



Spring 2010

## International & Comparative Law Perspectives: Spring 2010

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### Recommended Citation

Int'l & Comp. Law Program, "International & Comparative Law Perspectives: Spring 2010" (2010).  
*International & Comparative Law Perspectives*. 4.  
[https://scholarship.law.gwu.edu/international\\_perspectives/4](https://scholarship.law.gwu.edu/international_perspectives/4)

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[ P E R S P E C T I V E S ]

# CLIMATE CHANGE AND INTERNATIONAL TRADE LAW:

A CONVERSATION WITH GW LAW PROFESSOR STEVE CHARNOVITZ

For Steve Charnovitz, the recent media and government attention on climate change—particularly in advance of the Copenhagen Climate Conference in December 2009—placed on center stage the issues that have shaped his research and writing throughout most of his professional career.



Charnovitz brings numerous perspectives to the discussion. First, he understands the policy angle, having obtained a master's of public policy from the Kennedy School of Government at Harvard University after graduating from Yale College.

His work at the U.S. Department of Labor on international labor issues; for Senator Carl Levin; and for two speakers of the U.S. House of Representatives, Speaker Jim Wright and Speaker Tom Foley, has given him unique insight into the U.S. government. He was also policy

director of the Competitiveness Policy Council, an independent federal advisory committee with representatives from the private sector and government that advised the president and the Congress on policies to make the U.S. more competitive. Professor Charnovitz is not shy

★ ★ ★

SPRING 2010

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[ V I E W P O I N T ]

In this issue of Perspectives, we profile the work of our international and comparative law faculty and introduce readers to distinguished GW Law alumni who have been instrumental in shaping the field. The lead article features an interview about international trade law and climate change with Professor Steve Charnovitz.



ASSOC. DEAN SUSAN KARAMANIAN

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about his support for free trade, yet he recognizes that the government may need to implement economic and social policies that support trade liberalization.

Second, he is a lawyer, trained at Yale Law School, with a focus on public international law. He practiced at Wilmer, Cutler, Pickering, Hale & Dorr in international trade law before joining GW Law in 2004. Third, he has a firm grasp of international and domestic environmental issues; in 1994, he co-founded and directed the Global Environment and Trade Study (GETS) at the Yale Center for Environmental Law and Policy. The GETS was one of the first institutions to be devoted exclusively to trade and the environment.

Given the breadth of Charnovitz's training and focus, it should come as no surprise that his work in international trade law has a strong normative component. His writing remains, however, disciplined and rigorous. His path-breaking work has tackled the broad issue of global governance, in general, and the

role of non-governmental organizations in global governance, in particular.

So, what does he think about global and national attempts to address climate change in light of the vast international legal regime that attempts to regulate trade, the World Trade Organization (WTO)? We sat down with Charnovitz for a conversation on this issue, as well as on the position of the U.S. on climate change.

**EDITOR:** Your new book [*Global Warming and the World Trading System*, co-authored with Gary Clyde Hufbauer and Jisun Kim and published by the Peter G. Peterson Institute for International Economics] examines the tension between efforts to address climate change and WTO law. What are some of the key tension points?

**CHARNOVITZ:** Although we note in our book that trade liberalization can make it easier for governments to take measures to reduce greenhouse gas emissions, the focus in our book is whether particular domestic or international climate measures violate WTO law. We are concerned that many of the measures being proposed in the U.S. would violate WTO rules. For example, the climate bill passed by the U.S. House of Representatives in June 2009 contains an adjustable import charge to be imposed on certain goods from certain countries that do not have climate legislation that imposes a cost of compliance at least as high as [that of] the U.S. This provision would violate WTO rules, in my view.

**EDITOR:** If these environmental measures are inconsistent with the WTO regime, then what measures should nations enact to address climate change that would minimize the tension? Or, are we better off changing the WTO regime?



PROFESSOR STEVE CHARNOVITZ EXAMINES THE RELATIONSHIP BETWEEN CLIMATE MEASURES AND WTO LAW IN HIS RECENT BOOK *Global Warming and the World Trading System*

**CHARNOVITZ:** We recommend that the largest countries enter into cooperative agreements to address the problem of climate change and to deal with the trade-related issues of how to account for emissions associated with imports and exports. Such cooperative agreements could be accomplished inside the WTO or in the climate regime. At Copenhagen, President Barack Obama told the world about the mitigation actions being taken in the U.S. and said that these new policies “will create millions of new jobs, power new industries, keep us competitive, and spark new innovation.” If that’s true, then new Congressional legislation does not need [to include] trade sanctions against other countries.

**EDITOR:** What concerns do you have from the WTO perspective on the outcome of the Copenhagen summit?

**CHARNOVITZ:** At Copenhagen, there were proposals on the table to ban the use of border measures. I haven’t seen a text of those proposals, but in our book we recommended that the Copenhagen Summit enact a temporary moratorium on border measures pending the outcome of new negotiations. A few weeks ago, I read in *World Trade Online* that “U.S. negotiators buried an effort to ban such measures during the climate change conference.” In my view, that was unwise and unfortunate

and contributed to the lack of trust between India and the U.S.

**EDITOR:** In the fall 2009 issue of *The International Economy*, you wrote about America’s unilateralism in climate change, noting the possibility of “eco-imperialist unilateralism.” Explain your concerns.

**CHARNOVITZ:** In that article, I pointed out the parallelism between the Bush Administration with its “my way or the highway” attitude and the current political situation in which Congressional democrats are promoting unilateral trade measures by the U.S. as a way to dictate actions to China and India. In neither case does the U.S. lead by positive example. Given that the U.S. Congress has not enacted a serious greenhouse gas reduction program, it is premature and hypocritical for the Congress to threaten sanctions against other countries that are also laggards.

**EDITOR:** If you were a member of Congress, what measures would you propose to deal with global warming?

**CHARNOVITZ:** In 2004, I wrote an article pointing to the need for framework legislation setting a U.S. goal on climate change, authorizing negotiations, and setting out a procedure for Congress to review and approve the results of multilateral negotiations. It noted that Congress had never taken that simple first step to develop a



#### INTERNATIONAL AND COMPARATIVE LAW PERSPECTIVES

*International and Comparative Law Perspectives* is published by the International and Comparative Law Program at The George Washington University Law School.

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## { RECOGNITION }

We take great pride in our LL.M. students, many of whom have had their scholarship published. The recent theses of two of our LL.M. graduates have been published as books:

Meredith Mariani, *The Intersection of International Law, Agricultural Biotechnology, and Infectious Disease* (Martinus Nijhoff Publishers 2007).

Dan Stigall, *Counterterrorism and the Comparative Law of Investigative Detention* (Cambria Press 2009).

Our LL.M. students' recent publications in journals include: Niranjali Manel Amerasinghe and Daniel Barstow Magraw, Jr., "American Branch ILA/American Society of International Law Joint Study on the Implementation of Transparency Norms in International Commercial Arbitration: Part I, An Introduction to the Issues: Transparency and Public Participation in Investor-State Arbitration," 15 *ILSA J. Int'l & Comp. L.* 337 (2009).

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## { WHAT'S NEW }

### PROFESSOR DINAH SHELTON ELECTED TO INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



DINAH SHELTON

Professor Dinah Shelton, the Manatt/Ahn Professor of International Law, was recently elected a member of the Inter-American Commission on Human Rights for a four-year term beginning in January 2010. She is the first woman nominated by the U.S. for the commission. Professor Shelton is the author or editor of three prize-winning books: *Protecting Human Rights in the Americas* (winner of the 1982 Inter-American Bar Association Book Prize and co-authored with Thomas

Buergethal), *Remedies in International Human Rights Law* (awarded the 2000 Certificate of Merit from the American Society of International Law), and the three-volume *Encyclopedia of Genocide and Crimes against Humanity* (awarded a Best Research book award by the New York Public Library). She has authored many articles and books on international law, human rights law, and international environmental law and is a member of the board of editors of the *American Journal of International Law*. Professor Shelton sits on the boards of numerous human rights and environmental organizations, including the American Society of International Law for which she serves as vice president. In 2006, she was awarded the prestigious Elizabeth Haub Prize in Environmental Law.

### GRUBER FOUNDATION INTER- NATIONAL LAW FELLOWSHIP

The Peter and Patricia Gruber Foundation recently established the Gruber Foundation International Law Fellowship to provide financial support for a GW Law graduate to clerk at the International Court of Justice (ICJ) if that graduate is selected by the ICJ into its trainee program. The foundation honors and



LUKE WILSON

# { PROFILES }

## CLOVIS MAKSOU D (J.D. '51)

by Susan Karamanian, Associate Dean for International Studies

This past Ramadan, I attended an Iftar at the home of the Ambassador of Syria to the U.S., Imad Moustapha. After learning that I worked at GW Law, the ambassador steered me to Clovis Maksoud, an unassuming man who politely told me that he had earned his J.D. in 1951 at GW Law. Shortly into our conversation, Ambassador Moustapha mentioned that Mr. Maksoud, originally from Lebanon, was also an ambassador, having served as the chief representative of the Arab League to the U.S. and the United Nations from 1979 to

diplomat gave him a mastery of the facts and issues and an engaging, convincing manner.

I quickly arranged for him to return to GW Law to talk to about life as a diplomat. Before I could extend the invitation, he invited me to a couple of lunches, including a small gathering to honor Dr. Rima Khalaf Hunaidi, the former director of the UN Development Programme for Arab States, and Queen Noor of Jordan. He also visited the Law School one afternoon. While we were walking outside, a Lebanese LL.M. graduate who now works

school classmates, Daniel Inouye, now the senator from Hawaii, “didn’t understand at times a word I was saying, and I still think he doesn’t!”

While at GW Law, Maksoud made numerous contacts, a fact that has served him well throughout his life. He was close to the daughter of the Indian ambassador at the time, Vijaya Lakshmi Pandit, the sister of then-Indian Prime Minister Jawaharlal Nehru. Ambassador Pandit invited Maksoud to a dinner with Justice William O. Douglas. They struck up a conversation and Justice Douglas, known for his interest in foreign countries and people, said to him, “Why don’t you help me?” Based on that conversation, Maksoud became an intern to the justice, quite an amazing feat for a law student from Lebanon. For two consecutive years, on October 16, they celebrated Justice Douglas’s birthday at The Baghdad Restaurant on I Street. On one of these occasions, Justice Felix Frankfurter and Justice Byron White joined them, along with other guests.

Maksoud became interested in India through his friendships with Indians such as Dr. Ram Manohar Lohia, the Socialist leader who visited Washington, D.C. On February 4, 1961, at the age of 29, Maksoud arrived in Delhi as the Arab League’s first ambassador to India. On the morning of his arrival, he had breakfast with the Egyptian ambassador, who suggested that Maksoud stay at the ambassador’s guest house until he found a home. That night, the Egyptian ambassador had a dinner for dignitaries, including Indira Gandhi, to discuss a conference on Goa to be held the next day with leaders of former colonies of Portugal. The ambassador suggested that Maksoud should speak at the conference. Maksoud, who had just arrived in

India earlier that morning, was not eager to speak in public. Indeed, Gandhi was not thrilled about having Maksoud, someone unknown to her, take the stage. Her fierce stares at him sent a strong signal. Not wanting to anger the daughter of Nehru, particularly on his first day in the country, Maksoud repeatedly said no. But the ambassador insisted, recognizing that an Arab voice should speak on the issue. Gandhi eventually agreed to let Maksoud speak for exactly six minutes—less than the 10 minutes allocated to the other speakers—and only after the other speakers, except for Panditji Nehru. So, Maksoud spoke right before Nehru. While everyone else was introduced as a great liberation leader, Gandhi introduced the new ambassador of the Arab League with no fanfare. Maksoud spoke for only four minutes to show he was not eager to speak. Unlike the other speakers, he didn’t read a speech. Nehru followed him, and he also spoke without notes. In his speech, Nehru repeated several times, “As my friend Maksoud said...,” as if they had been life-long friends. At that moment, according to Maksoud, Indira Gandhi’s view of him “moved from antagonism to respect.”

During the 1965 India-Pakistan war, Ambassador Maksoud’s friendship with Gandhi was instrumental in helping ease a volatile situation and gave rise to one of the most inspiring moments of Maksoud’s career. Muslim leaders came to him and expressed concern that a group of extremists was throwing stones at the homes of Muslims. Maksoud called Indira Gandhi. Even though it was nearly midnight, she suggested that they go to the Jama Masjid, the large mosque in Old Delhi, where thousands of Indian Muslims were taking cover. There, Gandhi spoke to the group, saying, “Why



AMBASSADOR CLOVIS MAKSOU D

1990; he resigned due to the Arab League’s position on the Gulf War. He also had been the Arab League Ambassador to India from 1961 to 1966.

The next day I spoke to a colleague about Ambassador Maksoud and he said, “Oh yes. He is a regular on television about the Middle East.” I learned quickly that Ambassador Maksoud’s experience as a journalist (he was senior editor of *Al-Abram* in Cairo and then chief editor of *Al-Nabar Weekly* in Beirut) and his experience as a

for the United Nations in Beirut shouted across the quad, “Ambassador Maksoud, what brings you to GW Law?” The two had just seen each other in Beirut and did not know they both had attended the same law school.

Ambassador Maksoud came to GW Law after graduating from the American University in Beirut. Upon his arrival, he admitted that his “English was hazy and too Arab for some Americans to understand.” According to him, one of his law

# { WHAT'S NEW }

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encourages educational excellence, social justice, and scientific achievements that better the human condition. By establishing the fellowship, the Gruber Foundation is helping to advance the development and understanding of international law.

The first Gruber Foundation International Law Fellow is Luke Wilson, a graduate of Bowdoin College, who chose to study at GW Law for its

strength in international law and its location in the nation's capital. Wilson served as executive articles editor of *The George Washington International Law Review* and held several other on-campus positions. While at GW Law, he secured coveted internships at the U.S. Department of State, Office of the Legal Adviser, and at the U.S. Department of Justice, Criminal Division.

## NEW INTERNATIONAL AND COMPARATIVE LAW FELLOW



CLAUDIA E. HAUPT

GW Law has announced a new position, the International and Comparative Law Fellow, which allows a junior scholar the opportunity to teach, research, and write at GW Law. The first fellow is Claudia E. Haupt, who received her first law degree from the University of Cologne and an LL.M., with highest honors, from GW Law. She also holds a master's degree in political science from the State University of

New York at Albany. In 2008 at the University of Cologne, she successfully defended her Ph.D. thesis in political science, a comparative study of religion-state relations in the U.S. and Germany. Dr. Haupt clerked at the Regional Court of Appeals of Cologne; practiced at the law firm of Graf von Westphalen in Cologne, with her practice focusing on information technology law; and taught as an adjunct at the University of Cologne. Her primary research interests are in the areas of constitutional law, comparative constitutional law, legal history, and international law. Her publications have appeared in the *Boston University International Law Journal*, *George Washington International Law Review*, and *Florida Journal of International Law*. ★

are you fearful? Come with me, get your rickshaws." Along with the police, whom Gandhi had brought with her, they took to the streets. According to Maksoud, this incident confirmed Gandhi's commitment to secularism, which he considers one of her greatest legacies. Through this incident, they gained mutual respect for each other; it effectively cemented their close friendship.

As he recalls his life, Ambassador Maksoud has fond memories of his GW Law professors, particularly Professor Tom Malleson who introduced him to comparative law and international law. Malleson would later visit the ambassador in Beirut on his many trips to the region, and he was instrumental in one of the events that Clovis describes as a "career event."

In 1988 during the presidency of Ronald Reagan, U.S. Secretary of State George P. Shultz used his "constitutional prerogatives," as he described them, to deny PLO Chairman Yassar Arafat a visa to come to the United Nations. Ambassador Maksoud consulted with Malleson, who advised him that the denial of the visa violated the U.S. host country treaty with the United Nations. The treaty states that whomever the United Nations invites as a member state or observer cannot be denied a visa, although the U.S. can impose certain restrictions on the person's movement while in the country. In a moment of anger, Maksoud told media "stringers" that he would seek to move the UN General Assembly to Geneva, Switzerland. The General Assembly later overwhelmingly adopted a motion to move the meeting. On the flight to Geneva, Maksoud sat next to the U.S. ambassador, who was not amused about flying all of the way to Geneva for a UN General Assembly meeting.

Maksoud likes to recall another moment in the media spotlight. During the OPEC oil embargo of 1973 and 1974, Ambassador Maksoud was a special envoy of the Arab Summit. He was sent to tour the U.S. The morning after landing in the states, he found himself on *The Today Show* being interviewed by Barbara Walters. (He did not know who she was as this was his first time on U.S. television.) Her first question was along the lines of, "Aren't you ashamed of yourself as on the way to NBC you must have seen Americans waiting for two or three hours for gasoline because of your embargo?" His response was, "Madam Walters, I want to take this opportunity to apologize to the American drivers for the inconvenience that our oil embargo has caused." She smiled. He continued, "And I hope one day that the American drivers will apologize to the Palestinian refugees who have waited on the breadlines for 40 years." The phones in the studio and in the Arab League offices lit up quickly. She subsequently asked more friendly questions and then took him to breakfast.

Throughout Ambassador Maksoud's fascinating stories about life as a diplomat, his well-developed views about the substantive issues concerning Arab identity and the Palestinian issue remain evident. His preparation at GW Law clearly helped launch him into the international arena and put him in the path of contemporary world leaders. Although he is no longer an ambassador, he continues to work in the field as a professor of international relations and director of the Center for the Global South at American University in Washington, D.C. ★

## JOHN FOSTER DULLES (LL.B. '11)



JOHN FOSTER DULLES (LL.B. 1911)

John Foster Dulles, U.S. secretary of state under President Dwight D. Eisenhower from 1953 to 1959, is one of GW Law's most distinguished alums, one who helped shape international law profoundly. After graduating first in his class from Princeton University, Dulles moved to Paris where he studied philosophy and international law at the Sorbonne. A year later, he moved to Washington, D.C., to live with his grandfather, John Watson Foster, and to enroll in GW Law.

Dulles's grandfather Foster, a former secretary of state under President Benjamin Harrison, had taken Dulles to the Second Hague Peace Conference in 1907 when Dulles was a 19-year-old Princeton student. Foster attended as the envoy for China; Dulles later became a secretary to the Chinese delegation due to his French language skills. The trip helped shape Dulles's interest in international dispute resolution and foreign policy. That interest was further nurtured because he had met Woodrow Wilson at Princeton and had been exposed

to foreign affairs through his uncle, Robert Lansing, who would later become secretary of state under then-President Woodrow Wilson.

Dulles completed his LL.B. degree in just two years. He passed the New York Bar examination, and after an extensive search, he landed a job at the law firm of Sullivan & Cromwell in New York. At that time, New York City law firms knew little about GW Law and were not inclined to hire Dulles despite his stellar credentials. His grandfather Foster arranged an interview with a partner at Sullivan & Cromwell and, based on the interview, Dulles landed a job as a clerk.

Dulles quickly established himself at Sullivan & Cromwell as an energetic and brilliant lawyer. Within a few years, he was doing substantive international work. He moved to the U.S. Department of State during the war and later participated as a member of the U.S. delegation to the Paris Peace Conference of 1919, at which he advocated for limited reparations for Germany, a position that was not accepted but over the years proved prescient. He eventually returned to Sullivan & Cromwell, becoming executive partner of the firm. His international work flourished, as did his civic engagement. He was appointed a senior U.S. adviser at the San Francisco Conference of 1945 and later was part of the U.S. delegation to the UN General Assembly in Paris in 1945, assuming the position of acting chair of the delegation when George Marshall returned to the U.S. for surgery. Perhaps one of his most important accomplishments was negotiating the Peace Treaty with Japan; he worked feverishly for one year on

the treaty. Following those experiences, he was appointed to the U.S. Senate to fill the vacancy of Robert F. Wagner (New York) in 1949.

By the time he was appointed secretary of state, Dulles had entrenched views on the Soviet Union. Containment and neutrality would not be sufficient, he believed; the United States needed to be engaged internationally and have a long-term plan. His views on "brinkmanship" and "liberation" antagonized some because they were considered too aggressive. Under Dulles' leadership, the Southeast Asia Treaty Organization was established. He also helped negotiate a coordinated use of force among NATO allies and resolve the Suez Canal situation, and he was instrumental in ensuring that support was provided to various Middle Eastern nations. He was recognized as *Time* magazine's 1954 Man of the Year. In 1959, ailing from cancer, he resigned the position as secretary of state and died two months later. Dulles received the Presidential Medal of Freedom shortly before his death. ★

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Arlington National Cemetery web site

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The focus on our alumni examines Clovis Maksoud (J.D. '51), the former Arab League ambassador to the U.S. and current professor at American University, and John Foster Dulles (LL.B. '11), the former U.S. secretary of state. We also provide insight into two new fellowships in international and comparative law as well as updates on our faculty, students, and events. ★

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viable U.S. climate policy. So if I were in Congress, I would advocate such framework legislation. It was sad that President Obama had to go to Copenhagen without any mandate from Congress.

**EDITOR:** Should we scrap carbon trading/cap and trade regimes unless they can be truly open regimes?

**CHARNOVITZ:** All multilat-

eral regimes should be open in the sense that governments that want to join them will be able to do so. They should also be openly transparent in the sense of providing public information and, where appropriate, notice and comment opportunities to civil society and business. As I said in the article in *The International Economy*, it was inappropriate for the U.S. House of

Representatives to rush through its 1,437-page climate bill without any hearings or without providing at least 24 hours for members of the House or the public to read it before [they] voted. I never understood why it was so urgent for the House to rush to pass the bill on June 26, when many months later the Senate still has not even begun consideration of it.

## EDITOR'S NOTE:

The current climate change debate covers a wide range of issues that will continue to engage Professor Charnovitz and other scholars and lawyers. GW Law has several faculty members, including David Freestone, Robert Glicksman, Lee Paddock, and Dinah Shelton, working on climate change solutions. ★

# [ ON THE AGENDA ]

## MARCH 5, NOON - 5 PM

Comparative Constitutional Law Roundtable (Convener: Professor David Fontana).

## MARCH 17, 4 PM

Hon. Shanka Sharma, ambassador of Nepal to the U.S., will speak on "Proposed Assignments of Economic Rights and Natural Resources in the New Constitution of Nepal."

## MARCH 26, 5 PM

GW Law and the Canadian Council on International Law co-host Chief Justice Beverley McLachlin of the Supreme Court of Canada at the annual meeting of the American Society of International Law.

## MARCH 29

GW Law and the Office of the Legal Adviser, U.S. Department of State co-host the conference, "The International Law Commission: What Should It Be Doing to Make A Difference?" Professor George Nolte, Humboldt University of Berlin, will present the 2010 Susan N. and Augustus DiZeriga Lecture at the conference luncheon. Confirmed speakers include Professor David Caron, Professor Lori Damrosch, Ambassador Hussein Hassouna, Hon. Mahmoud D. Hmoud, Hon. Marie Jacobsson, Professor Donald McRae, and Harold Koh (legal adviser, U.S. Department of State).

## APRIL 5, NOON:

International and Comparative Law Colloquium. Professor Robert D. Sloane, Boston University School of Law.

## APRIL 13-17

ABA Section of International Law Spring Meeting, Grand Hyatt, New York, NY (more information is available at <http://www.abanet.org/intlaw/spring2010/>).

## MAY 7, NOON - 5 PM

GW Law's Third Annual Potomac Foreign Relations Roundtable (Convener: Professor Peter Raven-Hansen).

## JUNE 28-JULY 24

Munich Intellectual Property Law Summer Program, Max

Planck Institute for Intellectual Property, Competition, and Tax Law, Munich, Germany.

## JULY 11-AUGUST 7

GW Law-Oxford University Summer Program in International Human Rights Law, New College, Oxford.

## JULY 25-31

The International Academy of Comparative Law and the American Society of Comparative Law XVIIIth World Congress held at GW Law, American University Washington College of Law, and Georgetown University Law Center (more information is available at <http://www.wcl.american.edu/events/2010congress/welcome.en.cfm>).

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