N°42
OCTOBRE
1992

GAZETTE

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ASSOCIATION INTERNATIONALE DES JEUNES AVOCATS
INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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Le mot du rédacteur

L'AIJA a trente ans !

Que de chemin parcouru depuis la fondation, l'AIJA a grandi et j'ai demandé à certains de nos anciens Présidents d'évoquer leurs souvenirs.

Notre Association a connu des Présidentes et des Présidents aux personnalités très diverses, mais, qui ont toujours su maintenir l'esprit AIJA.

L'ESPRIT AIJA, c'est un doux mélange de jeunesse, de compétence, de bonne humeur qui produit une convivialité bien agréable.

Dès le premier Congrès de l'AIJA auquel j'ai participé, j'ai eu l'impression d'être membre de l'Association depuis longtemps.

A l'AIJA toutes les bonnes volontés étaient et sont toujours recherchées et le Bureau m'a fait l'honneur de me confier d'intéressantes responsabilités.

J'ai eu le plaisir d'être Commissaire aux travaux de MUNICH, puis Rédacteur adjoint et enfin Rédacteur en Chef de la GAZETTE de l'Association, j'ai également participé à l'organisation d'un cours de droit français et du Comité Exécutif de VERSAILLES.

Grâce à l'Association, j'ai vécu des moments privilégiés dans des lieux fort agréables.

Certains épisodes méritent d'être rappelés :

DUBLIN et le Réfectoire de TRINITY COLLEGE, RIO, BADEN BADEN, COPENHAGUE ou l'AIJA en paquebot et à l'opéra, MUNICH, DELHI et son POLO, VERSAILLES, COIMBRA et son train spécial, PALERME et la Villa IGEIA, VANCOUVER, MONTREAL, BERLIN avec et sans mur, ALGER la belle, la POLOGNE libérée et j'oublie bien des lieux de nos réunions.

Partout l'accueil chaleureux et l'ambiance AIJA ont été présents.

L'Association nous donne la possibilité d'une ouverture sur le monde et nous permet de connaître d'autres façons de penser et de travailler.

A bientôt dans 30 ans au Club des OLDJIISTES !

Jean-Frédéric MAURO,
SAINT POURCAIN SUR SIOULE,
Août 1992.

Editorial

Création de la fondation AIJA

La Fondation AIJA est née à Amsterdam, cette fondation est une idée ancienne à l'AIJA mais elle n'avait pu encore se réaliser.

Grâce à la détermination d'Elisabet Fura Sandstroem, de François Ruhlmann et d'Emmanuel Hayaux du Tilly, le projet de fondation a pu se concrétiser.

Le but de la fondation est de faciliter la formation des confrères dans de nombreux pays aux situations politiques instables, et dont les économies rendent délicates l'exercice matériel de la profession.

La Fondation contribuera à côté de l'Association, avec les jeunes membres et avec nos anciens qui ont toujours su aider l'Association par leurs expériences.

l'AIJA a toujours souhaité agir effectivement et la Fondation naissante souhaite d'ores et déjà apporter son appui à deux projets.

Vous êtes tous conviés à Douala (Cameroun) pour une réunion intercontinentale organisée sur place par notre confrère Pierre Nthepe du 11 au 14 février 1993, Pierre nous décrit dans la Gazette la charmante ville de Douala, et je suis sûr que vous vous rendrez nombreux à cette réunion qui vous permettra de connaître des confrères d'autres horizons.

Au cours de la réunion les thèmes suivants seront abordés:

- L'indépendance de l'avocat
- La fonction de la défense
- L'avocat conseil
- La déontologie internationale
- Les mécanismes internationaux de protection des droits de l'Homme.

Un programme détaillé sera diffusé aux membres de l'Association.

La Fondation veut apporter son soutien également à un séminaire d'arbitrage qui se tiendra à Budapest au mois de juin 1993. De nombreux confrères de l'est de l'Europe souhaitent participer à nos travaux mais la situation économique de faillite des anciens pays socialistes ne permet pas à nos confrères de venir facilement.

La Fondation souhaite apporter son aide matérielle pour permettre à la solidarité entre jeunes avocats de s'exprimer de façon pratique et non sur le seul terrain des belles déclarations.

Longue vie à la Fondation !

Jean Frédéric Mauro
Paris, septembre 1992

Motion votée lors de l'Assemblée Générale de l'AIJA le 21 août 1992, à Amsterdam (Pays-Bas)

Fidèles à leur idéal d'humanisme, de respect des droits fondamentaux et de démocratie, les jeunes avocats du monde condamnent les politiques et les pratiques d'hégémonie raciale, éthique ou religieuse et les crimes qu'elles engendrent sous diverses formes dans plusieurs pays.

Resolution adopted by the General Assembly of the AIJA on 21 August 1992, in Amsterdam (Netherlands)

Faithfull to their ideas of humanity, the respect for fundamental human rights and democracy, the young lawyers of the world condemn policies and practices of racial, ethic or religious dominance and offences which are committed against other groups in many countries.

Bratislava

Tchécoslovaquie, Workshop. 28-30 mai 1992

Alors que le samedi 30 mai, nous observions Bratislava depuis les hauteurs de Burberg, la cloche de la cathédrale de Bratislava sonne onze coups, annonçant la fin proche de nos groupes de travaux tant réussis.

Cela nous a rappelé que cette capitale de la Slovaquie avait été jadis capitale du royaume de Hongrie et que dans cette même cathédrale furent couronnés les rois hongrois et l'impératrice d'Autriche Marie-Thérèse. Nous avions vue sur l'Autriche et la Hongrie et certains d'entre nous ont pu voir dans le cours du Danube, qui coulait tranquillement à nos pieds, le symbole d'une alliance entre les peuples appartenant au passé, mais peut-être aussi au futur.

Cette vue sans aucun doute très belle de la ville a été gâchée par une affreuse cicatrice. Une voie rapide a en effet été construite au début des années 70, qui traverse la vieille ville en son centre après la destruction du vieux quartier juif, longe la vieille enceinte de la ville et frôle sans pudeur l'autel de la cathédrale.

Hier encore nous participions à nos ateliers de travaux avec le comité d'organisation (Ludile, Udvaros, Maly et Pritz) et environ 40 collègues, sur la constitution de société à l'Est, par l'exemple de la Tchécoslovaquie. Grande était notre joie de voir l'attraction que cette ville exerce et qu'ainsi tant de nos collègues aient fait le voyage

Qu'ils en soient tous remerciés !

Quelle joie de voir que ni Gabriele Koetschau, de Flensburg, ni Ralf Benesch, de Münster, ni Jérôme de Montmolin, de Genève, n'avaient reculé devant l'effort pour venir à cette manifestation d'un seul jour, si loin de chez eux. Combien d'autres seraient volontiers venus si la manifestation n'avait pas été organisée pour des germanophones ?

Il faut dire à ce sujet que de telles manifestations à Bratislava ne présentent plus guère d'originalité. Je crois pourtant que l'activité de l'AIJA à l'Est, qui a été organisée très tôt, et en particulier ici à Bratislava, a conduit à des liens particuliers avec les jeunes collègues de ce domaine. C'est pour cela que l'Ordre des Avocats de Slovaquie sous la direction de son président Stefan Devay n'a pas hésité à soutenir cette manifestation. Même le Barreau de Vienne a apporté son soutien amical sous la forme d'une invitation à dîner. Ici aussi les liens entre l'AIJA et leurs collègues slovaques, eux-mêmes très proches du Barreau de Vienne ont été décisifs.

Le "Workshop" lui-même s'est déroulé comme prévu, se caractérisant par une discussion particulièrement animée et force nous était de constater le soir que nous n'avions pu venir à bout d'une part importante de ce que nous nous étions promis de traiter. L'évolution du droit en Tchécoslovaquie, en particulier les premières lois venant d'entrer en vigueur, nous montrent que nous tendons de plus en plus vers un standard pour l'Europe Centrale. Les dispositions du droit des sociétés sont en substance tout à fait comparables à celles des pays voisins et on s'est enfin décidé, et la profession largement, à régulariser de façon à obtenir une situation juridique comparable à celle de l'Autriche. Il ne peut plus être question d'une quelconque discrimination envers un investisseur étranger. Ce dernier est toujours libre d'acquérir des biens immobiliers et de conclure des contrats de bail. A condition qu'il s'établisse en fait et non en apparence en Tchécoslovaquie; cela étant prouvé par l'attestation du contrat de bail qu'il aura conclu. L'autorisation d'exercer l'activité de l'entreprise naît de l'immatriculation au registre du commerce.

En droit des sociétés, la société unipersonnelle est aussi possible, à condition que deux personnes (physiques ou morales) au minimum participent à sa constitution. Il est aussi intéressant de pouvoir transférer le siège d'une société étrangère en Tchécoslovaquie, dans la mesure où le droit étranger permet cette manoeuvre. Les formes de sociétés prévues par le Code de commerce sont : la société en nom collectif, la société en commandite simple, la société à responsabilité limitée et la société par actions. L'impôt sur le revenu s'élève à 55 %.

Si un étranger participe à une société à concurrence de plus de 30 % le taux d'imposition est réduit à 40 %. L'imposition élevée des facteurs de production mérite attention, à l'occasion de quoi on nous assure du côté slovaque que le travail sera aussi bon marché qu'avant, que d'une part les salaires peu élevés attirent comme par le passé les investisseurs étrangers et que d'autre part il ne faut pas s'attendre à une rationalisation de la main-d'oeuvre.

Ces constatations objectives nous ont été transmises par le Professeur Plank lors d'un exposé haut en couleurs. Sa conférence nous a montré que l'un des problèmes majeurs à venir repose dans l'évolution constitutionnelle de cet état. Au premier plan de ces réflexions se trouvent les rapports entre les deux républiques sécessionnistes slovaque et tchèque. Si la séparation des républiques se poursuit, se posera la question de savoir si dans le futur une évolution constitutionnelle sera garantie, qui offrira à un investisseur étranger la sécurité dont dépendront ses investissements.

Les dernières évolutions montrent combien il est difficile d'établir des prévisions, même pour cette partie de l'Europe.

Nous espérons tous que l'évolution politique ne viendra pas s'opposer aux efforts des jeunes avocats slovaques de créer une profession stable et autonome !

Hanz Pritz

Amsterdam

Annual Congress

17-22.08.1992

Gys H.J. Heutink

Il y a quelques années, lorsque Me Marc BONNANT fut élu Bâtonnier de l'Ordre des Avocats de Genève, il avait ponctué son discours d'intronisation d'un tonitruant "Je reviens de Yaoundé !" où il venait de créer - avec d'autres - la Conférence des Bâtonniers des traditions francophones.

En rentrant d'Amsterdam, j'avais l'impression de rentrer de Yaoundé.

Etaient en effet présents à Amsterdam, de nombreux amis d'Afrique noire francophone soit, entre autres Linda DADIE-SANGARET, de Côte d'Ivoire, et Xavier-Jean KEITA et Bara DIOKHANE du Sénégal et Camille KOS'ISAKA, Matadi NENGA et KALENGA du Zaïre, ainsi que Pierre N'THEPE et Patrice MONTHE, du Cameroun. Ce dernier est Bâtonnier de Douala.

Alors, Doula, c'est pas Yaoundé, mais c'est juste à côté.

Nous revenons donc d'Amsterdam.

Amsterdam, c'est pas Yaoundé, mais c'est presque la même chose, sauf pour le port où il y a les femmes qui ... et les hommes qui ...

We have returned from Amsterdam, an amazing city, its punks, canals, red light district (which I desperatly looked for but never found), its little houses, beautiful old structures mingling with new buildings, all of extremely interesting architecture.

We had our congress in Amsterdam so this article is meant for all those who did not attend the Congress, as well as to those who did ! - in fact, it is totally unmöglich to assist a congress and be aware of everything which is going on.

So many things happen, so many things are said and exchanged with so many different people.

Toute la pluie tombe sur moi, da da da da -... da da da da da - da da da - daaaaaa....

It did rain a lot - UNFORTUNATELY - mainly during the two outdoor events, i. e. the "beach party" and the sailboat tour outing of Thursday. What a pity ! But as a true AIJA Congress organisor always thinks positive, we had the AIJA custom made umbrella and since a true AIJist always thinks positive, he dances, eats and drinks so much that he does not even realize anymore that the rain has totally flooded his plate, glas or firework.

It is not possible to write about all the events such as the opening ceremony in the Old Church (where our President Elisabet FURA-SANDSTRÖM and the President of the Organizing Committee, Gijs HEUTINK, made a remarkable speech which was immediately responded by the Dutch Minister of Justice), followed up by a very wet canal tour (no, it was not raining !) and an extraordinary cocktail on a real old sailship, followed up by an indonesian dinner in the Maritime Museum or the closing ceremony with the craziest fashion show ever seen, etc.,etc.

But AIJA is not only fun (isn't it ?). No! It is also work ! Which consisted in a day long seminar : services as a business "interprofessional coOporation" as well as working sessions on "lex mercatoria", where to locate holding and common services of groups of companies (during which Jean-Charles BALAT used a very efficient method in which the audience takes an active part into the resolution of a case), EEC LAW employment, foreign (?) shopping, securitisation, design protection in international situation and a French ...(?). workshop: is there a need for pre-sail disclosure law ?

Apart from all these working sessions, many commissions or sub-commissions held working sessions held on an open-door basis. So, for all those who really did not want to visit Amsterdam, there was ample to do. And, apparently, many did, since all the working sessions were extremely well attended.

On the last day of the Congress, the General Assembly takes place during which the Presidency, Vice-Presidency and Executive Committee are elected.

This year, Marie Anne BASTIN, from Brussels, succeeded to Elisabet FURA-SANDSTRÖM, as President, while Douglas HORNUNG, from Geneva, in a very tight race with Ron BOZZER, from Vancouver, was elected Vice-President.

Philippe XAVIER-BENDER, Secretary General, had decided to withdraw from his function and Jérôme DEPONDT, from Paris, Assistant Secretary General, was elected Secretary General of the Association.

The Executive Committee, decided to postpone the presentation to the General Assembly of the modification of the By-Laws of the Association to the effect of including inhouse lawyers as members

Jérôme Depondt (Secrétaire Général)

Les marchands du Temple
Xavier Jean Keita

since the matter has not yet been studied in the light of all the various jurisdictions of all the countries of which AIJA holds members. Members will so be kept abreast of this matter by future reports in the Gazette.

So many more things could be said about this Congress, such as the wonderful organisation with all the little details that made it a true AIJA event, or about this AIJIA member wondering around along a canal at six o'clock in the morning in his pyjamas, looking for the fire brigade to come and deliver other AIJA members blocked in the lift, and suddenly realizing, once everything had been settled with his friends, that he had been locked out of his flat ! That is also AIJA !

AIJA will also be in Bombay, in November, for the Executive Committee and a seminar on investment possibilities in India. This is the place to remind everyone that Executive Committee meetings are also open to non-members of the E.C. who wish to attend, although they are not able or allowed to vote on subjects submitted to the Committee.

AIJA will also most probably be in Douala for a regional meeting in February 1993 and more informations will be given about this last event.

Again and again, many congratulations to the organisors of the Amsterdam Congress as well as to all the people who have helped them and, ... Horatio, ne te relâche pas, on t'attend à Rio !

Susannah L. MAAS, Geneva

Ron Bozzer
et Douglas Hornung

California

Young lawyers association introduces AIJA
10.04.1992

The California Young Lawyers Association (CYLA) consists of all California lawyers under the age of 36 -- somewhere on the order of 50.000 lawyers. CYLA will be sponsoring a seminar "An international Perspective -- Current Issues of International Law" during the annual meeting of the State Bar of California from October 2-5, 1992 which will introduce AIJA to the CYLA and will provide a basis for a regional reunion. This year's annual State Bar Meeting will be held at the San Francisco Hilton. Recognition of AIJA will occur in the form of a two hour educational program on October 2 from 10.00 am to noon on several selected topics in the international arena. Jean-Pierre Gasnier, AIJA member from Marseille will be speaking on the protection and licensing of intellectual property rights in an international context. There will also be a round table discussion on how to work with foreign counsel, with Jean-Pierre Gasnier and San Francisco AIJA member John Weinkopf, discussing fee structures, confidentiality issues, customs and protocol and a comparison of foreign and U.S. Law Practices. CYLA will also present a talk which is an introduction to off shore financial centers.

A reception for AIJA members attending, for those attending the CYLA international seminar, and for the members of the International Law Section of the State Bar of California, will be held on Saturday afternoon from 4.30 to 6.30 at a location to be announced.

AIJA members are invited to attend the entire annual meeting of the State Bar of California as well as the AIJA presentation and seminar. Attending the annual meeting is an excellent way to meet and perhaps understand a large number of California lawyers in a short period of time. Other programs during the meeting are likely to be of interest including a program sponsored by the International Law Section on the Pacific Rim on the morning of October 3.

For a moderate additional cost, one can attend various luncheons, dinners and receptions. The basic admission cost to attend the annual meeting is approximately $300, which includes admission to the CYLA/AIJA educational program as well as the reception along with perhaps over a hundred additional programs which will be held during the meeting.

For more information about this event along with the annual California state bar meeting, please contact Paul Supnik, 9601 Wilshire Boulevard, Suite 735, Beverly Hills, CA 90210, Tel. 310-274-8281, Fax 310-274-5039.

Paul SUPNIK,
Beverly Hills.

Bombay

Comité Exécutif
Seminar on Investment in India
26.11 - 29.11 1992

Come make the most of this short weekend - don't let the days just fly away - grab a few moments to make it a never-to-be-forgotten experience.

There couldn't be a more ideal setting than our island city, holding the seminar on 'Emerging Investment Opportunities in India' simultaneously with the forthcoming AIJA Executive Committee meeting. The city has a tradition for all major commercial activities for the Indian subcontinent a legacy of a bygone era when Bombay was given as part of a dowry settlement of a Portuguese Princess to an erstwhile British King.

Savour the warmth and spontaneity of city and its people open to western ideas, yet retaining, its traditional heritage and charm.

We look forward to welcoming you all on not so warm, yet sunny days is the last week of November 1992.

Please make it a success - this is the best opportunity to travel East at the cost of Inland Revenue.

For registration and further information :

N.G. THAKKER

Fax 91-22-204.54.98.

Il y a quelques années un magnifique film appelé "La Route des Indes" m'a donné une grande envie de connaître Bombay.

Le film commençait par l'arrivée du paquebot de la P.O. dans le port de Bombay, la porte des Indes.

Le rêve va se réaliser, Nitin Thakker et son équipe nous attendent pour un Comité exécutif fin novembre à Bombay.

Les Aijiistes qui gardent un souvenir inoubliable de New Delhi vont venir nombreux, nous n'avons plus le temps de venir en paquebot mais d'excellents avions relient Bombay au monde entier.

A bientôt à Bombay !

Jean Frédéric Mauro

Well ! Here I'm sitting in an office surrounded by impressive leather-bound books. "What am I doing here ? is a question I've asked myself a hundred times may be a million. Ever since I was selected to be the coordinator for the AIJA meeting. AIJA whats that, I asked the Chairman of the organising committee.

'That' I was told with mild indulgence is an International Association for Young Advocates, who have common interests and goals, they get together on a regular basis to share ideas etc etc. I did my best to look suitably impressed. It seemed it was just another group out for a fun-filled weekend under the guise of work/seminars/meetings. Had n't Seen it all before (I had worked at the Front Desk of a hotel for several years) it all seemed to be in a days work.

Did my best to get hold of all the information leaflets, literature, previous seminar programmes just any reading material on AIJA.

Here we go, my first impression on AIJA Association Internationale Des Jeunes Avocats, even with my limited knowledge of french, I understood what it meant an International Association of Young Advocates, sorry the idea is not yet clear, could I ask again an International Association for Young Advocates ? It did not fit in with my idea of the legal profession. Had I been a misconception all these years ? International Association could lawyers agree, that across their country borders another legal system also existed; or would they bang on their tables and say no that's not the issue, and like oil and water never mix may be they've formed a law to agree to disagree or disagree to agree shall I keep the issue pending ? The part of jeunes avocats young, and that too, advocates ! Had always visualised them as ponderous old men in flowing gowns and curly wigs furrowed brows and quizzing looks, a thunderous bellow, and a victim struck down with a flourish of a pen or a verdict declared the likes of a king's proclamation, or was it a latin opera ?

Guilty! Not Guilty! Pardoned! To hang at dawn! a gamblers' fluke win or ruin all given out in a sonorous tone, that's what lawyers thrive on they have more twists and turns than a professional dancer.

May be I can put aside my earlier misgivings of the legal profession have I by any chance got hooked on it? Though I confess I always wanted to learn all that gancy legal jargon, to use at the right moment with great aplomb to sump a hapless victim.

Here's hoping the above matter will be taken with true AIJA spirit and without prejudice .....

WELCOME TO BOMBAY.

Ms Patel KHORSHED,
co-ordinator.

Douala

Réunion Intercontinentale
11-2 - 14-2-93

A partir de quel moment un village ou un assemblage de villages deviennent-ils ville ? Existe-t-il des critères précis permettant de rendre compte du passage de l'un à l'autre ? DOUALA est originale à plus d'un titre parmi les grandes villes d'Afrique Noire. Située au fond du Golfe de Guinée, non loin de l'Equateur, DOUALA s'est bâtie entre fleuve et forêt. La ville de DOUALA située sur le Littoral, s'est imposée d'abord comme comptoir par le Commerce, puis comme Centre Administratif et Industriel. Ce qui parait caractériser la ville c'est une dynamique imprévisible et asymétrique. Pôle d'attraction, DOUALA a drainé une grande part de l'exode rural.

Cependant et bien que contemporaine de la colonisation européenne, il existe à DOUALA les preuves de préurbanisation bien des décenies avant la pénétration allemande. Les Français ayant succédé aux Allemands apportèrent avec eux d'autres méthodes et une autre vision de la colonisation. Ville de plusieurs colonisations, DOUALA présente plusieurs faciès morphologiques. En outre et depuis les années 50 la concentration en un même lieu des hommes d'origines diverses, des activités les plus diverses, des habitudes et des genres de vie différents malgré la place des autochtones dans leur ville, a fait apparaître une forme de discrimination urbaine qui explique les différences des paysages et des modes de vie de l'agglomération DOUALA.

Le climat de DOUALA se distingue par l'abondance de la pluviosité. On relève des mois "secs" : Novembre, Décembre, Janvier, Février. La chaleur sans être excessive est surtout constante. La température moyenne annuelle est de 26°3. Les écarts de température entre le jour et la nuit, entre la période sèche et la saison des pluies plus fraîche sont rarement supérieurs à 10°.

L'Histoire de DOUALA qui se confond avec celle du Cameroun n'a pas cessé d'étonner. Aux grands noms qui ont symbolisé l'éveil de la conscience nationale face aux colonisateurs tel KING JOSS, père de KING BELL et arrière grand-père de Rudolf DOUALA MANGA BELL, ou encore KING AKWA et KING DEIDO, ont succédé des générations d'hommes narcissiques vivants hors du temps et qui n'ont pas perçu la fonction portuaire de la ville qui a déterminé toute l'évolution de DOUALA, de ses hommes et du Cameroun.

Il est un fait aujourd'hui que DOUALA a crû à la manière d'un tronc d'arbre, en auréoles successives qui se distinguent par l'âge et la forme de leurs bâtiments. Et avec cela DOUALA est la plus grande ville (2.000.000 habitants) et la métropole économique du Cameroun.

Cosmospolite, DOUALA a son art de vivre et c'est une ville qui a plus de charme la nuit que le jour. Venez la découvrir !

Dans mes jeunes années, la France fredonnait avec Dario Moreno "Si tu vas à Rio... n'oublie pas de monter là-haut ... dans mon petit village ...."
Grâce à nos amis brésiliens, j'ai eu la joie de connaître RIO à l'occasion d'un Comité Exécutif mémorable.
RIO nous attend en 1993 pour un Congrès encore plus inoubliable, et à AMSTERDAM, de nombreux Aijistes ont effectué leur préinscription.
Prenez votre agenda et dessinez un grand soleil sur les pages du 23 au 27 août 1993.
Un programme formidable, j'allais dire un cocktail nous attend.
Le Congrès de RIO aura un grand avantage, il est en effet impossible de stocker et de distribuer des cartes de visite en maillot de bain.
En attendant RIO, je vous recommande d'écouter les C.D. de STAN GETZ, CHICO BUARQUE, GILBERTO GIL en buvant une "CAIPIRINHA" (à consommer avec modération).
A BIENTOT A RIO.

Jean-Frédéric MAURO

Rio Congress 1993

For the first time since the creation of AIJA, its annual Congress will take place in Latin America and the chosen city will be the main tourism gate of this continent, Rio de Janeiro.

Rio de Janeiro continues to be the most beautiful city in the world and its greatest problem, the lack of security, is in process of being solved. During ECO 92 a special police group initiated a specific service to maintain the security of the tourists with great efficiency.

The Rio Congress will be held between the 22nd and the 27nd of August, when in spite of the Brazilian winter, it is the ideal season to be in Rio, as the temperature is agreable and pleasant.

The Rio program could not be more complete : it will have Working Sessions, Tourism and Social Events.

Some of the Working Session topics will be : Intellectual Property and New Technologies, International Business Law, International Arbitration, E.E.C. Law and others.

Tourism events will include several ecological joggings to Painerias, Urca and Lagoa are included and all day "Green Coast" tour to Portobelo, and as options for the accompyning persons there will be a city tour, and all day tour to Petropolis and also a historical tour.

Brazil is immense : the trip can be very long, and after or before these hard days of work, it could be worthwhile to make the XXXI AIJA Congress your 1993 holiday. Due to this there have been prepared many options to the most interesting places in this country. They are : Iguaçu Falls, Buzios, a natural paradise set in a peninsula surrounded by transparent green sea, Pantanal, the largest ecological reserve of the Americas, Manaus, the gateway to the Amazon jungle, Recife and Olinda, declared by UNESCO as a World Monument, Salvador, former colonial capital of Brazil and Natal, where the blue sea contrasts with the white sand dunes.

This Congress will be the first opportunity to present AIJA in Brazil; it will permit the Brazilian Young Lawyers who do not know AIJA to make its aquaintance and those who already know AIJA to visit Brazil.

Certainly it will be the beginning of many AIJA activities in Latin America.

Elza Leite de Moraes Andreade
Sao Paulo.

Conseil de l'Europe

Démosthène - Démo Droit

A la suite des bouleversements intervenus dans les pays d'Europe centrale et orientale à la fin de 1989, le Conseil de l'Europe a pris des mesures pour aider ces pays à procéder aux réformes constitutionnelles, législatives et administratives inscrites à leur ordre du jour.

La volonté du Conseil est de transmettre l'expérience accumulée par ses États membres en matière d'organisation et de gestion d'une démocratie pluraliste.

Un programme dénommé "DEMOSTHENE", prévoyant une coopération sous la forme de réunions d'experts, d'ateliers, de stages de formation, de bourses et de voyages d'étude, a été mis en place.

Le Droit étant l'un des fondements de toute société démocratique, il a été convenu une coopération dans le domaine juridique.

Cette coopération, dans le cadre du programme DEMOSTHENE, a été baptisée "Démo-Droit".

Démo-Droit vise à aider les nouveaux membres du Conseil, mais aussi les pays non-membres (dont le nombre s'accroît sans cesse) à assurer le respect, dans le cadre des réformes juridiques en cours dans les pays concernés, des principes fondamentaux auxquels tout État doit adhérer s'il veut assurer la prééminence du Droit.

On peut espérer ainsi que les systèmes juridiques et la législation des divers pays se conformeront progressivement aux normes européennes consacrées dans les conventions, recommandations et rapports du Conseil de l'Europe, permettant en définitive l'adhésion d'un certain nombre d'États nouveaux au Conseil de l'Europe, en tant que membres à part entière.

Les réformes envisagées concernent essentiellement trois domaines :

- Les réformes de fond visant à améliorer la qualité de la Justice et l'équité dans la vie publique (nouvelles constitutions et lois dans un certain nombre de domaines tels que l'organisation administrative, la refonte du système judiciaire et la protection des données);
- Le droit pénal et l'administration pénitentiaire;
- Le statut, la formation et l'indépendance des Juges.

C'est dans ce cadre de coopération et d'assistance que notre participation est sollicitée en qualité d'Avocats.

Ceux qui le souhaiteront pourront présenter dans les mois à venir sous l'égide du Conseil de l'Europe, d'une part, le rôle de l'avocat dans l'administration d'une justice démocratique (droits, statut, formation, obligations de l'avocat et organisation d'un Barreau), d'autre part, les problèmes posés par la transition vers un Etat de droit.

Vous êtes tous invités à cet égard, avocats francophones et anglophones, plus particulièrement ceux issus des pays membres du Conseil de l'Europe, à me faire part de votre candidature dans les plus brefs délais et en tout état de cause avant le 20 octobre 1992.

Je tiens à préciser que les frais de voyage et de séjour des avocats qui seront invités à participer aux réunions du programme Démo-Droit seront pris en charge par le Conseil de l'Europe, selon les modalités ressortant de ses règlements.

Songez à l'importance fondamentale de votre participation personnelle et de la participation de l'Association Internationale des Jeunes Avocats au défi vital auquel sont confrontés les femmes et les hommes qui s'efforcent de recréer les conditions d'une compréhension efficace et d'une coopération fraternelle entre les deux moitiés de l'Europe, trop longtemps séparées.

Merci à toutes et à tous.

François RUHLMANN
Ancien Président de la Commission d'Arbitrage et Président de la Commission des Droits de la Défense
Strasbourg

Spes

HOST OFFICES WANTED

	Period	Language	Destination
Cudmore Dominic Edward 235, Devonshire Street Surrey Hills, NSW, 2010		English French Basic German	France or francophone c. Europe gen
Munar Saura Miguel-Angeln Bufete Munar & Munar Av. Valencia N° 7-13, 3-0, 1-A 8750 Molins de Rei Barcelona, Spain		English	U.S.A.
Porcelli Gabriella Studio Legale avv. Fabio M. Tavola v. le Sabotino, 19/2 20135 Milano, Italy	92-08/09	English French	London Brussels
Claeys Sarie Het Heiken, 20 2930 Brasschaat (Antwerpen) Belgium		French	Germany (Muenchen)
Candler Philippa Flat 3 187 South Lambet Road Vauxhall, London SW8 1XP, GB		French English Portuguese	Africa
Massimo Sebastiano Studio Legale Sutti Via Molino delle Armi 4 20 123 Milano, Italy	92-09-12	German	Germany
Macken Mary 18 Ridge Street Suttye Hills 2010 N.S.W. Australia		French Japanese	France Belgium
Njiru Steven M.K. 44 Ropery Street BOW - London E3 4QG, G.B.		English Swahili	GB - London U.S.A.

Commissions

Activité de la Commission Droit des Affaires Internationales

La C.D.A.I. a subi, ces dernières années, un développement complexe et articulé (création de sous-commissions, multiplication des sujets évoqués lors des congrès, création des workshop, etc...) qui rend opportune, à mon avis, une réflexion destinée à ouvrir un débat sur le rôle et la finalité de la Commission, pour déterminer avec précision les exigences auxquelles cette dernière est amenée à répondre

Les idées force autour desquelles la Commission s'est développée ces dernières années sont les suivantes :

1. Modification des sujets traités.

Les sujets fondés sur une pure comparaison des différents droits nationaux ont été réduits au profit de grands thèmes du commerce international.

A titre d'exemple de tels choix, on se rappellera les sujets traités à Munich (Hardship clauses), à Barcelone (Deadlock clauses et Franchising international), à Londres (Piercing Corporate Veil), à Amsterdam (Lex Mercatoria et Disclosure in Franchising Law) et à Rio (Countertrade).

L'abandon de thèmes propres aux différents droits nationaux a eu pour conséquence, selon moi, de nous permettre d'affronter des sujets d'actualité d'un intérêt majeur mais a changé considérablement la destination première de la Commission qui était d'informer ses membres sur la réalité juridique d'autres pays. Cette information est d'autant plus importante qu'elle s'adresse à de jeunes avocats qui s'intéressent pour la première fois à un contexte international et font preuve d'une légitime curiosité à l'égard de ce qui se passe dans les autres pays.

2. Multiplication des sujets traités à l'occasion de congrès.

La Commission a proposé, à l'occasion des congrès annuels, de traiter plus d'un sujet et de réduire la durée des séminaires de deux à un jour ou même une demie-journée. Un tel choix a amené à multiplier les interventions et inévitablement à une superposition de certains horaires.

3. Création des Sous-commissions.

La multiplication des sujets traités a entraîné la création de sous-commissions spécialisées de façon plus ponctuelle, le droit des affaires internationales étant à la vérité un sujet beaucoup trop vaste.

La création de sous-commissions a eu selon moi l'effet très positif d'impliquer un plus grand nombre de membres dans l'organisation de la Commission.

Cinq sous-commissions ont été créées : Banking and Finance, Travail, Franchising et Distribution, Joint Venture et Fusion et Acquisition internationales, Faillites.

Le débat reste ouvert sur le point de savoir s'il convient ou non de transformer les sous-commissions en commissions.

4. Les Workshop.

Les sous-commissions ont élaboré une nouvelle méthode de travail consistant en la tenue de réunions se déroulant à l'occasion des Congrès annuels (s'il est possible le dimanche et en tout cas pas durant les jours réservés aux sessions d'étude) ou à l'occasion des Comités Exécutifs. Ces Workshop ont pour vocation de traiter des sujets plus limités, de façon informelle et pratique, sans que soit nécessaire au préalable l'élaboration de rapports nationaux et de rapports généraux.

5. La lettre du Président.

Une exigence particulièrement ressentie a été celle de maintenir entre les membres de la Commission une communication constante. C'est pourquoi a été créée la lettre du Président qui a pour intention de résumer après chaque réunion de la Commission les diverses activités en cours, sollicitant ainsi la participation de tous les membres.

Ces dernières années, la Commission a toujours été guidée par le souci d'impliquer constamment ses membres et de leur offrir une qualité élevée dans les travaux effectués. Il est cependant possible que de telles options se révèlent inadaptées aux perspectives futures de la Commission.

J'estime donc qu'il est temps, désormais, d'ouvrir un débat permettant à tous les membres de notre Association d'exprimer leurs attentes concernant l'activité future de la Commission.

J'espère donc que tous les membres de l'Association s'exprimeront à ce sujet dans notre Gazette.

Girolamo ABBATESCIANNI,
Milano.

Access to Justice and Legal Aid

Free or subsidised legal advice, and any consequential representation and assistance in court, is an essential prerequisite for all who live under the rule of law. Only then is access to justice likely to be a reality for everyone.

The Consumer Policy Service of the EC Commission is now supporting research into legal aid (in non-criminal cases) available to the citizens of one European State who are faced with a legal problem within the jurisdiction of another European State. The inquiry extends to all EC and EFTA, member-states which it is proposed will form the European Economic Area from 1st January 1993. A report will be presented to the EC Commission by mid-1993, following which a Guide will be issued, subject to Commission approval.

Members of AIJA with special interests in this subject are invited to write to the undersigned with examples or comments which they believe may assist the project, in particular (but not exclusively) the following :

1. A definition of les défavorisés which goes beyond the idea of indigence;
2. The ways in which legal aid is provided (by avocats at their cabinets; in special centres; with or without central control; allocated by the bâtonnier; including the role of young avocats and stagiaires; and so on).
3. The financial resources for legal aid and the rates and methods of payment for such work.

D.B. WALTERS

Accès à la justice et assistance judiciaire

La consultation juridique gratuite ou subventionnée et la représentation ou l'assistance devant les cours et tribunaux qui en découlent est une condition prérequise essentielle pour toute personne qui vit dans un État de Droit. Alors seulement, l'accès à la justice sera une réalité pour tous.

Le Service Politique des Consommateurs de la Commission des Communautés Européennes soutient la recherche relative à l'aide judiciaire (dans les affaires non-pénales) accessible aux citoyens de l'un des États européens qui sont confrontés à des problèmes juridiques dans la juridiction d'un autre État européen.

Cette recherche inclut tous les pays membres des Communautés Européennes et de l'AELE (Association Européenne de Libre Échange), dont les pays membres formeront à dater du 1er janvier 1993 l'Espace Économique Européen.Un rapport sera présenté à la Commission des Communautés Européennes à la mi-1993 et sera suivi d'un Guide à publier, aprés l'approbation de la Commission.

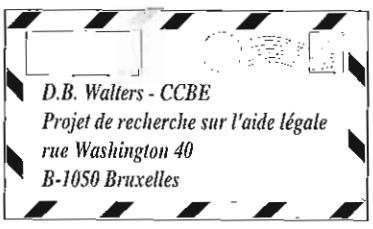
Les membres de l'AIJA, qui ont un intérêt particulier pour ce sujet, sont invités à écrire au soussigné, pour lui faire part d'exemples ou de commentaires qui pourront l'aider dans sa recherche et en particulier, mais de manière non limitative, sur les sujets suivants :

1. Une définition des "défavorisés", qui va au-delà de l'idée de pure indigence;
2. Les moyens par lesquels l'assistance judiciaire est accordée (par des avocats à leurs cabinets; dans des centres spécialisés; avec ou sans contrôle central; désigné d'office par le bâtonnier; en ce compris le rôle des jeunes avocats et des stagiaires; etc ...)
3. Les ressources financières pour l'assistance judiciaire et les tarifs et méthodes de paiement pour un travail de ce type.

D.B. WALTERS

Interested members of AIJA are invited to write (in French or English, if possible) to

Les membres intéressés de l'AIJA sont invités à écrire (en français ou en anglais, si possible) à :



Confidentiality will be respected, if requested.

Si elle est souhaitée, la confidentialité sera respectée.

Commissions

Souvenirs d'un ancien Président

à l'occasion du 30ème anniversaire de l'AIJA

Mes premiers contacts avec l'Association Internationale des Jeunes Avocats datent de son Congrès de Bruxelles, en 1964; sans doute en suis-je déjà devenu membre alors mais je n'en suis pas sûr.

En revanche, je suis tout à fait certain que c'est au Congrès de Beyrouth, en 1969, que je suis vraiment devenu aijiiste.

C'est là en effet que j'ai vraiment partagé, pour la première fois, l'amitié que l'A.I.J.A. fait naître au sein des travaux, des loisirs et des activités qu'elle organise.

L'âme de ce congrès, présidé par John Young, était Moussa Prince, alors futur président, dont la diplomatie nous évita tout au long du congrès, d'être entraînés dans les divergences qui commençaient à écarteler son beau pays.

L'amitié était à cette époque et demeure aujourd'hui, j'en suis sûr, avant même la jeunesse de l'esprit et du coeur, la caractéritique fondamentale de l'A.I.J.A.

C'est à tel point que quelqu'un a dit un jour, une quinzaine d'années plus tard, que l'A.I.J.A. n'avait été qu'un groupe d'amis jusqu'au milieu des années 1970

Ce n'est pas tout à fait vrai mais il est fort heureux qu'il en ait été largement ainsi.

Je suis convaincu en effet que sans les solides fondations que seule pouvait construire une véritable amitié à base de connaissance et de confiance mutuelles, de désintéressement et de solidarité partagés dans l'enthousiasme, l'A.I.J.A. ne serait pas devenue ce qu'elle est aujourd'hui, tout en restant fidèle à ses sources; la Déclaration de Lausanne n'est-elle pas un excellent exemple de cette continuité puisqu'elle fut préparée, à la demande du Comité Exécutif alors en charge, par les anciens présidents et s'inscrit dans le droit fil de la déclaration d'Athènes.

Ce sont du reste les mêmes liens d'amitié, de confiance et d'enthousiasme et les mêmes idéaux qui ont rassemblé beaucoup plus tard les fondateurs de l'Association Européenne des Avocats, si semblable aujourd'hui à ce qu'était l'A.I.J.A. au début des années 1970, avant de prendre son essor.

Ces années-là, l'A.I.J.A. ne comptait pas 300 membres en règle de cotisation; d'aucuns s'en inquiétaient, mais j'ai toujours pensé quant à moi qu'un petit nombre de convaincus ne peut que croître !

Quoi qu'il en soit, cela n'a pas empêché l'A.I.J.A. de l'époque d'intervenir très énergiquement et très efficacement par sa Commission des Droits de la Défense - aujourd'hui ce serait le Comité SOS Avocats - aux côtés de confrères en difficulté au Maroc et en Yougoslavie, sous la présidence de Jacques Hochstaetter, ni de créer, ensuite d'un Comité Exécutif à Luxembourg présidé par Philippe Jacob, le SPES dont le premier animateur fut Christian Dieryck, lequel a été, bien plus tard, à Milan, le premier à être élu plus que coopté à la présidence ni encore de modifier les statuts au cours du Congrès de Cologne-Mayence, pour créer la catégorie, aujourd'hui florissante, des membres collectifs en vue de mieux atteindre les jeunes avocats, à travers leurs organisations nationales.

Tous les présidents de l'époque se souviennent des problèmes auxquels l'A.I.J.A. était confrontée du fait d'une trésorerie fort étroite, d'une comptabilité manquant de professionnalisme malgré son évidente fidélité, et des insuccès de leurs tentatives répétées de mettre sur pied un annuaire et une gazette valables.

Mais le coeur y était, les germes murissaient et grâce à quelques uns, dont je ne citerai personne pour ne pas en oublier, le professionnalisme et la méthode auxquels l'amitié et l'enthousiasme avaient ouvert la route, ont progressivement mis en place des structures aux rouages robustes et efficaces.

Grâce aux fondations existantes, ces structures ont permis et suscité, depuis la fin de la décennie 1970, l'essor et le développement qui font que, pour son 30ème anniversaire, l'A.I.J.A. compte de par le monde entier 2.500 membres indivuels et une cinquantaine de membres collectifs.

C'est ainsi aussi que, pour poursuivre et réaliser les objectifs qu'elle s'est donnés il y a trente ans, l'A.I.J.A. est dotée aujourd'hui de commissions permanentes, d'organes administratifs, de moyens de diffusion et de ressources, qui lui confèrent une remarquable efficacité et font qu'à travers elle, les jeunes avocats sont écoutés des autorités professionnelles, des autres associations internationales d'avocats, des gouvernements et des organisations internationales.

Il m'est particulièrement agréable d'évoquer, à l'occasion de ce 30ème anniversaire, le souvenir, et hélas parfois la mémoire, de tous les anciens présidents et officers de l'A.I.J.A. sans qui elle ne serait pas ce qu'elle est aujourd'hui et de dire à leurs successeurs présents et futurs, toute la confiance avec laquelle les anciens voient entre leurs mains les destinées de l'A.I.J.A.

Permettez-moi cependant de saluer tout particulièrement ici Marie-Anne Bastin qui prend les rênes en ce 30ème anniversaire en me souvenant, avec beaucoup d'amitié et d'émotion, que c'est au cours de la croisière sur le Rhin, à l'occasion du Congrès de Cologne-Mayence (1975), que j'ai eu l'heureuse idée de lui demander de poser sa candidature au Comité Exécutif.

Chacun sait ce que l'A.I.J.A. lui doit depuis.

Marc WILLEMART,
Bruxelles.

AIJA in the middle ages

In the distant Middles Ages of AIJA, 1974, I was elected First Vice-President at the Congress in Salzburg. This Congress with 400 participants was the biggest until the Congress in Bordeaux 1984.

In 1975/76 I took over the presidency at the Rhine-Congress (Cologne/Mayence), organized by Harro Gurland and Manfred Meuren.

At that time AIJA had more than 1200 members from 48 countries and several bar associations as group members. There were standing commissions for the rights of defense, consumer protection, legal informatic, etc. "SPES", the Permanent Secretariat for the Exchange of Student Lawyers was already in existence.

AIJA already had Consultative Status with the UN (ECOSOC) and at the Council of Europe.

In February 1975 AIJA was invited for the first time to participate at the European Conference of the Presidents of Bar Associations in Vienna. By this AIJA was de facto recognized as the third major international lawyers' organization beside UIA and IBA.

Important events 1975/76 included a seminar in Brussels concerning the free exercise of the legal profession in the European Community (at that time the "Reyners" judgement of the European Court gave rise to heated debates in all bar associations), a symposium in Paris with the famous American "champion of consumer protection" Ralph Nader.

In March 1976 Joaquim Galant-Ruiz organized the first Regional Congress of AIJA, a meeting of the young lawyers of the Mediterranean area in Alicante with very strong participation from Arab countries, trend setting resolutions for the protection of the Mediterranean Sea and installation of a standing AIJA-Commission for environmental law.

In order to enable us to enjoy also the English spring two months later in May there was another premiere : the first training course organized by AIJA "Introduction to English Law" in London, organized by John Maycock and Richard Rawlence. Furthermore it was decided that such courses should become a permanent feature of AIJA's activities (1977 Introduction to French law in Paris, 1978 Introduction to German law in Mainz).

In Atlanta I had the opportunity to introduce AIJA for the first time to the American Bar Association at their annual convention. From a presentation of AIJA before the Philadelphia Bar Association resulted some years later the AIJA Congress in Philadelphia.

These "missionary activities" in North America culminated in the Congress in Quebec, organized by Anne-Marie Trahan and Serge Kronström. At this Congress for the first time the Past Presidents' prize was presented following a proposal of my predecessor Marc Willemart. Since then this prize has become a permanent institution.

At this Congress, I reported also "The Popovic Case". This case entered into the legal history as one of the oustanding cases of the "defence of the rights of the defence".

Srdja Popovic, lawyer in Belgrade and member of AIJA, had defended a Yugoslavian writer and critic of the regime. He based his defence statement on the right of freedom of speach at that time guaranteed in the constitution. Subsequently Popovic was accused because of his defence statement of antistate propaganda. (At this time life for dissidents and their lawyers was dangerous in Yugoslavia. Barovic who defended Milovan Djilas, the friend of Tito and dissident, was killed some months after the Popovic trial by a mysterious car accident. It was presumed that this accident

had been engineered by the secret service.)

In cooperation with other lawyer organizations I personnaly intervened several times in Belgrade and participated in the trial. Popovic was sentenced to one year imprisonment. As my request for a meeting with the Yugoslavian Minister of Justice was met by delaying requests for additional information and the trial of the appeal was already imminent I went without previous announcement to a conference of the Ministers of Justice of the Yugoslavian republics in Cavtat. There together with our Vice-President for Luxembourg, Louis Chiltz, I could present the position of AIJA to the Yugoslavian Ministers of Justice. At the appeal hearing the judgment of the first instance was changed to a suspended sentence.

As a result of my experience with the Popovic trial I presented in the opening session of the Congress in Quebec a proposal for an international convention for immunity of the legal profession. Some years later I had the opportunity to participate in the name of AIJA in an international expert group on the drafting of such a convention on the independence of judges and lawyers.

Konrad MEINGAST-GMÜND

Reflections on thirty years of AIJA

AIJA was born on 1st July 1962 at a meeting held at the time of the Rentree of the Conference of the Young Bar in Luxembourg. The first congress took place in Geneva in 1963. The following are personal reflections of one who has been both a President and an editor of the AIJA Gazette and in whose heart AIJA finds a special place.

What are the special features of AIJA that have developed over the last thirty years ?

Top of the list must come openness and friendship. AIJA is an unusually friendly organisation. It has been a friendly organisation ever since I joined in 1973 and this has been so since its foundation. This gives AIJA a special attraction as well as a special power because the best work is often done by people working harmoniously together. Despite the growth is size and success of AIJA this feature remains undiminished.

The second special feature is the altruistic nature of AIJA. It is a club of members who wish to share their common interests and are prepared to put time and effort into working and learning together. Gaining business does not dominate AIJA work. We discover that if obtaining business is the main objective of our AIJA membership, disappointment is the likely result. If education, contribution to legal affairs, widening experience and making good friends of colleagues in other countries are the objectives we are not disappointed. These have been features of AIJA during the nineteen years in which I have been a member. They will certainly continue.

The story of AIJA since 1962 is one of gradual growth, increasing self-confidence, widening aspirations and increased achievements as increased resources became available. I remember a Bureau Elargi Meeting in Vienna when the Annuaire was being started. The Annuaire we now take for granted but it did not become a reality until the late 1970s. One of those who achieved this work was Kay von Metzler from Hamburg who with Marie-Anne Bastin toiled lightily to overcome the many detailed problems associated with starting such a publication. I remember the early problems of producing the AIJA Gazette which now makes an outstanding contribution to AIJA. It also was a product of the late 1970s. The initiative belonged to Anne-Marie Trahan and Anthony Slingsby and Christian Dieryck who insisted that the work required be done. I reflect also on the success and growth of the Law Courses in which John Maycock of London played an essential role. I believe these courses make and have always made an important contribution to legal education at an international level. They have also contributed to the financial strength of the AIJA and in turn to its ability to operate effectively. The many members who have organised in a very personal way one superb annual congress after another have made an essential contribution to the success and growth of AIJA.

In the fourth Congress in Athens in 1966 there was adopted the Declaration of Athens. Nowadays it is standard practice for management consultants to advise an organisation to adopt a mission statement. This Declaration can be seen as mission statement before its time. When I re-read it, it seems to me that its striking words have become more striking with the passage of the years. The principles which it contains have in many countries not become fully established, or are under threat.

Paragraph IV of the Athens Declaration declares that the solidarity of young lawyers of all countries must manifest itself each time that the principles set out in the declaration are threatened. The AIJA in consequence appeals to all young lawyers of the world to aid it to watch over the respects of these principles. That was the challenge in 1966. I believe it is more of a challenge in 1992.

The Declaration of Lausanne prepared in the Congress of 1982 deals with professional privilege at the right to a fair trial. The ideas expressed at that time seem to me of increasing importance as the years pass, and as more countries seek to follow democratic ideas.

In 1979 at the Congress of Alicante and in 1980 at an Executive Committee Meeting in Athens were passed resolutions on the subject of legal education and remuneration of the trainee lawyer. I believe that these resolutions have been influential in shaping the thinking of those responsible for these matters. They show that AIJA has the power to influence thought according to the quality of its work.

As I write these words I have in my hand the Annuaires for 1981/82 and 1991/92. The gradual increase over the years in the numbers and scope of the standing commissions demonstrates an increasing wish to contribute to the international legal issues of the day. The increase in the numbers of members and countries indicates an increasing capacity to do so.

The success of AIJA from 1962 to 1992 demonstrates that AIJA has been responding to a need. The need has been

for young lawyers to make friends and contacts in other countries, to understand better their languages and culture and their approach to legal problems as well as current international legal issues. In 1992 all the signs are that this need will increase and that the role which AIJA has established for itself in the last thirty years will contribue to grow in importance.

With the growth of AIJA comes an increasing realisation of the value of the international network which it provides. In what I believe is now almost sixty countries there exist AIJA members knowledgeable in local affairs who can respond to many different types of calls upon their knowledge and time.

The business law topics which are the subject of the everyday work of AIJA are essential. Excellent work has been done on them for many years and will and must continue. Young lawyers also have a special role in discussing how legal systems might better achieve their objectives in a changing world. AIJA can use its comparative knowledge to compare and suggest improvements to the judicial process and law reform in different countries.

The work of AIJA is now extending into many countries where the principles and ideas which are expressed in the declarations and resolutions set out in the Annuaire are not already an established part of the legal and professional systems there. AIJA is in a special position to contribute to the establishment of these principles in parts of the world where they are not adequately respected and where there is a growing demand for them. The AIJA network exists to find out what the needs are and to find practical ways of contributing to the establishment and respect of these principles.

The AIJA represents thirty years of effort and achievement by young lawyers at an international level. Thirty years after its foundation the need for that effort and achievement is even greater than it was when it began. I have no doubt that AIJA will respond to this challenge in the next 30 years as it has in the last 30 years.

Walter G. SEMPLE,
Glasgow.

AIJA
Le Grand Mystère

Les candidats à la Première Vice Présidence regorgent d'idées. Il faut bien en avoir trouvé quelques unes pour avoir l'air d'un candidat sérieux. Mais une fois élus, dès la première réunion de bureau, comme d'affreux politiciens, ils semblent oublier leurs promesses. Pourtant les Présidents de l'AIJA (jusqu'ici...) n'ont pas été d'abominables escrocs, ni des carriéristes sans scrupules.

S'ils ne tiennent pas leurs promesses, c'est qu'ils ne peuvent pas le faire. A l'AIJA, le Président ne décide rien ; parfois il suggère, parfois il laisse faire, plus rarement il tente de freiner une initiative malheureuse. Le Président ne fait pas l'AIJA, elle se construit par elle-même. Souvent, c'est elle qui fait le Président, bien différent de ce qu'il avait imaginé.

Le fait que l'association ne fonctionne que sur le volontariat et le bénévolat ne suffit pas à expliquer le peu d'influence du Président. La brièveté du mandat, la rareté des réunions, les distances entre les membres ne fourniront pas non plus la clé.

L'AIJA est essentiellement diverse : géographiquement et culturellement, bien sûr, c'est sa raison d'être. Mais aussi dans les spécialisations, les centres d'intérêts, la disponibilité, les possibilités matérielles de ses membres.

Pour que quelque chose advienne à l'AIJA et que cela soit un succès, il ne suffit pas que le Président l'ait décidé. Il faut que quelqu'un ait envie de le faire, qu'il ait trouvé un groupe prêt à le soutenir et que tous ces membres soient décidés à donner tout le temps et l'énergie nécessaires. Alors l'initiative sera un succès avec ou sans l'approbation du Bureau.

Il n'y a pas d'exemple qu'un Président ait pu imposer quoi que ce soit sans le soutien des membres, ni qu'un Président ait pu s'opposer à la volonté des membres.

Peut-être est-ce, au fond, cela qu'on appelle "l'esprit de l'AIJA". Ce "truc" indéfinissable qui ne se mesure ni au nombre de membres, ni à l'épaisseur des rapports, ni à la garniture des tables, ni aux décibels de l'orchestre, mais qui fait que l'AIJA "on en est, ou on en n'est pas".

Au fond l'AIJA reste un grand mystère et la plus grande qualité de son Président demeurera l'humilité.

Thierry GARBY,
Paris.

Thierry Garby

30 ans d'AIJA

Souvenirs AIJA

Hélas ! Je ne peux parler que de souvenirs, si je me réfère à l'AIJA !

Il y a presque trente ans que j'ai connu cette Association. C'était en 1963, peu après sa naissance à la suite d'un Congrès de la FNUJA française à Toulouse, en 1962.

Et je l'ai connue par l'insistance d'un de ses membres fondateurs, notre confrère de Madrid, Me Pascual MENEU, dont l'amitié et la cordialité avaient toujours rempli ses contacts confraternels. A l'époque, il voyageait énormément. Et comme les compagnies aériennes permettaient la possibilité de faire des petits sauts de ville en ville, entre le point de départ et celui de destination finale, il en profitait pour assister à de nombreuses manifestations professionnelles et saluer ainsi ses innombrables amis dans tous les pays d'Europe ... et d'au delà.

Me MENEU, qui est devenu par la suite Vice-Président d'honneur pour l'Espagne, ne m'en voudra pas si je rappelle ici son excellente habitude d'envoyer aux amis les doubles des lettres qu'il adressait aux uns et aux autres, à propos de ce qui le tenait à coeur. Et c'est donc, par ces doubles de lettres - parfois à peine lisibles (la photocopie n'était pas encore un élément indispensable d'un cabinet professionnel) - que j'ai appris, et la naissance de l'AIJA, et son Congrès de Genève de 1963, et un prochain Congrès qui allait se faire à Bruxelles.

Bruxelles 1964 a été mon premier Congrès AIJA ..., et le début d'une longue série qui serait devenue interminable si on ne devait pas arriver à l'âge "terrible" de 45 ans. Et, malgré cela, j'ai "fait" un total de vingt et un Congrès !

Bruxelles 1964 m'a "attrapé" pour toujours dans l'AIJA. Notre confrère PROBST, du Luxembourg, en était le Président. Je le vois encore, à l'Hôtel de Ville de Bruges, essayant de calmer l'euphorie des participants à un dîner "breughelien" que Frank DOUSSELAERE et d'autres confrères brugeois avaient magnifiquement organisé le jour de l'excursion.

Munich 1965 a été le Congrès où j'ai été "élu" membre du Comité. Vincent CARDINAUX de Genève, était le Président à cette occasion.

Tous les deux nous ont laissé déjà, et les "vieux" en garderons - tant que nous serons de ce monde - un grand souvenir.

Permettez-moi de rappeler aussi qu'à la suite de tous ces contacts avec l'AIJA, nous avons créé alors à Barcelone, le Groupe des Jeunes Avocats, qui vient de fêter maintenant ses premiers 25 ans d'existence. Une des finalités de l'AIJA s'est vue ainsi réalisée à Barcelone même avant qu'un Congrès s'y célèbre.

Athènes 1966 a servi pour que quelques confrères barcelonais - portés déjà par la problématique des jeunes avocats et la défense des intérêts de ceux-ci - proposent notre ville pour un Congrès en 1968, ce qui a été accepté par acclamation. C'est d'ailleurs, à ce Congrès que l'AIJA doit la DÉCLARATION D'ATHENES. Roger DALCQ, qui avait organisé le Congrès de Bruxelles, était le Président de notre Association, et s'est bien occupé de la faire grandir.

A Londres, en 1967, John YOUNG et son équipe nous offrirent un magnifique Congrès, présidé alors par Franz WITTMAN, organisateur du Congrès de Munich en 1965. Bien que parlant très bien l'anglais, il avait décidé de faire tous ses discours en allemand. Le Président de la LAW SOCIETY, qui accueillit le banquet de clôture et qui répondit au discours de notre Président en allemand indiqua, en faisant preuve de l'humour anglais, que pour une fois, il devait donner réponse à un discours auquel il n'avait pas compris un seul mot !

1968 fut l'année du Congrès de Barcelone. Il ne serait pas bon que je qualifie maintenant ce Congrès, mais je peux affirmer, sans manquer à la modestie, qu'il a laissé un très bon souvenir à tous les participants.

Notre ami MOUSSA PRINCE organisa le Congrès de 1969 au Liban. Je crois qu'il a contribué ainsi à nous donner un des beaux moments de notre vie. C'est, tout au moins, ainsi que j'ai toujours considéré ce magnifique Congrès dans ce pays merveilleux, qui, hélas !, a tant changé depuis.

L'AIJA avait, dès son début, la règle que l'organisateur d'un Congrès, devenait Premier Vice-Président, et, par la suite, Président de l'Association.

C'est ainsi qu'à la fin du Congrès de Beyrouth, je me suis trouvé à la Présidence de l'Association, et que j'ai eu l'honneur de présider le Congrès de Rome en 1970. Quel grand Congrès avaient organisé nos confrères romains, Emilio BELLEGRANDI en tête, ensemble avec les confrères milanais dirigés par Mario SCAMONI, qui allait devenir Président par la suite !!

Je ne veux pas continuer cette liste historique des Congrès de notre AIJA BIEN AIMÉE, comme Moussa PRINCE l'appelait.

Je veux cependant insister sur les liens d'amitié qu'elle a créés et qui continuent malgré les années et l'éloignement physique. Appartenir à l'AIJA était à l'époque la clé qui vous ouvrait les coeurs des autres confrères qui en étaient aussi membres. C'est entre les anciens (ou pas) Aijistes que j'ai encore mes meilleurs amis. Et cette expérience personnelle a été celle qui a été aussi vécue par tous ceux qui avaient approché l'AIJA.

J'ai entendu dire que la distribution de cartes de visite devenait maintenant chose courante à l'AIJA. Ceci aurait semblé inimaginable à ces époques-là. Et, pourtant, la transmission de dossiers se faisait aussi, mais non comme résultat

d'une carte de visite, mais de l'amitié qui était née.

L'appartenance à l'AIJA m'a donné le souci de m'occuper des problèmes professionnels, et à l'intérieur et en dehors de mon barreau et de mon pays. Ceci a été la "drogue" qui m'a possédé pendant de longues années. Seulement l'âge vous oblige à vous en séparer. Et si je l'ai accepté, ceci l'a été à l'idée de pouvoir laisser la place aux jeunes.

L'AIJA que j'ai vécue a-t-elle été semblable ou différente de l'actuelle ?

Je crois, tout simplement, que l'"Enfant" a grandi et a dû vivre des époques différentes, dans lesquelles les habitudes professionnelles ont énormément changé. Cet "Enfant" a su s'adapter, et continue de grandir. L'AIJA a des membres actifs dans tous les continents. Pour la première fois, un Congrès se tiendra en Amérique du Sud. Penser ceci aurait été un simple rêve il y a quelques années. Pour la troisième fois, l'AIJA a la chance de compter avec une excellente Présidente. Une consoeur à ce poste aurait aussi, semblé impossible à notre époque.

Il n'est donc pas étonnant qu'en regardant le long chemin suivi par l'AIJA, je me sente très fier d'avoir participé à ce parcours.

Et je remercie continuellement l'AIJA de m'avoir permis un enrichissement humain extraordinaire. Elle m'a donné des inquiétudes professionnelles, des moments de bonheur, et surtout, des amis, très vrais, que je suis très heureux de conserver.

Il me reste maintenant l'espoir de figurer longtemps, dans l'Annuaire AIJA, comme Ancien Président, et la fierté de porter - comme je le fais - ma cravate d'Ancien Président de l'AIJA dans les grandes occasions de ma vie professionnelle.

Antonio PLASENCIA MONLEON

Le premier Congrès de l'AIJA auquel j'ai assisté a été le Congrès d'Athènes, qu'on mentionne souvent et qui a été la base de l'AIJA. Ce Congrès a été organisé par Nicola Antonopoulos avec beaucoup de soins personnels, ceci était encore possible à l'époque, car les congressistes se déplaçaient en deux autobus dont le deuxième n'était même pas plein. La seule langue qu'on entendait était la langue française. Le noyau très actif qui a agi pendant une bonne dizaine d'années a été déjà formé. Nous n'avons pas eu des ambitions des jeunes avocats d'aujourd'hui. On logeait dans les petits hôtels, les cotisations étaient minimes. L'échange de cartes de visite n'était pas une coutume. Les travaux n'avaient pas l'importance qu'elles ont dans l'AIJA d'aujourd'hui. Pour nous, l'important c'était de se rencontrer, de se connaître, d'échanger des points de vue...

Après quelques années, l'époque des Grands Congrès a été ouverte. Mon impression est que cette nouvelle époque commence avec le Congrès de Salzburg lequel, d'après "les anciens aijiistes" de tous les points de vue n'a jamais été surpassé et qui a été organisé par Konrad Meingast. A cette époque les aijiistes sont devenus plus ambitieux professionnellement.

Les membres devenaient plus nombreux chaque année, ils venaient de tous les pays. Surtout sous les présidences d'Anthony Slingsby et Anne-Marie Trahan, l'AIJA a fait une expansion sur tous les continents. La formation de commissions de travail donnaient un aspect sérieux à l'association. Mais, il n'était plus question de connaître tous les membres par leurs propres noms aussi bien que leurs épouses si bien incorporées dans la vie de l'association (comme Jacqueline Hochstaeter ou Lydween Wilmart que je cite seulement à titre d'exemple).

A travers l'AIJA j'ai compris que les avocats de différents pays ont beaucoup en commun. Je dirais presque qu'ils forment une race à part. Une race de gens très ouverte pour tout le progrès, pour les nouvelles idées, pour la liberté d'esprit. Il ne s'agit pas seulement du fait que j'ai connu un seul avocat qui s'est prononcé pour la peine de mort, que tous ont été toujours prêts à défendre les droits de l'homme, mais il s'agit du fait que dans la vie privée quotidienne ils agissaient de la même manière. Ils sont expéditifs, sûrs d'eux-mêmes, persuadifs, avec un grain d'impatience. Ils sont toujours prêts à voyager (quoi qu'ils disent), à connaitre les gens et surtout prêts à se comporter amicalement avec leurs collègues des autres pays.

Naturellement avec la croissance de l'AIJA différents petits problèmes se créent, certains même touchent aux problèmes politiques, mais à ce moment il faut que nous nous rappellions seulement des bons moments que nous avons eus ensemble.

Pour conclure, je peux suggérer seulement aux aijiistes d'aujourd'hui de faire l'impossible pour ne pas manquer une réunion de l'AIJA pour n'avoir rien à se reprocher le jour de leur 45e anniversaire.

Gordana POPOVIC
Belgrade, Yougoslavie

Dossier

CCBE

Common code of Conduct for Lawyers in the EC
Code Commun de Déontologie

Preparation of the Code.

When the question is asked "What is the major achievement of the CCBE in the 30-odd years since it was founded ?" the first answer that comes to mind is the production of a Common Code of Conduct for Lawyers in the European Community.

This is indeed a considerable achievement, given the very different approaches to regulation among the various bars and law societies of Europe. The first step towards it was taken in what became know as the "Declaration of Perugia" adopted by the CCBE in 1977, but this was no more than a general declaration of the principles underlying the different national codes of conduct.

In 1982 work was started on an ambitious plan to draft a common code of conduct. After six years' work the Code was finally adopted at the CCBE Plenary Session in Strasbourg in October 1988. The main credit for the final draft should go to a sub-committee of two : Heinz Weil, a member of the German delegation practising in Paris, who is also a member of the Paris bar; and Walter Semple, a Scottish solicitor who was then a member of the United Kingdom delegation and is also a former president of AIJA. Together they were uniquely well qualified to reconcile the different national traditions in the Community and to produce a synthesis which commanded general acceptance.

Developments since the Code was adopted

The Code was originally prepared in French and English but has since been translated into all Community languages. It has also been formally incorporated into the internal regulations of most of the bars and law societies in most Community member states, at least for the cross-border activities of their members. In some cases it has also been incorporated as part of their internal rules as well. The only major exception in Germany, where there are still legal difficulties resulting from the decision of the Constitutional Court that the previous regulatory system there had no legal foundation. It is expected that, when these difficulties are resolved, the Code will be adopted in Germany.

The influence of the Code has since spread well beyond the boundaries of the European Community itself. At the CCBE Plenary Session in Basle in November 1990 conventions were signed with the delegations of six observer countries, Norway, Sweden, Finland, Austria, Switzerland and Cyprus, in which they agreed to adopt the provisions of the Code. More recently the emerging bars and law societies in Central and Eastern Europe have looked to the Code as the foundation for restoring their own rules of conduct. For instance in Czechoslovakia it has been adopted as the internal Code of conduct of the legal profession.

The first draft of the CCBE Code took its inspiration from the International Code of Ethics for the Legal Profession adopted by the International Bar Association. More recently the IBA has been reviewing the current edition of its Code, published in 1988, and there are proposals to bring it much closer to the wording of the CCBE Code. Indeed there have been discussions between representatives of the CCBE and the IBA with a view to eliminating the remaining differences between the two Codes.

Objects and Cope of the Code

The CCBE Code operates at a number of different levels. This is indicated in article 1.3 of the Code which sets out its purpose. Article 1.3.2 states :

> " the organisations representing the legal profession through the CCBE propose that the rules codified in the following articles :
> be recognised at the present time as the consensus of all the bars and law societies of the EC;
> be adopted as enforceable rules as soon as possible in accordance with national or community procedures in relation to cross-border activities of the lawyer in the EC; and
> be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation. "

Article 1.3.2 goes on to say that the organisations concerned "further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code". It then states that "after the rules have been adopted as enforceable rules in relation to cross-border activities, the lawyer will remain bound to observe the rules of the bar or law society to which he belongs to the extent that they are consistent with the rules in this Code".

Cross-border activities of a lawyer are defined widely by article 1.5 to mean : -

> all professional contacts with lawyers of member states other than his own; an
> the professional activity of a lawyer in a member state other than his own, whether or not he is physically present in that member state.

Main Provisions of the Code

The substantive provisions in the Code are divided into four chapters under the headings General Principles, Relations with Clients, Relations with the Courts and Relations Between Lawyers.

The "General Principles" include statements on independence, trust and

personal integrity, confidentiality, personal publicity and the client's interests. Under "Relations with Clients", there are provisions on fees, etc, protection of client's funds and professional indemnity insurance.

Under "Relations with the Court" there are provisions on fair conduct of proceedings, demeanour in court, etc. Under "Relations Between Lawyers" there are provisions on co-operation among lawyers of different states, correspondence between lawyers, referral fees, communications with opposing parties, change of lawyer, responsibility for fees and disputes among lawyers in different member states.

While some of the provisions of the Code are self-explanatory, others require some elucidation. The CCBE Deontology Working Party, who were responsible for the drafting of the Code itself, accordingly prepared an explanatory memorandum and commentary which has been published in French and English. It is intended to explain the origin of the provisions of the Code, to illustrate these problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the competent authorities in the member states in the application of the Code. It is not intended to have any binding force in the interpretation of the Code.

Points of particular difficulty

Among the matters covered by the Code are four areas which often cause difficulty in cross-border legal practice, namely personal publicity, the responsibility to the instructing lawyer for the fees of the lawyer in another jurisdiction, client confidentiality ("secret professionnel") and the question of "confidentiality of correspondence" between lawyers in different jurisdictions.

Personal publicity is often a problem because of the wide difference between liberal and less liberal jurisdictions. Article 2.6 of the Code attempts to resolve the problem by establishing the principle of respect for the rules of the host state but with a saving for advertising where its publication in the host state is only incidental.

Questions of the responsibility of the instructions lawyer for the fees of a lawyer in another jurisdiction are a common source of dispute. Article 5.7 of the Code states the principle that when a lawyer personally instructs a lawyer in another jurisdiction the instructing lawyer is responsible for the other lawyer's fees unless he expressly disclaims responsibility.

The principle of client confidentiality is stated in Article 2.3 of the Code but does not address the underlying difference in the approach to this subject among member states, as reviewed by the European Court of Justice in the leading case of A M & S Europe Limited in 1982. Nor does it provide a very secure defence against inroads commonly made into the principle by national or even Commmunity legislation.

Finally Article 5.3 of the Code seeks to avoid misunderstandings arising from the different attitudes taken in the member states towards the communications which pass between lawyers with a view to settling proceedings in such a way that the communications cannot subsequently be used in such proceedings. In some countries there is a principle of "confidentiality of correspondence" between lawyers. In other countries such correspondence is treated as "without prejudice" so that it will not normally be received in evidence. The relevant part of the explanatory memorandum to the Code gives a full account of the background to this provision.

Conclusion

While the Code by no means contains the answers to all the problems which can arise in cross-border legal practice it does at least provide a framework and a common language within which such issues may be resolved. It has also started a process of harmonisation of national rules of conduct, by providing a common reference point and a common fund of rules which can be drawn upon by national regulators. Even more importantly, it has been influential in setting minimum standards for rules of conduct on certain matters, particularly protection of client's funds and professional indemnity insurance. In some member states where comprehensive protection in these matters has not previously been introduced internally, the adoption of the Code is providing the impetus for the introduction of such minimum safeguards for domestic as well as cross-border practice.

If the major achievement of the CCBE is the adoption of the Code, the major achievement of the Code itself is perhaps to be inspiring better systems of client protection within the domestic rules of conduct of member states.

Hamish ADAMSON.

Lawyers' establishment

under home title within the EEC

Dossier

A generation ago European lawyers were mostly national. Their clients were compatriots, their cases were domestic, they normally when expressing themselves professionally spoke but their mother tongue and above all they practised their national law only.

Today the situation has changed dramatically. European lawyers of our age, and these of tomorrow increasingly, will have to adapt their professional lives to the international, including the European scene. Clients - whether in trade or industry or private citizens - are thinking and acting internationally. More and more they demand advice on European law and cross-border assistance in negotiations or even in lawsuits. The lawyer of today must handle foreign languages and above all he finds even his traditional sphere of knowledge - his national law - comprehensively changed by new European law.

International and European legal advice and handling of cross-border cases are in great and increasing demand. The legal profession in Europe must meet this demand, or it will decline and succumb to a number of competing professions who will be more than willing to take over especially our role as legal advisers to business.

We cannot, all of us, stay at home, trying to meet the demand of the clients and to compete with accountants, bank advisers, management consultants etc. from our domestic desk chairs. Some of us will have to - and will wish to - go abroad, to settle down, and to establish law firms or maybe branch offices in another EEC country.

The CCBE.

Considering the need to facilitate and to regulate EEC lawyers' work and establishment in other Member States than their own, and feeling that the legal professions, proud of being self-regulated professions, should find themselves ways and means to achieve this goal rather than leaving is to the EC Council, the Commission or even the European Court of Justice, for many years the CCBE (The Council of Bars and Law Societies in the European Community) has been doing its utmost to ease and to liberalize conditions for lawyers wishing to work or to establish themselves in another Member State.

Much has been achieved already. Under the Services Directive of 1977 any EC lawyer has a right to provide occasional legal service in another Member State from his place of establishment in his or her home Member State. And the Diplomas Directive of 1988 has opened up to any EC lawyer to become a full member of the legal profession - with unrestricted right to practise - in another Member State after undertaking an aptitude test or a period of adaptation as a (minor) necessary supplement to his existing qualifications based upon his domestic education, which - in principle - the host Member State must acknowledge as equivalent to the legal education in the host Member State.

What remains ? The Member States' formal recognition and an appropriate regulation of any EC lawyer's right to establish himself in another Member State (the "host Member State") under his home title i.e. without undertaking the aptitude test or the adaptation period required to qualify under the Diplomas Directive. A German Rechtsanwalt wishes to establish himself in France, not as an avocat, but as a Rechtsanwalt, or a Danish advokat wishes to work permanently in Spain, not as an abogado, but under this home title.

For a number of years the CCBE has found itself engaged upon the task of finding rules on "Establishment under Home Title", upon which the legal professions of all Member States can agree. It has been a difficult job, but we have reasons to believe that we are now coming very close to the goal. A draft Directive on Right of Establishment for Lawyers has been prepared and so far 8 out of 12 national delegations have approved it. Recently negotiations especially with the so far hesitating delegations have led to some proposed amendments, with which a new draft will be put before the CCBE's plenary session in October 1992.

Establishment under Home Title

Taking into account, however, that following the implementation of the Diplomas Directive in the Member States, by passing an aptitude test in the host Member State (most - mayby all - Member States have preferred the aptitude test to the adaptation period) any EC lawyer may establish himself in that Member State, one might ask, whether it is still worthwhile figting for a recognition of a right for the EC lawyers alternatively - and without passing any aptitude test - to establish themselves under home title in any other Member State.

In the opinion of at least a majority of the national delegations to the CCBE the answer is yes. There is a need - a large and an increasing need - for a recognized and duly regulated opportunity for EC lawyers to establish under home title wherever they wish in the Common Market. Many practical examples are conceivable : An English solicitor wants to set up a law firm - as a solicitor - on the Costa del Sol in Spain mainly to give legal advice to British pensioners having settled down to spend their old age at the Mediterranean. A Paris law firm specialized in transport law wishes to send young partners on a rotation basis - each of them for a couple of years - to work with corresponding law firms in Hamburg, Amsterdam, or London. A Belgian avocat wants to set up a branch office just across the border to Holland, where he plans to work two

days a week. An Italian avvocato finds a market for himself by establishing a law firm in Munich mainly meant to offer legal consultations to Italian guest workers in that city. Or a young Danish lawyer, wishing eventually to pass the aptitude test of the Paris Bar, wants to make his living in Paris as a Danish advokat while acquainting himself to French law and language and thus preparing for the examination.

They all have a vital intrest in being recognized as lawyers legally working as such under their home title.

And, most important of all, a right of establishment under home title appears to be an unavoidable condition of European law firms' creation of real and effective European multinational partnership.

Many, indeed, share the view that already in European law - Art. 52 of the Treaty of Rome - EC lawyers do have an unquestionable and fundamental right to establish themselves as lawyers under home title in any other Member State. This view, however, is challenged by others, and truly so far no Directive and no decision of the European Court of Justice did recognize explicitly such a right to the EC lawyers. A distinct ackowledgment of such a right of EC lawyers is an important object of the CCBE's draft directive.

It is definitely not the intention by the draft directive to create any new class or category of lawyers. Lawyers qualifying under the Diplomas Directive and lawyers in the future invoking a directive on establishment under home title are all lawyers established in the host Member State and members of the host Member State's Bar. There is only a difference in degree resulting from the fact that only the former have passed an aptitude test and consequently only the former - on a par with the national lawyers of the host Member State - may practise within the so-called reserved areas ("notarial activities" and unrestricted, sole right of audience before the courts).

Considering that a lawyer having worked for a number of years in a host Member State eventually may wish to be recognized under the Diplomas Directive, thus acquiring access to the "reserved areas" just mentioned, the draft directive of the CCBE proposes that in case a lawyer, who can prove that for a period of three years he has carried on an effective and permanent professional activity as a lawyer established under home title in a host Member State, he may require the competent authority of that state considering his application for admission under the Diplomas Directive to take into account i.a. his professional experience acquired in the host Member State and to except him from the whole or a substantial part of the aptitude test (or the adaptation period). This proposal, evidently, is meant to facilitate the established lawyer's access to unrestricted rights of practice in the host Member State.

Registration

What has been said so far concerns one of the two objects of the CCBE's draft directive - to facilitate by an explicit acknow- ledgement the EC lawyer's right of establishment under home title. I shall now turn to the other important object of the draft - an appropriate EC regulation of the establishment and the practice of lawyers established under home title.

The legal profession is a regulated profession in all Member States. Any lawyer in any Member State is bound to observe professional rules of conduct and is subject to a specific professional discipline. Lawyers of one EC Member State, but established in another Member State, are not and should not be an exception to that. But the mere fact that they are practising outside the territory of the home Bar or Law Society gives rise to a number of questions : Which set of deontological rules and which discipline should a lawyer established under home title be subject to ? How can the host Bar know that a lawyer of another Member State established himself within its territory ? How should the host Bar handle possible complaints from clients of a lawyer from another Member State, established under home title ?

First of all the host Bar or Law Society should be informed about an incoming lawyer's establishment under home title. Accordingly the lawyer must notify his establishment under home title to the competent authority of the host Member State ("the host Bar").

It is suggested that upon receipt of evidence of the applicant's proper enrolement and right to practise in his home Member State etc. the host Bar shall be obliged to register the incoming lawyer, wishing to establish himself under home title in the host Member State. The registration as such should not be at the discretion of the host Bar. The incoming lawyer should have a right to be registered. The specific form of registration, however, may be an administrative matter left to the host Bar's administration.

The lawyer establishing himself under home title should have, not only a right, but also a duty to register. The disciplinary control of the host Bar necessitates a registration of all lawyers practising within its territory. The host Member State, accordingly, should only acknowledge as lawyers - and definitely should only be obliged to acknowledge - lawyers duly registred with the local Bar as lawyers legally practising in that Member State.

Reserved Areas

The 1977 Services Directive reserves to national lawyers (and lawyers having qualified under the Diplomas Directive) certain specific activities, including the preparation of formal documents for obtaining title to administer estates and deceased persons and the drafting of formal documents creating or transferring intrests in land (socalled "notarial activities"). To some extent, according to the 1977 Services Directive and ECJ-court decisions in relation hereto, a lawyer from another Member State may only represent or defend clients in courts of the host Member State when working in conjuction with a lawyer of that state.

The CCBE proposes similar restrictions to be introduced as to the right of practice of a lawyer established under home title.

It should be noted that no restrictions are proposed by the CCBE as to the right of the lawyer established under home title to give legal advice on national law of the host Member State. In our view a lawyer established under home title should not by law be prevented from advising his clients in national law of the host Member State ("host law"). It is a lawyer's fundamental right and duty to give full advice on all legal aspects of

the client's problem or situation ? Excluding possible relevant aspects of "host law" might easily invalidate the advice of the lawyer established under home title. In real life a lawyer established under home title will know essential parts of "host law" as well as his own "home law". Very often his special kill will come from the fact that he knows the essential differences in law of his home country on one side and the host Member State on the other - so important to analyze in most cross border cases. He may not know "host law" in details but will often have a sufficient knowledge to identify the existence of a problem of his client under "host law", which should - and mostly will - result in the lawyer and/or the client seeking the assistance of a national lawyer of the host Member State.

At all times the lawyer established under home title - as any other lawyer - should be aware of and recall art. 3.1.3. of the CCBE's Code of Conduct for Lawyers in the European Community.

"A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it".

Titles

Titles are lawyers' trade marks. A trade mark must be true. Accordingly the CCBE draft directive includes the - one might say self-evident - rule that a lawyer who has not passed the aptitude test of the Diplomas Directive and thus establishes himself under home title may only use his home title plus an indication of this registration with the host Bar. An English solicitor wishing to establish himself in Paris "under home title" accordingly may not call himself "avocat", but must practise as "solicitor - Membre du Barreau de Paris".

On the other hand, once having qualified under the Diplomas Directive a lawyer must use both his professional titles, e.g. "Solicitor - Avocat". The lawyer holding double qualification should not by changing between one and the other of his legal titles hide the fact - important to clients - that he is responsable to the deontological rules of both his original home Member State and the host Member State in which he has qualified under the Diplomas Directive.

Host Rules

The CCBE delegations agree that all lawyers established in a host Member State, whether having qualified under the Diplomas Directive or having established themselves under home title, should be bound by the same rules of professional conduct as those in force for national lawyers of the host Member State. In short - host rules should prevail. Clients in a host Member State should be able to reply on the rules of professional conduct for lawyers of that state regardless of whether they have sought legal advice and/or assistance by a national lawyer of a lawyer from another EC Member State established in that state.

Thus the CCBE draft states, that a lawyer established under home title shall for all his activities in the host Member State be subject to the same obligations, professional rules, incapacities and incompatibilities as the lawyers practising under the title of the host Member State.

It is added, however, in the CCBE's draft that the competent authorities of the Member States shall ensure that these obligations, professional rules, incapacities and incompatibilities, are applied (1) in accordance with the rules of the CCBE's Common Code of Conduct, and (2) in accordance with the objective defined by the provisions of the Treaty of Rome relating to freedom of establishment, and (3) only to the extent that compliance with them is objectively justified by the public interest.

Accordingly no Bar or other disciplinary authority for lawyers of an EC Member State shall be entitled to apply professional rules so as to pursue protectionistic goals of the host Member State.

To safeguard this important principle the CCBE draft directive has introduced a very special procedure. In case a disciplinary proceeding is undertaken by the host Bar against the EC lawyer established under home title, his home Bar may request the matter to be refered to at special panel, made up by three representatives of the host Bar and two representatives of the home Bar. The host Bar, accordingly, will have the casting vote, but all members of the panel may require their dissenting opinion, if any, to be recorded in the findings and the sentence of the panel. The sentence must be open to appeal, ultilmately under art. 177 of the Treaty to the European Court of Justice.

This procedure, which probably will be practised extremely rarely, but, if so, in cases of principal importance to our profession, should guarantee, that the issue - whether a professional rule applied by the host Bar is "objectively justified by the public interest" or just a protectionist rule in conflict with overriding principles of European law - will be very well prepared and very well argued by both the home Bar and the host Bar before being presented to the European Court of Justice.

Host Discipline

Any EC lawyer established in another Member State should be subject to the disciplinary authorities of the host Member State ("Host Discipline").

This proposal results from the finding that clients of the host Member State should be able to file complaints against any lawyer practising in the host Member State with the local Bar or other disciplinary authority.

Associations

Finally it is proposed by the CCBE draft that lawyers established - or establishing - themselves under home title should have the right to set up firms - to associate - with other lawyers, and should have the right, normally, to use in the host Member State the business name of their law firm at home, if they so wish.

Many delegates (and ex-delegates) of the CCBE who for years have been working with devotion on this draft directive meant to formalize and regulate EC lawyers' right of establishment under home title, do hope that in a very near future a draft directive can be agreed upon as the CCBE's proposal to the EC Commission as to how the Single Market for lawyers within the EEC can be shaped in a way wished, proposed and supported by the European legal profession, itself.

Niels FISCH-THOMSEN,
Vice-President of the CCBE.

The Scope of Activities of the CCBE

I was fortunate to be the guest of AIJA at the recent Conferences in Barcelona and London and to have an opportunity to listen to and to discuss the topics of most concern to the members of AIJA who represent in age the majority of lawyers in full time practice. At the recent CCBE Plenary Session in Barcelona Elisabet Fura-Sandström spoke about the future of the profession and confirmed that the topics which the CCBE is currently discussing are indeed the topics which are of increasing importance to all practising lawyers. The pace of change in the legal profession is accelerating and if we must recognise the changes that are taking place and work out how to deal with them.

This is a very important task for the CCBE formed in 1960 as the representative body for the legal profession in the Member States of the European Community (other than the notarial professions). The CCBE is the offically recognised consultative body for the legal profession at the European Commission, the Court of Justice in Luxembourg and the European Court of Human Rights and the Council of Europe in Strasbourg.

Its consultative status was recognised in this former title "the Consultative Committee of the Bars and Law Societies of Europe". Recently it was felt that the "Council of the Bars and Law Societies of Europe" better reflected its activities, although it has retained the initials CCBE.

It consists of delegations representing the legal professions of each of the twelve Member States and the observer countries. The delegations vary in size, from two from the smaller countries to six for the larger countries. If there is a vote, it is by country and not by individual delegate. For any major resolution to pass (except the budget which requires unanimity) there must be affirmative votes from ten out of twelve Member States. An abstention effectively counts as a negative vote. The executive officers consist of the President and a First and Second Vice President, elected annually in October.

The CCBE acts both as the representative of European lawyers with the Community institutions and outside bodies, and as a forum for discussing and developing solutions on the questions which concern lawyers within its Member Countries. It has two Plenary Sessions a year from Thursday to Sunday which all Delegates attend. These Sessions take place in different parts of Europe. In addition, the Heads of Delegation and the Presidency meet five times a year from lunchtime on Friday to lunchtime on Saturday normally in Brussels. The CCBE has working groups considering professional conducts; various aspects of the future of the profession including multinational and multidisciplinary practice and professional advertising; Eastern and Central Europe and relations with the EFTA countries and the ABA. It also has specialist committees on company and competition law. There are standing consultative committees at the European Court in Luxembourg, the Court of Human Rights and the Council of Europe.

The CCBE has been particularly involved in discussions with the Commission on questions involving the opening up of the single market within the EC; the ability of EC lawyers to go to another EC country to give legal services to their clients (both legal advice and representation in Court); the right of EC lawyers qualified in one Member State to use their qualifications to assist them in obtaining the legal qualifications in another Member State; and the right for EC lawyers to establish offices in other Member States without requalifying as Members of the local bar or Law Society. The first question was decided by the Legal Services Directive of 1977. In my time the CCBE was very much involved in the negociations leading up to the Diplomas Directive of 1989 which came into force in January 1991. The provisions of the Diplomas Directive are still being worked out in the different Member States.

For over twenty years the profession and the EC have been attempting to resolve the questions of rights of establishment under home title. We have come close to success but have not achieved it. In Dublin in 1991 a draft directive was supported by eight of the twelve Member States. Since then further work has been done and I am cautiously optimistic that a draft Directive may be adopted at the Plenary Session in Lisbon next month. The Commission has said that it will adopt as a working draft any Directive wich can be agreed within the CCBE.

The CCBE makes representations to the Commission on behalf of the legal profession on other proposed legislation affecting lawyers, e.g. on the appropriate rate for Value Added Tax, the new proposed directive on secondary diplomas, and professional advertising. If the Commission extends its activities into other areas, for example, Social Europe and Environmental Issues, the CCBE will have to make sure that the interests of the legal profession are protected. Whatever the final outcome of the Maastricht proposals it seems to be inevitable that circumstances will dictate that some additional topics will require Community-wide treatment. For example, lawyers may have a particular contribution to make to the development of an environmental audit. The CCBE through its specialist committees also makes representations to the Commission on company law and competition law.

With regard to external matters, the CCBE is also playing a leading part in the GATT discussions as they relate to legal services. This fact was recently acknowledged by Commissioner Andriessen when answering questions in the European Parliament. It has been involved in separate discussions with re-

presentatives of the American Bar Association on the free movement of lawyers and will, I hope, soon be involved in similar discussions with the Japanese. The CCBE also has a coordinating role with the Commission in providing help for the emerging countries of Central and Eastern Europe.

The Consultative Committee at the Court in Luxembourg meets regularly with the Judges of both the European Court and Court of First Instance. It has been consulted extensively in the setting up of the new Court of First Instance in Luxembourg, which presently deals with competition and staff cases, and in developing its rules of procedure. At the first hearing of the Court of First instance the President of the Court acknowledged the real contribution the CCBE had made. It has been refreshing for us that the Court has shown a great willingness to receive ideas and to consider them on their merits. In addition, we have been developing with the Court notes for guidance on written and oral procedure so that lawyers who do not appear regularly before the Court may better understand what the Court expects of them.

The Standing Committee at the Court in Strasbourg is concerned not only with questions of procedure but also with human rights. Of particular interest is the agreement by some Member States, called the Schengen Agreement, on exchange of information after the removal of customs barriers in 1993 and whether this will adversely affect human rights. The CCBE also meets the Legal Affairs Committee of the European Parliament. It is inevitable that the Parliament will become more powerful in the next few years.

Despite the difference in our legal systems, we have managed to find a common solution in relation to rules of conduct for cross-border referrals. In 1988 in Strasbourg the CCBE adopted unanimously a code of professional conduct to apply to all cross-border activities. It deals not only with the requirement of the independence of the lawyer and the need only to advise in those areas of the law where a lawyer is competent but also provides detailed rules on such subjects as referral of matters to other lawyers, charging of fees, clients' funds and confidentiality of correspondence. It remains a hope that a Code could be developed worldwide as an international Code for all cross-border activities. It has been most encouraging that the observer delegations of the CCBE have also voluntary adopted the CCBE Code.

In 1978 the CCBE adopted a lawyer's identity card wich is issued by national Bars and Law Societies to its members in good standing and is recognised by the European Court and by national authorities. The card has been adapted so that a separate version is available to lawyers in the observer countries.

Thanks to the generosity of the Danish Bar the CCBE has set up a research Institute in Copenhagen. Earlier this year it produced the first part of a Cross-Border Practice Compendium which when completed, will describe the legal profession and rules of professional ethics in each of the Member States and the Observer Countries. The volume so far includes seven Member States and five Oberver Countries. It is hoped to publish other books which would assist legal practitioners to have a better understanding of other legal systems.

The CCBE has strong links with the International Lawyers Organisations, the IBA, and UIA as well as AIJA. I hope that the degree of cooperation between the CCBE and AIJA can be strengthened. In February 1991 with the Dutch and German Bars it sponsored a most successfull European Lawyer's Conference attended by over 800 lawyers from all over Europe. A similar conference is planned for 31st March 1993 in Brussels. I hope that many of the members of AIJA who live and work in Europe will attend.

It is significant that in our own internal discussions on the future of the legal profession, we have similar concerns to those of lawyers in other parts of the world. As I have already said, we have not yet managed to agree on whether EC lawyers should be entitled to establish offices in other EC countries to practise as legal consultants. We are grapping with the detailed questions of precisely what is required of lawyers qualified in one member State before they can be fully qualified in an other member State. We are developping ethical principles which can apply to all cross-borders activities. We are concerned with measures of consumer protection which would provide safeguards for clients' funds and compensation for professional negligence. In addition, we discuss other topics of concern to lawyers worldwide - multinational partnerships, multidisciplinary partnerships particularly with accountants, professional publicity, legal aid, the protection of the consumer, control of fees and legal education. It may well be that legal education is a subject in which the CCBE and AIJA have a particularly close interest.

The need for Bars and Law Societies to take concerted action in putting forward the views of the profession has never been grater. It is a fact of life that we are becoming more interdependent. The great advances in technology makes it increasingly mobile requiring legal services in different jurisdictions. Transactions are becoming increasingly international. This means that major changes in the structure of the profession in one country will have an effect in other countries. Lawyers must recognise this and work to achieve agreed proposals that can be to their Governments and, within the EC, to the Commission.

I to end by mentionning other challenges which face us all. There is an increasing divergence in attitude between these who regard lawyers as an instrument of the courts and those who regard lawyers as an instrument of business. The first look to lawyers as participants in the process of justice with a duty to uphold the rule of law, to uphold feralessly the basic freedoms of speech, freedom from imprisonment without fair trial and to protect the weak against unjust oppression by the strong. The second look at lawyers as instruments of business to be treated on a level with any other person who provides a service. It is important that we remain one united profession with strong ethical rules ans canons of behaviour which apply to all lawyers.

It is also important that we contribute to the development of a better world. We must help to find means of ensuring that access to legal service and to legal advice and to justice is not a privilege for the wealthy few and of helping and supporting the Bars in those countries where the development and maintenance of the rule of law cannot be taken for

granted whether in the emerging countries of Central and Eastern Europe or in other parts of the world.

This is a very challenging agenda. Change affects not only those from large firms or have a particular interest in international practice but increasingly it affects all practising lawyers. This is a fact of life well understood by AIJA which includes among its membership lawyers not only from all parts of the world but also lawyers in all different types of practice.

John TOULMIN
1st Vice-President CCBE

Uniform Commercial Law in the 21st. century

Congress of the United Nations Commission on International Trade Law (UNCITRAL).

The United Nations Commission on International Trade Law celebrated its 25th birthday with a congress on the theme of Uniform Commercial Law in the 21st Century, held in New York, May 18-22, 1992. Delegates from countries and international organizations from all over the world attended the session, which was held in the General Assembly Hall at United Nations headquarters. AIJA was represented by Ron Allen, Presidential Delegate for the East Coast; Rich Raymond, our designated representative for United Nations activities in New York; and Randy Anderson, President of the Civil Procedure Commission.

The Congress reviewed UNCITRAL's accomplishments in the progressive unification and harmonization of international trade law during the past 25 years, and considered the needs for the next 25 years. Over 60 speakers from different regions and legal systems presented a wide-ranging view of developments in major areas of international commercial law.

The Congress opened with an address by Boutros Botros-Ghali, the Secretary-General of the United Nations. He emphasized that in an area of renewed nationalism and even micro-nationalism, there is an increasing need for new legal infrastructures. Mr. Boutros-Ghali urged that the rationalization of trade law could and should serve as the precursor to greater economic and social cooperation. Presentations by a number of former Secretaries of UNCITRAL rounded out the opening session.

One, Professor John O. Honnold, a leading authority on United States contract law as well as an early Secretary and emince grise of UNCITRAL, noted the following four essential goals of the body's work in the formalization of international trade law.

Clarity : the need for the law to lead to a predictable, if not a certain, result in any given case -- despite the challenges inherent in law's depending upon often untranslatable words rather than upon numbers or chemical formulae. Professor Honnold observed that it is often easier to agree on the desired results than on the language which should produce them, for which reason he suggested that it is better, despite the resistance of some lawyers wedded to the jargon of their own legal system, to draft in "vulgar" language.

Flexigibility : UNCITRAL has been active in preparing international conventions, model laws and model contracts. Even in conventions, in which maximum uniformity is desirable, there has been an effort to leave room for growth and flexibility without the necessity of amendment, for example by allowing the parties' contract to override a convention if they deem it wise and by a convention's giving effect to evolving practices and usages.

Modernization : UNCITRAL work may respond more easily than national law to new concepts and practices in trade; to the extent that some nations may have domestic laws concerning such matters (e.g., computer law), UNCITRAL may profit by their experience and perhaps refine the statutory scheme.

Fairness : UNCITRAL endeavors both to achieve the fair result and to avoid domination of any legal area by powerful interests over smaller, less powerful ones.

Status of existing conventions

The scope of UNCITRAL's activities is reflected in the following table, which

summarizes the major UNCITRAL Conventions and their present status.

A number of commentators focused on the Vienna Sales Convention. One pointed out that the number of states having ratified the Convention (34) is not enough out of a world community of 160 nations. For example, Belgium, the United Kingdom and Japan have not ratified the convention, nor is it widely ratified in Latin America. The commentators uniformly called for a greater knowledge of the convention and broader ratification. One of the commentators focused on subject matters not covered by the convention, such as fraud and duress, which are left to national law. Although these particular items may be more appropriately left to domestic law, there was some feeling that the convention's exclusion of exemption/disclaimer clauses was regrettable, since it would be beneficial top have a uniform law with respect to those matters.

With respect to future areas for UNCITRAL involvement, the working group on international payments reported concerning its identification of legal issues arising from the use of electronic data interchange ("EDI") in international trade. The requirement of a paper-based writing may be viewed as a barrier to the developemnt of electronic commerce. The working group proposed that legal norms and rules should be prepared concerning the use of EDI in international trade. That work might lead to the drafting of a convention, a model law or perhaps a statement of general principles.

Numerous other subjects were discussed during the week, such as the UNCITRAL Model law on International Commercial Arbitration, the 1990 International Chamber of Commerce Incoterms, and the Convention on International Bills of Exchange and International Promissory Notes. The Congress accomplished its objective of promoting awareness of subjects where there can be greater harmonization of international legal norms. AIJA will continue to expand its involvement in this important area. Members with a particular interest may contact Richard Raymond.

Richard C. RAYMOND,
New-York.

Convention	Status
1. Convention of the Limitation Period in the International Sale of Goods (New York, 1974)	Ratifications and Accessions : 13
2. Protocol Amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980)	Accessions : 10
3. United Nations Convention on the Carriage of Goods by Sea, (Hamburg, 1978)	Ratification and Accessions : 20
4. United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)	Ratification, Accessions, Approvals and Acceptances : 34
5. United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988)	Ratification and Accessions : 1
6. United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991)	Ratification and Accessions necessary to bring the Convention into force: 5
7. UNCITRAL Model Law on International Commercial Arbitration (1985)	Legislation based on model law enacted in 8 countries
8. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)	Ratification and Accessions : 86

Le droit grec
en matière d'accidents de la route

Aperçu du droit grec sur les accidents de la circulation

1. En Grèce, les dommages-intérêts en matière d'accidents de la route sont régis par les règles générales des articles 914 et suivants du Code Civil Hellénique, c'est-à-dire par les dispositions relatives aux délits civils, ainsi que par la loi 1911.

Les dispositions relatives aux délits civils instaurent la responsabilité subjective étant donné qu'une faute de l'auteur du dommage est requise, alors que la loi 1911 introduit la responsabilité objective, c'est-à-dire une présomption de responsabilité.

Quant à l'étendue de la répartition des dommages, les dispositions légales susdites ne présentent aucune différence essentielle et généralement le demandeur invoque cumulativement dans son action tant les règles du Code Civil que celles de la loi sus-mentionnée, comme base juridique de son action en réparation.

2. L'existence d'un lien de causalité entre l'accident et le dommage est une condition fondamentale pour la naissance de l'obligation en dédommagement. La théorie de la cause adéquate est prédominante dans la doctrine et la jurisprudence helléniques. Il s'agit de la cause, laquelle, de par son caractère, suffit d'après l'évolution normale des choses et l'expérience humaine commune pour provoquer le dommage (CAUSA ADAEQUATA). Concernant le remboursement des frais exposés par la victime, pour qu'il soit fait droit à ses prétentions, il faut que le Tribunal admette que la victime du dommage était en droit de considérer ces frais comme nécessaires.

3. L'indemnité versée en cas d'accidents de la route compense les lésions corporelles de la personne ou la détérioration de sa santé. Elle compense également les frais d'hospitalisation, c'est-à-dire les frais nécessaires au rétablissement de la santé de la victime. Se basant sur la théorie de la PREVOYANCE EXCESSIVE, qui a souvent lieu dans la pratique, les Tribunaux limitent le remboursement des frais d'hospitalisation. Il y a prévoyance excessive lorsque certaines dépenses effectuées ne s'imposaient pas de façon objective.

L'indemnité couvre aussi les dommages suivants causés à la victime :

1) la perte de revenus due à l'incapacité de la victime d'exercer son activité professionnelle,
2) les privations futures qu'implique la diminution de sa capacité de travail. Cette question fait l'objet d'un examen in concreto et non in abstracto. Il est examiné notamment si la victime doit changer de métier en fonction toujours du degré et de la durée de l'incapacité déterminée par expertise. La détermination du dommage est aisée en ce qui concerne les employés du secteur public et privé, mais difficile en ce qui concerne les professions libérales,
3) l'augmentation des dépenses due au changement du régime alimentaire, à l'embauche d'une aide ménagère ou d'une baby sitter, à l'absorption de médicaments, à la nécessité de kinésithérapie, etc...

Parmi les éléments, qui sont pris en considération pour le calcul de l'indemnité, figurent la nature du dommage, le métier de la victime, la durée de l'incapacité d'exercice de sa profession, les revenus de la victime, l'infirmité ou la déformation, dans la mesure où ils influent sur l'avenir de la victime, etc.

4. La personne du bénéficiaire de l'indemnité : le fait de porter atteinte à la santé ou au corps de la personne produit des effets non seulement sur la victime immédiate du dommage mais également sur d'autres personnes, telles que l'employeur en cas de préjudice porté à l'employé, l'époux(se) en cas de préjudice porté au conjoint et les parents lorsque le préjudice est porté à leur enfant, lequel leur offre ses services. Un accident de la route produit donc des effets se répercutant sur de tierces personnes, les victimes par ricochet. Le principe en droit grec est l'indemnisation de la victime "immédiate "du dommage. A titre exceptionnel, sont indemnisées les victimes du dommage "par ricochet", qui sont les personnes ayant le droit en vertu de la loi d'exiger de la victime de l'accident de la route une pension alimentaire ou la prestation de services.

5. Un accident de la route peut avoir pour résultat la mort de la victime. Cette mort provoque divers dommages pécuniairs à sa famille. L'acteur du dommage est tenu de rembourser les frais d'hospitalisation pendant la période de temps allant de la provocation du dommage à la mort, les frais d'enterrement ainsi que de verser une indemnité aux personnes qui en vertu de la loi ont le droit de réclamer à la victime une pension alimentaire ou la prestation de services. Les notions de pension alimentaire, de prestation de services ainsi que de bénéficiaires de celles-ci sont essentiellement régies par les dispositions du droit de la famille.

6. Dans un accident de la route, les véhicules aussi subissent des dé-

gâts. Le véhicule de la victime est d'habitude le plus endommagé.

- En cas de détérioration totale du véhicule, la victime du dommage a le droit de choisir si elle va acheter un véhicule d'occasion ou neuf. Cependant, l'indemnité que devra verser l'auteur du dommage sera fixé en fonction de la valeur du véhicule antérieure au dommage. Autrement, il y aurait enrichissement sans cause de la victime.
- En cas de détérioration partielle, la répartition des dommages est plutôt facile, car elle est basée sur les factures d'achat des pièces de rechange et des services de réparation.

Dans tous les cas, l'indemnité concerne la valeur des pièces de rechange et des réparations effectuées dans un intervalle de temps raisonnable à compter du jour de l'accident afin que d'éventuelles augmentations de prix ne soient pas supportées par l'auteur du dommage. Ceci est valable aussi au cas où la victime a choisi de ne pas faire réparer son véhicule. En règle générale, en cas de détérioration partielle du véhicule, l'indemnité comprend la valeur des pièces de rechange et la rémunération du travail de réparation, ainsi qu'une somme relativement modeste pour la dévalorisation commerciale et technique que subit la voiture endommagée.

7. Le droit hellénique n'ignore pas l'indemnisation du préjudice moral. Selon l'article 932 du Code Civil Hellénique, le Tribunal peut allouer une réparation pécuniaire raisonnable suivant son appréciation pour cause de préjudice moral, indépendamment de l'indemnité due en raison du préjudice patrimonial causé par un acte illicite. En cas de mort d'homme, la réparation du préjudice moral est allouée à la famille de la victime à titre de pretium doloris. Cette indemnité est équitable, mais le montant qui est alloué par les Tribunaux en Grèce est nettement inférieur à celui accordé dans d'autres pays. Cela devient une indemnité symbolique, pour ainsi dire.

8. Par application des articles 914 et suivants du Code Civil, les réclamations de la victime se prescrivent par cinq (5) ans à compter du jour où la victime a pris connaissance du préjudice et de l'auteur du dommage. Par contre, par application des dispositions de la loi 1911, les réclamations de la victime se prescrivent par deux (2) ans à partir du jour de l'accident. La prescription brève atténue la sévérité de la responsabilité objective instaurée par la loi 1911. Cette prescription biennale s'applique uniquement si les réclamations de la victime sont fondées sur cette loi. Si les réclamations de celle-ci sont fondées sur le Code Civil (c'est-à-dire sur les articles 914 et suivants du Code Civil), la prescription est alors quinquennale. Il est évident qu'à condition de pouvoir prouver la responsabilité subjective (comportement fautif) de l'auteur de l'accident, les personnes préjudiciées invoqueront toujours les articles 914 et suivants du Code Civil applicables aux délits civils.

9. En cas de blessure d'une personne dans un accident de la route, en principe une action pénale est engagée contre le responsable des lésions coporelles. Dans ces cas-là, le Tribunal Civil saisi de l'action de la victime en réparation suspend, à la demande des parties ou même de plein droit, le procès civil jusqu'à ce que la juridiction pénale rende un jugement définitif.

10. La loi prévoit que sont tenus de réparer les dommages de façon cumulative et même solidaire (in solidum), le conducteur du véhicule, qui a provoqué le dommage, le propriétaire du véhicule et la compagnie d'assurance avec laquelle a été conclu le contrat d'assurance, qui est obligatoire en Grèce en ce qui concerne la responsabilité civile du propriétaire du véhicule.

11. Si l'auteur de l'accident est inconnu ou n'avait pas conclu de contrat d'assurance, c'est une personne morale spéciale de droit privé (sous la dénomination CAPITAL AUXILIAIRE) qui peut être assignée en réparation des dégâts. Du fait du versement de l'indemnité, le Capital Auxiliaire se trouve subrogé dans les droits de la victime et peut, par la suite, se tourner contre l'auteur de l'accident.

12. Sur le plan procédural, le Code de Procédure Civile prévoit une procédure spéciale pour les actions relatives aux accidents de la route, laquelle facilite au demandeur la preuve de ses allégations. Les Tribunaux matériellement compétents sont les Tribunaux de Paix (lorsque le montant de l'indemnité réclamée n'excède pas 300.000 drachmes) et les Tribunaux d'Instance (lorsque l'indemnité dépasse les 300.000 drachmes). Sont territorialement compétents, cumulativement, les Tribunaux du domicile ou du siège des défendeurs et ceux du lieu de l'accident. Le demandeur a la possibilité de choisir parmi ces Tribunaux celui qu'il saisira de son action.

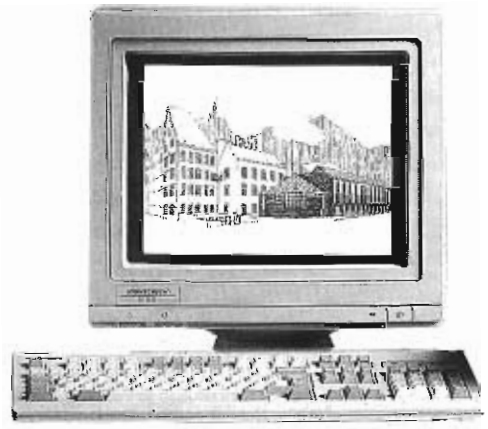
Christos Onidis.
Athènes

Legal protection of CAD/CAM Programs *in the European Community*

Introduction.

The computer like a chisel to a sculptor can be a instrument to accomplish specific creations and designs. A computer work comes into being because the computer converts the data fed in, the input, by means of a computer program into new data. The question arises whether works accomplished with the computer can qualify in any way for legal protection. There are no laws in Europe which explicitly have a protection regime for works created with computers. Since a computer can nowadays be used to create many types of designs, drawings, texts and other creations in many areas, protection of works brought about with a computer as the instrument is desirable in certain cases. In the absence of an explicit ruling, the extent to which existing laws can apply has been sought. In many European countries the protection of computer works has been sought in copyricht.

Computer and copyright are more often involved with each other. In many European Community countries (France, UK, Germany, Italy, Belgium, Luxembourg, The Netherlands, Ireland, Denmark, Greece, Spain and Portugal) computer software is provided with copyright protection based on copyright law. Several EC countries, like France, Germany, the United Kingdom, Spain and Denmark, have already included a stipulation in their Copyright Act, in which it is stated that computer software can be considered as a work protected by copyright in the sense of the Copyright Act, provided that the requirements set by the respective copyright acts on works have been met. In Belgium, Ireland, Luxembourg and Portugal, protection based on copyright is adjudged by a favourable lower court judgement or the opinions of experts. Furthermore legislation or decrees concerning the protection of software have been proposed in these countries. In Italy and the Netherlands significant case law precedents support



the protection of software under the copyrightlaw.

Legislation or degrees have also been proposed in these countries. National laws do not, however, all offer the same level of protection on for example : the duration of the protection and the interpretation of the law. In the member states, protection ranges between 25 years from the date of the program's creation and 70 years after the author's death. Differences exist in the interpretation of the law by the court especially in the area of originality. Hence, because of these and other differences, the range of programs and the titles to protection vary from one member state to another. The United States and Japan on the other hand have both introduced an extensive copyright system to protect software. In order to compete with these two countries, the European Commission has decided to establish a regulatory framework to give equal protection to software throughout the European Community. It has decided for protection along the lines of what is offered by the law of copyright. Copyright offers protection against illegal copying, can adapt to new technologies, and discourages market domination which might hinder development and further progress since copyright only protects the expression of an idea and not the idea itself. In the meantime the Council of Ministers of the EC drew up an European directive on May 14, 1991 concerning the legal protection of computer programs.

All member countries of the EC must bring their (copyright) legislation into line with this directive by 1 January 1993 (European harmonisation of legislation). Computer software will consequently be a work which can qualify for copyright protection in the whole of the EC. In summary follow hereunder a description of the EC directive. All member states shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the protection of literary and artistic works.

Protection in accordance with the directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this directive. The exclusive rights of the rightholder shall include the right to do or to authorize the permanent or temporary reproduction of a computer programm by any means and in any form, in part or in whole.

In so far as loading, displaying, running, transmission or storage of the computer program necessitate such re-

production, such acts shall be subject to authorization by the rightholder.

The rightholder has the right to authorize the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program. In the absence of specific contractual provisions, the acts referred to above shall not require authorization by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract insofar as it is necessary for that use. The authorization of the rightholder shall not be required where reproduction of the code and translation of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the strict conditions are met (the acts are performed by the licensee or by another person having a right to use a copy of a program, the information necessary to achieve interoperability has not previously been readily available to the persons referred to above and the acts are confined to the parts of the original program which are necessary to achieve interoperability).

In this directive nothing has been included about the protection of works made by means of computers and software.

In case the computer work is a computer program this EC directive can be of some importance. In case the outcome is not a computer program, but another type of work, the EC directive is of no importance.

There is no European Community which has a copyright Act that explicity protects computer work or which is considering amending their Act for this type of work.

The question arises whether works (those which are not a computer program) made totally of partialy by means of computer can be protected by copyright.

In general it can be said that only products of human activity can be the objects of copyright. The question is then whether human activity underlies the computer work, in such a way that it can be considered as a work in the sense of the respective copyright acts and copyright protection is consequently possible. If it is argued that only works which are the result of human activity can be considered as a work in the sense of the respective copyright acts, and if it is assumed that a computer work is a work made totally or partially by machines, then copyright protection cannot be appealed to for a computer work. The assumption here is that human activity does not underly a work produced by a computer. However, a computer is not able to operate independently, this means without human instructions underlying this operation. Each computer operation is the result of a programming operation carried out by human beings. After all the human being gives instructions to the computer with which the computer sets to work. The computer work is the result of these instructions given by the human being. Seen in this way copyright on computer works in general appears not to be excluded from protection.

If it is assumed that the computer work has been achieved by means of human activity this still does not, however, automatically mean that it can be considered as a work in the sense of the respective copyright acts. Every computer work must meet the requirements set down for a work in the various acts to qualify for copyright protection. The criterion is not whether the work has been accomplished as a result of human activity but whether, and here I restrict myself to Dutch law, the work has its own individual character. I am referring here to a so-called requirement of originality. The requirement of originally does not imply that is must be a case of absolute objective originality. A work is original if it is new for the maker. It is then a case of subjective originality. The work must result from the maker and be new for the maker. The maker of the computer work is the one who has given the instruction to the computer. It can be considered as a computer work which has been created by the maker, if the author is able to exercise some influence on the achieved result.

To obtain copyright protection registration is not required.

The maker (the one who gives the computer the instructions) just claims that his computer work can be protected by copyright. In case somebody contests this copyright, the maker has to prove that the computer work meets all the requirements set down for a work in the various acts to qualify for copyright protection (originality, own individual character etc.). By difference of opinion it is up to the respective courts to judge whether a computer work can be protected by copyright or not.

If we assume therefore that computer works qualify for copyright protection provided that the requirements set by the respective copyright acts are met and the works consequently have their own individual character, then the maker, the one who has given the instructions to the computer, can take legal action against someone who makes reproductions of his work and/or publishes it.

According to the Dutch law the maker is allowed, in case of infringement, to request the court to judge the infringements illegal, and to issue a prohibition to every further infringement, to claim damages, to attach the unlawful reproductions, to claim the unlawful reproductions as his own property, to claim destroyment of all the unlawful reproductions.

The laws of copyright operate territorially. They usually only provide protection for the country's nationals or for works first published in that country. Treaties and bilateral agreements deal with the availability of protection for foreign authors. Bilateral agreements often grant the same protection with the condition or reciprocity.

The most significant international treaties relating to copyright protection are the Berne Convention and the Universal Copyright Convention. The Berne Convention has been concluded in September 1968. About 80 countries are members of this convention, the United States has also been a member since March 1st, 1989. The primary aim of this convention is to ensure international protection for works of literature, science or art. The maker of a work which is protected by the Berne Convention has the advantage, that the rights which are assigned to the nationals of that country

also apply to him. This is the case in each country affiliated with the Berne Convention. The Universal Copyright Convention has been concluded in September 1952. There are also 80 countries affiliated with it. The UCC has the same principles as the Berne Convention. Works by authors who are nationals of one of the convention countries always qualify for protection, works by authors from non-convention countries can also qualify provided that the work has first been published in a convention country.

The UCC, however, has a lower level of protection than the Berne Convention. It also contains fewer conditions by which an appeal can be made directly. Most of the stipulations apply to the member countries.

The question arises whether it also might be possible to obtain patent protection for a work made by means of computer and software. In case a computer work can be considered as an invention in the sense of the respective patent acts or the European Patent Treaty, provided that the requirements set by these acts and treaty on patents have been met, it is conceivable that a computer work can be protected by patent.

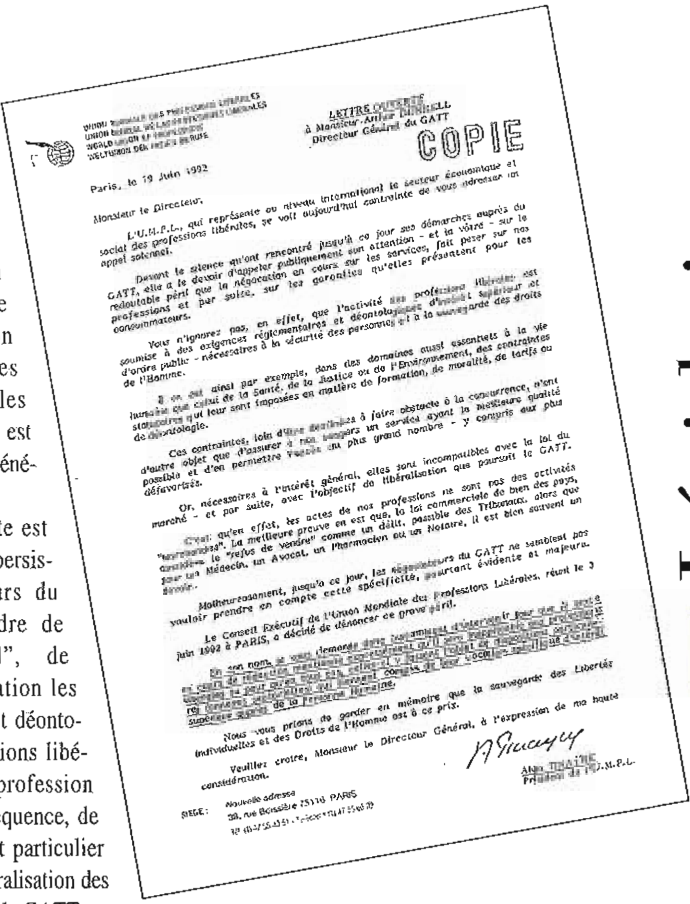
Within the European Community or the WIPO the protection of computer works is not an important issue. In many European countries computer works can qualify for protection in accordance with the respective copyright acts. The EC directive on software protection, which has in the meantime been made, does not refer to the protection of computer works. Perhaps in the future the EC will also strive for harmonisation on this point in the EC harmonisation. For the timebeing the conclusion is that it the maker of a computer work in Europe wants to oppose someone who has infringed his rights he must base his case on the national copyright acts.

Fredericus MUTSAERTS,
Utrecht.

Législations

Lettre ouverte de l'UMPL au GATT

Vous lirez ci-dessous le texte de la lettre ouverte que notre confrère, Me Alain Tinayre, adressait le 12 juin 1992, en sa qualité de Président de l'Union Mondiale des Professions Libérales (UMPL), dont l'AIJA est membre, au directeur général du GATT.



UNION MONDIALE DES PROFESSIONS LIBÉRALES
WORLD UNION OF PROFESSIONS
WELTUNION DER FREIEN BERUFE

LETTRE OUVERTE
à Monsieur Arthur DUNKELL
Directeur Général du GATT

COPIE

Paris, le 19 Juin 1992

Monsieur le Directeur,

L'U.M.P.L., qui représente au niveau international le secteur économique et social des professions libérales, se voit aujourd'hui contrainte de vous adresser un appel solennel.

Devant le silence qu'ont rencontré jusqu'à ce jour ses démarches auprès du GATT, elle a le devoir d'appeler publiquement son attention - et la vôtre - sur le redoutable péril que la négociation en cours sur les services, fait peser sur nos professions et par suite, sur les garanties qu'elles présentent pour les consommateurs.

Vous n'ignorez pas, en effet, que l'activité des professions libérales est soumise à des exigences réglementaires et déontologiques d'intérêt supérieur et d'ordre public - nécessaires à la sécurité des personnes et à la sauvegarde des droits de l'Homme.

Il en est ainsi par exemple, dans des domaines aussi essentiels à la vie humaine que celui de la Santé, de la Justice ou de l'Environnement, des contraintes statutaires qui leur sont imposées en matière de formation, de moralité, de tarifs ou de déontologie.

Ces contraintes, loin d'être destinées à faire obstacle à la concurrence, n'ont d'autre objet que d'assurer à nos usagers un service ayant la meilleure qualité possible et d'en permettre l'accès au plus grand nombre - y compris aux plus défavorisés.

Or, nécessaires à l'intérêt général, elles sont incompatibles avec la loi du marché - et par suite, avec l'objectif de libéralisation que poursuit le GATT.

C'est qu'en effet, les actes de nos professions ne sont pas des activités [illegible]. La meilleure preuve en est que, la loi commerciale de bien des pays, considère le "refus de vendre" comme un délit, passible des Tribunaux, alors que pour un Médecin, un Avocat, un Pharmacien ou un Notaire, il est bien souvent un devoir.

Malheureusement, jusqu'à ce jour, les négociateurs du GATT ne semblent pas vouloir prendre en compte cette spécificité, pourtant évidente et majeure.

Le Conseil Exécutif de l'Union Mondiale des Professions Libérales, réuni le 3 juin 1992 à PARIS, a décidé de dénoncer ce grave péril.

En son nom, je vous demande [illegible]

Nous vous prions de garder en mémoire que la sauvegarde des Libertés individuelles et des Droits de l'Homme est à ce prix.

Veuillez croire, Monsieur le Directeur Général, à l'expression de ma haute considération.

Alain TINAYRE
Président de l'U.M.P.L.

SIEGE : Nouvelle adresse
38, rue Boissière 75116 PARIS
[illegible]

Cette lettre ouverte est motivée par le refus persistant des négociateurs du GATT, dans le cadre de l'"Uruguay Round", de prendre en considération les spécialités (notamment déontologiques) des professions libérales (et donc de la profession d'avocat) et, en conséquence, de leur accorder un statut particulier dans le cadre de la libéralisation des services poursuivie par le GATT.

Nul doute, à mon sens, que si nous ne parvenons pas à faire entendre notre voix avant la conclusion de ces négociations, et/ou si les négociateurs du GATT persistent à faire la sourde oreille, les conséquences pourraient en être dramatiques pour notre profession, nos clients, et chacun d'entre nous. Il est vrai cependant que, d'une part le caractère purement intergouvernemental des négociations GATT rend difficile une intervention efficace de la part d'organisations non-gouvernementales, comme l'UMPL, ou l'AIJA, et que d'autre part, cette question qui a été longuement discutée au sein de l'AIJA lors de la réunion de son Comité Exécutif à Baden-Baden, le 30 novembre 1191, n'a pu faire l'unanimité au sein de celui-ci.

C'est donc à titre personnel que je vous invite à y prendre garde et à tout mettre en oeuvre pour empêcher que notre profession soit rabaissée au rang d'un vulgaire service, banal et quelconque, parmi tant d'autres.

Votre bien amicalement dévoué.

Georges STEVENS
Bruxelles.

Events

Clôture des articles de cette édition 30/09/92

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Deadlines for Your Contributions

28 février - February 28
31 mai - May 31
31 août - August 31
30 novembre - November 30

List of Events Calendrier

1992

18-20.09	Crans-Montana	Séminaire Arbitrage
25-27.09	Glasgow	Réunion Régionale - Regional Meeting Multi-National Partnerships: "A Single Market"
02-10	San Francisco CA	AIJA/ABA-CYLA
22-25.10	Dresden	Réunion Régionale - Regional Meeting "Investitionen in den Neuen Bundesländern Deutschlands"
29-31.10	Madère	Séminaire "Les paradis fiscaux" - Seminar "Tax Havens"
05-06.11	Washington DC	AIJA/ABA Séminaire - AIJA/ABA Seminar "Construction Law"
26-29.11	Bombay	Comité Exécutif,Seminar : "Emerging Investment Opportunities in India"

1993

11-14.02	Douala	Réunion Intercontinetale - Intercontinental Meeting
13-16.05	Salzbourg	Comité Exécutif
10-12.06	Budapest	Séminaire - Seminar: Arbitration
23-27.08	Rio de Janeiro	31e Congrès Annuel

1994

Été/Summer	Vichy	32e Congrès Annuel

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