# *Pro Bono* Practices and Opportunities in International Law

## *Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions*

September 2010
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Individual access to international legal bodies is a relatively new, but rapidly expanding phenomenon. This chapter provides an introduction to *pro bono* in the international legal sphere. On the litigation side, *pro bono* initiatives in international law provide a unique opportunity for lawyers, not only to assist individuals and non-state actors in vindicating their rights, but also to influence the formation of international law and precedent. There are also many opportunities for international *pro bono* outside of litigation, as will be discussed in more detail below.

## I. *The History and Development of Individual Participation in International Law*

Traditionally, only states were considered to be subjects of international law. The rights and duties of individuals were regarded as matters entirely within each state's domestic jurisdiction and unsuitable for regulation by international law.

This began to change as early as 1907, when the Hague Convention XII Relative to the Creation of an International Prize Court recognized the right of an individual to appeal a national decision to an international tribunal. A few years later, the Treaty of Versailles and the other peace treaties that followed the conclusion of World War I allowed individuals to advance claims against a foreign state or against nationals of a foreign state and to be entitled to compensation. These and other developments served as a basis for the paradigm shift that would take place in the second half of the twentieth century: the recognition of the legal personality of individuals to sue or be sued before international tribunals.[1]

World War II was the catalyst for the transformation. After 1945, the need for a supra-national system of checks and balances was clear. Human rights law consequently developed as the first area explicitly to recognize the individual as a subject of international law. This extension of international law was enshrined in the UN Charter, which established general obligations requiring member states to respect human rights. The UN Charter also provided for the creation of a Human Rights Commission to protect and advance these individual rights.[2]

Human rights law has expanded dramatically since 1945. Numerous international instruments have been adopted, among the most notable of which are the Universal Declaration of Human Rights and the Genocide Convention (1948); the Convention on the Elimination of All Forms of Racial Discrimination (1965); the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966); the Protocol Relating to the Status of Refugees (1967); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); and the Convention on Migrant Workers (1990).[3]

Another wave of international legislation and institution-building similar to the one that characterized the late 1940s happened after the Cold War and in the 1990s. International courts and tribunals proliferated, and the role and capacities of individuals and non-state actors

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1 *See* F. Orrego-Vicuna, *Individual and Non-State Entities Before International Courts and Tribunals*, Max Plank UN Year Book 53 at 54–55 (2001).

2 *See* H. Hannum (ed.), Guide To International Human Rights 4 (3rd edition) (1999).

3 *See* Hannum, *supra* note 940. For additional background and overview *see also*, A. A. Cancado Trinidade, *The Consolidation of the Procedural Capacity of Individuals in the Evolution of the International Protection of Human Rights: Present State and Perspectives at the Turn of the Century*, 30 Columbia Law Review 1 (1998); A. Orakhelashvili, *The Position of the Individual in International Law*, 31 *Cal. W. Int'l L.J.* 241; P. Alston & H. Steiner, International Human Rights in Context: Law, Politics, Morals: Text and Materials (2000).

(primarily non-governmental organizations ("NGOs") and corporations) within that framework expanded commensurately.[4]

## II. *Individual Access to International Legal Bodies*

Today, the scope of individual access to international justice goes far beyond the field of human rights; it encompasses international trade regulation, environmental law, immigration and refugee law, and labor law—to name only the most significant examples. The range of international institutions and mechanisms can be grouped into the following categories:[5]

1. Regional human rights bodies (*e.g.*, the Inter-American Court of Human Rights ("IACHR"));

2. International criminal tribunals (*e.g.*, the International Criminal Tribunal for Rwanda ("ICTR"));

3. Regional economic agreement courts (*e.g.*, the North American Free Trade Agreement ("NAFTA") Arbitration Panel);

4. Inspection panels of inter-governmental organizations (*e.g.*, the World Bank Inspection Panel);

5. International claims and compensation bodies (*e.g.*, the Claims Resolution Tribunal for Dormant Accounts in Switzerland);

6. International administrative tribunals (*e.g.*, the Administrative Tribunal of the International Labor Organization); and

7. Law of the sea tribunals (*e.g.*, the International Tribunal for the Law of the Sea).

These international legal mechanisms can be classified as either purely international regimes (such as the international criminal courts) or regional regimes, also referred to as "transnational" or "supra-national" regimes (such as the European Union, the NAFTA trade regime, the African human rights regime, and the Arab League).[6]

In both international and regional regimes, organizations can be categorized further as either treaty regimes or non-treaty regimes. These terms refer to the instrument through which an international legal body was established and in which its mandate is defined. An example of a non-treaty body is the International Criminal Tribunal for the former Yugoslavia, which was established in 1993 through UN Security Council Resolution 808. Treaty bodies include the World Trade Organization (established in 1994 through the General Agreement on Tariffs and Trade, a multilateral treaty) or the Marshall Islands Nuclear Claims Tribunal (established in 1983 through the Agreement Between the Government of the United States and the Government of the

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[4] *See* M. Steinitz, *'The Milosevice Trial – Live!'*: *An Iconic Analysis of International Law's Claim of Legitimate Authority*, 3 Oxford Journal of Internal Criminal Justice 103 (2005). Previously published as: *Authority, Legitimacy and Participation in International Legal Institutions: The Case of the Milosevic Trial*, NYU Global Law Working Papers (2004).

[5] *See* J. Almqvist, *Individual Access to International Justice: A Theoretical Study*, Paper presented at the annual meeting of the American Political Science Association, Philadelphia Marriott Hotel, Philadelphia, PA, Aug. 27, 2003.

[6] The term "international" in this chapter refers to both regional and purely international levels.

Marshall Islands, a bilateral treaty). Ordinarily, the establishing instrument—usually a treaty or a UN resolution—is supplemented by a statute or a protocol that is the legal source of authority for the international body. Often, regulations are promulgated under such statutes and protocols. Together, these treaties, resolutions, statutes, and regulations contain the substantive rights and the procedures that govern their implementation. Some rights and duties of individuals are also recognized as part of customary international law or as *jus cogens*.[7]

The European Union ("EU") has the most extensive, and the most effective, regional human rights system.[8] The institutions primarily entrusted with enforcement of the European Convention on Human Rights (the "Convention") are the European Court of Human Rights (the "ECHR)" and the Committee of Ministers of the Council of Europe, which oversees the enforcement of the ECHR's judgments.[9] The Court of Justice of the European Union established by the Treaty of Paris of 1951 as part of the European Coal and Steel Community has jurisdiction over matters governed by the substantive law of the Treaty.[10] Although both the ECHR and the Court of Justice of the European Union have the power to adjudicate state-to-state disputes, the vast majority of their case load involves private parties litigating directly against state governments or against each other.[11]

As regards the obligation to respect fundamental rights in the EU, it has to be noted that the Lisbon Treaty which entered into force on December 1, 2009, grants the Charter of Fundamental Rights of the European Union[12] (the "Charter") legally binding status. As a result,

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7 *Jus Cogens* rights are peremptory norms of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Customary international laws are laws resulting from a general consistent practice of states. *See generally*, G. M. Danilenko, *International* Jus Cogens: *Issues of Law-Making*, 2 *EJIL* 42 (1991) and A. E. Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 *Am. J. Int'l. L.* 757. *See also*, *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Merits, 1986 ICJ REP. 14 (Judgment of June 27).

8 *See* L.R. Helfer & A.M. Slaughter, *Toward A Theory of Effective Supranational Adjudication*, 107 *Yale L. J.* 273 (1998) and J. H. H. Weiler, *The Transformation of Europe*, 100 *Yale L. J.* 2403 (1991). The number of applications registered annually with the European Commission of Human Rights (an intermediary body that was eliminated in a 1998 reform) increased from 404 in 1981 to 4,750 in 1997. Since the entry into force of Protocol No. 11, which simplified and fortified the operation of the Court, the number of applications rose from 5,979 in 1998 to 13,858 in 2001. *See The European Court Of Human Rights: Historical Background, Organization And Procedure*, Information Document issued by the Registrar of the European Court of Human Rights, *available at:* http://www.echr.coe.int/Eng/EDocs/HistoricalBackground.htm. Meanwhile, the number of cases before the European Court of Justice increased from nine cases in 1969 to over 150 per year in 1993. *See* Helfer & Slaughter, *supra* note 974 at 63.

9 European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (as amended by Protocol No. 14 in 2010) (the "Convention").

10 The Court of Justice of the European Union thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of European Union law. The Court of Justice of the European Union, which has its seat in Luxembourg, consists of three distinct courts: the Court of Justice (the "ECJ"), the General Court (created in 1988) and the Civil Service Tribunal (created in 2004).

11 *See* Helfer & Slaughter, *supra* note 974.

12 OJ 2007, C 303, p. 1 Article 6(1) of the Treaty on European Union ("TEU") provides that " [t]*he Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000 […] which shall have the same legal value as the Treaties*".

the Charter has become a – if not the – primary source of fundamental rights in the EU. The general principles of EU law remain binding as an additional source of fundamental rights.[13]

A. The European Court of Human Rights

The ECHR has jurisdiction over 45 contracting states (including Turkey, Russia and the Ukraine), together representing more than 800 million Europeans. The ECHR has jurisdiction over all matters relating to the interpretation and application of the Convention and its protocols. The Convention covers a wide range of civil and political rights. The ECHR's efficacy is largely owed to the fact that almost all of the contracting states allow the Court to review judgments of domestic courts and have submitted to the compulsory jurisdiction of the Court. Individuals and groups can also file complaints against their national governments in the ECHR alleging violations of European human rights norms.

Article 34 of the Convention provides:

> The Court may receive applications from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.[14]

A finding of a breach of the Convention imposes an obligation on the respondent State to remedy the breach and make reparations to the individual so as to restore, as much as possible, the situation existing before the breach. The Court may award both pecuniary and non-pecuniary damages as well as reasonable and necessary legal costs.[15] Final judgments of the ECHR are binding on the respondent State. At the request of the Committee of Ministers, the Court may also render advisory opinions.

A lawyer is not generally required for proceedings before the ECHR. An applicant may be self-represented or may be represented by anyone of his or her choice approved by the Court. However, the President of the Chamber may direct that an applicant obtain legal representation where an application raises serious issues, especially if the applicant would have difficulty in representing his or her own interests.[16]

An applicant may appoint any advocate authorized to practice in any member state of the Council of Europe or another approved representative. Such other approved representatives are often professors of law. The Convention has been interpreted so as to hold that legal aid itself is a right and the ECHR is free to decide that the applicant is entitled to compensation from his or her home state if legal aid was improperly refused in domestic proceedings.[17]

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[13] *See* Article 6(3) TEU.

[14] Article 34 of the European Convention on Human Rights and Fundamental Freedoms of 1950.

[15] Article 41 the European Convention on Human Rights and Fundamental Freedoms of 1950.

[16] Rule 36 of the Court. In several cases brought against Turkey, the government objected to the applicants being represented by lawyers from the UK on the ground of costs. However, the Court ruled that an applicant may engage a lawyer from *any* member state. *See* Hannum, *supra* note 940 at 145.

[17] *See* http://europa.eu.int/comm/dgs/health_consumer/library/pub/legalaid/c5-6-1.html.

B. The ECJ

The ECJ is primarily charged with interpreting and applying the EU Treaties in disputes between member States of the European Union, or between the European Commission of the Community and one or more Member States. Over time, the ECJ gained jurisdiction over disputes between individuals and Member States through broad interpretation of Article 267 of the Treaty on the Functioning of the European Union ("TFEU"), which requires national courts of last resort to refer cases involving the application of European law to the ECJ for preliminary ruling on the issues of European law.[18]

The ECJ's Rules of Procedure provide for free legal aid.[19] This assistance is paid for from Council of Europe funds. The Court may grant legal aid either at the request of an applicant or on its own initiative. Legal aid is based on means and eligibility is determined by whether an applicant would be entitled to legal aid in his or her country. The fees are not generous and are deemed to be only a "contribution" to the costs. However, the fees normally provide for travel and out-of-pocket expenses, and if an application succeeds, the Court normally awards reasonable fees and expenses to the applicant's lawyer.[20]

## III. *Attorneys' Qualifications and Fee Structures*[21]

The rapid expansion and increased activity of international courts and tribunals in recent years has been largely uncoordinated. Both substantive and procedural law and practices vary dramatically from court to court. The effects of this fragmentation are exacerbated by the fact that the courts are not set in a hierarchical structure and their decisions are not binding on one another.[22] As a result, it is impossible to speak generally of rules, regulations or practices regarding attorneys' qualifications or fee structures. The following paragraphs should be read with this reservation in mind.

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[18] *See* Helfer & Slaughter, *supra* note 947 at 290–91 (citing Case 26/62, *N.V. Algemene Transp. & Expeditie Onderneming Van Gend & Loos v. Nederlandse administratie der belastingen*, 1963 E.C.R. 1, 12 in which the ECJ declared the "doctrine of direct effect" holding that certain provisions of the Treaty of Rome are directly applicable to individuals within national legal systems). Subsequently, individuals can now invoke these provisions in national courts against contrary provisions of national law and the national court is then to refer the issue to the ECJ for resolution. In a later case involving private parties in a domestic court, the ECJ also held that a state that failed to implement the Community directive could be required to pay compensation to injured private parties. *See* Cases C-6/90 & C-9/90, *Francovich v. Italy*, 67 C.M.L.R. 66 (1991) as discussed in Helfer & Slaughter, *Id.*

[19] Rule 76 and Additional Rules 4 & 5 of the Court (also specifying the means and merits tests for legal aid). Legal aid can be paid for from the ECJ's own treasury. The Court's Registrar is in charge of obtaining such legal services. In Article 267 TFEU cases, when a party is already granted legal aid in a case heard by a domestic court of a contracting state and the case is then referred to the ECJ legal aid must be extended to cover the proceedings at the ECJ. *See* R. v. Marlborough Street Stipendiary Magistrate, ex parte Bouchereau 3 ALL ER 365 (Divisional Court of Queens Bench) (1977); Case 30/77 of ECJ. *See also* Article 14 and Article 6 (subsec. (1)-civil; subsec. (2)-criminal legal aid).

[20] *See* Hannum, *supra* note 940 at 146.

[21] Unless otherwise specified, the information in this section has been gathered through discussions and correspondence with UN officers, clinical professors and staff-attorneys at NGOs.

[22] Decisions of other courts are merely persuasive.

A. Qualifications for Representation Before International Courts

Qualification requirements before international bodies vary widely. As one commentator has stated, "[t]he regulation of counsel who practice before international tribunals, particularly public law tribunals, is almost a complete vacuum."[23] On one end of the spectrum is the Inter-American human rights system, where an advocate need not have any legal training or certification whatsoever: the rationale is to allow victims to petition the Commission and the Court directly. The same practice is used across the various quasi-judicial UN committees. At the other end of the spectrum is the ECJ, where the qualifications required to serve as representative are determined by the national law of the advocate.[24]

Criminal tribunals are distinct, in that the statutes of the tribunals provide for legal representation as a right. If a defendant cannot afford legal representation, the tribunal will provide for the defense at no cost to the defendant. The tribunal registrars publicly invite eligible persons to submit applications and maintain lists of eligible counsel.[25] In order to qualify:

> [A] counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise.[26]

As a matter of policy, criminal tribunals encourage representation by members of the local bar, *i.e.*, the base of the place where the tribunal is located. It is often argued that the very legitimacy of an international criminal tribunal hinges, in part, on the employment and involvement of local attorneys. However, post-conflict societies are often devastated and devoid of legal capacity to service adjudication on the scale required in post-conflict situations. For example, in post-genocide Rwanda only 50 lawyers survived. Similarly, most of the current Sierra Leonian defense lawyers have fewer than 5 years of experience.[27]

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[23] D. F. Vagts, *The International Legal Profession: A Need for More Governance?*, 90 Am. J. Int'l L. 250, 260. ("Fee arrangements between clients and lawyers are regulated very differently in different countries: can an American lawyer be paid on a contingent basis for arguing before the International Court of Justice? Do German fee schedules apply to such a case? The way in which a case is tried before an international tribunal, setting aside permanent bodies, depends greatly on the composition of the panel").

[24] Article 19 of the ECJ Statute. The information about representation and fees at the ECJ was provided by *Interights*—The International Center for the Legal Protection of Human Rights (chapter on file with author).

[25] *See, e.g.*, Articles 55 and 67 of the Rome Statute of the International Criminal Court 2002 (right to legal assistance); Rules 20–22 of the Rules of Procedure and Evidence (assignment of legal assistance and qualifications of counsel for the defense). Among the documentation requirements set by the Registrar are requirements for a certificate of good standing from a professional association of which the candidate is a member; certificate from the relevant state authority specifying criminal convictions, if any. Similar provisions, subject to some variations, exist in the Statutes and rules of the *ad hoc* International Criminal Tribunals for the Former-Yugoslavia and for Rwanda and the Special Court for Sierra Leone.

[26] Rule 22 of the Rules of Procedure and Evidence. The working languages of the criminal court and the criminal tribunals are English and French. In exceptional cases, it may be enough that counsel speaks the language of the accused. *See* Delalic *et a*l., Decision of ICTY (June 24, 1996).

[27] *See* M. Minnow, *Between Vengeance and Forgiveness XX (XXXX) and Report on Defence Provision for the Special Court for Sierra Leone* (February, 2003), *available at:* www.specialcourt.org (suggesting appointment of

B. Fee Structures

Like appointment of counsel, the issue of attorney compensation has proven to be a sensitive matter. The ICTR, for example, faced allegations of over-billing and fee splitting between attorneys and their clients.[28] Generally, criminal defense attorneys' fees are set by the courts' Registry. The standard hourly rate at the International Criminal Tribunal for the Former Yugoslavia ("ICTY") is $110 per hour for a lead counsel with 20 years' experience (and somewhat less for those with less experience) and $80 per hour for co-counsel.[29] The Tribunal is in the process of implementing a lump-sum payment scheme which will supersede the hourly rate.

In civil proceedings, such as petitions to the IACHR, fees are usually not provided by the courts.[30] Representation is often provided by NGOs or on a *pro bono* basis. The Court at its discretion may award payment of fees; however, these would be significantly lower than the custom in American courts (between $100 and $2,000 per case).[31]

## IV. *Establishing a Pro Bono Presence Internationally*

Generally, *pro bono* representation before international bodies can be provided in one of at least three capacities:

1. Representation of individuals or non-state entities, such as NGOs, before international institutions;

2. Representation of underdeveloped countries in disputes between States (*e.g.*, in relation to requests for advisory opinions from the ICJ or disputes brought before the World Trade Organization Arbitration Panel); or

3. Intervention as *amicus curiae*.

Within this framework, three major avenues of opportunity can be identified for law firms wishing to increase access to *pro bono* opportunities in international law: (1) partnering with NGOs or other organizations such as law school clinics; (2) partnering with UN agencies; and

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local attorneys as co-counsel and the establishment of pools of specialists who can assist with legal research, legal investigations and interpretation). In order to qualify to represent as defense counsel at the ICTY, for example, the requirement is a minimum of 7 years experience.

[28] *See* T. Deen, *UN War Crimes Courts Embroiled in Corruption Charges*, Inter Press Service (March 11, 2002).

[29] The rates at the ICTR are the same but a cap of 175 hours a month has been implemented in response to the allegations of abusive practices.

[30] An exception is the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. In order to overcome the financial impediments to the judicial settlement of disputes between states at the ICJ, (also known as the "World Court"), a special fund was established in 1989 by the UN Secretary General to assist developing countries; the primary reason being the recognition that many developing countries have neither the capacity to self-represent nor the resources to retain foreign counsel. The Secretary General is the manager of the trust fund and is assisted in its implementation by the UN Secretariat through the Office of Legal Affairs. *International Court of Justice*, UN Doc. A/47/444, at 4 (1992). *See also*, P. F. Bekker, *Current Development: International Legal Aid In Practice: The ICJ Trust Fund*, 87 *Am. J. Int'l L.* 659.

[31] Information on representation and fees at the IACHR was provided by Prof. James Cavallaro, Associate Director of the Human Rights Program at the Harvard Law School. For a precedent-setting award of attorneys' fees *see In re Blake*, Judgment of the Inter-American Court of Human Rights (January 24, 1998).

(3) establishing working relationships with Registrars of the various international courts and tribunals.

A. Partnering with NGOs

Many international NGOs have well-established networks of connections and experience with representing individuals in international bodies. Still, these NGOs may be under-staffed, under-budgeted or may simply lack expertise in a certain area of law and may be happy to cooperate with law firms who have the right resources and institutional knowledge. Leading international NGOs that undertake individual representation include Amnesty International, Human Rights Watch, No Peace Without Justice, the International Rescue Committee and Interights.[32] Often these NGOs have a legal department, and contacting the heads of such departments may be the most effective way of reaching out. National NGOs doing international work (such as the American ACLU and other leading civil rights organizations) can be equally fruitful partnerships to explore.

One issue to be aware of when approaching NGOs is that their public funding, or ability to attract private funding, is often contingent upon being able to point to high-profile successes for the organization. Accordingly, they may be disinclined or even hostile towards the idea of sharing the limelight with law firms. This concern can be addressed at the outset by clarifying that the law firm offering its services is willing to assume a back seat role, if that is indeed the case.

B. Partnering with UN Agencies

A number of UN agencies have corporate partner programs and NGO partner programs.[33] The partnership model is familiar and encouraged; therefore, expanding the scope of partnerships to include law firms should not meet with resistance. UN agencies that may be particularly relevant to law firms looking to provide legal services include the United Nations Development Program ("UNDP"), the United Nations Human Rights Commission ("UNHRC"), United Nations International Children's Fund ("UNICEF") and the United Nations High Commissioner for Refugees ("UNHCR").

Most of these UN bodies are headquartered in New York. However, given that the needs of any given program may vary from country to country, and given the bureaucratic nature of the UN, it would probably be more effective to contact Country Offices rather than UN Headquarters. For example, contacting the Rule of Law Officers or the Governance Program Officers at UNDP's Country Offices or the Child Protection Officers at UNICEF's Country Offices may prove more effective than contacting the Country Bureau at UNDP or UNICEF's Headquarters.

C. Establishing Working Relationships with Registrars

Each of the international courts has a Registry. Unlike many domestic courts, the Registrars of the international courts are senior staff holding sway over policy, regulation, and

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[32] Interights has been particularly active in the field of access to justice and legal aid. In collaboration with the European commission, the Public Interest Law Institute and the Open Society Justice Initiative, Interights helped produced a source book on access to justice in Central and Eastern Europe as well as nine country reports reviewing access to justice and legal aid in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia, *available at:* http://www.interights.org/pubs/accesstojusticenew.asp; http://www.pili.org/en/content/view/349/53/.

[33] *See e.g.*, UNHCR's partners/donors website at http://www.unhcr.ch/cgi-bin/texis/vtx/partners.

procedures and are second in influence only to the judiciary itself. Among other responsibilities, the Registrars are entrusted with the administration of defendants' representation (in criminal courts), with allocating and disbursing attorneys' fees (when paid by the court), and with enforcing the attorneys' qualification requirements. Because Registrars also keep rosters of eligible attorneys, formally applying to be included on these rosters should be a first step for those wishing to volunteer their services. Similarly, in order to represent petitioners appearing before the ICJ, a good first step might be to establish contact with the Office of Legal Affairs at the UN Secretariat.

### D. Specific Examples of International *Pro Bono* Opportunities

As can be seen by the non-exhaustive list below, *pro bono* work in the international sphere is not restricted to litigation. Transactional attorneys can provide legal services to those in need of assistance accessing international justice. For example, law firms can provide assistance directly to governments in developing countries and emerging market economies by drafting codes, statutes, and regulations (*e.g.*, tax codes or banking laws). Alternatively, attorneys can work through international organizations such as the International Monetary Fund, the World Bank, or USAID to develop fiscal policies and guidelines. Transactional attorneys can assist and advise entrepreneurs in developed and developing countries to incorporate and register businesses, companies, and non-profit organizations as well as providing guidance on issues such as credit, taxation, real estate and intellectual property.

Attorneys are also needed to provide counseling on issues such as privatization and enforcement in areas such as energy law and insolvency, or supply legal training and mentorship geared towards sustainable skill transfer. Finally, attorneys can assist local, regional, and international NGOs with researching and documenting human rights violations. Other than providing a basis for advocacy, reports can also be submitted to various UN treaty bodies (such as the Committee on the Elimination of Discrimination against Women) or serve as evidence in trials.

Law firms have engaged in a wide variety of international *pro bono* work. In terms of litigation, Latham & Watkins LLP recently collaborated with the Harvard Law School Student Advocates for Human Rights in preparing two *amicus curiae* briefs for submission to the Inter-American Court of Human Rights in two individual petitions against Trinidad and Tobago and Suriname for violations of the Inter-American Convention on Human Rights.

Shearman & Sterling has an ongoing program with the Office of the Prosecutor at the ICTR through which associates are sent to the ICTR to assist the Prosecution in various aspects of its work, particularly legal research and legal training. In addition, Shearman has organized and led several trial advocacy seminars in Arusha, Tanzania for the staff of the Office of the Prosecutor.

Latham has also entered into partnerships with several Eastern European NGOs to provide assistance with petitions to the European Court of Human Rights. Recently, Latham partnered with the Romania Helsinki Committee ("RHC") in *Tatar v. Romania*, a case concerning mining pollution. The case culminated in an oral hearing in Strasbourg at which lawyers both from Latham and the RHC pled to the Court. The firm has also provided research assistance to NGOs on international and comparative law in other cases before the ECHR.

Debevoise & Plimpton litigated successfully the rights of 51 Mexican nationals on death row in the United States under the Vienna Convention on Consular Relations in front of the

International Court of Justice. In March 2004, the ICJ held that the United States had violated the Vienna Convention in the cases of these individuals, and ordered U.S. courts to review and reconsider their convictions in light of the violations. Debevoise has also represented the Committee to Protect Journalists, filing amicus briefs in the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the courts of Croatia and Taiwan to challenge criminal libel prosecutions of journalists.

Shearman also partnered with the Open Society Justice Initiative to file a brief in the European Court of Human Rights. The brief concerned the development of legal norms on racial discrimination and violence. The Grand Chamber of the ECHR eventually returned a decision affirming in substantial part its first-ever findings of racial discrimination in breach of Article 14 of the European Convention of Human Rights.

Law firms have also undertaken a great deal of interesting international work not focused on litigation. For example, Mayer, Brown, Rowe & Maw sponsored the placement of a solicitor in Belize, where the solicitor spent three months assessing compliance of Belize laws with the UN Convention on the Rights of the Child. Hunton & Williams provided Afghanistan with corporate legal advice on updating its commercial code, its corporate code, and its registration of business entities code.[34]

Latham provided a team of attorneys to assist Virtue Foundation, an NGO with special consultative status to the United Nations, and its partners in the structuring and documentation of the Cambodian Healthcare Partnership. The partnership's goal is to establish a rural Cambodian village as a health-care focused millennium village.

Baker & McKenzie and Covington & Burling have worked with Public International Law & Policy Group ("PILPG"), a global *pro bono* law firm that provides free legal assistance to developing states emerging from conflict. Baker has done several projects with PILPG, including working with them on Kosovo's independence from Serbia. There, lawyers from seven Baker offices drafted position papers on international law, politics and negotiating strategy for one of the parties in the talks. Through PILPG, Baker also helped the Anuak Justice Council in Ethiopia to negotiate health and water rights for the Anuak minority. Similarly, in Sri Lanka, representatives of twelve Baker offices researched and prepared memoranda and legal advice on a variety of complex issues as part of PILPG's ongoing support of the peace negotiations to end two decades of ethnic strife.

Covington has also been involved with PILPG, helping them advise the government of Armenia in connection with conducting a political status referendum in the disputed Nagorno-Karabakh region of Azerbaijan. In another project for PILPG, Covington is evaluating Liberian electoral law to ensure its consistency with international practice and offering recommendations for reform.

Other law firms have been involved with microfinance programs that enable the poor, especially women, to start or expand businesses. For example, Cleary Gottlieb Steen & Hamilton has provided counsel to the Nobel Prize-winning Grameen Foundation, which operates in Bangladesh. Similarly, Covington has worked with the Foundation for International Community Assistance, an organization that makes micro-loans to small groups of individuals, usually women, in villages in underdeveloped countries. Covington developed a plan and appropriate

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[34] *See, e.g.*, Hunton & Williams 2004 *Pro bono* Report (on file with author); Mayer, Brown, Rowe & Maw's website *available at*: http://www.mayerbrownrowe.com/london/overview/index.asp?nid=464.

documents, including consideration of complex tax issues, whereby FINCA licenses specialized accounting software that it has acquired and improved to manage micro-loans in 23 countries in Latin and South America, Africa and the former Soviet Union.

White & Case served as *pro bono* counsel to The Nature Conservancy and Conservation International, in conjunction with the governments of the United States and Costa Rica, in a large debt-for-nature swap. The United States forgave $26 million of Costa Rica's debt, with Costa Rica spending that amount on tropical forest conservation programs.

## V. *Conclusion*

*Pro bono* initiatives in international law provide a unique opportunity for lawyers to influence and learn from an evolving jurisprudence. International *pro bono* work can also serve as an opportunity to integrate attorneys working in non-U.S. offices and to share staffing and resources, thus providing a sense of global teamwork across offices. Such work also gives young associates the opportunity to develop the skills necessary to work in multicultural settings—a facility which can be carried over into non-*pro bono* practice. Encouraging international *pro bono* also makes sense from a business development standpoint: cases that reach international bodies are often high-profile both in the jurisdiction in which they originated and internationally, providing high visibility to the representing law firm.