

# Ethics Central

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*News from The International  
Center for Ethics, Justice, and  
Public Life at Brandeis University*

## *Center Celebrates 10th Anniversary*

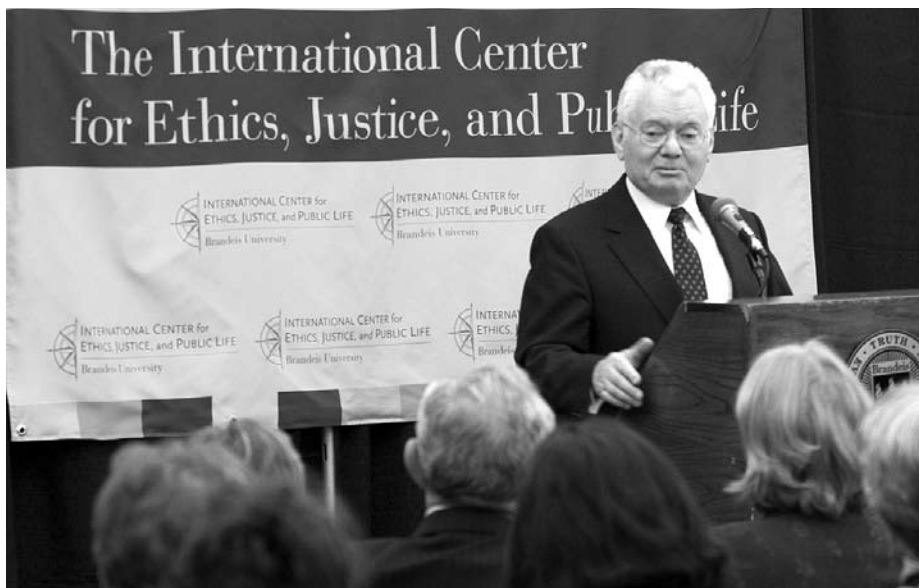
**H**ighlighted by a keynote speech from Judge Thomas Buergenthal of the International Court of Justice (ICJ), the Ethics Center looked to its next decade of fostering global coexistence and justice during a day-long 10th anniversary celebration on March 13.

The talk by Buergenthal followed a symposium called “The Next Ten Years: The Ethics Center Looks Ahead,” in which members of the Center’s Advisory Board and leaders in the field of coexistence and international justice considered potential activities for the Center, such as advocacy for support of international justice norms, examination of religion’s role in society, and encouraging empowerment of women and marginalized populations.

“Just as another esteemed group gave us ideas to move forward before the Ethics Center began, the participants in ‘The Next Ten Years’ helped create a vision for the future of our now established Center as we seek to advance our activities for the decade to come,” said Director Daniel Terris.

In his talk, Buergenthal discussed the role of the international justice system from the perspective of someone who has served both on the bench of the ICJ as well as on the Inter-American Court of Human Rights. He noted that most major international courts were created after World War II. And the need for such courts will continue to grow, he predicted, with more tribunals to address human rights violations

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*Judge Thomas Buergenthal of the International Court of Justice gives the keynote address during the Center’s 10th anniversary celebration.*

### FROM THE DIRECTOR – DANIEL TERRIS

## **An End to Unilateralism**

**I**t is a truism that Americans treasure freedom, and never more so than when it comes to foreign affairs. Freedom of action in the international arena is deeply ingrained in the U.S. psyche, as Americans of every political persuasion cherish the principle of unfettered pursuit of national interests and moral principles.

Yet it is increasingly clear that the next president of the United States can ill afford to cling to unilateralism. Iraq and other ventures have exposed the weaknesses of the military might of the “last remaining superpower.” Global forces are buffeting the American economic system. Talking down to its friends, and not talking at all to its foes, the U.S. has lost a great deal of its ability to pursue its interests through international political and diplomacy — to say nothing of the patently self-destructive consequences of unilateralism when it comes to the global environment.

A great test of a nation’s inclination to shed its hubris is its attitude towards international law, and in particular towards the extraordinary network of international courts and tribunals that have developed over the past half-century.

Americans from across the political spectrum often shudder when they consider the prospect of their countrymen appearing

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*The International Center for Ethics, Justice, and Public Life*

The mission of the International Center for Ethics, Justice, and Public Life is to develop effective responses to conflict and injustice by offering innovative approaches to coexistence, strengthening the work of international courts, and encouraging ethical practice in civic and professional life.

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**■ IN THE NEWS**

**New Dual Master's Degree in Development and Coexistence Launched**

Brandeis University has established a new dual Master's Degree Program in Sustainable International Development and Coexistence and Conflict. This unique degree has been created especially for those people working or planning to work on development issues in situations of conflict. The Center and the Heller School for Social Policy and Management will oversee the program, with the first students enrolling in fall 2008. For more information about the program, e-mail [helleradmissions@brandeis.edu](mailto:helleradmissions@brandeis.edu).

**CI Partner Publishes First Newsletter**

Coexistence International's regional partner organization, the Ghana Center for Democratic Development produced the first issue of its electronic newsletter, which examines transitional justice processes in the West Africa sub-region and explores the nexus between transitional justice and coexistence/peacebuilding. To access the newsletter, visit [www.brandeis.edu/ethics/publications/CDDNewsletter.pdf](http://www.brandeis.edu/ethics/publications/CDDNewsletter.pdf).

**Staff Highlights**

**Mari Fitzduff** in November attended the sixth annual conference of the Club of Madrid, whose members include 70 democratic former heads of state and government. The conference, titled "Democratizing Energy: Geopolitics and Power," addressed the geopolitical dimensions of current energy concerns.

■ **Leigh Swigart** attended a symposium from November 29 to December 1, in Arusha, Tanzania, titled "The Legacy of International Criminal Courts and Tribunals for Africa," a collaboration of the Center and the International Criminal Tribunal for Rwanda. ■ An article in the January 1 edition of *Corporate Counsel* titled "Attention Must be Paid," which details the case of a Lockheed Martin employee who uncovers problems with a company shipbuilding project, cites Center Director **Daniel Terris**. His book *Ethics at Work* examines Lockheed Martin's ethics program. ■ **Theodore Johnson** in January traveled to Rome to lead a negotiation and consensus-building workshop for the secretariat of the CODEX Alimentarius Commission. CODEX was created by the Food and Agriculture Organization, a United Nations agency, to develop food standards, programs, and practices to benefit both developed and developing countries. ■ **Cynthia Cohen** traveled to Liberia in February to facilitate a workshop on "Transitional Justice, Reconciliation, and Coexistence" co-sponsored by Coexistence International at Brandeis University and regional partner Ghana Center for Democratic Development, in collaboration with the Transitional Justice Working Group of Liberia. Participants covered such topics as the challenges of the transitional justice process currently underway in Liberia, lessons to be learned from completed processes in neighboring countries, and policy recommendations for these processes to be more sensitive and conducive to coexistence and inter-group relations.

**2008 Ethics Center Student Fellows Named**

The Center has chosen six Brandeis undergraduates as the recipients of the 2008 Ethics Center Student Fellowships. After taking courses in the spring in preparation for their internships, the Fellows will work on issues of peacebuilding and justice for organizations in China, Ethiopia, India, Nepal, South Africa, and Uganda. When they return to Brandeis in the fall, the Fellows will take another course to report and reflect on their experiences abroad. For more about the Fellows and their internship plans, see [www.brandeis.edu/ethics/ecsf/bios\\_2008.html](http://www.brandeis.edu/ethics/ecsf/bios_2008.html).



*The 2008 Ethics Center Student Fellows (from left): Hannah "Boots" Janoowalla '10, Benjamin Bechtolsheim '10, Angela Tse '09, Aaron Voldman '09, Avram Mlotek '09, and Catherine McConnell '10*

## Book Roundtable Examines International Judicial Institutions

A roundtable discussion of the new book *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* focused on the fragility of international judicial institutions and the challenges and opportunities of the people who serve on them.

The discussion, held November 8 at Brandeis, featured co-authors Daniel Terris, director of the Center, and Leigh Swigart, the Center's director of programs in international justice and society (the third co-author, Cesare P.R. Romano, associate professor at Loyola Law School in Los Angeles, could not attend). Joining the authors were moderator Anita Hill, professor at the Heller School, and four guests with international judicial experience: Thomas Franck, professor of international law at New York University and former ad hoc judge of the International Court of Justice; Richard Goldstone, retired justice of the Constitutional Court of South Africa and the first chief prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda; Phillip Rapoza, chief justice of the Massachusetts Appeals Court and former chief administrative judge of the Special Panel for Serious Crimes in East Timor; and Patricia Wald, retired judge of the United States Court of Appeals for the District of Columbia and former judge of the International Criminal Tribunal for the former Yugoslavia.

In his opening remarks, Terris said the book offers background about international courts and in-depth portraits of their judges, who are establishing a network thanks in part to programs like the Brandeis Institute for International Judges. While the courts forge new realms of law and hold individuals accountable for crime on a mass scale, they also contend with insufficient funding and threats from the political environment, he said.

Goldstone concurred, contending that



Panelists (from left) Daniel Terris, moderator Anita Hill, Phillip Rapoza, Patricia Wald, Leigh Swigart, Richard Goldstone, and Thomas Franck gather for a discussion of the book *The International Judge*.

“international justice is all about politics.” He noted that national judges don’t typically worry about the funding of their courts while international judges do. Indeed, in one example Goldstone provided, judges on the Special Court for Sierra Leone even had to fundraise themselves to support their court.

Rapoza said that the international court on which he served gave judges six-month contracts, causing them to “look over their shoulder” and potentially affecting their decisions. In the end, he said, the courts are only as good as the judges.

“Judges haven’t inherited courts of long standing, but they’re the builders of the courts they’re serving on,” he said.

Wald noted that those international judges “serve in a sense unanchored” because their courts are not part of a hierarchy, such as national courts have with a supreme court or legislative body.

“These [international] courts have an enormous amount of responsibility, because once you’re done, you’re done,” she said.

Only between 200 and 300 people in the world

serve on these courts, according to Terris. Franck said that the small number allows international judges as well as those who serve as counsel before the courts to form a peer group, but also leads to criticism. “One of the complaints that people have about the international judicial system,” he said, “is that it’s like a vast Broadway musical with 30 people playing all the parts.”

Swigart pointed to the diversity of the international judiciary, which is composed of judges from many different countries with different languages as well as varied backgrounds, including national judges, diplomats, and law professors. “This heterogeneity could be seen as a weakness, but it also could be a strength,” she said.

Panelists debated whether such a heterogeneous group of international judges can be seen as a community. Terris argued that while the judges differ in backgrounds, they share an intellectual bond.

“There is a growing common mindset about approaches to the law . . . that is helping to ameliorate this problem of divergent views,” he said.

# Forensic Anthropologist Highlights Work on Mass-Grave Sites

During a four-day residency at Brandeis on October 30 - November 2, forensic anthropologist Dr. William Haglund spoke about his work at mass-grave sites and its implications for international justice and offered students insights on a career investigating the aftermath of mass violence and genocide.

The Center's second annual Distinguished Visiting Practitioner, Haglund served as director of the International Forensic Program for Physicians for Human Rights from 1998 to 2006 and currently is senior forensic consultant for the organization. Previously he was the United Nations' senior forensic advisor for the International Criminal Tribunals for Rwanda and the former Yugoslavia and prior to that chief medical investigator of the King County Medical Examiner's Office in Seattle, Washington.

Hosted by Brandeis' Anthropology Department, with lead faculty member Elizabeth Ferry, Haglund spoke to an International Criminal Law and Human Rights class on "Criminal Law and Forensic Anthropology" and to master's students in Sustainable International Development on "Uncovering the Dead: Truth and Justice After Mass Atrocities." He also held office hours to discuss with students career options in the field of forensic anthropology.

Haglund began his keynote address, titled "The Promise of Nuremberg," with a quote from the opening statement of Justice Robert Jackson, the chief prosecutor for the United States at the Nuremberg Trials: "The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."

Nuremberg represented the first successful holding of an international court — a precursor for the international courts that have since been established, said Haglund. Those courts, such as

the International Criminal Tribunals for Rwanda and the former Yugoslavia, expanded the principle that individuals could be held accountable in the international community, he said.

Yet, he said, "The most difficult crime to prove is genocide." He recounted impediments to international forensic investigations, such as lack of will, absence of local expertise and resources, security concerns, and distrust of investigators by the local populace. Most investigations of human rights abuses are ultimately driven by families of the victims and family advocacy groups, he said.

Haglund detailed the site assessments he's undertaken, including mass graves in Rwanda that contained thousands of bodies. In his

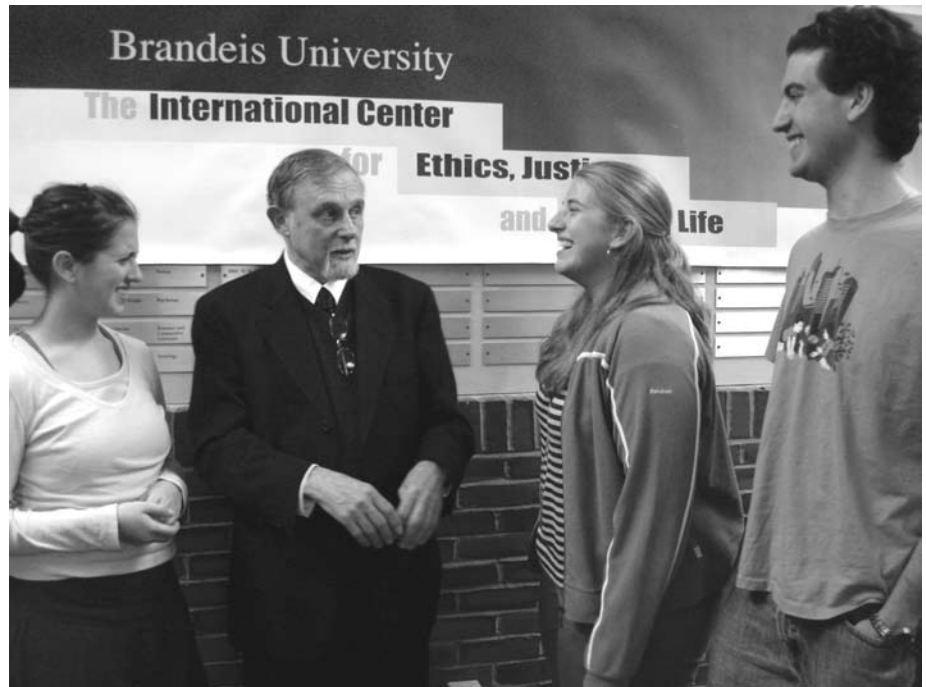
**"The most difficult crime to prove is genocide."**

investigations, he estimates the number of people killed and collects evidence such as shell casings that would indicate if the killings took place at the site. In one case in Rwanda, he told of discovering curtains in a grave that were used to blindfold the victims, which he was able to trace to a school to establish the scene of the crime.

At the sites, he said, he looks for evidence that will serve the international court. "You're guided by the needs of the prosecution," he said. "That's what you're there for."

Sometimes if a person's body isn't intact, he said, "All you can do is tell the story of one bone. But if you have the complete skeleton, you can tell the story of the whole individual. That's the story we need to tell."

Haglund said he derives the most satisfaction from dealing with families and getting their loved ones' remains back to them. "I think it's important for human dignity," he said.



*William Haglund, the Center's second annual Distinguished Visiting Practitioner, speaks with students at Brandeis.*

# An End to Unilateralism

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before a bench of international judges. Some worry that these “unaccountable” jurists will use “foreign” human rights concepts to supplant rights guaranteed under the U.S. Constitution. Others fret that international criminal courts may seek to indict American soldiers or politicians for war crimes. Still others see nefarious attacks on labor and environmental protections by international judges who are protecting a neoliberal international economic regime.

But what hope is there for a nation of laws, if the only laws it respects are its own? The countries of Europe, with no less pride in their national traditions, have come to this realization. Sixty years ago, warfare engulfed the continent. Today, nations from Russia to Portugal submit to the jurisdiction of two well-established judicial bodies, the European Court of Human Rights and the European Court of Justice. In these courts, a Pole sits in judgment on Germany, a Frenchman sits in

judgment on Britain, and a Greek sits in judgment on Turkey. National pride and prejudices have yielded to a stable, productive, and reasonably effective continental rule of law.

The United States, for its part, has in recent years turned its back on international justice. The U.S. has ignored some rulings of the International Court of Justice, which rules on disputes between countries. It has refused to become a party to either the new International Criminal Court (designed to prosecute the perpetrators of crimes against humanity when no national court is available to try them) or the Inter-American Court of Human Rights (which protects the human rights of individuals in the Western hemisphere). The U.S. has in many ways abandoned a tradition of support for the global rule of law that began in Woodrow Wilson’s time and extended through the Nuremberg trials and the establishment of the tribunals that have successfully prosecuted the war criminals of the former Yugoslavia and Rwanda.

Our next president could send a strong and rapid message to the world by reversing

the current trend and embracing institutions of international law. What better way to signal an end to unilateralism and a move towards reciprocity than to make clear that the world’s most powerful nation is willing to respect the decisions of strong, well-supported, properly constituted international judicial bodies?

The judgments of international courts will not always be to the liking of the United States . . . any more than American citizens are unanimous about the rulings of their own Supreme Court. Sometimes, law and justice will be at odds in the international arena, just as they sometimes are at home. The long arm of politics will sometimes muddy the waters of the purely legal . . . but what courts are completely free of this taint? The shortcomings of legal institutions should be spurs to reform, rather than convenient excuses to disregard their dictates.

In the end, respect for law — and the willingness to submit — is an essential step towards a world where violence is curtailed, and where nations work together to confront global perils. Constraint is a small price to pay for justice.

## 2nd West African Judicial Colloquium Focuses on Judicial Independence

From October 8-10, 2007, the Center hosted the 2nd West African Judicial Colloquium around the theme “Promoting Judicial Independence and Access to Global Jurisprudence.” This colloquium followed upon the 1st West African Judicial Colloquium, held in Dakar, Senegal in January 2006.

The 2nd Colloquium aimed to build upon the experience of the first by furthering efforts to create a strong and sustainable network among supreme and high court judges in West Africa. Participants at the 1st Colloquium considered that such a network would help them to remain independent in their judicial work and create an opportunity for expanded judicial dialogue, both of which are fundamental to well-functioning judiciaries. The program of the 2nd Colloquium was thus designed

both to enhance the networking begun in Dakar and to provide critical information about how judges can access and utilize legal thinking from other national courts as well as the international legal regime.

Judges discussed how national courts can draw upon the expanding body of human rights and international law both to enrich their thinking and to promote their independence from over-reaching executive and legislative branches of the government. They also considered how they might interact with judges sitting on international courts for a mutually beneficial exchange of ideas, and how they might draw both inspiration and



*Fatsah Ouguergouz (at left) of the African Foundation for International Law talks with judges from the Ivory Coast, Guinea, Togo, and Benin.*

support from international agencies and civil society entities. Finally, West African judges examined how their courts might best cooperate with the International Criminal Court to end impunity for genocide, war crimes, and crimes against humanity on the continent.

## ■ HIGHLIGHTS OF RECENT EVENTS

### October

**Sari Nusseibeh**, president of Al Quds University in Jerusalem and a member of the Ethics Center’s Advisory Board, came to Brandeis to speak about his book, *Once*



*Upon a Country: A Palestinian Life*, which chronicles the Israeli-Palestinian conflict from his perspective, including his 1991 imprisonment in an Israeli prison.

The Center co-sponsored a symposium titled “**Speaking Safety and Security**,” which featured discussions focusing on the measures governments and other entities take in the name of security and the pervasive sense of fear and mistrust that these efforts often engender.

**Benjamin Pogrund**, the founding director of Yakar’s Center for Social Concern in Jerusalem, gave a lecture called “Is Israel the New Apartheid State?” He contended that while discrimination exists in Israel, apartheid does not.

### November

**C.J. Pascoe ’96**, a postdoctoral scholar



at the University of California, Berkeley, spoke about her new book, *Dude You’re a Fag: Masculinity and Sexuality in High School*.

### December

The six 2007 Ethics Center Student Fellows — **Ramon De Jesus ’08**, **Rachel Kleinbaum ’08**, **Daniel Koosed ’08**, **Margot Moinester ’09**, **Neena Pathak ’08**, and **Jamie Pottern ’09** — shared the highlights and challenges of their internships and debuted a chronicle of their experiences, *Translations: Six Stories of (Mis)Understanding*. (Read it online at [www.brandeis.edu/ethics/publications/ECSF\\_07.pdf](http://www.brandeis.edu/ethics/publications/ECSF_07.pdf).)

### January

**Naomi Safran-Hon ’08**, a 2006 Ethics Center Student Fellow, presented an exhibit at the Women’s Studies Research Center called “Healing, Community and Transformation: Student Visions From



*A photo from the exhibit*

Johannesburg,” which explored the healing powers of art and featured photos taken on her internship.

### February

**Welile Nhlapo**, South African



Ambassador to the U.S., gave the Ruth First Memorial Lecture on “South Africa’s Time Has Come — Achievements and Prospects.”

A discussion titled “HIV/AIDS and the Gendered Politics of Care in South Africa” featured Northeastern University School of Law professor **Brook Baker**,

a policy advisory for Health GAP (Global Access Project), and **Donna Gallagher**, a registered nurse who has worked extensively on HIV/AIDS caregiving issues in South Africa and many other countries.

“**I thought it was funny — Gender... Race...Humor**,” the annual Tillie K. Lubin Symposium, explored issues pertaining to women and gender as they relate to what is — and what isn’t — funny.

### March

Professors **Ibrahim Sundiata**, **Anita Hill**, **Jacqueline Jones**, and **Mingus Mapps** discussed the “Obama Phenomena — Changing Ideas of Race in America,” which explored whether, following a century in which the color line was a major feature of our society, we are now seeing the emergence of a new, post-racial order.

2007 Ethics Center Student Fellowship recipient **Daniel Koosed ’08** presented a paper about the Rwandan genocide at the Greater Boston Anthropology Consortium annual conference, held at Brandeis. As part of his Fellowship, Koosed interned with the International Criminal Tribunal for Rwanda.

## Center Celebrates 10 Years of Student Fellowships



*Current and former Student Fellows convene for the ECSF Extravaganza, held October 26-27. The event included “Africa Remembered: Reflections from ECSF Alumni,” featuring former Fellows who interned in South Africa, and performances by the Brandeis Playback Theatre Society and the African Dance Club. ECSF alumni also discussed subjects such as poverty, community development, fundraising, coexistence, and legal careers in social justice. For a summary of the presentations, see [www.brandeis.edu/ethics/news/2007/ECSF102707events.pdf](http://www.brandeis.edu/ethics/news/2007/ECSF102707events.pdf).*

## Center Celebrates 10th Anniversary

■ *continued from page 1*

and regional economic courts being created. Many areas of the world still lack such courts, he noted. In addition, he said, domestic courts are applying international court decisions, showing that international courts not only settle disputes but create law.

“We live in a world in which international courts are needed more than ever before,” he said.

International courts have gained acceptance in many countries, particularly in Europe, but still engender suspicion, he said. One objection is that judges on international courts can’t be neutral if their own country comes before the court. Yet, he countered, in many countries, the public “has a much greater faith in the impartiality and honesty of international judges than in their own judges.”

Buergenthal also noted that the Brandeis Institute for International Judges, a flagship program of the Center, has benefited the international justice system.

Following his talk, the Center held a gala 10th anniversary dinner, which included a tribute to the late Abraham Feinberg, whose gift established the Center. In addition, Ethics Center Student Fellowship recipient Jennifer Lewey '02 and Sunil Kumar Pokhrel, a current student in the Master of Arts in Coexistence and Conflict program, spoke about their experiences with the Center.



*Jennifer Lewey '02, a 2001 Ethics Center Student Fellow, speaks during the Center's 10th anniversary gala dinner about her Fellowship experience.*

## *The State of the International Justice System*



*The following is an excerpt from the keynote address presented by Judge Thomas Buergenthal of the International Court of Justice for the Center's 10th anniversary celebration:*

**T**o summarize where we are today when it comes to the international justice system: On the one hand, we have more international courts than ever before; on the other, we have many areas of the world that remain largely unaffected by or left out of the contemporary international justice system. If you were to try to picture where we are today, you might say that the situation resembles a medieval map of the world. These maps tended to identify large empty spaces of land, usually in white, as terra incognita. There is still too much terra incognita in the world when it comes to the international justice system, but the white areas are slowly getting smaller.

It is frequently not realized that we need international courts not only to settle disputes; we also need them to help develop international law. In the process of applying and interpreting international law, international judicial and quasi-judicial institutions contribute to the making of international law. The notion that courts don't make law is a myth, both as far as domestic and international courts are concerned. It was never true and it cannot be true, for courts cannot interpret or apply law, regardless of the legal system within which they operate, without at the same time engaging in judicial lawmaking. True, it is lawmaking that differs from legislation because it is narrow in scope, but it is lawmaking nevertheless.

The availability of this lawmaking method is particularly important in the international law area, where lawmaking by legislation, that is by treaty and by custom — the two formal sources of that law — tend to be slow and cumbersome.

**The notion that courts don't make law is a myth, both as far as domestic and international courts are concerned.**

The growth in the number of international and regional courts has resulted in a veritable explosion of judge-made international law. That is what it is as a practical matter, whether we call it that or not. As a result, international courts today play a much more important role than ever before, if only because there are more of them. Since the very existence of international law influences the conduct of governments — probably not as much as one might wish, but certainly more than ever before, and in some parts of the world more than in others — what courts do in deciding international disputes has normative consequences for international law in general. And it has consequences for the entire international community and not only for the states' parties to any particular international judicial institution or treaty.

In my opinion, the risk of fragmentation of international law caused by an increase in the number of courts is minimal when compared with the benefits to be derived from the creative interaction between international courts. It allows and frequently compels judges of different courts to study each other's judgments in the search for better judicial solutions to common legal problems. This interaction between international courts has a direct bearing on the fragmentation issue: It strengthens the universality of international law and thus counteracts its fragmentation.

NEW CENTER PUBLICATIONS



**BIJ 2007 – Independence and Interdependence: The Delicate Balance of International Justice**

The report on the fifth gathering of the institute, held in Bretton Woods, New Hampshire, features chronicles of break-out sessions with judges from human rights, criminal, and inter-state dispute courts conferring on issues specific to their work, and

“Topics in Ethical Practice: Integrity and Interdependence: the Shaping of the Judicial Persona.” To read the report online, visit [www.brandeis.edu/ethics/publications/BIJ2007.pdf](http://www.brandeis.edu/ethics/publications/BIJ2007.pdf). To receive a copy by mail, please contact the Center.



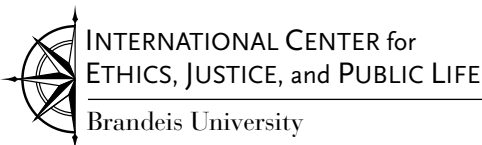
**Pieces of the Coexistence Puzzle: Democracy, Human Rights, Gender, and Development**

This report documents the proceedings of the “Pieces of the Coexistence Puzzle” conference held on March 15 and 16, 2007, which examined the intersection of distinct but related disciplines

that contribute to strengthening coexistence and peace. The conference featured a keynote address by Senator Mobina Jaffer of Canada, the former Special Envoy for Peace in Sudan. To read the report online, visit [www.brandeis.edu/ethics/publications/PiecesofCoexistencePuzzle.pdf](http://www.brandeis.edu/ethics/publications/PiecesofCoexistencePuzzle.pdf).

**The International Center for Ethics, Justice, and Public Life: The First 10 Years**

This special anniversary publication looks back at the Center’s work since its founding in 1998 to the present day. Featuring articles on the Center’s flagship programs as well as major events and activities, the publication chronicles our history and shares impressions of people whose lives and work have been influenced by their association with the Center. To read the publication online, see [www.brandeis.edu/ethics/publications/10YearReport.pdf](http://www.brandeis.edu/ethics/publications/10YearReport.pdf). To receive a copy by mail, please contact the Center.



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