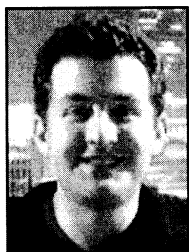


# International Law in China: The Xiamen Academy of International Law

By N. Alexander Aizenstatd, Guatemala



A. Aizenstatd

Geneva, The Hague, Heidelberg, New York and New Haven are commonly regarded as cities of important influence on international law. Should Xiamen in China be added to this list? This

year the Xiamen Academy of International Law held its fifth consecutive summer course on international law. The program is modeled after the one offered in the Peace Palace. Every year for the past five years, international law scholars from all over the world have gathered for an intensive three-week summer course. It offers one general course on international law along with several others on recent developments in this field. I had the opportunity to attend this year.

The Xiamen Academy is rapidly building an impressive reputation and has managed to attract some of the leading scholars worldwide. This year the courses were taught by Professor W. Michael Reisman (of Yale Law School and the President of IC-SID), Professor Christine Chinkin (of the London School of Economics and a former member of the U.N. Goldstone Commission), Professor Ralph Wilde (of the University of London) and Judge Abdul Koroma (from the International Court of Justice), among many other scholars.<sup>1</sup> The Xiamen Academy, as Judge Koroma explained, has full support from the Justices of the World Court, and its members regularly come forward to teach each year.

Xiamen is a lesser known city in the mainland, right across the strait of Taiwan, but it is quickly developing a reputation in international law and an ability to attract leading policymakers and academics in the field. Past lecturers have included

notable space law scholar Professor Bin Cheng; Professor Malcolm Shaw; Oxford Professor Vaughan Lowe; Max Planck Institute for Comparative Public Law and International Law Director Professor Dr. Armin von Bogdandy; and Professor Ivan Shearer. This impressive list includes important academics, policymakers and practitioners. The tentative program for next year includes several U.N. undersecretaries and the President of the International Tribunal for the Law of the Sea.

The establishment of an international law academy of world repute in China is of great interest. China's relation to traditional notions of international law has not always been harmonious. As Professor Wilde of the London School of Economics explained, international law, as we know it, is mostly a product of Western influence and European policy. China is an important policymaker in the global field and a permanent member of the U.N. Security Council. There has always been at least one Judge of Chinese nationality in the International Court of Justice. Most recently, Judge Shi Jiuyong retired and was replaced with Judge Xue Hanqin. China, however, has never been party to a proceeding before the U.N. World Court nor has it accepted its compulsory jurisdiction. This reluctance to participate in international adjudicatory institutions is not limited to the World Court but includes most permanent international tribunals. China, and a large part of Asia in general, refrain from creating or participating in international tribunals. This could be a result of an adherence to Confucianist ideals of harmony. Some have argued that the use of formal court proceedings on the international field would be disruptive to the principles of balance and harmony. In the case of China, this

reluctance can also be understood as a strategic decision aimed at achieving a better negotiated outcome of disputes by using its economic clout and influence. As one Xiamen Law School Professor confided, however, China's reluctance to participate in formal adjudicating institutions is sure to change soon. This, she indicated, would include an acceptance of the compulsory jurisdiction of the International Court of Justice.

Some have argued that adherence to international courts is necessary for continued prosperity in Asia. We can see some examples of this already; among them was China's acceptance of WTO dispute resolution procedures. I remain skeptical since there is an important degree of difference between arbitration panels, even those with appellate procedures like the WTO, and permanent judicial institutions.<sup>2</sup> In China, in matters of international law, there is still an important cultural and policy preference for negotiation, consultation and consensus as well as an important economic leverage in negotiations. While the rest of the world is active in creating permanent tribunals (e.g., Court of Justice of the European Union, European Court of Human Rights, Central American Court of Justice, Andean Tribunal, African Court of Human Rights), Southeast Asia and China are still relying on negotiation and consensus.<sup>3</sup> Whether this will continue to be the case remains to be seen.

The Xiamen Academy of International Law presents an important opportunity for international law scholars to gather and discuss current issues from their own legal traditions and perspectives. Although Xiamen University is large and well-funded, it is not yet as impressive, nor does it have the resources, of the major European and U.S. institutions.

Notwithstanding, the Chinese appeal has managed to attract scholars from many parts of the world. It was surprising to see a few foreign students, including some from the U.S., Iran, Turkey and Russia, working towards their law degrees in Xiamen University Law School. During the summer course, participants from all over the world provided an important forum for discussing current topics of international law. Among these: the threat or use of nuclear weapons; maritime barricades; anticipatory self-defense; international criminal law; and the declaration of independence of Kosovo. The International Court's opinion regarding this last issue was released during the course taught by Judge Koroma, which provided an interesting opportunity for discussion.

Although more than half of the attendees originated from mainland China, there was significant diversity. Participants included scholars from Latin America, Europe, Africa and Asia, including Taiwan, providing a

unique opportunity to share views on sensitive topics like Taiwan. This was interesting for me in particular considering that my country, Guatemala, is one of the few States that has official diplomatic relations with the island.

Besides scholarly work, the course was also an opportunity to explore our cultural differences. I have lived in Latin America, the U.S. and Germany, but this was the first time I have really experienced "culture shock." On one occasion I was chased down the street by a waiter trying to give me back the tip I had left on the table at the restaurant. Most people refused tips. In the Western world, it is common for students to get a suntan or go to tanning beds. Chinese students, and women in particular, are meticulous about avoiding the sun. They even carry parasols to avoid getting a tan, which I was told was not regarded as attractive. I had a difficult time finding people outside the university who spoke English, even in Beijing or

Shanghai. Taxi drivers generally don't speak English or read Latin characters, so be sure to have your hotel address spelled in Chinese characters. You can expect crowds everywhere and at all times. Foreigners are usually stopped in the street for pictures. This was common in Xiamen but also in large cities like Beijing.<sup>4</sup>

Xiamen, located in the Fujian province, is a city of more than 2.5 million, which is small by Chinese standards. It is a lovely city near the ocean. It was ranked as the cleanest city in China and the second-best city in which to live. (I quickly learned that in China rankings are given a high degree of importance). Its most regarded tourist attractions are the Gulangyu Island and the Nanputuo Temple. Curiously, the city is also the world's largest producer of sunglasses.

During this academic exchange, some topics could not be overlooked. Limitations on access to information are obvious and a big setback for

*continued, next page*



THE FLORIDA BAR  
INTERNATIONAL LAW SECTION

**SQUIRE SANDERS** | LEGAL  
COUNSEL  
WORLDWIDE

**Your global partner.** Among the strongest global law firms, Squire Sanders combines sound legal counsel with practical solutions to resolve our clients' legal challenges and maximize opportunities. Squire Sanders is home to lawyers in 32 offices worldwide who are fluent in more than 30 languages and are admitted to practice in more than 140 courts and jurisdictions worldwide. We are proud to represent a diverse mix of clients – from Fortune 100 clients to privately held enterprises, from emerging companies to mature conglomerates, as well as a wide range of government bodies around the globe.

[www.ssd.com](http://www.ssd.com)

## XIAMEN ACADEMY

from previous page

mainland students. Youtube, Facebook and many other sites are blocked. The people, however, are not as isolated as one may think, and some have ways of getting around the government's barriers. There is a noticeable difference between those in the mainland and those students from the rest of the world, including Hong Kong or Taiwan, regarding access to information on world events. This is also creating a larger gap between Taiwanese and mainland cultures. Nevertheless, there is a strong awareness of the world outside the firewall and a big interest in the Western world, particularly U.S. universities.

Although the culture and experience of Xiamen University is very different from European or U.S. campuses, there is a common denominator: Chinese students. It has been reported that students from China are the fastest growing set of foreign students at university campuses in the U.S. and Europe. One report indicates more than 98,000 Chinese students a year go to the U.S. alone.<sup>5</sup> Available disposable income in China has fostered the desire to attend the best universities in the world, wherever they may be. A thriving economy means that jobs will be available for them when they come back. Their experience abroad will certainly be an important factor in shaping China in the future. Additionally, some univer-

sities and law schools have established specialized institutions in order to conduct scholarly work relating to China. At Yale, for example, the China Law Center has been working for several years.<sup>6</sup>

Under the loud sound of the cicadas, the tropical climate of Xiamen, and the unique roof styles that characterize Chinese architecture, the fifth consecutive summer course of the Xiamen Academy took place this year. The Academy is quickly turning into an important counterpart to the course offered in The Hague, considering the latter has been established for almost ninety years. Judge Koroma explains that its prestige is gaining important attention in international legal circles. Its curatorium includes some of the world's leading scholars. Among them are NYU Professor Andreas Lowenfeld, who is a trade law specialist, and Brazilian World Court Justice Antônio Cançado Trindade. One important difference, however, must be noted: in contrast to the course at the Peace Palace, the Xiamen Academy places an important focus on the domestic legal culture of the host country. The Xiamen Academy emphasizes the participation of local professors in teaching courses and seminars. Learning about Chinese culture was an important part of what attracted many of us to attend.

China, as the largest developing economy, has demonstrated its ability to attract the interest of the world. The Xiamen Academy of International Law is an example of this for three weeks each year in the field of inter-

national law. Whether this will result in a growing consideration of cultural sensibilities within classical notions of international law, an increased responsibility of China in maintaining world public order, and a harmonization of Chinese domestic legal policy with international law, as would be desirable, I remain hopeful.

**N. Alexander Aizenstatd** is Professor of International law at Universidad Rafael Landivar and a practicing lawyer in Guatemala. He has an LL.M. from Yale Law School (2009) and is a Research Fellow at the Max Planck Institute for Comparative Public Law and International Law (2010). Mr. Aizenstatd is admitted to the Guatemalan Bar and New York State Bar. Email: [najman.aizenstatd@aya.yale.edu](mailto:najman.aizenstatd@aya.yale.edu). The author is thankful to the professors, participants and student volunteers at the Xiamen Academy of International Law ([www.xiamenacademy.org](http://www.xiamenacademy.org)), and especially to Zhang Shuo, Zhang Ru Pind, Lizzie Dong and Professor W. Michael Reisman. Additionally, the author wishes to thank Professor Han Liu at Beijing University.

## Endnotes:

1 Judge Bruno Simma of the International Court of Justice was also scheduled to appear but had to cancel for health issues.

2 For support of this view, see Mark L. Movsesian, *International Commercial Arbitration and International Courts*, 18 DUKE J. COMP. & INT'L L. 423 (2007). (Professor Movsesian explains why States are more reluctant to accept permanent binding tribunals than ad hoc arbitration panels).

3 In Southeast Asia, for example, ASEAN still does not have a permanent judicial institution for trade or human rights. This preference for consensus as opposed to legalization has been referred to by some as the "ASEAN Way."

4 One explanation is that domestic tourists from the provinces visiting the main attractions in the cities have seldom seen foreigners.

5 Tamar Lewin, *China is Sending More Students to the U.S.*, N.Y. TIMES, available at [http://www.nytimes.com/2009/11/16/education/16international.html?\\_r=1](http://www.nytimes.com/2009/11/16/education/16international.html?_r=1) (Nov. 16, 2009).

6 <http://www.law.yale.edu/intellectuallife/ChinaLawCenter.htm>.

ADVERTISE  
IN THE ILQ!

Contact  
Elizabeth Ortega  
ECO Strategic Communications  
305/213-8798  
[eco@ecostrats.com](mailto:eco@ecostrats.com)

## AD RATES

per issue

\$125 quarter page

\$250 half page

\$500 full page