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Charlotte Ku

Texas A&M University School of Law, cku@law.tamu.edu

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Introduction to “Transnational Law: What is it? How Does it Differ from International Law and Comparative Law?”

Charlotte Ku*

Welcome to the Joint AALS Executive Committee and American Society of International Law Program on “Transnational Law: What is it? How Does it Differ from International Law and Comparative Law?”

For AALS, this afternoon’s panel is a continuation of the growing interest in transnationalism as a feature of the legal profession today and how legal education can best prepare tomorrow’s lawyers for practice. This interest has led to discussions with legal educators around the world most recently in May 2004 in Hawaii at a Conference on Educating Lawyers for Transnational Challenges. The Hawaii conference has further led to exploring the development of a global curriculum and the formation of an international association of law schools to foster awareness as Professor Gerald Torres has said, “of the complexity of the legal world and the different ways people think about problems that they are facing.”¹

The Hawaii conference focused not only the need for such awareness in the U.S., but indeed around the world although a key difference may be in the level of external pressure to foster such awareness that exists in other countries. For member countries of the European Union, for example, EU law is embedded in their national legal systems. Regardless of the nature of external pressures, the reasons and needs for cultivating the awareness mentioned by Professor Torres remain compelling. The challenge, however, is to find the structure and resources to respond to this need.

For the American Society of International Law, understanding and promoting the interaction between the body of obligations and practices we know as international law with the domestic legal system were at the

* Executive Director of The American Society of International Law and Moderator of the Panel.

1. Michelle Adam, *Global Law Curriculum Coming Up?* HISPANIC OUTLOOK, 11/01/2004, p.37.

heart of the Society's founding in 1906. But, the question has been raised as to whether the awareness that is needed to function effectively in today's globalized world can be achieved by taking a course in international law. That legal educators today are focusing on building awareness of law across boundaries and outside one's own boundaries is something ASIL applauds, but the question of content is one where we may find division among ASIL members.

Can and does international law provide the trans-border and trans-cultural kind of awareness that we feel necessary for today's legal professional? If transnationalism includes elements of international law, what are those elements? Philip Jessup was a great proponent of the concept of transnational law and wrote that public international law could not be effective without "tolerance of certain differences stemming from various legal systems."²

Each of today's panelists has been asked to recount some of their personal educational and professional experience as a way of describing the kind of awareness that a transnational approach might provide. Each panelist has been asked to consider the content of a transnational course and how schools might draw on existing curricula and teaching staffs to teach a transnational law class. One of the most widely talked about experiences in developing such a curriculum is the approach adopted by the University of Michigan Law School by requiring a Transnational Law course for all its students starting with the class of 2004.³ How are other programs responding to the need for cultivating awareness beyond one's own borders?

Panelists are:

James H. Carter is President of the American Society of International Law and Partner, Sullivan & Cromwell, New York.

Gerald Torres is the Immediate Past President of Association of American Law Schools and the H.O. Head Centennial Professor in Real Property Law at the University of Texas Law School.

2. Philip C. Jessup, *The Concept of Transnational Law: An Introduction*, 3 COLUM. J. OF TRANSNAT'L L. (1963-4), p.2.

3. See Mathias Reimann, *From the Law of Nations to Transnational Law: Why We Need a New Basic Course for the International Curriculum?* 22 PENN STATE INT'L L. REV. (Winter 2004), pp.397-415; Mathias Reimann, *Michigan breaks new ground by requiring the study of transnational law*, LAW QUAD NOTES (Summer 2003), pp.54-7; and Charlotte Ku, *International Law and the Legal Curriculum*, PROCEEDINGS OF THE NINETY SIXTH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW (2002), pp.54-64.