

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).¹⁰²² 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.¹⁰²³ 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.¹⁰²⁴ 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).¹⁰²⁵

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;

interpretation). In order to qualify to represent as defense counsel at the ICTY, for example, the requirement is a minimum of 7 years experience.

¹⁰²² See T. Deen, *UN War Crimes Courts Embroiled in Corruption Charges*, Inter Press Service (March 11, 2002).

¹⁰²³ 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.

¹⁰²⁴ 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.

¹⁰²⁴ 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).

¹⁰²⁴ 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>.

¹⁰²⁵ 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).

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 (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.¹⁰²⁶ 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 partners programs and NGO partner programs.¹⁰²⁷ 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”).

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¹⁰²⁷ See e.g., UNHCR’s partners/donors website at <http://www.unhcr.ch/cgi-bin/texis/vtx/partners>.

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 procedures and are second in influence only to the judiciary itself. Among other responsibilities, the Registrars are entrusted with the administration of defendant's representation (in criminal courts), with allocating and disbursing attorneys' fees (when paid by the court), and with enforcing the attorneys' qualification requirements. Registrars also keep rosters of eligible attorneys so 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 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 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.¹⁰²⁸

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

¹⁰²⁸ See e.g., Hunton & Williams 2004 *Pro Bono* Report (on file with author) and Mayer, Brown, Rowe & Maw’s website available at: <http://www.mayerbrownrowe.com/london/overview/index.asp?nid=464>.

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 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.

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Pro Bono Practices and Opportunities in International Law

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