

Introductory remarks by Lance Liebman, William S. Beinecke Professor of Law, Columbia University, Director of the American Law Institute

Thank you so much. The American Law Institute was founded in 1923. At that point the notion in the United States was that the common law was falling apart, that there were 48 different states, the courts were making different rules of law, and an organisation was needed that could pursue coherence in the law. About 1,000 law professors, judges, and practicing lawyers in the United States came together and formed this organisation and began work that those of you who have studied American law know under the name, Restatements of the Law.

The concept was that the law already existed but if one could only find its principles and hold onto them and then apply them one would have a more coherent legal system. It is quite interesting that at the same time – almost exactly the same year – an organisation called UNIDROIT was formed in Europe with a very similar goal. The idea was that post Napoleon, the different countries in Europe were taking the civil law in different directions and that an institution was needed to seek coherence in European law.

The American Law Institute has always been located in Philadelphia because the professor at the University of Pennsylvania who had the basic idea and was the earliest founder had a rich wife who could pay the bills in the early years. Similarly UNIDROIT was located in Rome because Mussolini wanted the law to go out from Italy as it had in the past and so he supplied a very elegant palazzo in which UNIDROIT still holds its meetings in the centre of Rome. The American Law Institute likes very much to work with UNIDROIT because of their palazzo and you see here in this beautiful building why we are very honoured to come to Brussels today. I promise you that when this project goes forward and meetings are held in the United States we will not meet in such a good place or eat such good food.

In most of its first 70 years, the American Law Institute worked on American law and worked on areas in which the common law of England as developed in the United States supplied the legal rules. In the more recent period, two interesting changes have occurred. One is a willingness to tackle some very difficult issues that are much more political, much more economic, much more matters of complicated policy, involving many levels of government - the national government and the state governments - and bringing complicated policy issues forward.

The first such project for the ALI was our work on corporate governance in which a number of the professors who are on the panel this afternoon and Professor Goldschmid, as I still call him, were very active participants. At that point the American Law Institute did not use the name “Restatement of the Law” because we were not simply taking existing law and supplying words to describe it, we were drafting principles of the law looking forward to what the law and the legal system and the ideas of law ought to be.

More recently we have several other principle projects, including one in family law and one about the principles of the law of non-profit organisations. The other change has been a move towards internationalisation or globalisation. We were essentially a domestic organisation working on American law alone. Now we find ourselves travelling to meetings all over the world and working on a number of interesting subjects.

We have finished work with UNIDROIT recommending ideas about civil procedure for trans-national disputes, commercial law suits or litigations in which, for instance, a company based in a civil law country is on one side and a common law company on the other – how do you work out an appropriate civil procedure. We are doing work on intellectual property – judgements – where it's so easy to steal property with the click of a computer button and then how can countries cooperate in this area. Most important I would say, in terms of our agenda, we are doing major work on the law of world trade. Those of you who have done any work about trade law are aware that we cannot restate the law of trade because it does not currently exist.

Trade law must be “stated” based on the fragmentary material so far of the 70 or 80 decisions of the appellate body of the World Trade Organisation, some of them dramatically inconsistent with other decisions from other panels of that organisation. Over the next years, you will see us make a contribution with our work in the area of world trade. We have already reached the stage where we are going to have to think about whether our name should remain ALI – American Law Institute – or should we remain an American organisation but work in cooperation with organisations like the European Corporate Governance Institute.

That is a direction and a decision that we will have to make in the future. For the moment we're simply very happy that the ECGI made contact with us through Dean Mundheim and that we were able to participate in this meeting and I am sure this will be an important and valuable meeting. I think I can promise you that this work will not be finished today and that we will have quite a bit still to do. Most of our projects take at least eight, sometimes ten, years to complete and this one could well be the same. I look forward to a very interesting day today. My next task is to introduce Mr. Schaub who has truly earned his place at this microphone and I know has a great deal to say to us.