

This Issue . . .

This issue of *THE INTERNATIONAL LAWYER* needs little introduction, but given its impressive content and the fact that it is one of our recent “bests,” I cannot resist including a brief introduction to share with you some of the editorial judgment that went into selecting, editing and producing this issue. Over twenty contributors provided their analyses and opinions resulting in a diversity of perspectives on a variety of subjects. By their efforts, they have lent support to journal goals to reflect international legal practice and to assist in shaping its future.

Symposium

Leading this issue is the tenth article symposium in as many issues. Focusing on current issues in the law of international finance this symposium will be presented in two parts and feature some of the most current thinking in the international financial community by some of its most eminent lawyers and decisionmakers. Part I, published in this issue, offers an analysis of concerns involving two of the most important international financial institutions—the International Monetary Fund and the World Bank. *Sir Joseph Gold*—formerly General Counsel and Director of the Legal Department at IMF, and currently Senior Consultant there—addresses the ability of IMF to borrow from private sources. Sir Joseph, who also serves as one of *TIL*'s editorial advisors, provides an outstanding analysis of IMF's authority to borrow and the legal and policy issues related. *Ibrahim Shihata*, Vice President and General Counsel of the World Bank, introduces readers to an important recent initiative in the world of international finances—the Multilateral Investment Guarantee Agency (MIGA). Ibrahim describes this development in detail and assesses its potential significance in encouraging investments to and among developing countries.

Part II of this Symposium—appearing in the next issue, number three—

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will feature eight additional articles and address a broad range of topics under the subcategories of: U.S. regulations, judicial decisions, and institutions; and forms of financing, refinancing, and restructuring.

Articles

As author *Monica McCabe* notes in her lead article, discovery is most often associated with litigation, not arbitration. Yet, by revealing the origins and role played by discovery in various domestic and international arbitration fora, she makes a convincing case for its usage in many international arbitrations. Most interesting is Monica's assessment of discovery practice before the Iran-U.S. Claims Tribunal where it has been time-consuming and unenforceable. She draws some conclusions from this experience and offers suggestions for enforcement in that and other arbitration situations.

Co-authors *Richard de Belder and Makdoom Ali Khan* survey the laws and practice of doing business in Pakistan. Despite Pakistan's poverty, its economy has seen significant growth in the last few years. With new receptivity to foreign investment and a geographical location offering access to the Middle East, Africa and the Near Far East, Pakistan may be attractive to companies seeking new venues for investment. The authors explore in detail the Anglo-Islamic law that would govern such involvement.

Bill DeGrandis next examines the causation standard employed in United States antidumping cases. In such cases, petitioners to obtain relief must prove that a U.S. industry suffers threat of, or actual material, injury *by reason of* "less than fair value" imports. Despite this requirement of a crucial nexus between domestic injury and undervalued imports, the International Trade Commission has no explicit statutory guidance in making such determinations. Bill reviews the practice of the Commission and judicial review of such determinations, and offers guidance to practitioners about how they might deal with cases in which the causation determination may be influenced by injurious factors unrelated to imports.

With *Bob Jarvis'* article, we continue our examination of space law topics, many of which speculate about what law applies to situations created by manned-space activities. Bob posits that future space rescue operations might involve crews whose members are of different nationalities and might be conducted in the territory of third nations. His thesis is that admiralty law may assist us with legal analogues in this developing area.

Annual Report

Following the widely-read and appreciated article published in THE INTERNATIONAL LAWYER last year (*see Pfund, U.S. Participation in Interna-*

tional Unification of Private Law, 19 INT'L LAW. 505 (1985)), *Peter Pfund* has prepared an update covering last year's efforts by the United States to unify private international law. Remaining apprised of these developments should prove invaluable to the practitioner anticipating significant legal changes, but it is also hoped these annual reports will encourage informed participation in the formulation of new initiatives and in the support of those agreements currently before the Senate.

Peter's contribution inaugurates the **Annual Report** feature of the Journal. In addition to his annual report on developments in private international law, it is planned that subsequent issues will initiate annual reports from the Office of the Legal Adviser on that office's work on public international law issues and also on the work of the Office of the U.S. Trade Representative.

Short Articles, Comments and Casenotes

The 1986 Theberge Prize for Private International Law is the Section's annual opportunity to honor an individual who has distinguished himself in the field of private international law. Since 1983, the Section has recognized such luminaries as: Phillip Amram, Richard Kearney and Willis Reese. Receiving the 1986 award is *Professor John Honnold*, whose outstanding teaching career has been highlighted by his impressive service to the cause of unification of substantive law for international trade. The Professor treats us to his assessment of the progress towards unification and an evaluation of its prospects in his commentary on "The Uniform Law for International Trade."

On a trade law theme, *David Palmeter* follows with an intriguing piece lamenting the abandonment of trade policy for trade law in the administration of the United States antidumping and countervailing duty laws. He considers the existing system inquisitorial and proposes a solution along the lines of the procedure prescribed for Section 337 proceedings.

Without some kind of attorney-client ("legal") privilege, the communications of in-house counsel are unprotected and available to regulatory authorities. Author *Peter Burkard* describes a recent decision of the EEC Commission in which the legal privilege of in-house counsel was denied. Peter discusses the implications of this decision for multinational company in-house counsel, and suggests a more enlightened approach for future cases before the Commission.

Nothing reflects more the growth of international practice in the United States than the boom in U.S. court litigation involving foreign parties. Recent cases have provided a testing ground for the application of the Hague Evidence Convention to efforts to obtain evidence abroad, and *Mark*

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Sadoff examines this transnational litigation development. He attempts to clarify the issues involved and reveals what he believes to be various analytical mistakes made in recent judicial decisions.

Current Developments

In this category, *Judy Bello* and *Alan Holmer* contribute their eighth article of the Journal's U.S. Trade Law and Policy Series. Offering as always indepth analysis and rich annotation, Judy and Alan review recent developments regarding injury determinations by the International Trade Commission in antidumping and countervailing duty investigations.

Bibliography/Book Reviews

Wrapping up this issue are the dependable bibliography by *Earl Weisbaum* and a number of interesting book reviews. The bibliography of current literature is full with numerous entries so helpful to practitioners. The book review section continues to improve in coverage as well as in quality, thanks to the regular contributions submitted by Section committee members.

Assistant Editors. The production of THE INTERNATIONAL LAWYER has always engaged the skills of many outstanding people. For this issue it was my pleasure to have the editorial services of several very able practitioners as Assistant Editors: *Jim DeMent*, *Kevin Harris*, *Larry Johnson* and *Jean Van den Eynde*. With *Dan Magraw*, the Associate Editor who edited this issue's symposium, they provided valuable editorial assistance in producing this issue, and I owe all five my gratitude.

On that note I end this introduction, except to say—Happy Reading!