

1986

Book Reviews

Recommended Citation

Book Reviews, 20 INT'L L. 1413 (1986)

<https://scholar.smu.edu/til/vol20/iss4/15>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in *International Lawyer* by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

BOOK REVIEWS

International Judicial Assistance (Civil and Commercial)

By Bruno A. Ristau. Published by the International Law Institute, Georgetown University Law Center, Washington, D. C., 1984, 2 vols, \$125.00.

Recently, the librarian of a major international law library in Chicago complained to me that he could not find any good materials to provide to the "poor counselors" who were trying to determine how to serve documents and procure evidence abroad. Thus, he had begun collecting articles, treaties, and forms to provide to the attorneys who wandered aimlessly into his library. When I boasted to him that I probably had a better collection of materials than he, the librarian appeared quite distraught. I admitted, however, that I had not done the work. Rather, the laborer was Bruno Ristau, and the collection is available to anyone by purchasing *International Judicial Assistance*. I expect that this book will become standard text in all law libraries.

The author of *International Judicial Assistance*, Bruno Ristau, was the first director of the Office of Foreign Litigation of the U.S. Department of Justice from 1963 until 1981 when he went into private practice. He organized this office originally for purposes of executing requests by foreign tribunals for U.S. judicial assistance, but over the years the office also became a fountain of information for U.S. lawyers, agencies and tribunals seeking judicial assistance abroad. Now, whenever my projects or programs involving international litigation or judicial assistance are discussed, Bruno Ristau's name is invariably brought up. Certainly, Bruno Ristau could have rested upon his reputation and kept his expertise to himself. But, thankfully, he has provided us with the benefit of his knowledge and experience by publishing a comprehensive work covering practically every aspect of obtaining international judicial assistance.

International Judicial Assistance is a two-volume work. The first volume contains the author's text and an appendix of tables, treaties and other international documents related to international judicial assistance. The text professes to be a manual "designed for the practicing lawyer who needs guidance in the performance of a procedural act in a foreign

country in aid of civil or commercial litigation in the United States.” It also provides the practitioner guidance on U.S. assistance to foreign courts and litigants, where the forum of the litigation is in a foreign country.

The text, in turn, is broken down into several chapters called parts. The first part gives a rather dry, but comforting historical background of international judicial assistance. It is dry because it is loaded with names, dates and other facts concerning numerous international conferences and conventions. It is comforting because, while we learn of the relative recent state of disarray of international judicial assistance, we begin to understand why there is not much else out there on the subject other than what is in the book.

The next five parts comprise what, in my view, is the “manual” and most important part of the work. These parts contain reprints of nearly all of the relevant statutes, legislative history, uniform acts, regulations, and conventions necessary to invoke international judicial assistance. Part II provides guidance on U.S. assistance to foreign courts and litigants where such assistance is not controlled by an international convention or treaty. It contains a separate chapter on service of foreign judicial documents and on obtaining evidence on behalf of foreign courts or litigants.

Part III provides similar guidance on foreign assistance to U.S. courts and litigants where an international convention or treaty is not applicable. While it also has a chapter on service of process, Mr. Ristau has provided two separate chapters on the obtaining of evidence. One chapter deals with the taking of evidence abroad with the same subject where assistance of a foreign authority is not sought. This separate chapter is most valuable. My experience has shown that many practitioners freeze up when they are faced with the need to procure evidence from abroad. Many fail to realize that in a great number of the situations, foreign intervention is not necessary—evidence may be given voluntarily so long as the country does not consider the act to be an infringement of its territorial sovereignty. Mr. Ristau provides some recommendations as to how to proceed in such voluntary situations, and how to have a commissioner appointed for purposes of taking deposition testimony abroad.

The next two parts concern both U.S. and foreign judicial assistance where the provisions of a treaty are utilized. Part IV provides guidance on serving documents under the Hague Service Convention, and Part V provides guidance on obtaining evidence abroad under the Hague Evidence Convention.

While these five parts are the most important section of Mr. Ristau’s work, they require great concentration and stamina to work through. Much of this difficulty is attributable to the subject matter, but some of it is attributable to format and style. For example, I expect that a beginner to international judicial assistance would hope to easily turn to a chapter

on obtaining evidence abroad, read an overview of the subject and find a step-by-step analysis. Instead, as noted above, each major subject—service of documents and obtaining evidence—is dealt with in three separate parts according to whether one is seeking to work with the subject in the United States without assistance of a treaty, abroad without the assistance of a treaty, or in the U.S. or abroad with the assistance of the treaty. While this format may be logical for academic purposes, it is not very convenient for a practitioner working under pressure.

Rather than begin each part with an introductory text, some parts begin with a reprint of applicable statutes, legislative history, uniform acts, or treaties. Then, well into the middle of the chapter begins Mr. Ristau's general observations, introductory notes, lists of examples, and commentary. This organization is made even more difficult to follow by the fact that the print and margins, used to distinguish the author's text from the text of the quoted material, is nearly identical. Thus, at times I thought I was reading the author's text, but upon closer examination, realized that I was reading a statute, excerpt, or legislative history.

The parts dealing with the individual Hague Conventions, however, do not suffer from this shortcoming since they are much better organized and contain far fewer resource materials in the body of the chapter. Therefore, if the reader knows that a particular convention applies to the reader's situation, he or she will be spared the confusion.

The reader of *International Judicial Assistance* would also have been well served if the manual contained greater discussion concerning developing case law and provided the author's viewpoint on where the law should go. Unfortunately, much of the controversial case law has blossomed since the work's publication. For instance, several cases, the most notable of which are *In re Anschuetz & Co., GmbH*, 754 F. 2d 602 (5th Cir. 1985), *petition for cert. filed*, and *In re Messerschmitt Bolkow Blohm, GmbH*, 757 F. 2d 729 (5th Cir. 1985), *cert. vacated*, 54 U.S.L.W. 3809 (U.S. June 10, 1986) (No. 85-99), have held that the Hague Evidence Convention does not supplant application of the discovery provisions of the Federal Rules of Civil Procedure over non-resident alien parties over whom a U.S. court has in personam jurisdiction. Thus, the cases contemplate that a U.S. district court could order production in the U.S. of documents kept abroad, and order that the depositions of non-resident employees of the non-resident party take place in the U.S. *See also In re Societe Nationale Industrielle Aerospatiale*, 782 F.2d 120 (8th Cir. 1986), *cert. granted*, 54 U.S.L.W. 3803 (U.S. June 10, 1986) (No. 85-1695). A discussion by Mr. Ristau as to the appropriateness of this and similar developments would be most valuable considering his expertise and experience. But, even though *International Judicial Assistance* covers some case law, it does not profess to be an exhaustive treatise.

These comments, however, should not detract from the value of Mr. Ristau's work. There is no other available work that provides the depth of understanding of the technical tasks involved. Nor does any known work provide the same breadth and detail. While the Hague Evidence Convention has received a fair amount of attention in legal periodicals, the Hague Service Convention has received little attention, and virtually no attention is paid to the Hague Convention on Abolishing the Requirement of Legalization of Foreign Public Documents.¹ Thus, for example, the latter convention is very seldom utilized because of the lack of awareness of it. But as Mr. Ristau points out, the Convention supersedes Federal Rule of Civil Procedure 44(a) (2) and Federal Rule of Evidence 902(3) requiring that litigants follow the traditional "chain authentication" procedures for authenticating foreign public documents used in court. Rather, the Convention prescribes a procedure for certifying such documents with an apostille. Therefore, if more practitioners were aware of the convention, and how to use it, they would utilize its simplified procedures. With the availability of *International Judicial Assistance*, undoubtedly this convention, as well as the other procedural conventions, will receive more attention in the daily practice of law.

International Judicial Assistance also provides information on other international conventions. Mr. Ristau discusses a short procedural history of two conventions which the United States may, but has not yet, ratified: the Inter-American Convention on Letters Rogatory, and its "Additional Protocol" which would apply to the transmission and service of judicial documents abroad, and the Inter-American Convention on Taking of Evidence Abroad which will govern the foreign execution of requests for information and the taking of evidence. The complete text of both conventions are provided in the Appendix. A third convention, the Hague Convention on the International Aspects of Child Abduction which has recently been transmitted by the President to the Senate is only mentioned briefly. While its text is not provided, the State Department has published the full text and a legal analysis in the Federal Register at 51 F.R. 104494 (1986). Mr. Ristau has promised to supplement his work with an analysis of all three conventions upon ratification.

The second volume of *International Judicial Assistance*, alone, may be worth the price of the entire set. Here Mr. Ristau has included an incredible compilation of the domestic laws and customs of some eighty-seven countries governing the treatment of international judicial assis-

¹The Hague Evidence Convention and Service of Process Convention are also the subject of separate handbooks written and edited by the Permanent Bureau of the Hague Conference on Private International Law. This reviewer's review of those books can be found at 19 INT'L LAW. 1048 (1985).

tance. For instance, the section on Canada sets forth portions of the Canadian Evidence Act and Canadian federal blocking legislation, as well as portions of the separate evidence acts of British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Quebec, along with their separate blocking statutes. The section on the Federal Republic of Germany identifies the treaties and conventions to which it is bound and reprints the applicable provisions of the Treaty of Friendship, Commerce, and Consular Rights with the United States. This section also reprints the "Exchange of Notes" between the Federal Republic of Germany and the United States in 1979 and 1980 confirming a previous agreement on the taking of depositions by American consular offices, and reprints West German blocking legislation. Similar materials are provided for most countries with which the U.S. has major commercial relations, including Japan, Mexico, Taiwan, the Union of Soviet Socialist Republics and the United Kingdom. Assuming that this volume is supplemented periodically, it is an invaluable basic resource for any library. Indeed, Mr. Ristau has promised to supplement both volumes of *International Judicial Assistance*, as well as co-author three additional volumes dealing with judicial assistance in criminal matters.

In conclusion, Bruno Ristau's *International Judicial Assistance* puts in the hands of practitioners, for the first time, most, if not all, of the materials needed to obtain foreign judicial assistance for domestic litigation, or domestic judicial assistance for foreign litigation. The practitioner can no longer complain that materials relating to international judicial assistance are hard to find or that basic resource materials regarding foreign laws and conventions are difficult to obtain. Mr. Ristau has provided the legal community with a major new publication that no law library should be without.

Reed R. Kathrein*
 Arnstein, Gluck, Lehr, Barron & Milligan
 Chicago, Illinois

Transnational Legal Problems (Third Edition)

By Henry J. Steiner and Detlev F. Vagts, The Foundation Press, Mineola, New York, 1986, pp. 1128, with Documentary Supplement, pp. 138, \$31.50.

*Chairman, Private International Law Committee, ABA Section of International Law and Practice, 1984-present.

Transnational Business Problems

By Detlev F. Vagts, The Foundation Press, Mineola, New York, 1986, pp. 529, \$21.95.

The first two editions of Henry Steiner and Detlev Vagts' *Transnational Legal Problems* brought blessed relief to law professors accustomed to teaching courses in "private" international law or international business transactions armed mainly with war stories and xeroxed remnants of bygone private practice deals. The greatest strength of the Steiner and Vagts casebook rested not in its admirable editing or topical breadth,¹ but rather, in its resolve to teach international transactions from an avowedly theoretical perspective. By expressly acknowledging that all transnational legal issues "occupy different positions on a spectrum between the extremes of 'national' and 'international' law, or on one between 'private' and 'public' law,"² the Steiner and Vagts casebook rejected artificial shuffling of topics into "public-private" or "domestic-international" compartments. Instead, the authors invited teachers and students to view international business transactions as a species of "transnational legal problem," a subject that transcends traditional curricular categories and reveals the vibrancy of a transnational legal process guided by diverse sources of law and shaped by private as well as public actors.

The recent bifurcation of the Steiner and Vagts' text into an updated third edition of *Transnational Legal Problems* and a smaller companion volume, Professor Vagts' *Transnational Business Problems*, marks an unfortunate step backward from this advance. The third edition of *Transnational Legal Problems* explicitly "gives increased attention to public international law and institutions, and less attention to private transactions,"³ and thereby devolves from a casebook that created its own course into an interesting, nontraditional, but ultimately unremarkable casebook on public international law. Similarly, the Vagts volume, a spinoff of updated materials on international business law culled from the second edition of Steiner and Vagts, is a book of modest theoretical ambition, ap-

1. The Steiner and Vagts casebook distinguished itself from its primary competitors in the international business transactions field by being of manageable volume, focused primarily on nontrade transactions, and reasonably up-to-date. *But cf.* I-VI A. LOWENFELD, INTERNATIONAL ECONOMIC LAW (2d ed. 1981-1983) (six-volume series); J. JACKSON, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS (1977) (primary trade focus); I & II A. CHAYES, T. EHRLICH & A. LOWENFELD, INTERNATIONAL LEGAL PROCESS (1969) (current only through 1969).

2. H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS xvii (2d ed. 1976) [hereinafter "STEINER and VAGTS"].

3. STEINER and VAGTS, third edition at xix.

parently designed to answer Professor Vagts' own call for a text that would permit ingenious teachers of international business transactions to smuggle "a bit of general theory" into an otherwise nuts-and-bolts course.⁴

Each book, taken on its own terms, has much to commend it. The third edition of *Transnational Legal Problems* largely retains the innovative conceptual progression of the previous edition, starting in Part I with an examination of how national legal systems cope with three transnational problems: litigation that crosses national borders, the economic and political rights of aliens, and the distribution of national powers to deal with foreign affairs. Part 2 then provides an excellent description of both the characteristics of the international legal process and how that process has attempted to generate international minimum standards regarding the protection of basic human rights and of alien-owned property (chapters 4 and 5). Shifting to national legal settings, the authors then demonstrate how international and national legal systems "interpenetrate" through judicial decisions, treaties, and reciprocal legislation (chapter 6), with illustrations of that phenomenon from the fields of contemporary human rights law, foreign sovereign immunity, and the Act of State Doctrine (chapter 7). After exploring the extraterritorial reach of national criminal and economic regulatory systems (part 3), the book concludes by asking how international organizations develop and seek to solve vexing problems of peacekeeping and regional economic integration (part 4).

The authors have retained the most insightful materials from the earlier editions. Nearly all of the thought-provoking questions and problems have been preserved, recent cases and materials have been shrewdly selected and carefully pruned,⁵ and significant secondary literature has been accurately noted as suggested "additional reading." In addition, much that is interesting has been added, particularly to the book's concluding part on international organizations and the book's conceptual linchpin, part 2 on the relationship of national and international legal systems.⁶ Thus, *Transnational Legal*

4. Five years ago, Professor Vagts warned international business transactions professors against succumbing to

"an irresistible pressure to serve up offerings that will be seen as readily translatable into what is in demand by commercial law firms. As a result, more and more schools offer solely 'international transactions' courses that begin, as it were, on the firing line, with the nuts and bolts of a foreign distributorship or licensing agreement. Only a bit of general theory is smuggled in here and there by the more ingenious teachers."

VAGTS, *Are There No International Lawyers Anymore?*, 75 AM. J. INT'L L. 134, 136-37 (1981).

5. See, e.g., STEINER and VAGTS, third edition at 662-72 (slicing fifty-three pages of opinions in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), to less than ten).

6. The authors have expanded part 4, which in the second edition consisted of a single chapter on the European Economic Community, to include an excellent overview chapter

Problems emerges from its latest revision as a logical choice for professors interested in teaching public international law from a nonclassical, process-oriented perspective. Moreover, its express focus on the intersection between public international law, as traditionally understood, and "domestic law that has substantial significance for the foreign relations of the United States or has other substantial international consequence" makes it an ideal tool for teaching concepts central to the recently approved Revised Restatement of the Foreign Relations Law of the United States.⁷

Professor Vagts' solo venture on *Transnational Business Problems* seems similarly destined to compete strongly in the burgeoning market of textbooks targeted directly at courses on International Business Transactions.⁸ From materials adeptly extracted from the second edition of Steiner and Vagts, Professor Vagts has organized a compact two-pronged examination of international business transactions. Recognizing that students cannot understand transnational business problems without some theoretical grounding, Part 1 of the book weaves four previously unrelated chapters on the General Agreement on Tariffs and Trade and the International Monetary Fund, international tax issues, multinational enterprises, and the role of international lawyers into an illuminating overview section that introduces students to the economic, tax, corporate, and legal "environments" of transnational business. Part 2 then greatly expands excerpts from Steiner and Vagts into a set of hypothetical problems that illustrate the business and regulatory aspects of eight forms of doing business abroad: an export sale, a distributorship, a

on the structure, personality, immunities, powers and functions of international organizations (chapter 10), as well as an illustrative chapter describing how the United Nations has attempted to control armed conflict, with provocative excerpts from the General Assembly and Security Council debates over the independence of Bangladesh, the Israeli attack on the Iraqi atomic reactor, and the United States intervention in Grenada (chapter 11). Similarly, the authors have greatly enriched part 2, on the relationship between international legal process and national legal systems, with an outstanding chapter that illustrates how international law has infiltrated the United States law of human rights, foreign sovereign immunity, and Act of State via treaties, judicial decisions, executive actions, and federal legislation (chapter 7).

7. See RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (Revised) sec. 1 (Proposed Final Draft 1986). The overlap is hardly coincidental, given that Professor Vagts has also served as an Associate Reporter for the *Revised Restatement*. One happy byproduct is that both textbooks make regular reference to the new *Restatement's* provisions.

8. Other new competitors include R. FOLSOM, M. GORDON & J. SPANOGLE, *INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM-ORIENTED COURSEBOOK* (1986) and J. BARTON & B. FISHER, *INTERNATIONAL TRADE AND INVESTMENT: REGULATING INTERNATIONAL BUSINESS* (1986). A number of student-oriented treatises on the subject have also recently appeared, see, e.g., THE LAW OF INTERNATIONAL BUSINESS TRANSACTIONS (V. NANDA ed. 1982), D. WILSON, *INTERNATIONAL BUSINESS TRANSACTIONS IN A NUTSHELL* (1984), as have updated editions of Professor Lowenfeld's *INTERNATIONAL ECONOMIC LAW* series and Professor Jackson's *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* (coauthored with William Davey). See *supra* note 1.

licensing arrangement, the establishment of an operation abroad, a European acquisition, a joint venture, a development agreement, and a loan agreement. Each problem is wisely organized around a sample document, usually a form contract for the deal under discussion, and is supplemented with concise notes and excerpts from United States, foreign, and international legal sources that reveal the regulatory environment in which the deal will transpire.⁹

Despite the two volumes' many strengths, the process of distilling and separating one text into two has not been without cost. A number of subjects—for example, the law of expropriation, the Act of State Doctrine, and the evolution of a transnational lawsuit—sit awkwardly divided between the two volumes.¹⁰ Other topics, such as international antitrust and export controls, are explored in greater depth in the *Transnational Legal Problems* volume (chapter 9) than in the business volume where one would ordinarily expect them to appear. Similarly, a number of important topics that deserve extensive treatment in one text or the other simply fall between the stools and receive cursory treatment in both, for example, international commercial arbitration.¹¹ Finally, the authors have made some puzzling omissions from

9. For example, Problem 1 on the Export Sale of a Factory sets forth the General Conditions for the Erection of Plant and Machinery Abroad prepared by the Secretariat of the United Nations Economic Commission for Europe, describes the general international law of commerce and the workings of letter of credit transactions, excerpts relevant United States export control, antitrust, income tax, and securities provisions and judicial decisions construing them, and concludes by discussing the General System of Preferences and applicable United States countervailing duty law.

10. Although the formation of international development agreements is set out in Problem 7 of Vagts, one must turn to chapter 5 of Steiner and Vagts to learn how the customary international law of expropriation has developed with respect to concession agreements. Similarly, chapter 7 of Steiner and Vagts tours the terrain of the Act of State Doctrine under United States law, but the most recent Act of State cases, which arise in the context of the international debt crisis, are reproduced only in Problem 8 of Vagts, which addresses international loan agreements. Finally, in order to teach in chronological sequence the phases of a transnational lawsuit, one must begin at chapter 4 of Vagts with a discussion of international litigation strategy, shift to chapter 1 of Steiner and Vagts for elucidation of adjudicatory jurisdiction and extraterritorial service of process, shift back to Vagts for discussions of choice-of-forum clauses and the taking of evidence abroad, then return to scattered sections of Steiner and Vagts for discussions of foreign sovereign immunity and compulsion, justiciability, blocking statutes, and the enforcement of foreign judgments and foreign equity decrees. Curiously, even this circuitous journey omits any discussion of the doctrine of *forum non conveniens*, notwithstanding Professor Vagts' brief mention of the Bhopal litigation in which that doctrine was recently invoked. See D. VAGTS, *TRANSNATIONAL BUSINESS PROBLEMS* 141-42 (1986) [hereinafter "VAGTS"].

11. Although chapter 4 of Vagts and chapters 4 and 5 of Steiner and Vagts give fleeting attention to the structure and formation of international arbitral tribunals, the enforcement of foreign arbitral awards, and the World Bank Convention on the Settlement of Investment Disputes, the various arbitral regimes developed by the International Chamber of Commerce, the London Court of Arbitration, and the United Nations Commission on International Trade Law are nowhere systematically discussed or compared. Moreover, the two volumes make only the barest mention of decisions of the largest continuing arbitral panel, the Iran-United States Claims Tribunal.

the Documentary Supplement to the Third Edition of Steiner and Vagts and provide no independent supplement to the business volume, which arguably deserves the greater supplementation.¹²

Although the authors try to bridge some of these gaps by providing numerous cross-references between the volumes, the fundamental problem with the bifurcation rests in its unrealistic hope that students will use the two texts in a two-course sequence, gaining a general introductory conceptual framework from *Transnational Legal Problems*, then using *Transnational Business Problems* to apply those concepts in a concrete business setting.¹³ The far greater likelihood—that professors will use the international business volume alone, without referring to the broader theoretical work—dilutes the power of the authors' central insight that international business transactions must be viewed as only one of many problems confronted by a "transnational legal system" of overlapping national and international institutions and rules.

In the end, my greatest concern about the authors' decision to treat transnational "legal" and "business" problems separately is that they thereby reintroduce a dichotomy that evokes, and is just as artificial, as the public-private, domestic-international distinctions that their previous editions eschewed. The deficiency of this approach becomes most apparent when one attempts to use the authors' materials to illustrate how a particular international business transaction evolves through three stages—formation, regulation, and dispute-resolution—during a time of public crisis. At each stage, the dividing lines between the "legal" and "business," "public" and "private," or "domestic" and "international" aspects of the problems encountered are blurry at best.

The plight of a particular United States multinational enterprise—a California engineering firm called Dames and Moore, which became notorious during the Iranian Hostages crisis¹⁴—best illustrates this point.

12. For example, although both volumes address foreign investment, the updated Documentary Supplement omits the foreign investment incentive codes of Liberia and Sri Lanka, which usefully appeared in the previous edition. Similarly, both books attempt to discuss issues in contemporary transnational litigation without reproducing the Hague Service or Evidence Conventions or the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

13. See Vagts, *supra*, at xix ("This volume connects with *Transnational Legal Problems* in such a way as to provide a relative smooth transition from the general to the particular . . .").

14. See *Dames and Moore v. Regan*, 453 U.S. 654 (1981). As the Supreme Court's opinion in that famous case recites, during the Shah's reign, Dames and Moore entered a contract with the Atomic Energy Organization of Iran to conduct a nuclear power plant site study. Shortly after the American hostages were seized, the Organization cancelled the contract, which led Dames and Moore to sue Iran and its instrumentalities in United States district court, an action that it supported by judicial attachment of certain Iranian bank property. After Dames and Moore won a summary judgment on its contract claim against Iran, it

After World War II, thousands of American entities like Dames and Moore entered a web of ostensibly "private" agreements with the Shah's government, negotiated against the backdrop of numerous bilateral and multilateral treaty commitments between the Iranian and United States governments. The formation and operation of those agreements were regulated not only by the particular terms of the contracts entered, but also by Iranian and United States law. In 1978 and 1979, a series of cataclysmic public events—the ouster of the Shah, his flight to the United States, and the seizure of fifty-two American hostages—triggered a surge of emergency host and home-country regulations that dramatically affected preexisting "private" deals. These regulations took the form of Iranian expropriatory actions and retaliatory United States government sanctions, including a trade embargo, an extraterritorial assets freeze, and ultimately, an executive agreement that nullified judicial attachments on frozen Iranian assets, suspended private claims against Iran, and transferred them to arbitration before the newly created Iran-United States Claims Tribunal.

In its previous incarnation, the Steiner and Vagts textbook could be used to illustrate all aspects of the formation, regulation, and dissolution of Dames and Moore's particular international business transaction. A class could discuss the business considerations that entered the firm's initial decision to enter its deal with the Iranian Atomic Energy Organization, the types of clauses properly included in the contract, the financing of the agreement, and the methods by which aspects of the arrangement, such as technology transfer and royalty payments, would have been regulated under both the United States and Iranian law. Discussion could then turn to other chapters, which explored the United States' ability to sue Iran in the International Court of Justice, and the President's authority under United States law to seek to rescue the hostages by military force and to impose immigration measures against Iranian diplomats in the United States. Returning to Dames and Moore, the class could then use other sections of Steiner and Vagts to inform debate over the lawfulness under customary international law of the United States' extraterritorial assets freeze, the legality under the United States Constitution and statutes of the executive agreement that suspended Dames and Moore's

commenced proceedings to enforce its judgment, but the district court vacated its attachments based on the January 1981 executive orders implementing the United States-Iran agreement that freed the hostages. Dames and Moore then filed a new district court complaint against the United States and the Secretary of the Treasury to enjoin enforcement of those executive orders, which ultimately resulted in its historic loss in the United States Supreme Court a few months later. As a last resort, Dames and Moore proceeded to the Iran-United States Claims Tribunal, which excluded it from the Tribunal's jurisdiction due to an Iranian forum-selection clause in its original contract. *See Dames & Moore v. Iran*, Award No. 97-54-3, Dec. 20, 1983, *IRANIAN ASSETS LIT. REP.* 7,727 (Jan. 13, 1984); Dissenting Opinion of Judge Mosk, Dec. 21, 1983, *IRANIAN ASSETS LIT. REP.* at 7,738 (Jan. 13, 1984).

federal court claims, and Dames and Moore's litigation options against the United States and Iran in United States District Court, the Iran-United States Claims Tribunal, and the United States Claims Court. In the process, students could evaluate Iran's claims of foreign sovereign immunity, the applicability of the Act of State Doctrine, the mechanics of service and judicial attachment, as well as the substantive constitutional allegation that, by entering the executive agreement, the United States government "took" Dames and Moore's claim against Iran in contravention of the Fifth Amendment.

In short, the earlier edition of Steiner and Vagts gave students of international business transactions a sweeping overview of how an ostensibly "private business deal" entered between a United States multinational and a developing-country government can dissolve into a domestic *legal* dispute, then percolate upward into a public international political dispute. Students could then trace how that political dispute was ultimately resolved by sovereign governments in a manner that raised domestic constitutional claims by Dames and Moore against its own government in United States courts and international expropriation and breach of contract claims by Dames and Moore against a foreign government in a newly-minted international arbitral tribunal. The splitting of the one volume into two forces professors away from this broad overview of the interaction between private and public transactions, toward a narrower presentation that focuses artificially on either the "public international law" or the "private domestic business" aspects of the larger picture.

In fairness to the authors, it could be argued that no single course or book could fairly treat such a wide spectrum of issues, or alternatively, that professors determined to address all of these issues should assign *both* books with heavy supplementation (as I, for one, have chosen to do). Indeed, the authors explain their decision to offer two books as driven by their conclusion that "it was no longer possible to cover all of this subject matter in a single volume" not obviously directed toward either the public international law or the international business transactions textbook market.¹⁵ While that decision may have been unavoidable, I regret that the authors' understandable desire to divide and conquer two textbook markets has led them to create two parts that sum to something less than the original whole.

Harold Hongju Koh
Associate Professor of Law
Yale Law School
New Haven, Connecticut

15. VAGTS, *supra*, at xix.

Career Preparation and Opportunities in International Law (Second Edition)

Edited by John W. Williams, Esq., Section of International Law and Practice, American Bar Association, and International Law Institute, Washington, D.C., 1984, pp. 143, \$8.00.

In a collection of fifteen brief articles, this revised and enlarged second edition is a significant improvement over the 1977 edition. Directors of Placement, as providers of legal career services in law schools, will be particularly interested in the scope, the work problems, and advice about the international law area. Typical requests to directors for information and advice come from a broad spectrum of persons with an equally wide range of perceptions—from applicants to law school, from students who have had a romantic undergraduate year abroad, and from intensely focused students such as the Jessup Moot Court team competitors. There is also a range of motivations one can associate with those inquiring about career opportunities in international law. Disenchanted but yearning alumni come to inquire about a more stimulating and/or socially productive practice area than that which their current position offers. There are also calls by alumni practitioners seeking additional resource information. Of course, there are the employers seeking qualified applicants for positions that relate to international concerns. To service students and inquiring alumni with an interest about what they think is the practice of international law and perhaps a fantasy about an “ideal” law practice, it is imperative that recent trends and pertinent information be acquired and gently disseminated by a placement advisor. It is critical to the credibility and skill of such administrators that they be knowledgeable and comfortable about their information concerning a field of law practice. In this handsome paperbound text, placement directors, pre-law students, current students and alumni will find an informative, helpful guide to the varied forms of practice in what we all—perhaps imprecisely—refer to as international law.

The second edition is divided into four major sections with each containing articles dealing with specific aspects of international law practice. Section 1 on “Planning for a Career in International Law” sets forth the basic considerations for preparing, at both the college and law school levels, for a career in international law. It provides articles on “The Study of International Law,” “Preparation for a Career in International Law,” and “Career Opportunities in International Law: An Overview for the Job Seeker” and includes a contribution entitled, “Selected Bibliography of Career Opportunity and Study Guides.”

The remaining three sections indicate what career opportunities can be found in various practice sectors as well as what such careers are like. The articles suggest what specific preparation is useful for each sector, and how to enter that sector's market. Each section also provides bibliographies and additional sources of career information. Section 2, "Practice with the Federal Government," contains articles on "Public Policy Making: The State Department," "Legal Opportunities in the Public Sector: Investment, Trade and Commerce," and "The Regulatory Agencies and the Department of Justice." Section 3, entitled "Private and Corporate Practice," contains articles on "International Legal Practice in New York," "Transnational Career Opportunities in Washington, D.C. Legal Practice," "The Work of Corporate Counsel in International Law," "Working in a Foreign Law Firm: An Overview," "Private Practice of Law in Europe, A Lawyer Abroad: Regulatory Ambiguities of Foreign Practice," and "Comparative Lawyering: A Prolegomena." Section 4 on "Non-Profit Practice" contains articles on "Career Opportunities in International Law: The World Bank Group," and "Academic Careers in International Law." Finally, the second edition contains an extensive appendix with the following entries: Selections from Statement on Prelegal Education of the Association of American Law Schools (1953); off campus summer programs approved by the ABA (as of March 1983); and a listing of international law journals and of law schools with joint degree programs in international law areas.

The second edition improvements are not just the aesthetic ones of better format and clearer type. It helps the flow of the book in this edition to move the discussion of teaching to the end, inviting the browsing law student to focus first on the practice of law and the employers they have thought about as "international." The new bibliography is first rate, comprehensive and inventive. The articles themselves are more usefully organized in this updated book too. There is one topic deletion, but along with revised copy from most of the authors of the first edition, there are three new authors in the practice sections. My favorite addition is the small but accessible article by *Louis M. Brown* pleading for increased study about comparative lawyering in the foreign workplace. It enables a student to grasp the creativity possible, the value of thinking about international systems and conveys material that is not found in the other more specific discussions. The fine article by *Kathryn J. Fritz* on the role of the legal scholar in international law teaching was informative and served as a fitting finale in that she provides a recapitulation of this boundless area of the law. Fritz, in addition, provides a fine essay on general academic work and the environment of a professor in law school teaching in any substantive area.

The most serviceable section from a career advisor's viewpoint is the new section on preparation and planning. The contents of the first article

by editor Williams may be obvious, but is wisely laid out and his "law tree" outline on the structure of practice divisions has proven valuable to my students. One called it, "clear, comprehensive but not overwhelming." The second article, also by Williams, is excellent and seems to surpass the goals of the first edition, "to answer the questions law students asked." Williams, and then *Dr. Abbie Willard Thorner* in an article that completes this section, have performed the true task of the career advisor: to draw together with complete candor all the hard human issues, the realities and the intrinsic rewards of various types of international law practice. Both authors supply sources, book lists, organizations and concrete leads that any exploring law student would find comforting and ultimately necessary to pursue a job in the field.

Even with the many topics and authors, there are few aspects of the monograph that can be seriously faulted. Perhaps the editors could have included a chapter about small firms or solo work. The introduction had previously touched on the fact that multitudes of professionals evolve into, rather than plan, a working life. The second edition's introduction, avoiding that point, is somewhat convoluted and awkward. A student in a hurry said that the introduction was "a formidable start to the topic."

Nevertheless, in my view, this effort remains the best in the ABA Career Series.¹ The Section on International Law and Practice and the International Law Institute have a work product that gives something tangible and useful to the substantial numbers of men and women in all stages of legal career development, as well as to the administrators that work with them. In short, this is a worthy book.

Joan Profant
Assistant Dean and Director of Placement
Southwestern University School of Law
Los Angeles, California

1. Other books on legal careers available through the ABA are: F. UTLEY & G. MUNNEKI, *FROM LAW STUDENT TO LAWYER—A CAREER PLANNING MANUAL* (1984); F. UTLEY & G. MUNNEKI, *NONLEGAL CAREERS FOR LAWYERS: IN THE PRIVATE SECTOR* (2d ed. 1984); E. WAYNE, *CAREERS IN LABOR LAW* (1985); J. FOONBERG, *HOW TO START AND BUILD A LAW PRACTICE* (1984); and *NOW HIRING: GOVERNMENT JOBS FOR LAWYERS* (1985). For an order form, write to: American Bar Association, 750 N. Lake Shore Drive, Chicago, Il. 60611.

