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Editor's Tribute

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Editor's Tribute

This *Festschrift* pays tribute to an unusual man, an outstanding international civil servant, a prolific scholar, and a thoughtful teacher whose work has inspired many lawyers, judges, academics, and students throughout the world. Sir Joseph's remarkable qualities of mind and character were evident to me from the moment I first met him on the campus of Southern Methodist University in Dallas, Texas, where I had the privilege, from 1983 to 1988, to teach American corporate law, insurance, and accounting for lawyers. His lucidity of thought and expression, maturity of judgment, steadiness of temperament, sense of humor, warmth, and love for his family have left a deep impression on me.

Sir Joseph is probably the single most distinguished example of the seminal role that legal writers have played, and continue to play, in the intellectual upheaval of international monetary law. He mastered the arcane complexity of international monetary law and grasped the essentials of the Articles of Agreement of the International Monetary Fund (IMF) with a speed, a thoroughness, and a love for details that must amaze every lawyer familiar with the subject matter.¹ His judgment, careful and deliberate, was deflected neither by impulse nor by indecision. Sir Joseph's powers of reasoning and analysis would alone have placed him in the highest rank of the small group of experts of international monetary law. What separated him, however, from nearly everyone else even in this rarefied category were his feeling for the shape and structure of the international monetary system, his sensibility for the historical dimensions of international monetary law, his broad-based comparative approach, the unique blend of practical experience and analytical abilities, and above all, a writing

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1. For a more detailed exposition of his early publications, see Ebke, *Article VIII, Section 2(b), International Monetary Cooperation, and the Courts*, 23 INT'L LAW. _____ (1989).

style of unsurpassed elegance that was flowing, beautifully rounded, and luminously clear.

While he has written extensively on all facets of the law of the international monetary system, Sir Joseph has made no secret of the fact that his true love has always lain with article VIII, section 2(b) of the IMF Articles of Agreement, the inherent conflict solution potential of which seems to have fascinated him professionally and academically from the very beginning of his career as an international civil servant. The fact that the law with respect to article VIII, section 2(b) developed along divergent and uneven lines in the IMF member states concerned him. It was especially the narrow reading of the term "exchange contracts" by most courts of the United States and Great Britain that disappointed him deeply.² Sir Joseph was convinced that only a liberal construction of the elements of article VIII, section 2(b) would help accomplish the Fund's macro objectives and improve the stability of the volatile international monetary system. Everything below these lines, he assured us in his writings, would be inadequate, contrary to the Fund's goals, and at least in the long run, opposed to the interests of every IMF member state. His convincing arguments thus far have not changed the minds of American and English courts. The international debt crisis, it seems, has made it particularly difficult, if not impossible, for the courts of the countries mentioned to leave behind the perceived micro interests of the forum and to be more sympathetic to the Fund's macro objectives in international debt management cases. Yet, the question remains: "2(b) or not 2(b)," article VIII, section 2(b) that is.³

Failure to obtain favorable court decisions on the central issues of article VIII, section 2(b) in economically and politically important IMF member states such as the United States and Great Britain should not be allowed to obscure Sir Joseph's achievements. His realistic assessment of the chances for such liberal construction led many American and English writers to reconsider the law with respect to article VIII, section 2(b) as reflected in recent decisions of their countries' courts. Most importantly, Sir Joseph's reasoning and line of arguments proved to be effective on the Continent.⁴ As a result, the momentum of the liberal construction movement is preserved in the Continental courts and in the Anglo-American legal literature until the IMF or its member states, by means of concerted actions, change what Sir Joseph has perceived to be an undesirable and even unacceptable reading of article VIII, section 2(b).

While his position with the IMF and the preparation of his unprecedentedly large number of publications on the institutional and transactional aspects of the

2. Gold, "Exchange Contracts," *Exchange Control, and the IMF Articles of Agreement: Some Animadversions on Wilson, Smithett & Cope Ltd. v. Terruzzi*, 33 INT'L & COMP. L.Q. 777 (1984); Gold, *Exchange Controls and External Indebtedness: Are the Bretton Woods Concepts Still Workable?* 7 Hous. J. INT'L L. 1, 11 (1984).

3. See Editorial, *VIII, 2(b) or Not 2(b)*, Wall St. J., May 11, 1989, at A16.

4. See generally W. EBKE, *INTERNATIONALES DEISENRECHT* (1989).

law of the international monetary system absorbed most of his time, Sir Joseph was always available to young lawyers, with a helping hand and a sympathetic ear. I will never forget the day when I received three big boxes with his books and an almost complete set of reprints of his articles, case notes, book reviews, and other scholarly work products. At a time when academics seemed more and more competitive and self-centered, he was content to give a hand to scholars with a genuine interest in the international monetary system and its rules and regulations.⁵

A superb scholar, he was an equally excellent teacher, always being in high demand by law schools and other academic institutions around the globe, including the prestigious Hague Academy of International Law.⁶ In the classroom, flamboyance and showmanship were not his style; instead, he was the total opposite of pompous. To call him modest would be a Goldian understatement. Yet, the students loved him, and so did the professors, attorneys, judges, and administrators who frequently attended his lectures. They all appreciated the clarity and coherence of his presentations, his ability to explain even the most complicated legal, economic, and political issues in an understandable manner, his insights into the international monetary system that were rooted in years of work experience and a wealth of knowledge, his depth of analysis and breadth of coverage, his approaches and conceptual thinking. They all valued his fairmindedness and sensitivity. They reciprocated the respect, admiration, and affection he so clearly had for them.

In sum, one could not hope for a more delightful person, a wiser counselor, a more generous scholar, a more supportive teacher, a more sympathetic friend. I left Southern Methodist University School of Law a year and a half ago to accept the offer to hold the Business and Tax Law Chair at the University of Konstanz School of Law. Ever since, I have missed him (despite the modern means of communication and transportation), and will continue to miss him, tremendously. And that, be assured, is a Goldian understatement. This *Festschrift*, which Joseph J. Norton and I agreed to edit in honor of our common friend Sir Joseph, underscores my respect, admiration, and gratitude.

Tributes look to what *was* (which is evidenced by the past tense in which they are normally written) and they memorialize it.⁷ It is right that they should, and I wanted to pay tribute to the achievements of Sir Joseph. For me and everyone else who knows him, however, Sir Joseph *is*. His recent book on exchange rates,

5. See also K. DAM, *THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM* xvi-xvii (1982); R. EDWARDS, *INTERNATIONAL MONETARY COLLABORATION* xxiv (1985).

6. See Gold, *Developments in the International Monetary System, the International Monetary Fund, and International Monetary Law Since 1971*, 174 *RECUEIL DES COURS* 111 (1982), reprinted in 2 J. GOLD, *LEGAL AND INSTITUTIONAL ASPECTS OF THE INTERNATIONAL MONETARY SYSTEM: SELECTED ESSAYS* 17-254 (1984).

7. See Lutz, *Book Review*, 22 *INT'L LAW* 583 (1988).

published by the ABA Section of International Law and Practice,⁸ and the forthcoming fourth volume of *The Fund Agreement in the Courts*⁹ evidence his continued and continuous energy and activity. Sir Joseph may have retired from his position as General Counsel and Director of the Legal Department of the International Monetary Fund, but he has certainly not, and will not, retire as a legal writer. His colleagues, friends, and students are looking forward to the achievements still to come. *Ad multos felicissimos annos!*

8. J. GOLD, EXCHANGE RATES IN INTERNATIONAL LAW AND ORGANIZATION (1988).

9. 4 J. GOLD, THE FUND AGREEMENT IN THE COURTS (forthcoming).