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## History of the Section of International Law and Practice 1913-1993

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# History of the Section of International Law and Practice 1913–1993

## The Second Thirty-Five Years (1913–48)<sup>1</sup>

VICTOR C. FOLSOM\*

The history of our International Law Section proves the adage that “he who will not read history is destined to repeat the mistakes of history.” In reading the reports of the American Bar Association’s International Law Committee (ILC) and its comments on our government’s international relations, one is struck by the repetition of mistakes in the conduct of international affairs.

This attempt to chronicle some of our history was suspended with year 1913, possibly because the ILC’s report for 1914 looked too formidable. It was the Committee’s busiest year. Its close collaboration with the American Society of International Law (which it was instrumental in organizing in 1907) continued, and its report made reference to more than forty articles in the Society’s journal. Over twenty-five treaties, mainly relating to Secretary of State William Jennings Bryan’s “Peace Plan” and arbitration, were reviewed and supported.

Secretary Bryan’s Peace Plan was first signed by El Salvador. It provided for the establishment of bilateral International Commissions for the investigation and report on any international dispute, “a cooling off period” before war could be declared, a suspension of military buildups, and other good things designed to stop a World War. The Latin American governments as well as the Netherlands, Persia, and Switzerland became adherents to the plan. Unfortunately, none of the countries where the action was occurring adhered to the plan. The assassinations by Serbian terrorists had provided the excuse necessary to launch four years

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1. See Victor C. Folsom, *History of the Section of International Law: The First Thirty-Five Years*, 16 *THE INTERNATIONAL LAWYER* 1, 119 (1982).

of holocaust. Secretary Bryan's International Commission to prevent war was never appointed and the plan remains a golden dream. Nicaragua was an early supporter of it, and perhaps some avid researcher could yet revive it for use as a basis for settling our differences of today with that country.

The Comparative Law Commission of the American Bar Association (CLC) backed the efforts of the Committee on Commercial Law and the International Law Association to establish an international convention on the uniformity of negotiable instruments and shipping documents.

Today's headlines echo tales of World War I, as the tinderbox of the Balkans is once again aflame. Bosnia is being subjected to genocide, which subject occupied the attention of the Section for many years. History does repeat itself; the UN is again tested. May it be equal to the task.

Numerous treaties and executive agreements with foreign nations were signed during the year, including one with El Salvador that seemed to advance Secretary Bryan's peace plan. It provided for the constitution by the two nations of a joint commission, and for sharing its expenses. It appears that El Salvador appointed its Commissioners, but the United States did not. Possibly this action was one of the reasons El Salvador failed to join the allies during World War I. The other countries apparently abandoned the treaties after the United States did not follow through.

The President of Haiti was forced to flee the country (shades of 1992). The U.S. sent the cruiser *Montana* to protect American citizens in Haiti. Twenty-nine nations recognized the Huerta government of Mexico, causing President Taft to revoke the restrictions on the shipments of arms to the revolutionary forces in Mexico. Under a treaty with Denmark the United States agreed to arbitrate the sale of the Danish West Indian Islands to any European power (confirming Monroe Doctrine?). The longstanding disputes with Colombia over Panama and the Canal were the subject of a treaty to restore "friendly relations." The U.S. agreed to pay an indemnity of \$25,000,000 within six months after ratification. It also exempted Colombia's coastwise shipping from canal tolls. Colombia ratified the treaty. Delay by the U.S. caused great dissatisfaction in Colombia.

Huerta's government in Mexico clashed with the U.S. on several serious matters, the most important resulting in the loss of lives at the custom house in Vera Cruz and at the bridge at Laredo. Tampico was also the site of detention of American ships and personnel. Americans were again ordered out of Mexico. The several disputes with the Huerta government were more or less settled by a Mediation Conference made up by Latin American governments. Generals Carranza and Villa actually agreed not to oppose occupation of U.S. forces so long as it did involve territory they occupied. The U.S. was partially in control of the custom houses in Vera Cruz and Tampico.

The CLC declared that the courts of the United States should not have admiralty jurisdiction over claims arising out of such disasters as the loss of the *Titanic*.

In effect this allowed the foreign ship to take advantage of a limitation of liability under U.S. statutes. Secretary of State Elihu Root spoke to the Committee meeting in 1914, but his remarks are not in the record. I had hoped that they would be and that they would mention the total number of treaties signed in 1914. More than thirty-six have been mentioned in the report and counted by the writer.

The 1915 Annual Meeting of the ABA was held in Salt Lake City. The Committee's report recommended that the ABA endorse a resolution to bring about the uniformity of commercial laws throughout the commercial world. This was adopted by the meeting. Since the interesting report required no further action, one member moved that the report be referred to the German Kaiser. This novel idea was not voted upon by the meeting.

The Committee had been assigned the duty of determining whether or not the ABA should publish a journal. The Executive Committee voted to establish such a periodical, and its care was committed to the Committee on Publications. The bulk of the report concerned the war and the actions of the warring parties. The Committee decided to adhere to the policy of absolute neutrality invoked by the President. However, it did review actions being taken, without comment. Some eighteen countries concluded treaties with the United States implementing the peace plan. Amendments to the Panama Canal Act provided that foreign-built ships could be admitted to American registry for overseas trade.

Turkey repudiated a series of conventions, treaties, and privileges exempting foreigners from local jurisdiction that went back to the 11th century. The United States protested this action. The Committee noted that the warring powers had agreed to abide by the provisions of the Declaration of London concerning war conduct at sea. Both the allies and the axis powers charged the other with war atrocities.

The President of the United States ordered the withdrawal of troops from Vera Cruz, Mexico. American Marines landed in Haiti after a revolution in that country. Great Britain gave notice that she would not adhere to the Declaration of London exempting contraband of war from seizure when destined for neutral ports.

The English liner *Lusitania*, being warned of the presence of German submarines in the Irish sea, hoisted the American flag "for the protection of neutral passengers and cargo." The U.S. protested this action. Germany offered to abandon war on merchant vessels if Great Britain would permit free shipment of foodstuffs to the civilian population of Germany. The offer was refused.

On May 7th the *Lusitania* was torpedoed and sunk without warning. Loss of life was great; 115 Americans perished. The U.S. protested and denied the right of a belligerent to sink merchant vessels without warning and endangering the safety of crew and passengers. Germany's reply alleged that the *Lusitania* was armed as an auxiliary of the British navy. It further alleged that the ship carried Canadian troops and material. The facts are still debated today. The President

warned the warring factions in Mexico to "compose the internal disorders of Mexico," or "some other methods will be found by the United States." No one knew what this meant.

The 1916 meeting was attended by the Chairman of the Comparative Law Bureau. He urged that all members of the Association, "all of whom are *ipso facto* members of the Bureau," to aid the Bureau in keeping abreast of changes in laws throughout the world. The Bureau had not been making reports to the Association so that message may have surprised the members. As noted previously, the Bureau was made up of organizations not part of the ABA as well as the Section.

The Committee recommended that a competent knowledge of international law and justice be required as a condition for degrees in law and admission to the bar. This hope has yet to come to fruition in 1994. The 1916 report contains an even stronger exhortation to require that international law be required teaching in law schools.

The Committee noted that 128 international incidents had arisen during the last year. Most of these events involved the European powers, but our troubles with Mexico continued. At one point a conference of Latin American nations recommended that the U.S. recognize the Carranza government as the *de facto* government of Mexico. Notwithstanding an agreement with the Carranza government permitting the U.S. to pursue Mexican raids into the U.S., the Carranza government protested the pursuit of the Villa forces by General Pershing following the Villa attack at Columbus, New Mexico.

The 1916 report of the Committee printed a list of international events directly affecting the country at this time, stating that it did not collate them because they were too vast. The Committee commended the government for its attempt to enforce the international rules of war. It also applauded its attempts to bring about peace, "without seeking an untimely peace, and without seeking to dominate its terms." This seems to be a veiled remark aimed at President Wilson's plans for postwar Europe. One member appeared to dissent from the report by stating that "we no longer have any controversy to speak of with the Germanic or Central Powers, but we still have a controversy with Great Britain in reference to matters relating to neutral trade." He followed this by introducing a proposed resolution aimed at the conduct of the British. The matter was referred to the International Committee after members had noted that while they doubted the facts, the rules prevented their debate. The fate of the resolution does not appear in the record.

The report went on to note the problems with Europe and Mexico. Some 128 incidents with Europe and fifteen with Mexico were listed. Notwithstanding the problems with Mexico, the U.S. recognized the *de facto* government of Mexico and relaxed its neutrality to allow shipments of arms and munitions to that government. As a matter of fact, such shipments were never effectively stopped. The Pershing invasion of Mexico became the subject of contesting notes between the governments.

The 1917 report discussed the right of the U.S. to declare war on the Axis powers, stating that a state of war had actually been in effect for more than a year. Some nine legal grounds for the declaration of war were reviewed. The principal one was the declared German "unrestricted submarine" policy which resulted in substantial loss of American lives and property. The report received a "rising" note of appreciation from the Association.

The ILC's reports for the war years dealt largely with the legal implications arising out of the conflict. In 1919 the report considered the League of Nations but took no position as to adherence to it by the United States. An interesting part of the report contains George Washington's letter to his nephew, Bushrod Washington (later a Justice of the Supreme Court), regarding the ratification of our Constitution. One is struck by Washington's wisdom with respect to the rights of dissenting individuals or states. Incidentally, he states: "I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us." I believe that most of us would disagree; we were fortunate to have great men during the formation of our government.

We have previously noted that the Comparative Law Bureau (organized in 1907) became the Section of Comparative Law in 1919. Several other sections were also organized, but all of them were subservient to committees such as the International Law Committee. As early as 1913, Professor John H. Wigmore (after he pointed out the confusion that existed in the ABA structure) was appointed Chairman of a committee to recommend a reorganization. The committee was active over the next twenty years. The efforts of Elihu Root and Wigmore ultimately bore fruit and the Section of International and Comparative Law (ICL) was established. Wigmore described its scope as covering both public and private international law.

In 1921 the ICL's report listed some 175 items that it had studied, going on to state that it would have "to limit comment." It was a tumultuous time. The election of 1920 had sealed our decision not to join the League of Nations. Some thirty meetings of that organization had been held. The Permanent Court of International Justice had been adopted by unanimous vote to be ratified by the nations involved. The U.S. refused to ratify the Treaty of Versailles in unmodified form. Apparently the ICL made no formal recommendations to the State Department with reference to international matters, although individual members did make their own positions known to the Department. This was not difficult because Mr. Root, the Chairman of the Committee, and President of the ABA, was also a former Secretary of State.

The Committee's report of 1922 contains a fine explanation of the history of the Permanent Court and the difficulties of the United States in becoming a member of the Court. Its author, the ubiquitous Mr. Root (truly a great practitioner of international law) sought to find a way for the U.S. to join the Court. The Court was to be based on the Supreme Court of the United States.

As late as May 1920 the President of the United States and Congress were

involved in a dispute about how to end World War I with the Axis powers. Congress by joint resolution declared the war ended. The President vetoed the resolution. The new President approved a new one on July 2, 1921.

Treaties relative to the limitation of naval armaments were included in the 1922 report. A "non-war" policy for the U.S. became the law. With all the limitations placed on armaments, including aircraft carriers, it was decided it was impractical to limit aircraft, a fact that Adolph Hitler subsequently read with glee. Limitations on submarines were not included in the treaty. However, the U.S. insisted on a provision that forbade their use against commercial vessels, a vague one that enabled Germany to justify the sinking of 183 U.S. merchant ships in 1941 before the U.S. entered World War II. The report described the settlement between Peru and Chile over their boundary lines. All in all, the 1922 report of the Committee was the most comprehensive report of its existence.

The 1923 report covered what seemed to be the ultimate settlement between Chile and Peru over Tacna and Arica as well as the Central American Conference, the Fifth International Conference of American States, and the settlement of British debts to the United States. Most of the report describes the efforts of the U.S. to become a member of the new Permanent Court of International Justice (PCIJ).

The report contained an excellent review of the advance of Pan-Americanism in the hemisphere, starting with the 1889 conference held in Washington. The Union of American Republics ultimately resulted in the Organization of American States.

The report contained much discussion about the meaning of international law and concluded that Article 38 of the Statute of the Permanent Court stated the best definition then available.

It will be noted that the ICL seemed to deal principally with international public law to the exclusion of comparative law.

Sherman's *Roman Law in the Modern World*, published first in 1916, had been followed by an expanded second edition in 1924. This three-volume work truly did constitute a "History of Roman Law and its Descent into English, French, German, Italian, Spanish, and other Modern Law," as its Preface announced. Not to be outdone, Wigmore followed with *A Panorama of the World's Legal Systems* in three volumes. He found sixteen principal legal systems. These tomes were required readings in this author's home and enough of it "stuck" to preserve his interest in international law.

The 1925 report dealt almost exclusively with the international law of peace. Secretary of State Hughes, the Chair of the Pan American Union, announced that the American Republics would meet to study some thirty projects concerning public international law. Similar projects were advanced by the League of Nations and committees were appointed. Questions relating to war were deferred, as was the subject of private international law. The Committee expressed the hope that all the activity would result in progress in these fields.

The 1926 report noted that the League of Nations was making progress in the codification of international law. Similar progress was being made by the Pan

American Union. Members of the CIL were involved in these endeavors. The Committee also noted that the United States had decided to adhere to the Permanent Court of International Justice, subject to important reservations. Various treaties relating to settlements of boundaries were reviewed. An elaborate system of preventing future wars was agreed upon among the warring powers of World War I. Bustamente's Code of Private international law was presented to the Pan American Union, and a number of Latin American countries adhered to it. Acceptance of this code became widespread in the following years.

The 1927 report of the Committee was comprehensive in reporting on both public and private international law. The reservations of the U.S. attached to its adherence to the Permanent Court of International Justice caused the other parties to it to call a conference to determine if the U.S. had in fact adhered to the protocol. A settlement of sorts was worked out by agreeing that every member of the Court should have the same privileges that the U.S. had demanded. Codification, under the direction of the League, seemed to make progress with the members agreeing upon the subjects to be codified.

By 1927 there was great need for standardized rules regarding the use of radio, and a conference on the subject was held in Washington. It was called "the largest international conference in history." It had been preceded by other conferences on the subject but not much uniformity existed among the nations. No convention resulted from the meeting, but the countries agreed to be bound by some ninety-seven "rules."

The 1929 report again took up the question of the reservations of the U.S. to the Permanent Court. An agreement was worked out with the Council of the League. It clarified the U.S. position with respect to advisory opinions and seemed to settle the issues. The Paris (Jay) Treaty of 1794 was reviewed and its effect on arbitration emphasized. The Briand-Kellogg Pact outlawing war was signed by forty-six nations. A "captious critic" suggested that the pact allowed any nation to go to war "for defensive" purposes and it was the sole judge of the facts. Hitler subsequently found that a number of small countries were attacking Germany, and it launched World War II in its "defense."

Harvard submitted its drafts of conventions on three subjects, all rather "non-controversial."

The Vatican and the Government of Italy settled their long-standing controversy by signing the Lateran Treaties. The Tacna-Arica dispute was finally settled. Peru got Arica and Chile got Tacna. Bolivia, which had claimed most of both territories but lost the war, got no land and lost its seacoast. Bolivia did get the right of transit through its former territory. In December 1929, war between Bolivia and Paraguay broke out. The Chaco Boreal was involved, and Bolivia's claim was based on an old finding of the Audiencia de Charcas. A Commission of Conciliation was appointed.

The First Conference for the Codification of International Law was held at the Hague where the three "noncontroversial" subjects were considered. Two



proposals were rejected, while the one on nationality was approved by all but one of the delegations represented. The United States was the dissenter. It found that its common law principles were at great odds with those of the civil law countries. Codification of international law was not off to a great start.

The London Naval Conference was reviewed by the Committee. The famous 5-5-3 formula for battleships and aircraft carriers was established among the great powers. There was an attempt to "humanize" submarine warfare by requiring that passengers, crew, and ships papers be placed in safety before attack. The Committee did note that this provision was "only a partial success." The complete abolition of the submarine was favored by the U.S. and Great Britain while France defended it as "the poor man's weapon." The Committee expressed its opinion that great progress had been made in ensuring peace for all the world.

The 1931 report opened by stating that the United States was now "definitely" a member of the Permanent Court. The United States was a strong supporter of the Court, but its attempts to join at the same time it attached serious reservations found food for many law review articles. The 1931 report contained no other subject.

The 1932 report continues the saga of the Permanent Court because the Senate stirred up the matter again. The doctrine of the Non-Recognition of Force was adopted by the League and sought to be applied to the Manchurian conflict and the Chaco War between Bolivia and Paraguay. The League "insisted" on peace in each case, with the usual result. A disarmament conference was held at the suggestion of President Hoover. Little was accomplished except to set a date for another conference. The economic crises of the whole world caused President Hoover to propose a "Year's Holiday" on all inter-governmental debts; the League held an economic conference to which the U.S. was invited. Such conferences were failures, as the great depression overwhelmed all ordinary economic forces.

The U.S. agreed not to recognize revolutions by force in Central America and helped settle a boundary dispute between Guatemala and Honduras. Some seventeen treaties signed by the U.S. were reviewed as well as the decisions of the Permanent Court.

The 1933 report contained some ten items, including the permanent subject of the Court and a review of its decisions. A new war broke out between Colombia and Peru. Both countries had trouble fighting over the actual land involved because it was so inaccessible. The Marines stationed in Nicaragua were finally withdrawn and American control of Haiti was lessening. The Martinez revolution in El Salvador was denounced without effect. The Committee commented that more than one agreement had arisen between countries during the year.

Your reporter was surprised to find no information about the Committee on International Law in its report of 1933. All of the information compiled since

1878 had come from the reports starting on that date. Now the Committee disappeared and no information is contained in its official reports regarding its demise or abduction.

The first meeting of the Section of International and Comparative Law was called to order by its Chairman on August 27, 1934. While the plan of organization of the ABA contemplated that its work be done by committees, as early as 1893 a Section on Legal Education was organized. In 1884 a Section on Patent Law was organized, followed shortly by an attempt to establish one on insurance. This last proposition was defeated on the grounds that it was complicating things. We noted previously that ILC had a Bureau of Comparative Law as early as 1907 (its name was changed to Section of Comparative Law in 1919). Both the Bureau and its successor section published significant and substantial comparative law items.

There seems to be no written report on how our new section came about. I never met Wigmore except on *Evidence* and his numerous writings on foreign law, but the old-timers told me that he prevailed upon the heads of the ABA to reorganize it and clear the air with respect to sections and committees. There is nothing in the published 1933 report regarding the "amalgamation" of all the entities dealing with international law, both public and private. The quoted word is supposed to have been his. He was, of course, primarily interested in comparative law and expressed the hope that the new Section could study "in depth" the sixteen systems he found in the world. He strongly advocated the teaching of private international law in law school. One wag of the time said that only three members of the Committee were present when he got "authority" to pursue his amalgamation. In any event, it can truly be said that he is the father of the Section.

The first formal meeting elected officers, approved by-laws, provided for associate memberships from foreign nations, and asked the ABA for authority to hold an annual meeting in May. Most of the discussion concerned comparative law.

Before leaving the work of the International Law Committee, your reporter would like to pay tribute to their reports. I was very impressed with the caliber of forty-five reports. Most of them dealt with public international law. While the comparative law reports were not all available, (I have been informed that they are at Harvard Law Library), those I saw were of equal breadth and value. They should not be lost to history.

The 1935 meeting of the Section was noteworthy for me because I was able to attend it as a guest. Dean Roscoe Pound spoke on what we may expect from Comparative Law, and I learned something about "Early Chinese Interstate Law." This did not prove useful in my later practice. A proposed uniform statute for the proof of foreign law was approved. The Section was unsuccessful in establishing its own \$1 annual fee. The ABA dues were still \$5, and one could join two Sections free of an additional charge.

The report of the 1936 meeting contains a short discussion whether or not it was wise to combine public and international law. The conclusion was that it

was an appropriate and happy marriage because the two are intertwined and inseparable. Reports by the International Double Taxation Committee and the Military and Naval Law Committee were presented for the first time. A review of international law in the courts of the United States was established on an annual basis. Volunteers to report for each state were named.

The report for 1937 is notable in that thirteen Resolutions by the Section were approved by the ABA House of Delegates. While most were noncontroversial, they contained substance of importance to international law, its teaching, and its practice in the U.S. The report called attention to the unrest and threats of war in Europe. The Hague conference of that year was reviewed and appraised.

In 1938, the Section submitted eleven proposed resolutions to ABA's House of Delegates. Only four were adopted. One of them declared that *pacta sunt servanda* is a cardinal maxim of international law. This declaration did not affect the Spanish Civil War, Hitler's absorption of Austria, or the Mexican expropriation of all foreign oil properties, all then current events.

The Section noted that it now had one thousand members. It also reported that international law had been involved in more than 500 cases in state courts. It wondered where all the international lawyers were. A committee on Spanish-American Law was appointed. This ill-named committee shortly became the Latin American Law Committee. It was one of the first to publish and distribute its annual reports. The Committee on Publications commented on the vast amount of excellent material produced by the Section each year and noted that little of it was available to international lawyers. It did report that the *Tulane Law Review* had published a number of the Section's writings. At least the seed was being planted for the *Bulletin* and *The International Lawyer*.

In 1939, the Section submitted thirteen proposed resolutions to the House. Only two were considered by the House. The first related to the Mexican oil expropriation question and the second to the need for an international treaty to prevent the bombing of civilians during wars. The first was defeated on the grounds that the legal problems were too involved. The second was adopted by the House. In view of the fact that World War II became "the total war" involving all of the civilian populations of the countries at war, the objective remained just a hope.

The first serious dispute of the era with Japan occurred when Japanese fishing boats violated our three-mile limit in Alaska. The Section report reviewed our position, stating that most nations disagree with our law. Japan backed down in this case and agreed to keep its ships out of the three-mile zone.

Much of the activity of the Section in 1940 was related to the organization of the Inter-American Bar Association. In January of that year the House had authorized the Section to proceed with such an organization. Events followed rapidly and the ABA joined as the National Association representing the U.S. The Constitution of the IABA was approved by the ABA. The IABA was originally organized

as an association of associations and some twenty-eight entities joined in May 1940. Subsequently individual members were permitted to join.

Membership in the Section had increased to 1,615, but, under ABA rules, no dues as such were being collected by the Section.

In 1941, the Section asked the House for its approval on a number of actions being taken by the IABA, including the establishment of an Inter-American Academy of International and Comparative Law. This was done, and that Academy prospered for some years. Some of the Section's proposals were referred to other Sections.

During the period 1941–1943, the ABA established a number of special committees that seemed to impinge on the authority of the Section. Since practically all members of the Section were involved in the “War Effort” not much question was raised about this. The 1942 report did contain a proposed resolution stating that the Office of Alien Property Custodian had adopted regulations involving novel and far-reaching problems in the application of law. What was involved was confiscation of enemy assets in time of war. The APC vested enemy assets. As APC's liaison with our Latin American counterparts, I struggled with the issue in foreign languages.

In any event, with the help of the United States, our allies effectively controlled enemy property and its agents in Latin America. After the war they did everything from returning the property to confiscating it. In my opinion, the options were theirs. It was a good year in terms of dues. The Section was allowed to charge \$1 per year. However, the grant from the ABA was reduced.

The year 1943 was a relatively lean one for the Section. It met and carried on its business, but the war overshadowed international law. There were enough of those who maintained that the war had abolished international public law. In 1943, the Section started to publish its own proceedings on an annual basis. It continued for more than twenty-five years. While it contained selected articles of current interest, it did not purport to act as a legal journal. It was followed in 1957 by the publication of a Bulletin published bi-monthly. It served to keep the members informed between meetings and ultimately led to the production of *The International Lawyer*.

The 1944 report and recommendations contained comprehensive suggestions as to post-war matters. The House adopted them in general terms. All were referred to a Special Committee to Study Proposals for Post-War Organization of the Nations for Peace and Law.

In 1945, this Special Committee prepared a lengthy report on the United Nations. The Section agreed with most of the report but recommended that the ABA refrain from suggesting amendments to the UN Charter. This was the beginning of conflict between the Section and the Special Committee. This was to continue for more than ten years. In general the Section supported the UN, while the Special Committee was reluctant to give the UN too much power.

The Section was given authority to assist in the organization of an International Bar Association. It became an effective and prominent organization.

The Special Committee became a standing committee as the Committee on Peace and Law Through United Nations. The Committee produced a lot of fine work in promoting the UN while opposing the "creation of any form of super-government or super-state." It was very influential in the adoption of the UN in its present form. However, it opposed the Universal Declaration on Human Rights and warned that it would open "a Pandora's box of international friction and provocation." It urged that the right to bring actions be limited to states who were parties to the Covenant. The Committee continues today as the Standing Committee on World Order Under Law.

In 1947, the Proceedings contained eight articles or reports prepared by the Division of Comparative Law. The publication was beginning to look like a journal. Most of the Section's proposals to the House related to war matters, such as reparations, peace and boundary settlements.

The 1948 Proceedings contained a comprehensive report on the proposed international trade organization. The Section subsequently supported its approval by the ABA, which the ABA rejected. The Comparative Law Division again dominated the Proceedings. Public international law had been decimated by the war. Its formal structure was in need of revival.

## Section History, 1948-69

VICTOR C. FOLSOM\*  
LYMAN M. TONDEL, JR.

During the late 1940s, the Section continued to take positions in opposition to those taken by the Committee on Peace and Law Through the United Nations. That Committee opposed the Genocide Treaty, the Declaration on Human Rights, and the appointment of an observer to the United Nations, among other things related to the United Nations. The Section supported all of these matters, which took more than ten years to resolve. The Bricker amendment occupied the debate between the entities for another six years.

The *Proceedings* continued to grow in size. It was a good report on the activities of the Section, but it was published only once a year. It was apparent that it could not keep members currently informed. The 1949 issue contained more than 200 pages of excellent articles as well as a roster of the members of the Section.

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\*Victor C. Folsom, Section Chair between 1955 and 1957, wrote the Section History covering the periods 1948-51 and 1954-69. Lyman M. Tondel, Jr., Section Chair between 1951-53, wrote the Section History covering that period and the controversy surrounding the Bricker amendment.

The total income of the Section for 1949 was \$4,053.16 and a reserve of almost \$900 had been established.

Perhaps the most important report of the Section was the review of the Korean War and the actions taken by the United Nations. Fifty-three members of the United Nations expressed their support of the action taken by the Security Council. It was perhaps the start of the "constitutional law" of the United Nations.

Various reports dealing with the disposition of enemy property were published in the Proceedings. This subject would continue to occupy the attention of the Section for another eight years. How to control atomic energy was also the subject of numerous reports and articles during this period.

During World War II most Section members had been involved in military or other government service related to the total economic warfare waged by the warring factions. Germany had established preclusive buying programs for strategic products throughout Latin America. These were broken with the aid of our allies there. The legal problems caused by these actions were dealt with by the Section.

The attempt to create international law through the United Nations and its various organizations opened a Pandora of legal problems. The Bricker Amendment exemplified the problem. Lyman Tondel has written an excellent overview of the dispute in his summary of the Section's activities from 1951 until 1953.

*[Editor's Note: The following analysis of the years 1951-1953 was written by Lyman M. Tondel, Jr., who served as chair of the Section during that period. It is included as part of the Section's history from 1948-1969 because of his brilliant analysis of the controversy surrounding the Bricker amendment.]*

In the years immediately following World War II, the Section's extensive customary areas of committee activity were supplemented by activities in fields responsive to the times.<sup>2</sup> By 1951 committees had been studying and reporting for several years on such matters as the organization of the United Nations, the adjudication of war crimes, the treatment of property rights in war settlements, the international control of atomic energy, the law of occupied areas, offenses against the law of nations, an international criminal court, revision of the laws of war, fishery agreements with Japan, the proposed Universal Copyright Convention under the auspices of UNESCO, international judicial cooperation, the Convention on the International Transmission of News and the Right of Correction, and the draft convention on the freedom of information. At the time of its twentieth anniversary in 1953, the Section had forty active committees.

The key addresses at Section meetings also reflected postwar problems and those arising from the advent of the Cold War. At the September 1951 meeting, Governor Thomas E. Dewey, fresh from his Pacific tour, spoke on "A Foreign Policy for the Pacific." In 1952 in San Francisco, John Foster Dulles, soon to

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2. See *The Section of International Law: Its Work and Its Objectives*, 38 A.B.A. J. 928, for a fuller account of the Section's committee activities.

be Secretary of State, spoke on "International Unity in Foreign Policy." At the 1953 meeting in Boston, Senator Alexander Wiley, Chair of the Senate Committee on Foreign Relations, discussed the "Test of American Leadership."

However, the overriding issue was whether the treaty power under the Constitution should be limited. To that story, most of the balance of this paper will be devoted.

In these memorable years, the dominant issues before the American Bar Association as well as the Section related to the reach of the treaty-making power under the Constitution and whether the Bricker amendment, which would have limited that power, should be adopted. The Bricker amendment called for the following change: "A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law of the United States only through legislation by Congress which it could enact under its delegated powers in the absence of such treaty." At five successive meetings of the ABA House of Delegates in 1951, 1952, and 1953, there were extended and sometimes passionate debates<sup>3</sup> on the subject, buttressed by extensive scholarly debate and historical research. Numerous articles were published. Speeches, panel discussions, and debates were heard throughout the land. Newspapers and magazines reported on developments, wrote editorials, and printed special articles, both pro and con. Even cartoonists became involved.

The Section played a major role in the public debate, and, if nothing else, helped increase the public's knowledge of the Constitution and the concept of international law. This was indeed the first time that many members of the bar had themselves come face to face with international law, with executive agreements, and with the reasons for and arguably dangers in the centralized treaty-making power in the Constitution. Although there are many other examples of the Section's high quality and important work in these two years, it is important to recount at some length the story of its participation in the Bricker amendment controversy.

The debate was sharpened and made more interesting by the fact that the ABA had created a Standing Committee on Peace and Law Through the United Nations (the Peace and Law Committee), which habitually opposed the Section. The terms of the Peace and Law Committee's status as a Standing Committee, adopted in 1950, were themselves a challenge to the Section. Without saying that the jurisdiction of the Section was being limited, the Committee was given jurisdiction "with respect to all matters relating to the United Nations and to all international tribunals, resolutions, declarations, treaties, conventions, pacts and agreements that affect the rights and liberties of the American people."<sup>4</sup> The Peace and Law Committee was particularly concerned lest multipartite agreements, sponsored

3. See generally reports on House meetings published in the *AMERICAN BAR ASSOCIATION JOURNAL* during the period 1951-53 (e.g., 37 A.B.A. J. 873; 38 A.B.A. 434, 1069; and 39 A.B.A. J. 343, 1034).

4. Section of International and Comparative Law, *PROCEEDINGS*, 1950, at 9.

by the United Nations, like the Covenant on Human Rights and the Genocide Convention, that deal with matters which are historically within the domestic jurisdiction of individual states would, if ratified by the United States, be held to override domestic law and even override the rights and liberties protected by the United States Constitution.

Article 2(7) of the United Nations Charter expressly provides that:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the jurisdiction of any state . . .

However, the Peace and Law Committee feared the effect of the provision in Article VI of the Constitution that:

All Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or the Laws of any state to the Contrary notwithstanding.

The Committee began a crusade to alert the press and the public as well as the ABA to what they saw as the dangers of "treaty law," to oppose ratification of the Covenant on Human Rights and the Genocide Convention and to seek an amendment of Article VI of the Constitution.

The Section, of course, was seriously concerned and in 1949 had created a notable Committee on Constitutional Aspects of International Agreements (the "Section Committee on Constitutional Aspects"). Harold E. Stassen was the Chair. Other members were William D. Mitchell, past or future ABA Presidents Lashly, Malone, Morris, and Sylvester Smith, Charles W. Tillett (Section Chair), and Edgar Turlington (past Chair). Among those who assisted the committee were Professors Edwin D. Dickson of the University of Pennsylvania and Zechariah Chafee, Jr., of Harvard Law School.

At the ABA's 1950 Annual Meeting, the House of Delegates adopted a resolution<sup>5</sup> offered by the Peace and Law Committee that the Committee and the Section bring to the House of Delegates for consideration proposed Constitutional amendments addressed "to the following ideas": (1) that the Constitution be amended so as to provide that a treaty shall not become the supreme law of the land upon ratification except to the extent thereafter made so by Act of Congress; (2) that the Constitution be amended to provide that in legislating to give effect to treaties Congress shall enact no law not otherwise authorized by the Constitution; and (3) that the Constitution be amended so that the basic structure of the United States Government could not be abolished or altered by any treaty or executive agreement.

The Section Committee on Constitutional Aspects also reported in September 1950 and its recommendations, approved by the Section, were transmitted to the House of Delegates. The Section recommended in substance that every multipartite agreement to which the United States became a party in social and economic areas should contain an article, or be ratified with a reservation or understanding, that

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5. See 36 A.B.A. J. 359.



would provide in substance that the treaty would not be self-executing or become part of the domestic law of any contracting party unless implemented by domestic legislation and that the respective constitutional powers of state and federal authorities in federal states should not be deemed to be affected by the enactment of an international agreement. The Section further recommended that the House of Delegates direct that the above proposal be made the subject of a joint report by the Peace and Law Committee and the Section. Mr. Stassen emphasized to the House of Delegates the Section's view that there should not be a constitutional amendment of the treaty power because without something like the present constitutional provision (Article VI), the treaty-making power of the Federal government would come to a halt.<sup>6</sup> The Section's foregoing recommendations were adopted.

Thus the studies by the Peace and Law Committee and the Section continued "conjointly" and separately. The Peace and Law Committee continually emphasized the need for a constitutional amendment; the Section continued to oppose any constitutional amendment, believing that other available remedies short of such an amendment were preferable.<sup>7</sup> The Peace and Law Committee and the Section were nonetheless able to agree that the best international approach to the protection of human rights would be by way of an investigatory and advisory procedure such as that of the International Labor Organization rather than by way of legally binding multipartite treatments. At its Midyear Meeting on February 26, 1952, the House of Delegates approved such a recommendation.<sup>8</sup>

At the same meeting of the House of Delegates, however, the Peace and Law Committee proposed the following resolution:

RESOLVED, That the American Bar Association recommends to the Congress of the United States for consideration an amendment to the Constitution of the United States in respect of the treaty-making power, reading as follows:

"A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law of the United States only through legislation by Congress which it could enact under its delegated powers in the absence of such treaty."<sup>9</sup>

This Resolution was adopted over the strenuous objection of the Section. The Section took the position that the first sentence of the proposed amendment was a restatement of existing law and therefore unnecessary and that it was laden with the risks inherent in repetitive efforts to say the same thing in different words. The Supreme Court had several times indicated that a treaty provision conflicting with the Constitution should not be given effect as domestic law.<sup>10</sup>

6. See 36 A.B.A. J. 360.

7. Section of International and Comparative Law, PROCEEDINGS, 1951, at 9 and 36; PROCEEDINGS, 1952, at 9-11.

8. See 38 A.B.A. J. 434-5.

9. *Id.*

10. Cf. American Bar Association, REPORT OF THE SECTION COMMITTEE ON CONSTITUTIONAL ASPECTS OF INTERNATIONAL AGREEMENTS (referred to as the 1953 REPORT), pp. 6-13.

Of even more importance, the Section contended that the second sentence would seriously handicap the United States in making treaties with other nations because it would restrict the federal government's power to enact implementing legislation to the legislative powers expressly delegated to Congress by the Constitution, thus making the acquiescence of the legislatures of the several States necessary to effectuate many types of international agreements, including those dealing with such fundamental matters as friendship, commerce and navigation, narcotics control, and international control of atomic energy.<sup>11</sup> In the words of Ross L. Malone, Jr., the proposed amendment would "completely divest the Federal Government of the power which it has had for 165 years to negotiate treaties with other countries."<sup>12</sup>

In the course of the debate over the Bricker amendment great concern developed over the executive branch making important nonstatutory international executive agreements without submitting them to the Senate as treaties. Executive agreements had previously not attracted much attention.<sup>13</sup>

After the House of Delegates in February 1952 adopted the view of the Peace and Law Committee that only a constitutional amendment could successfully calm its fears of treaty law, the Committee turned its attention to executive agreements and the Annual ABA meeting in September 1952, over the vigorous opposition of the Section, persuaded the House of Delegates to adopt a resolution recommending another amendment of the Constitution. This further amendment read as follows:

Executive agreements shall not be made in lieu of treaties. Congress shall have power to enforce this provision by appropriate legislation. Nothing herein shall be construed to restrict the existing power of Congress to regulate executive agreements under the provisions of this Constitution.<sup>14</sup>

Successive versions of the Bricker amendment, except for the Knowland substitute, included restraints on the power of the executive branch to made executive agreements.

In September 1952 the Section sought to put the American Bar Association on record as opposing the Bricker amendment, including the executive agreement

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11. *Id.* at 3-4.

12. See 38 A.B.A. J. 435.

13. Executive agreements have been defined to include "every agreement and understanding, formal and informal, made by any official of the executive branch with any foreign power or international organization and not submitted to the Senate as a treaty." 1953 REPORT at 24-25. About 1,527 such agreements had been published in State Department publications from 1925 to January 20, 1953. Some 1,139 of these were so-called statutory executive agreements entered into pursuant to legislative direction or authority within the precise framework of legislation or treaty. *Id.* at 26. However, most of the remaining 388 nonstatutory agreements were routine and dealt with matters of minor interest, but there were also some very important ones such as the Yalta agreements, which had not only been negotiated and entered into without benefit of Congressional authority but had been kept secret wholly or in part as to their content for substantial periods of time.

14. See 38 A.B.A. J. 1069, 1070.

amendment. A portion of the 1953 Report was a thorough analysis of the executive agreement problem. While agreeing that some form of constitutional amendment dealing with executive agreements might be desirable, the Section believes that the proposed language had not accomplished its purpose and that any proposed amendment on the subject should be drafted with the utmost care. It called for further efforts to deal with the problem, but emphasized that the proposed executive agreement amendment "would in fact subordinate to the authority of Congress all power of the President not only over all executive agreements but also potentially over the entire conduct of foreign relations."<sup>15</sup> The Peace and Law Committee argued that since the Resolution adopted in February 1952 related only to treaties, this proposal for the regulation of executive agreements by Congress was necessary to prevent limitations on treaty law from being avoided by the use of executive agreements.

On February 7, 1952, fifty-six members of the United States Senate proposed an amendment to restrict both treaties and executive agreements.<sup>16</sup> This amendment and subsequent resolutions became known as the Bricker Amendment because Senator Bricker was its sponsor, even though former ABA President Frank Holman and the Peace and Law Committee were the moving spirits. Hearings were held before a subcommittee of the Senate Judiciary Committee. However, since the House of Delegates had rejected the position of the Section against a constitutional amendment it could not appear at the hearings. All members of the Peace and Law Committee appeared and testified in its favor. There were, however, enough witnesses against the proposed amendment, including former Section Chairs Turlington and Tillett in their individual capacities, to make it clear that, although the ABA through its House of Delegates had recommended a constitutional amendment, there was significant dissent within the ABA. The second Session of the 92nd Congress adjourned without taking any action even though the Judiciary Committee voted 10-5 in favor of the Bricker amendment.

In January 1953, as the first Session of the 83rd Congress opened, a revised form was introduced as S.J. Resolution 1. The national debate had become more intense as the time neared for further hearings and the Senate vote. Even President Eisenhower entered the fight on July 22 with the following statement:

I am unalterably opposed to any amendment which would change our traditional treaty making power or which would hamper the President in his constitutional authority to conduct foreign affairs. Today, probably as never before in our history, it is essential that our country be able effectively to enter into agreements with other nations.

As President I have taken an oath to defend the Constitution. I therefore oppose any change which will impair the President's traditional authority to conduct foreign affairs. Senator Wiley [with whom the Section worked closely] and others who have joined in the defense of these constitutional powers so important to the integrity of our nation are entitled to commendation and support for their efforts.

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15. 1953 REPORT at 28.

16. S.J. Res. 130, 82d Cong., 2d Sess. (1952).

On the same day Senator Knowland introduced a substitute amendment which met some of the Section's objections, especially by omitting any provision dealing with executive agreements. President Eisenhower gave this his "unqualified support." Senator Bricker, however, refused to accept the substitute, and Congress adjourned on August 4, 1953, without taking any action.

At the September 1953 ABA Annual Meeting the Section distributed its outstanding, exhaustive thirty-seven page report and presented two Resolutions on the Bricker amendment. The first would have put the Association on record as opposing the amendment and the second called for extensive further study and debate of the proposal to amend the treaty power in view of the Knowland substitute, which had only recently been submitted. Judge John J. Parker, the distinguished Delegate of the Section, made the lead argument for the first resolution.<sup>17</sup> There was a long and somewhat bitter debate, but the Section's resolution lost 117-33. The second resolution carried.

The position of the Section as presented to the House of Delegates was the result of a searching debate at the Section's August 25, 1953, meeting, which culminated in a 64-14 vote against the Bricker amendment. Among the speakers against the amendment were Professor Arthur E. Sutherland of Harvard Law School, Justice James Brand of Oregon, Judge John J. Parker, and Whitney Harris of Dallas. Among the speakers for the amendment were Otto Schoenrich of New York and George Finch of Washington, D.C. (a member of the Peace and Law Committee).<sup>18</sup>

After the defeats in the ABA House of Delegates, many of the Section members who had opposed the Bricker amendment joined with others in forming the nationwide Committee for the Defense of the Constitution by Preserving the Treaty Power (the Corwin Committee), and they continued their opposition even more vigorously. Voting in the Senate began on February 15, 1954, and ended on February 25, with a final tally for sixty in support and thirty-one against, only one short of the necessary two-thirds vote. The Committee on Peace and Law then ceased most of its efforts and the movement for a constitutional amendment died.

The Section's responsible, persistent, and knowledgeable advocacy of its position over a period of several years played no small role in preventing a Constitutional amendment that would have impaired seriously the treaty-making power of the federal government.

*[Editor's Note: Victor Folsom's description of the Section history during the period 1954-69 follows.]*

For many years, prior to the war, the Section maintained a balance between comparative law and international public law. By 1954 this had shifted and nine-

17. See 39 A.B.A. J. 1034, 1035.

18. Section of International and Comparative Law, PROCEEDINGS, 1953, at 19.

teen committees were dealing with public international law while only ten comparative law committees existed.

In 1954 the Section conducted several panel discussions on the possible revisions of the United Nations and meetings on this subject were held in Chicago and Atlanta. A meeting was also held in Portland, Oregon, to discuss the legal problems of the St. Lawrence Seaway. Canadian and American lawyers attended.

As a result of the introduction of a bill to return all enemy property, a special committee was appointed by the Council to report on the return of alien property. It recommended that a committee be established to make a comprehensive report and review of the settlements made by the warring powers as well as the position taken by the ABA. It was pointed out that the matter had been settled by law in 1948 and by agreement with the German government, which promised to compensate its citizens in return for the United States agreement not to ask for reparations. The bill provided not for the return of the value of the property vested by the United States but for its value in 1954, thirty times its value at the time of vesting. This subject would occupy the Section for several years. It was the subject of a debate and subsequent vote by the members of the Section, probably unique in its history. The vote was approximately three to one against the return.

In 1956 the Section held a meeting in New Orleans. Three law schools collaborated in an excellent discussion which contrasted civil and common law principles.

For many years a committee of the Section prepared a comprehensive report on International Law in the Courts of the United States. This, together with the annual reports of the Committee on Teaching International Law, proved to be valuable tools and resulted in more professors joining the Section. This sometimes resulted in debates in the House in which Section members were referred to as a "bunch of fuzzy-headed professors." This was long before we had arrived at that exalted status.

The 1955 *Proceedings* contained four excellent articles on the United Nations, its activities, and its Charter.

While 1955 had been a busy year for the Section and Council, the year 1956 proved even more active. The Chair reported that he had written more than 1,500 letters for the Section. He recommended that the Section adopt some method by which the Chair could be relieved. He also recommended that some better way of communicating with the members of the Section be adopted. It was proposed that a quarterly bulletin be published to improve general communication and allow for some publication of outstanding articles and reports.

In 1956 an extensive study was started to review the administration of the Section. Divisional Vice Chairs were established for the year 1957-58. Six meetings were held in 1957, culminating with a joint meeting with the Institute of Advanced Legal Studies of the University of London. This first overseas meeting of the Section was an extraordinary opportunity to meet with our fellow students

of international law. A "debate" on the Extraterritorial Application of Antitrust Laws was the principal theme of the day, and we were hard-pressed to defend our practices in the United States. This discussion was followed by papers dealing with the criminal jurisdiction of the status of forces of parties to NATO, then the subject of much discussion in the international bar. We met with the Inns of Court and were served British "hot dogs" by the Queen.

The first issue of the Section's *Bulletin* appeared in May 1957. From its modest beginning of twenty-four pages to its last sixty-page issue in 1966, it served the Section very well. Its two editors deserve our gratitude. The last issue contained a description of *The International Lawyer*, which was to appear in the fall. The Section's publication has lived up to the promise forecast in the *Bulletin*.

In 1958, the Council continued to refine the administrative structure of the Section. Three Divisional Vice Chairs were appointed. Because the Section Delegate had been unable to attend, the advisability of appointing an alternate Delegate to the House was considered. The Committee appointed to study the matter later recommended against the idea because the House welcomed reports from the Section Chairs. It was pointed out that experience in the House was important to the proper management of our affairs there. This could only be gained by frequent defeats one had to take in the House.

The problems of outer space occupied much of the Section's attention. The 1959 *Proceedings* contained excellent reports on the Berlin Crisis, the need for a United Nations Police Force, and reports from three foreign countries on administrative decisions. A symposium of various aspects of litigation in foreign countries was presented and published.

The Committee on International Control of Atomic Energy published an extensive report on the subject of its field.

Several of the committee reports provoked minority reports, which were uncommon in our history to that date. In 1960, the Section has 1,435 members. The Committee on the Connally Amendment was reactivated. The Section's original opinion on the subject was reprinted, together with a supplement to bring the matter up to date. The Section had forty committees, perhaps the most up to that point in time.

A regional meeting was held in Portland, Oregon. The Connally Amendment was again the main subject of debate.

Together with the Antitrust Section, the Section held a symposium on the foreign application of antitrust laws. Speakers from England, France, and the United States spoke.

In 1961, the Section presented a panel discussion on the future of the United Nations. This came at a time when there was talk about its failures. Four different lawyers spoke on the subject. The Assistant Secretary of State entitled his address "The Road Around Stalemate" and expressed great optimism as to the future of the United Nations. All of the speeches were printed in the 1961 *Proceedings* and make most interesting reading in view of the past thirty years. The committees

of the Comparative Law Division published reports that were of much use to the practitioner. A good balance between private and public law was maintained by committee reports.

During the 1960s, the Section was successful in getting the House of Delegates to adopt most of its recommendations. In 1962, the Committee on Peace and Law Through the United Nations proposed that the ABA appoint an observer to the United Nations. The Section had recommended that to the ABA for more than six years. In making the announcement about the action of the House, the Section Delegate mentioned that he had been a member of that Committee for more than a year. He did not repeat the adage "If you can't beat them, join them."

Substantial amendments to the Section's bylaws were made. More than forty committee reports were published in 1962. The Committee on War Claims continued to study the problem but recommended that the Committee be reduced in size, a most unusual request. Between the *Proceedings* and the *Bulletin*, the members were informed of Section activities.

In 1963, the Section's forty-five committees produced nearly fifty reports. The European Law Committee submitted seven reports. The *Proceedings* was now 339 pages long. It was apparent that a review of the Committee structure was needed. Among the noteworthy articles was a scholarly one by Ruth Ginsburg, who had become active in the Section.

At the Annual Meeting in 1963, the Section paid homage to Dean Wigmore. Two former students, Justice Goldberg and our Chairman Harry LeRoy Jones, spoke affectionately of Wigmore and his accomplishments. We learned more about the organization of the new Section than this writer had been able to dig up from the records. Among other things, Jones stated Wigmore "conceived the idea of merging the Committee on International Law and Bureau of Comparative Law into a Section, making it a dynamic, democratic organization in the main stream of the Association's activity." After the "slings and arrows" that the Section had suffered through the years, perhaps the Section deserved this new description. The Chief Justice of Japan also spoke of Wigmore and his three years in Japan where he helped establish the teaching of international law.

James Oliver Murdock's excellent article on the Section, published in the July issue of the *Bulletin*, added much to our knowledge of Wigmore's "amalgamation."

The *Bulletin* initiated the practice of publishing brief notes of committee reports. Twenty-two such notes were prepared that year. They served to keep the members aware of the type of work the committees were doing. The Committee on the United Nations published an interesting report on civil rights and the legal effect of Assembly resolutions. Section members actually working on committees were at a record high.

The filing of the Section's *Sabbatino* brief was perhaps the highlight event of 1963. The incoming Chairman and retiring Editor of the *Bulletin* (Max Chopnick) wrote an excellent review of the progress of the Section in 1963. He quoted from

the operetta *H.M.S. Pinafore* on “polishing up the handle of the big front door”—a reference to the *Bulletin*, which had truly achieved eminence under his guidance.

In 1964, the Section sponsored a Symposium on Peace and Law Through the United Nations. It was cosponsored by the committee with that name. Some seven speeches were presented, and the failures and successes of the organization were reviewed. The differences between the Section and the Peace Committee were at long last disappearing.

The *Bulletin* printed my speech on the Alliance for Progress. It was perhaps noteworthy for the publicity it received. One Houston newspaper reported “Folsom blasts Alliance,” while another said I supported it. I thought I “hailed” it.

As a result of Castro’s aggression in several countries, the Section called on the OAS to take action against Cuba. It did.

The Section adopted a new manual that assisted the committees in preparing reports for the ABA House.

Five addresses by eminent authorities in Latin America were made to the Section. It was sort of a Latin American year. Two ABA Presidents attended Inter-American Bar Association meetings. The same might be said for “fish” because the Committee on International Fisheries produced four excellent reports.

The Committee of the Law of Outer Space prepared a concise report on developments in the United Nations. It received additional notice when it was printed upside down in the *Proceedings*. Perhaps some proofreader felt the subject deserved that sort of gravity approach. Two other matters got the same treatment, so perhaps the proofreader was simply spaced out. One committee produced eleven separate reports so again we had more reports than committees. They were all good reports, and worthy of publication in legal journals.

In the March 1964 issue of the *ABA Journal*, the President’s Page was entirely devoted to the history and activities of the Section. More former ABA presidents were joining us and becoming active in international matters.

The Section devoted much of its time in 1965 to Latin America as well. The Spring Meeting was held in San Juan during the joint meeting of the Fourteenth Conference of the Inter-American Bar Association, the First Judicial Conference of the Americas, the ABA Governors Meeting, and the ABA Regional Meeting.

The Chairman prepared a consummate report that was published in the July 1965 *Bulletin*. Among the speakers were Dr. A. Broches, General Counsel of the World Bank and the Honorable Sean MacBride, Secretary General of the International Commission of Jurists. A number of panels on subjects involved in Latin America were presented. A program on space law was aired at the Annual Meeting. “Legal Phases of the Western Hemisphere” was the subject of our Annual Breakfast. The Chair was pleased to note that the Section had sponsored many programs with other sections and committees of the ABA.

President Johnson proclaimed 1965 as International Cooperation Year while Law Day was established as an annual event.

The transition of the *Bulletin* and the *Proceedings* into *The International Lawyer*



in 1966 was smooth and efficient. Chairman Re prepared thorough reports in the publications to keep everyone informed. The last issue of the *Bulletin* carried an incisive article on Human Rights and the United Nations by John Carey. *Sabbatino* was revisited to note that the courts were cleaning up much of the damage done to international law by the decision.

The 1966 meeting of the Section was held in Montreal. The ICI SW African case was debated and later published in *The International Lawyer*. The high standard set by the first issue of the journal has been maintained throughout its existence. It covers both international public and private law while concentrating on matters of practical importance to the international practitioner.

In 1966, the Section presented an important report urging that the United States establish an Institute of Aerospace Law. This was adopted by the ABA and served to promote the development of international aerospace law.

In 1967, the Section was finding itself in need of funds to support *The International Lawyer*. A corporate rate was established, and contributions of \$2,000 were made by members. The Section received authority to raise its dues to \$10. It also received authority to hold meetings outside the continental limits of the United States. The Section held its first National Institute during this year. The Section presented an amicus curiae brief in the continuing saga of the *Sabbatino* case. The appendix to the brief was printed in *The International Lawyer* and constituted an "A to V" list of countries that condemned confiscation of private property.

In 1967, the Section devoted much of its time to the United Nations human rights conventions. While there was dissent to the effect that such conventions infringed upon domestic matters, in general the Section supported them all. After much debate in the House of Delegates, the Section's recommendations were all approved. The Convention on Forced Labor was not included among those adopted.

The Section had 3,475 members at the end of 1967. In 1968, the Chairman reported that important problems then under consideration were jurisdiction of the seabed beyond the continental shelf, the Draft Convention of the Law of Treaties then being prepared by the International Law Commission, Antitrust Laws affecting foreign trade and investment, and liaison with state and local bar associations. These latter organizations were expanding into international law.

The Section opposed the Madrid trademark registration proposal. All of the matters mentioned by the Chair were followed up by reports from committees in 1968.

The 1968 meeting of the Section was addressed by Dean Acheson who titled his speech "The Arrogance of International Lawyers," one of his favorite subjects. It contained some sobering thoughts and good advice. The Committee on the Law of Outer Space produced an outstanding report on its subject matter.

Much of 1968 occupied the Section with United Nations matters, including Seabed and Ocean Floor, the Deep Sea, and the jurisdiction limits of continental shelves. Former Chair Barrett carried us from Jonesboro, Arkansas, in "From Main Street Across the Seas" in a most thoughtful talk, one that every aspiring international lawyer should read.

The right of United States lawyers to practice in foreign countries had occupied the attention of the Section for several years. We had been advising clients on foreign law for many generations. Studies of the laws and practices of foreign countries were made, including those of states within the United States.

As one muses on where the dollar went, your historian noted that the hotel rates for the 1968 Annual Meeting were from \$11 to \$22 for a stay at one of the leading hotels in Dallas. The registration for the meeting was \$35. Membership in the Section was about 3,500, and it was reported that 43 percent of the members came from California, New York and the District of Columbia.

The theme of the 1968 year was Antitrust Development 1955-1968. Several programs on this subject were presented. The Attorney General's National Committee Report provided a foundation for the Section's programs.

In 1969, the Chairman was able to report that the Section was in good financial condition. This was a new and novel situation. However, membership continued to be a problem. While 900 new members joined the Section during the year, about 750 dropped out.

During the 1969 year, the Section joined with other sections in making recommendations to the ABA House. It also encountered more conflict with other sections than had occurred previously. Some seven items were reported on by the Section Delegate. Due to the efforts of the Chairman and the Section Delegate, all of the conflicts with other sections were resolved amicably.

In 1969 the Section urged the ABA to support the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, adopted by the Hague Convention. The Section was successful in its efforts.

## Section History, 1970-71\*

EWELL E. MURPHY, JR.\*\*

As the Section entered the 1970s, it continued to maintain its traditional orientation toward public international law. The Division of International Law was the lead division in the Section. The Division of International Organizations showed

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\*The Section Histories covering the years 1970-1993 were edited by Edison W. Dick, who is an attorney in Washington, D.C. and a member of the Section of International Law and Practice for approximately twenty-five years. He has served as Secretary, Committee Chair, and Council member. Since 1976 Mr. Dick has served as Attorney-Consultant to the Section and since 1979 as Executive Director of the Section's International Legal Exchange (ILEX) program.

\*\*When Ewell E. (Pat) Murphy became Section Chair, he was a partner of Baker and Botts in Houston and head of the firm's International Department. His practice focused on international business transactions. Presently retired from the active practice of law, Mr. Murphy is a visiting professor at the University of Texas Law School.

the Section's preoccupation with the new public international law institutions that followed World War II. The Division of Comparative Law remains as it is today. There was also a Division of International Trade and Investment, which now has become the Division of Business Law.

The articles in *The International Lawyer* were much more traditional than they are today, focusing primarily on topics of public international law and comparative law. The Section became very involved in the United States' invasion of Cambodia and organized a committee led by a later Section Chair, Richard Brown, in an attempt to stir up indignation on the subject.

There was a successful movement to change the Section's name from "Section of International and Comparative Law" to "Section of International Law." This was an attempt to become more relevant to the new world of transnational business.

The 1970-71 major National Institute for the Section was on a topic then viewed as the cutting edge of transnational law practice, "Doing Business in Europe." In order to practice what we preach, the Annual ABA Meeting was held in London, where ABA members attended an opening meeting in Westminster Hall and (attired in rented morning coats) an elegant garden party at Buckingham Palace. They were charmed by the beautiful city. It was a grand way to enter the new decade.

## Section History, 1971-72

HARRY A. INMAN\*

The Section's famous War Powers Study was inaugurated in 1971. On July 7, 1971, the House of Delegates of the ABA adopted a Resolution calling for a study "on the respective powers under the President and of Congress to enter into and conduct war." Chair Inman appointed a committee to make this study and designed Lyman Tondel as its Chair. Emphasis in the study was to be placed on the allocation of powers relating to the conduct of foreign affairs and the power to cause or initiate hostilities with other nations. The study took several years and resulted in three volumes. The first volume was published in 1976. The study was conducted under contract with Columbia University with Professor Abraham D. Sofaer as Director. Professor Sofaer later became Legal Adviser to the U.S. State Department.

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\*Harry A. Inman is a partner of Patton, Boggs & Blow. He has represented clients in corporate, litigation, contractual and administrative regulatory matters with United States Government agencies on both domestic and international matters. A great deal of his legal practice has been concentrated in Mexico. In addition to serving as Chair of the Section of International Law and Practice, Mr. Inman served as Chair of the ABA Standing Committee on World Order Under Law and as a member of the ABA House of Delegates. He also is a member of the Council of the Inter-American Bar Association.

In 1972 the Section sponsored two very successful National Institutes. The first on Current Legal Aspects of Doing Business with Sino-Soviet Nations was chaired by Jim Haight and the second on Current Legal Aspects of Doing Business in the Far East chaired by Dick Allison. Both Messrs. Allison and Haight were to become Section Chairs, proving that leadership of successful National Institutes leads to bigger and better things.

In 1972 the Section newsletter, now known as *International Law News*, was inaugurated. James C. Tuttle was its first organizer and editor.

During his tenure as Chair, Harry Inman attempted to involve more women in the Section and encouraged them to become more active in the work of committees and in leadership roles. A questionnaire was sent to all women members of the Section but the response was generally that most of these members were too busy being a lawyer, mother, and wife to become more deeply involved in Section activities. How times have changed!

## Section History, 1972-73

BENJAMIN BUSCH\*

To illustrate this point, in late 1972 the Section gained its 5,000th member, and she was a law student. A photograph of this member, Jane C. Norwin of California, a first-year student at the Loyola University Law School in Los Angeles, was featured prominently in Section publications. It was also decided at the 1973 Midyear Meeting that the membership fees for law student members be reduced from \$5 to \$3.

The financial condition of the Section in January 1973 was noteworthy. At that time, the Section maintained a reserve of \$47,000. Projected revenues for 1972-73 were \$77,000 and expenditures were approximately \$75,000. The growth in the Section is demonstrated by the fact that in the next twenty years, the annual budget would grow to \$1.25 million.

In 1973 the Section bylaws were amended to provide for membership on the Council of the Legal Adviser of the Department of State as well as the Editor-in-Chief of *The International Law News*. Also at the Midyear Meeting in 1973, the Council decided to establish two new committees: the Committee on International Labor Law and the Committee on International Consumer Law.

Important Resolutions that the Section considered at its Midyear Meeting in 1973 included one concerning the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, and Other Gases and Bacteriological

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\*When Benjamin Busch became Chair of the Section in 1972, he was a partner in the New York City law firm of Katz and Sommerich. His practice focused on international litigation primarily at the appellate level. Mr. Busch died in 1989.

Methods of Warfare (which was referred to the Committee on International Law and the Use of Force). The Section also gave its support to the draft convention for the Prevention and Punishment of Certain Acts of International Terrorism adopted by the United Nations in 1972.

## Section History, 1973-74

DONALD K. DUVALL\*

Section membership continued to grow by leaps and bounds. In 1974 Section membership grew from 5,624 to 6,589, a 12 percent increase. This increase in membership and resulting productivity caused a budget deficit for the year. It also necessitated the publication of a Section Directory for the first time. Accordingly, Chair Donald Duvall appointed a budget officer for the first time to prepare and administer an annual Section budget. In addition, the Section took its initial foray into the outside funding arena. Chair Duvall appointed a coordinator for grants and financial support, responsible for preparing grant applications to outside foundations and other funding agencies and supervising the administration of all grants to the Section. Contemporaneously with this effort, the Section was designated as the beneficiary of approximately \$3,000 per year under the Morris Trust to promote international legal exchanges and related activities.

As usual, the Section was busy in the House of Delegates. At the Midyear Meeting, the Section sponsored a Resolution calling upon all trading nations to ratify, or accede to, the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards as well as a Resolution supporting development of international rules and procedures to supplement the arbitration rules of the United Nations Economic Commission for Europe. Both these Resolutions were adopted. The Committee on Commercial Arbitration and Conciliation of Investment Disputes, the Chair of which was future Section Chair Aksen, was active in preparing and presenting Council approved Resolutions promoting international arbitration to the House of Delegates. The Committee also was responsible for organizing and presenting a program on the peaceful resolution of international economic disputes at the 1974 Annual Meeting in Honolulu, Hawaii. The Section also sponsored a Resolution opposing congressional legislation that would restrict travel by United States citizens to foreign countries.

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\*Donald K. Duvall was a federal administrative law judge when he was elected Chair of the ABA Section of International Law in 1973. Previously, Mr. Duvall served in a number of positions with the U.S. Department of State, including the Office of the Legal Adviser. Following his service as Section Chair, Mr. Duvall became Chief Administrative Law Judge of the U.S. International Trade Commission, from which he retired in 1984, when he joined the law firm of Kenyon and Kenyon, specializing in the trade aspects of intellectual property law.

The Section also continued to be active in the continuing legal education field and sponsored two very successful National Institutes. The first dealt with customs, tariffs, and trade, and the second focused on legal aspects of doing business in Africa. Approximately 150 lawyers attended each Institute, and the second Institute was published as a successful Section monograph.

The Committee on Relations with Lawyers of Other Nations was active in institutionalizing the ABA International Legal Exchange (ILEX) program. Funding for the ILEX program was derived from the U.S. Department of State, the General Practice Section, and the American Bar Endowment as well as a modest contribution from the Section. This Committee organized a briefing trip to the Soviet Union (Moscow and Leningrad) in 1973 for 252 ABA members and their spouses. This successful briefing trip, including a joint seminar on international trade, provided impetus for production of a U.S.-U.S.S.R. trade manual and U.S.-Soviet agreement for an initial exchange of lawyers in cooperation with the Association of Soviet Jurists.

At this same meeting in Honolulu, the House approved a Section Resolution urging that the United States vote against the United Nations Charter of Economic Rights and Duties of States as long as the Charter did not provide that states must act in accordance with international law. The United States Government followed the ABA Recommendation.

## Section History, 1974-75

JAMES T. HAIGHT\*

During the mid-1970s, the Section's ever expanding activities were carried on by sixty committees organized into five divisions, each headed by a Section Vice Chair. Thirteen committees comprised the International Law Division, fifteen were in the Comparative Law Division, eight within the International Trade and Investment Law Division, five in the International Organizations Division, and nineteen committees in the General Committees Division.

The Section continued to be very busy in the House of Delegates. At the Association Midyear Meeting in 1975, the House adopted several Section

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\*James T. Haight started his law career by practicing antitrust law in Washington, D.C., with Covington & Burling for five years. He became chief counsel for the Goodyear International Corp., a subsidiary of Goodyear Tire & Rubber Co., in Akron, Ohio. Mr. Haight became active in the Section in 1956, was named Chair of the Section's Committee on International Trade and Investment, and started several seminars in international law. He was elected Divisional Vice Chair of the Section and named Chair-Elect and Section Chair in 1974. Mr. Haight worked with Thrifty Corporation as senior vice president, chief corporate counsel, and secretary until 1992. He is now Special Counsel to the company.

Recommendations. One urged early Senate ratification of the Treaty between the Swiss Confederations and the United States on Mutual Assistance in Criminal Matters. A second initiative supported U.S. adherence to the Hague Convention abolishing the requirement of legalization for foreign public documents. The House also took a historic step at the meeting by approving the Section's Recommendation to affirm the need for an independent judiciary and the independence of lawyers throughout the international community as well as expressing ABA concern toward reported threats to such independence of lawyers in a number of foreign countries. This Resolution was the forerunner of the ABA "Rule of Law" Resolution adopted the following year, which authorized the ABA president to bring to the attention of the United States and foreign governments the concerns of the ABA regarding violations of the independence of judiciary and allegations of persecution of lawyers because of their representation of unpopular clients.

At the Association's Annual Meeting in 1975, the ABA Assembly and the House of Delegates adopted a Section-supported Resolution whereby the United Nations Charter would be interpreted to prohibit expulsion of any member of the United Nations except through joint action by the Security Council and the General Assembly. This Resolution was intended to assist United States efforts on behalf of Israel and other nations threatened with political retribution by the General Assembly.

The Section presented two National Institutes in early 1975. The first, held in San Juan, was on Customs, Tariffs, and Trade. The second, in Washington, D.C., was entitled "East-West Investment" and examined the changing economic and legal environment in Eastern Europe. This National Institute obviously provided important information leading up to the momentous events in Eastern Europe fifteen years later.

The 1975 Annual Meeting was held in Montreal in August. This was the first ABA-wide meeting to be held in Canada and was cosponsored by the Canadian Bar Association. Chair Haight welcomed the Canadian Bar guests in a bilingual opening address. The meeting appropriately featured programs on "Foreign Investment in Canada," "Practical Aspects of Doing Business in Canada," and "International Estate Planning." The Section also presented an ABA Presidential Program on U.S.-U.S.S.R. aerospace law developments at which American astronaut Alan Bean was a featured speaker.

Some of the important new publications by the Section in 1974-75 included *Commercial Treaty Index*, *Business Transactions with the U.S.S.R.*, *Current Legal Aspects of Doing Business in Black Africa*, and *Multinational Corporation Checklist for Subsidiaries*.

Section membership continued its remarkable growth. As of June 30, 1975, there were 6,748 members, including 5,383 lawyer members, 1,314 students, and 51 associate members. Total membership had almost doubled since 1970, outdistancing the rate of growth of the Association as a whole.

For the first time, the Section operated on a budget in excess of \$100,000, and all members received a complete financial Report for the preceding year. It was decided to increase the Section dues to \$15 per year, effective July 1, 1976.

## Section History, 1975-76

RICHARD P. BROWN\*

To keep track of the ever expanding Section programs and projects, the Council voted in spring 1976 to create the Long Range Planning Committee (which replaced the Policy & Planning Committee) chaired by the Chair-Elect and an Administration Committee chaired by the Chair and consisting of the Chair-Elect, the Divisional Vice Chairs, the Secretary, and the Budget Officer. The task of the Long Range Planning Committee was to make Recommendations concerning the allocation of Section financial resources and restructuring of divisions and committees. The role of the Administration Committee was to handle routine administrative matters, thereby allowing the Council to confine itself to dealing with substantive and policy matters.

In the following year, the Section was reorganized along functional lines. Its thirty-eight committees were divided into five divisions: General; Comparative Law; International Law; International Organizations; and International Trade and Investment—each headed by a Divisional Vice Chair. The Section also launched a new concept when it sponsored the first regional luncheon of committee chairs in February 1977.

The Section continued to develop Resolutions in important public policy areas at the ABA Midyear Meeting in Philadelphia. The House of Delegates approved a Section-sponsored Resolution dealing with the subject of executive agreements. In this Resolution, the Association stated its opposition to the enactment by Congress of legislation that would authorize the veto of executive agreements by resolution and also undertook to further define the phrase “international agreement” in the Case Act. This Resolution was adopted by a voice vote.

Clearly the most important Resolution adopted in Philadelphia was the House of Delegates urging the United States to ratify the United Nations Convention

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\*When Richard P. Brown became Chair of the Section in 1976, he was a senior member of the litigation section of Morgan, Lewis & Bockius in Philadelphia, engaged primarily in the defense of corporate civil cases. In addition to serving as Section Chair, Mr. Brown was a member of the Executive Committee of the World Peace Through Law Center; Chair of the World Affairs Council of Philadelphia; and a member of the Board of the International Peace Academy. Mr. Brown currently is Counsel to Morgan, Lewis & Bockius, but no longer practices law actively. He is a member of the Board of Trustees of the University of Pennsylvania and the Council on Foreign Relations.



on Genocide. The Section finally succeeded in persuading the House of Delegates to vote to reverse twenty years of opposition to this Convention. The House of Delegates had previously opposed supporting conventions of this nature. Section Delegate Harry Inman was able to obtain support letters from the Departments of Defense, Army, Air Force, and Navy, which tipped the balance in favor of ratification. Chair Brown spoke eloquently to the House noting that since the ABA was meeting in Philadelphia, the City of Brotherly Love, where both the Declaration of Independence and the Constitution were created and adopted, it would be particularly appropriate for the Association finally to urge ratification of the Genocide Convention. This eloquent plea finally prevailed. Furthermore, this signaled a change of attitude in the House of Delegates which, at the behest of the Section, has supported numerous United Nations human rights conventions since that time.

At the Annual Meeting in Atlanta, Resolutions were submitted by the Section concerning the 1925 Geneva Protocol and the 1972 United Nations Convention prohibiting the use of poison gas and bacteriological warfare. The Section also proposed the establishment of an International Criminal Court but this was disapproved. This idea was resurrected approximately fifteen years later with considerably more success.

## Section History, 1976-77

RICHARD C. ALLISON\*

In 1977, a number of Resolutions emanating from the Section were approved by the ABA House of Delegates. In one of them the ABA recommended that the United States Senate give its advice and consent to the Additional Montreal Protocol of 1975, thereby amending the Warsaw Convention of 1959 relating to the compensation of airline passengers or their estates for death or personal injury occurring in international air travel. At the initiative of the Section, the ABA also recommended the extension of eight executive agreements between the Soviet Union and the United States which would have expired by their terms in 1977 and 1978.

The Section sponsored two National Institutes during this period. The first was entitled "Current Legal Aspects of Doing Business in the Middle East,"

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\*Richard C. Allison was a member of Reid & Priest from 1955 until 1987. Since 1988, he has served as a Judge, Iran-United States Claim Tribunal. Prior to becoming Section Chair in 1977, he served as Chair and Vice Chair of various Section Committees from 1964 until 1976. He was Chair of the ILEX Committee from 1981 until 1985.

and the second was on the subject of "Current Legal Aspects of Doing Business in Japan and East Asia." Both Institutes were well attended and favorably received. They later resulted in Section publications. The Section also sponsored two very successful one-day workshops on international law and developing countries.

## Section History, 1977-78

HENRY T. KING, JR.\*

During the 1977-78 ABA year (the 100th Anniversary of the Association) there was considerable effort made to involve the student members in Section activities to a greater extent than had previously been done. Under the guidance of the Law Student Division Liaison, Rich Rawson, the Section published for the first time a booklet on *Career Opportunities in International Law* that proved to be an invaluable guide for students who want to specialize in international law.

As part of this effort, the Section, at the Midyear Meeting in Austin sponsored a reception for students at the University of Texas Law School that was very well attended. At the Washington, D.C., Spring Meeting, student members entertained the leadership of the Section at a reception with considerable interchange between the students and practicing lawyers.

*The International Lawyer* was slightly restructured in accordance with Recommendations of a committee chaired by Joseph Griffin. The committee recommended the designation of Frank Ruddy of Houston, Texas, as the new editor-in-chief. In addition, the Council adopted guidelines whereby *The International Lawyer* would focus more on commercial and practical issues than it had in the past.

There were two successful National Institutes held during the 1977-78 year. The Section sponsored the first Institute on "Current Legal Aspects of Doing Business in the European Economic Community." The Section also sponsored an Institute on "International Human Rights Law and Practice."

Section Chair Henry King represented the American Bar Association in the dispute settlement project with the Canadian Bar Association and the first draft Report of the joint working group was published in the summer of 1978.

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\*Henry T. King, Jr., served as former United States Prosecutor at the Nuremberg Trials and as General Counsel of the United States Economic Aid Program. Mr. King is United States Chair of the joint ABA/CBA/Barras Mexicana Working Group on the Settlement of International Disputes. He is currently United States Director of the Canada-United States Law Institute and a Professor of Law at Case Western Reserve University School of Law. He is Counsel to the firm of Squire, Sanders & Dempsey.

In the House of Delegates, the Section's proposal for an International Criminal Court, which had previously been rejected, was reconsidered by the House and approved unanimously. The jurisdiction of the Court would have been over aircraft hijacking and crimes against diplomats and other protected persons. The Section's Recommendation for a U.S. initiative for a dispute settlement procedure under GATT to cover trade disputes was also adopted as was a Section proposal favoring U.S. accession to the Inter-American Convention on International Commercial Arbitration. The Section's Resolution supporting the United Nations Convention Against all Forms of Racial Discrimination was approved by the House of Delegates at the New York Annual Meeting, as was a Resolution endorsing U.S. Government efforts to end secondary and extended secondary (tertiary) boycotts by any nation.

The publications program was operating at full speed during 1977-78. In addition to *Career Opportunities in International Law*, which was noted above, the Section issued the following publications during this year: *Current Legal Aspects of Doing Business in the European Community*; *Current Legal Aspects of Doing Business in Japan and East Asia*; *International Court of Justice Opinion Briefs*; *Proceedings of the National Institute on Human Rights Law and Practice*; and *Report on the Regulation of Foreign Lawyers*.

The Ad Hoc Committee on the Year 2000 was appointed by Chair-Elect Wallace in 1978 to identify and recommend to the Section certain long-range goals to be accomplished. This Committee was chaired by former Section Chair Pat Murphy with Dean Rusk, Monroe Leigh, Victor Folsom, Bill Rogers, and Benjamin Busch as the other distinguished members. Also, the first two Section historians, Victor Folsom and Max Chopnick, were appointed to prepare the history of the Section.

In spring 1978, the Section sponsored the first ABA trip to the Peoples' Republic of China. The Delegation, led by Chair-Elect Wallace, included the Association President, three past ABA presidents, plus the Executive Director of the Association.

## Section History, 1978-79

DON WALLACE, JR.\*

Beginning in 1978, Chair Don Wallace went even further in institutionalizing changes in the way the Section was being administered. The Planning Committee

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\*Don Wallace, Jr., was Professor of Law at Georgetown University Law School and Director of the International Law Institute when he became Chair of the Section in 1978. After his term as Chair, he served in the ABA House of Delegates and was Chair of an ad hoc ABA committee on the Restatement of Foreign Relations Law. He is currently Counsel to the law firm of Sherman and Sterling in Washington, D.C.

was split into two committees—the Administration Committee and the Long Range Planning Committee. The Chair-Elect was designated as the Chair of the Long Range Planning Committee.

The Section sought to have continuity in its leadership positions. Chair Wallace proposed that the Chair, the last retiring Chair, and the Chair-Elect meet periodically. This practice has continued throughout the years. The Section began to hold four meetings a year rather than three. The fourth meeting was used as a retreat for officers and committee chairs.

It was during this year that the Private International Law Award was created for the Section (the name of this prize was changed to the Leonard J. Theberge Award following Len's untimely death in 1983). This Section also fought to preserve the private international law function in the State Department with considerable success.

The publications effort of the Section was promoted during this period. Len Theberge became Chair of the Publications Committee and he was succeeded by Joseph Griffin. Largely due to their efforts, publications became a profit center for the Section. Both National Institutes and smaller workshops were increasingly encouraged.

The International Legal Exchange (ILEX) Committee, which had been an Ad Hoc Committee of the Association, was brought into the Section. The ABA House of Delegates, at the 1978 Annual Meeting, reaffirmed its 1968 Resolution encouraging ABA members to participate in international legal exchange programs and pledged to cooperate with the United States government, the United Nations, foreign governments, and bar associations. The Section's Attorney-Consultant, Edison Dick, was named as the Executive Director of the ILEX Program.

The Section continued to be in the forefront with regard to human rights issues in the ABA House of Delegates. The Section's Recommendations on the United Nations Covenant on Civil and Political Rights and the United States Covenant on Economic and Social Rights were approved at the Midwinter Meeting in Atlanta in February 1979. Earlier, at the behest of the Section, the House of Delegates also gave its support to the Inter-American Convention on Human Rights at its 1978 Midyear Meeting in Dallas.

The Section's Ad Hoc Committee on Human Rights also delivered its Report to the 1978 Midwinter Meeting of the Section in Puerto Rico. This Report was made pursuant to the Rule of Law Resolution under which the ABA protests unlawful detention and violations of human rights to lawyers and judges around the world. The Section also was designated to serve as the ABA liaison with the Geneva Centre for the Independence of Judges and Lawyers.

At the Association's Annual Meeting in Dallas, the Section sponsored two showcase programs which presaged the coming importance of Asia and the Pacific Rim, showing remarkable vision by the Section to be on the "cutting edge." The first program dealt with counselling clients doing business in the Pacific

Basin in the 1980s and the second was entitled "The New Legal Structure of United States-China Relations." The final showcase program sponsored by the Section was entitled "Space, Commerce and the Space Shuttle—Its Development: Legal, Scientific and Practical Implications."

## Section History, 1979–80

LEONARD J. THEBERGE\*

The Section played a major role in a constitutional issue before the United States Supreme Court by obtaining the permission of the ABA Board of Governors to file an *amicus curiae* brief to the U.S. Court of Appeals for the District of Columbia in the Taiwan Treaty termination case. This brief argued, *inter alia*, that under principles of international law applicable in United States courts, the Mutual Defense Treaty between the United States of America and Taiwan became inoperative upon the U.S. withdrawal of recognition from and severance of diplomatic relations with the governmental authorities on Taiwan and that the President of the United States has the authority without congressional approval to acknowledge that a treaty previously ratified with the advice and consent of the Senate has become inoperative under the principles of international law applicable in the United States courts.

In August 1979 the American Bar and Canadian Bar Associations took a historic step by approving and recommending to the attention of the Canadian and United States governments, as a possible basis for negotiation, two important documents: (1) a draft treaty on the regime of equal access and remedy in cases of transfrontier pollution between Canada and the United States; and (2) a draft treaty on the third-party settlement of disputes relating to the interpretation, application, and operation of any treaty in force between Canada and the United States.

This activity resulted from an initiative of the Section of International Law and was carried out for the Section and the ABA by the Section's Legal Agenda for Peace Committee under the leadership of former Chair Henry T. King and Professor Louis B. Sohn.

Section Resolutions also delved into new areas. Together with the Section on

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\*When Leonard J. Theberge served as Section Chair in 1979-80, he was President of the Media Institute, which he founded as a nonprofit research organization to examine media coverage of major political issues. Prior to heading the Media Institute, he founded and served as the first president of the National Legal Center for the Public Interest from 1974 until 1978. He resigned the NLCPI presidency because of ill health, but continued to be involved actively in the Center until his death in 1983. During his service as Section Chair, Mr. Theberge was also a member of the Board of Trustees of the International Law Institute and President of St. Peters College Oxford Foundation.

Natural Resources Law, the Section proposed a Recommendation on a comprehensive Law of the Sea Convention. Another Resolution discussed general principles of international law as applied to the Arctic Region.

The Section was also in the forefront of proposals to deal with international terrorism, a problem that did not gain political prominence until later. The 1980 Resolution supported, *inter alia*, the Bonn Declaration Against Aircraft Hijacking and the Venice Declaration Against the Taking of Diplomatic Hostages.

Upon the initiative of the Section and in accordance with the previously adopted "Rule of Law" Resolutions, the ABA initiated a network of "concerned correspondents." Under this initiative, ABA members write letters as individuals on behalf of foreign judges and lawyers being persecuted for the exercise of their professional duties. This correspondence network is modeled on similar networks established by the National Academy of Sciences and the Legal Committee of Amnesty International. Under this program, individuals are asked to contact foreign government representatives or otherwise call their attention to the plight of individual foreign attorneys and judges being harassed, arrested, exiled, or even assassinated for carrying out their professional responsibilities. The Center for the Independence of Judges and Lawyers is responsible for researching and generating the individual case appeals.

The Section cosponsored with the Section of Litigation in April 1980 a timely workshop on transnational litigation. This workshop focused on the substantive and procedural issues that American litigators encounter in preparing to try cases which involve foreign parties, law, evidence, and proceedings. The faculty included practitioners with experience in transnational litigation as well as leading commentators in the area.

The Section, through its Committee on Taxation and in conjunction with the Section of Taxation, inaugurated a joint project concerning the role of Congress in the negotiation and ratification of tax treaties. This project involved a review of the present Tax Treaty negotiation and ratification process, the present U.S. Tax Treaty network and a critical analysis of the U.S. Model Income Tax Convention along with the formulation of guidelines for the Treasury Department in its negotiating approach on tax treaties, as well as of the role of the tax writing committees of Congress in the tax treaty area.

The 1980 Annual Meeting in Honolulu focused on business in Pacific Rim countries. Excellent CLE programs included one on "Arbitration and Litigation in East Asia: Practical Solutions to Transnational Problems" as well as a program entitled "Counselling Clients Doing Business in the Pacific Basin in the 1980s." These were both showcase programs.

Chair Theberge, during this year, invigorated the Section's publication effort. He was responsible for one of our most successful and informative publications, the *Multinational Corporation Checklist*.

## Section History, 1980-1981

LYON L. BRINSMADE\*

At the ABA 1981 Midyear Meeting in Houston, the House also adopted Resolutions proposed by the Section that replaced and updated a 1972 Resolution of the ABA recommending continued United States support for international cooperation and measures to prevent and punish acts of international terrorism. These Resolutions included new measures recommending United States action to: (1) encourage ratification of relevant Conventions by a maximum number of countries; (2) stimulate implementation of these Conventions, including enactment of United States penal legislation to implement the 1971 Montreal Convention; and (3) continue support for development of new initiatives.

Based on Resolutions which the Section adopted at its Midwinter Meeting in Palm Springs, California, the Section received blanket authority to submit testimony to Congress in support of the extension of the Overseas Private Investment Corporation (OPIC) and the expansion of OPIC's activities in support of projects in developing countries.

At its Midwinter Meeting, the Section also approved Resolutions on several topics, which included the United States-Iranian agreements providing for release of United States diplomatic personnel and for settlement of claims of United States nationals against Iran, the extraterritorial application of United States laws, United States ratification of the Inter-American Convention on Letters Rogatory, and the Agreements Governing the Activities of States on the Moon and Other Celestial Bodies.

Additionally, in June 1981 the Section approved a Resolution for proposed adoption by the House of Delegates at the then forthcoming Annual Meeting in New Orleans, recommending that the Association support signature and ratification by the United States of the United Nations Convention on Contracts for the International Sale of Goods and urge the Senate to give its advice and consent to ratification of such Convention, subject to certain reservations. This was an especially important and timely action because the Convention significantly affects the substantive law on international sales, was open for signature until September 20, 1981, and the Department of State desired the Association's endorsement before the Convention might be signed by the United States.

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\*When he became Chair in 1980, Mr. Brinsmade was partner in Butler & Binion in Houston, where he had been in charge of the firm's international practice section since the late 1950s. In addition to his service in the ABA, Mr. Brinsmade served on the Council of the Section of International Law of the State Bar of Texas from 1975 to 1978. Over the past decade, Mr. Brinsmade has been a partner—and more recently—Senior Counsel of Porter & Clements in Houston, where he has been in charge of the firm's international practice group. He was founder and cochair with Julio Trevino of the Section's Committee on Mexico (1982-1985).

The Section played a further important role in 1981 with respect to the implementation of the above-mentioned agreements with Iran, which resulted in the return of the fifty-two American hostages. Thus, the Section's Committee on Foreign Claims advised senior government officials in connection with the establishment of the Iran-United States Claims Tribunal and problems arising under such agreements for particular claimants.

Turning to the meetings of the Section during the subject year, a contested election arose at the 1980 Annual Meeting in Honolulu for the position of Chair-Elect. Charles N. Brower of Washington, D.C., who was nominated to that position by the Section's Nominating Committee, was opposed by James C. Tuttle of Troy, Michigan, who was nominated by petition. The contest resulted in the election of Mr. Brower as Chair-Elect.

The Midwinter Meeting in Palm Springs, California, produced a record turnout of new participants from the Los Angeles area. As a result of this record attendance, the Section in 1981 adopted a plan to hold its Spring Meeting in years after 1981, on an experimental basis, in various locations about the country close to metropolitan centers where international law practice is concentrated. This plan involved a departure from the Section's long-established tradition of holding its Spring Meeting in Washington, D.C.

Concerning continuing legal education, the Section in October 1980 sponsored a two-day National Institute, in collaboration with the ABA Section of Real Property, Probate, and Trust Law, on the subject of "International Estate Planning." In conjunction with its Spring Meeting in April 1981, in Washington, D.C., the Section sponsored another two-day National Institute entitled "Critical Issues of International Trade Law: The Realities of Implementing the Tokyo Round Results." This institute focused on important developments and fundamental issues as well as on future trends in law and policy. The Midwinter Meeting in Palm Springs had featured an educational program dealing with international transactions and the role of tax treaties, and at the 1981 Annual Meeting of the ABA in New Orleans, the Section presented a variety of educational programs, some of them in conjunction with other entities of the Association, on the following subjects: the legal and policy issues with respect to the New World Information Order and transborder data flow; current structures of international petroleum and mining transactions; claims arising from the Iranian revolution and the operation of the Iran-United States Claims Tribunal; and United States extraterritorial law enforcement and its relation to United States foreign economic policy interests (including a special focus on United States export control, securities, maritime, and antitrust laws).

The Section, in 1980, initiated a very successful new publication, *The China Law Reporter*. This quarterly publication focuses on legal developments within China and, in particular, how they relate to transactions with the United States. The Section's ILEX Committee sponsored a delegation of twenty-four lawyers to the People's Republic of China in spring 1981 to meet with legal and trade



officials. This is believed to be the first Section sponsored trip ever to the PRC. The delegation visited the cities of Peking, Nanking, Soochow, Shanghai, Hangchow, and Canton.

The ABA Network of Concerned Correspondents, an initiative recommended by the Section prior to the subject year, commenced operation in July 1980 by contributing to the release and suspension of charges against six illegally detained lawyers in South Africa and four in Argentina. The correspondents send appeals on behalf of jurists and attorneys who have been persecuted for their defense of unpopular clients or for upholding the rule of law. More than 160 lawyers, most of them members of the Section, participated in the work of the Network.

In April 1981 the Section Council approved a proposal (that had been under study for more than a year and a half) calling for the move of the Section staff and administrative functions, which were being performed at the headquarters in Chicago, to the Association's office in Washington, D.C. This proposal was approved by the Association's Board of Governors. The move was important to handle adequately the increasing volume of business generated by one of the fastest growing sections in the Association.

By May 31, 1981, the Section's membership had reached the magic number of 10,000, including 7,949 lawyers, 1,881 law students, and 251 associate members. This represented a membership increase of approximately 40 percent since the beginning of the 1977-78 Association year and appeared to demonstrate the growing importance of international law and practice in our increasingly interdependent world.

## Section History 1981-82

CHARLES N. BROWER\*

As the Section entered the 1980s, it moved forward on many different fronts. In September 1981, the Section actually moved the operations of its staff office from Chicago to Washington, D.C. Cynthia Price became the new Section Administrator. She was formerly Executive Assistant to the International Legal Exchange (ILEX) program.

The new Section Chair Charles Brower focused on several important projects. Among those were the submission of extensive, detailed Recommendations to

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\*At the time Mr. Brower became Section Chair, he was a partner with White & Case in Washington, D.C. Before that, he had served from 1969 until 1973 at the Department of State as Assistant Legal Adviser, Deputy Legal Adviser, and Acting Legal Adviser. From 1984 until 1988, Mr. Brower served as Judge of the Iran-United States Claims Tribunal. In 1987, he served as Deputy Special Counselor to President Reagan. In 1988, he returned to White & Case, but has continued to serve as a Judge of the Claims Tribunal on an ad hoc basis.

the State, Treasury, and Justice Departments on implementation of the Algiers Accord which established the Iran-United States Claims Tribunal. At the Section's initiative, the House of Delegates approved a Recommendation for the adoption of a specific executive branch consultative procedure designed to reduce diplomatic friction caused by ill-advised extensions of the United States long-arm statute. These extensions of jurisdiction occur primarily in the areas of antitrust, environmental, securities, and foreign assets control laws. The Section also undertook a study regarding proposed legislation to abolish or modify the act of state doctrine.

A Committee on International Law Education for Judges was established in 1981 for the purpose of implementing a program to educate federal, state, and local judges in international law. It was felt that since international law questions arise in our domestic courts with increasing frequency, it is in the public interest that judges, who rarely have any significant training in international law, be introduced to its principles in an academic rather than an adversarial environment. Edward D. Re, Chief Judge of the U.S. Court of International Trade, was named to serve as Chair of this Committee. (Judge Re was Section Chair between 1965 and 1967.)

The Section's Midwinter Meeting was held in St. Thomas, U.S. Virgin Islands, and the educational program was entitled "The Caribbean—Its Changing Legal Environment." Emphasis of the educational program was on taxation, business incentives, and energy. Distinguished representatives from Jamaica, Puerto Rico, and Barbados discussed recent economic, political, and legal developments in their areas.

At this same December meeting, the Council voted to change the name of the Section to the "Section of International Law and Practice" to reflect the fact that the Section's activities embraced not only matters of public international law but also issues of everyday concern to the practitioners such as transnational litigation and counselling on the application of national laws to international transactions.

At the Midwinter Meeting of the ABA in Chicago, the following Recommendations, submitted by the Section, were adopted by the House of Delegates:

- A Recommendation urging approval by the United States of expansion of the advisory jurisdiction of the International Court of Justice to include questions of international law referred by national courts.
- A Recommendation approving in principle the concept of a convention that would address the problem of terrorist activities in the Americas in a comprehensive manner.
- A Recommendation favoring signature and ratification by the United States of the "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies" ("Moon Treaty") subject to certain declarations.

In summer 1982 the Section established the Mexican Law Committee to devote systematic expert and continuing attention to the matters of Mexican law and practice in relation to United States law and practice and to aspects of the relations

between the neighboring countries falling within the purview of the Section. In addition to U.S. lawyers, the Committee decided to have as members lawyers from Mexico who joined the ABA as International Associates and who also joined the Section. The founding cochairmen of the Committee were Lyon L. Brinsmade of Houston, former Chair of the Section, and Julio C. Trevino of Mexico City, who was later to become president of the Barra Mexicana (Mexican Bar Association). This Committee has remained very active and, in 1993, was in the forefront of the ABA's resolve to secure ratification of the North American Free Trade Agreement (NAFTA).

In October 1981, Chair Charles Brower inaugurated the General Counsels' Dinner in honor of the general counsels of international agencies and of executive departments and agencies of the U.S. Government involved in international matters. The purpose of the dinners was to provide these general counsel with an informal opportunity to explore methods for the organized bar to assist them in matters of mutual interest. These dinners have been carried on up to the present time.

## Section History, 1982-83

GERALD AKSEN\*

In late 1983 Chair Gerald Aksen cited the following reasons for this remarkable growth in membership in his Chair's column noting the 50th anniversary of the Section:

We are proud of our 10,000 plus members and our unmatched record of achievement within the ABA for considering issues that are truly global rather than local in scope. While other Sections address perennial local court problems such as delay, calendar congestion, and the abuse of discovery, we are urging greater use of time-tested international methods of dispute resolution such as international arbitration and conciliation. Although other sections are primarily interested in domestic legislation, we foster and promote solutions to the problems of foreign law, including treaties and conventions on obtaining evidence abroad and enforcing international agreements, awards, and foreign judgments. While most ABA members are understandably more familiar with the practice of law within state and federal courts, the growing importance of international law and practice is now apparent to all ABA members.

In October 1982, the Section sponsored a briefing trip for United States lawyers to Zimbabwe and South Africa. This trip was designed to inform American

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\*Gerald Aksen was, at the time he became Section Chair in 1982, and is currently a partner in the New York office of Reid & Priest. He specializes in arbitration and alternative dispute resolution. Mr. Aksen also is an adjunct professor of law at the New York University School of Law, teaching international arbitration. He is a member of the Board of Directors and former General Counsel of the American Arbitration Association. Mr. Aksen is also Chair of the Arbitration Committee of the United States Council for International Business.

lawyers about the legal systems in Zimbabwe and South Africa and to focus on relations between these two countries and the United States. There was a particular emphasis on human rights issues in South Africa. There were briefings by lawyers, law professors, business people, and government officials in both countries. The group also visited courts and law schools as well as areas of special significance such as Soweto in South Africa. This politically sensitive trip was initially opposed by the ABA Board of Governors, but turned out to be a very successful venture for the Association.

Immigration reform highlighted the Midyear Meeting of the ABA in New Orleans in February 1983. The Section worked closely with the Administrative Law Section and the Section of Individual Rights and Responsibilities. There were a total of twenty-two separate Resolutions proposed in this area (five by our Section) which were finally consolidated into three Recommendations and Reports. These Resolutions were adopted and provided that: greater resources be used by federal agencies administering immigration and refugee laws; greater attention be given to economic and cultural factors in the allocation of immigration quotas; and that "legislation on amnesty for illegal aliens" be recommended.

At this meeting, the Section proposed a Recommendation that the ABA request the European Economic Community to extend the European lawyer-client privilege to non-European lawyers. This proposal was directed at reversing a recent decision of the European Court of Justice. The Section Resolution was unanimously adopted by the House.

The Section held its Spring Meeting in Minneapolis. The educational programs focused on recent laws and regulations affecting the international commodities market as well as planning and negotiating foreign investment projects. The meeting was cosponsored by the International Business Law Section of the Minnesota State Bar Association. This meeting constituted a successful continuation of the program to bring the Section to its members outside of New York and Washington.

The ABA House of Delegates at the Atlanta Meeting in August 1983 adopted a number of Reports and Recommendations submitted by the Section. They include:

- A Resolution calling for the revision of the federal rules of civil procedure to conform them to the Hague Conventions on the Taking of Evidence and Service of Process Abroad.
- A Resolution calling for the reform of the extradition laws and specifically narrowing the political offense exception to exclude terrorist acts of violence.
- A Resolution setting forth the Association's position that the United Nations Law of the Sea Convention generally reflects customary international law and supporting the use of the Convention's dispute resolution mechanisms with respect to deep seabed mining.
- A Resolution dealing with amendments to the Export Administration Act with regard to its retroactive and extraterritorial effects.

On January 15, 1983, the Section bestowed its Award in the Field of Private

International Law to Philip Amram. Phil was recognized for his courage, dedication, and achievements in propelling this country into the forefront in the unification and codification of private international law.

## Section History, 1983–84

MARK R. JOELSON\*

The House of Delegates in August 1983 approved the Recommendation of the ABA Board of Governors setting forth Goal VIII of the Association, "To Advance the Rule of Law in the World." This is the first and only ABA goal to focus on the international arena:

### *Summary Objective 1:*

Promote the development of international law and practice by fostering research, education, and legal initiatives for peace and human rights through law.

### *Summary Objective 2:*

Provide leadership for the development of the rule of law in dispute avoidance and resolution of conflict between nations and between nationals of different nations.

### *Summary Objective 3:*

Maintain relations and further cooperation with other professional organizations, including foreign and international bar associations, concerned with multinational and international legal matters.

### *Summary Objective 4:*

Facilitate professional contacts among American and foreign lawyers and help to assure the availability of competent legal service for multinational transactions.

Section Chair Mark Joelson noted that the adoption of this Goal "represents a timely recognition by the Association that our national profession has an important international component."

In furtherance of these objectives, the International Legal Exchange (ILEX) Committee in September 1983 sponsored a briefing trip to Southeast Asia. This

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\*Mark R. Joelson was partner in the Washington, D.C., firm of Wald, Harkrader & Ross at the time he was Section Chair. He currently is a partner in the Washington, D.C., office of the international firm of Morgan, Lewis & Bockius, practicing international trade, transnational litigation and arbitration, and antitrust law. Mr. Joelson served as the ABA Representative on the Council on the International Bar Association from 1984 to 1992. He also has served as a panelist under the Canada-United States Free Trade Agreement.

briefing trip undertook an extensive examination of the legal systems of Indonesia, Singapore, Thailand, and Hong Kong with special reference to commercial and trade relations between these countries and the United States.

In February 1984 the Section broke with tradition and held its Midyear Meeting at a winter venue, Lake Tahoe, California. In addition to educational programs on such subjects as "transnational litigation and international commercial arbitration," there were also programs on "ski fitting and arrangements" as well as a German *Bierstube* dinner.

In April the Senate Foreign Relations Committee held hearings on the United Nations Convention on Contracts for the International Sale of Goods. The President had transmitted this Convention to the Senate the previous September following a Recommendation by the House of Delegates that had been proposed by the Section in 1981. Section Chair Mark Joelson testified before the Committee on behalf of the American Bar Association in support of the Convention. Chair Joelson noted that the Convention offers, "in addition to predictability and commonality of rules, many equitable provisions to help define the commercial relationships that the parties usually have not fully elaborated in their documents." This testimony was keyed to the Senate, giving its advice and consent to ratification of the Convention.

The Spring Meeting was held in Philadelphia in May 1984. At this meeting, the Section's Private International Law Award was made to the Honorable Richard B. Kearney, former Deputy Legal Adviser, to honor his significant contributions to private international law. This meeting included educational programs on common market initiatives affecting the U.S. multinational and on U.S. regulations of American investment abroad: the case of South Africa. Congressman Steven Solarz, sponsor of the sanctions legislation on investments in South Africa, was the principal speaker.

The 1984 Annual Meeting of the ABA House of Delegates in Chicago was an especially busy one for the Section. Goal VIII was formally inaugurated. Presidents of bar associations from all over the world met at a special meeting presided over by ABA President Wallace Riley and Section Chair Joelson to discuss the advancement of the Rule of Law in the World.

Two Section Resolutions were approved by the House. The first urged the United States' accession to the Convention on the Elimination of All Forms of Discrimination Against Women. The second Resolution proposed a series of important amendments to the United States Foreign Sovereign Immunities Act. The latter proposal resulted from several years of work by a Section committee and brought about the introduction of legislation to amend the Act in May 1985.

The position taken by the United States Government at the International Court of Justice on the case brought by Nicaragua against the United States arising out of the mining of the harbor in Managua received considerable attention at the meeting. The Section offered a Resolution that would have the American Bar Association urge "that in the future the United States government refrain from

unnecessarily diminishing the United States acceptance of the jurisdiction of the International Court of Justice." This Recommendation was deferred because of concerns that any action by the House on the subject might affect the pending proceedings between the United States and Nicaragua. The House did act favorably on the Resolution that the Section had supported, endorsing the concept of a draft treaty on peaceful settlement of international disputes which Divisional Vice Chair Professor Louis Sohn had drafted.

The participation of sections in ABA governance was also an issue of great import at this 1984 Annual Meeting. The sections assumed increased participation in the governance system by virtue of being given seats on the ABA Nominating Committee and increased representation on a restructured ABA Board of Governors.

## Section History, 1984-1985

MONT P. HOYT\*

The Section Winter Meeting was held in San Antonio in December 1984. The highlight of the meeting was a program for the Central American and Dominican bar leaders on "the role of the organized bar in the United States: national, state, and local." This was the first major program to implement Goal VIII.

The Section's Administration of Justice Initiative in Latin America was inaugurated in 1984 as part of the U.S. Government's efforts to support governments throughout the hemisphere to strengthen and invigorate democratic institutions and to provide assistance in support of indigenous efforts to improve the administration of justice. The elements of the program included legal reform commissions, specialized training courses, judicial recruitment and selection, court administration, and information system and records management as well as strengthening legal education and professional associations.

The Section sponsored a one-day continuing legal education program at the Midyear Meeting of the Association in Detroit on the subject of recent developments in Canada, United States trade, and investment issues. The program was also supported by the Canadian Bar Association. It focused on important recent developments and issues in the Canada-U.S. relationship from a legal viewpoint. There were panels on trade issues, investments, enforcement and the extraterritorial effect of Canada-United States antitrust laws, and issues raised under the new Canada-United States Tax Convention.

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\*When Mont P. Hoyt became Section Chair in 1984, he was a partner in the law firm of Baker & Botts in Houston, dealing primarily with trade matters. Mr. Hoyt now chairs the Mexico Law Committee of the Section and serves as cochair of its NAFTA Task Force. He is currently a partner in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, specializing in assisting United States businesses with foreign legal matters.

The Spring Meeting was held in Seattle in cooperation with the Washington State Bar Association. The education programs focused on trade issues in 1985 with particular reference to the Export Administration Act and recent developments in international financing.

The Section also began playing a prominent role in ABA governance at the April 1985 meeting of the Board of Governors in St. Louis. For the first time, the Section was represented at the meeting by its own nominee on the Board, Charles N. Brower.

The Board unanimously approved two Resolutions proposed by the Section. The first expressed a concern of the ABA over the method by which the American Law Institute was developing, reviewing, and promulgating the *Restatement of the Foreign Relations Law of the United States (Revised)* and over the widespread view that in many important respects, the proposed revision did not accurately reflect the foreign relations law of the United States.

At the Section's urging the Board also supported a proposal by the District of Columbia Bar that it adopt a rule providing for the licensing of foreign lawyers to practice in the District of Columbia. The proposed rule served the dual purpose of making foreign legal consultative services available in the District of Columbia while ensuring continued reciprocal opportunities for American lawyers to practice in selected foreign jurisdictions.

At the July House of Delegates meeting in Washington, D.C., the Section cosponsored a Recommendation and Report with the Standing Committee on Law and National Security dealing with problems of chemical, biological, and toxic weapons. This Recommendation urged that steps be taken to secure respect for the present international law norms prohibiting the use in war of chemical, biological, and toxic weapons and the 1972 Treaty provisions affecting development, stockpiling, retention, or transfer of biological or toxic weapons. The Recommendation and Report were unanimously approved by the House of Delegates.

The Annual Meeting, held during Summer 1985, was split between Washington, D.C. (business meetings) and London (educational programs and social events). One of the key educational programs focused on international arbitration. However, all was not work in London. Section members attended a reception at the House of Lords, another reception sponsored by the British Institute of International and Comparative Law, and a joint Section/International Bar Association dinner.

During the year, long overdue amendments were adopted to the Section bylaws, primarily to comport with the model ABA bylaws. The Chair of the Publications Committee was added as a voting member of the Council and the majority and minority counsel to the Senate Foreign Relations Committee were invited to become honorary members of the Council. It was also provided that no more than four Council members at large shall be from the same state.



## Section History, 1985–86

ARTHUR ROVINE\*

In September 1985 the Section hosted—on behalf of the ABA—an elite delegation from the China Law Society. The delegation included the Vice President of the China Law Society as well as the Deputy Secretary General of the Society. The delegation visited San Francisco, Chicago, New York, and Washington, D.C. In New York, an intensive program was arranged by Section Chair Arthur Rovine.

The Section played a key role in the ABA's Midyear Meeting of the House of Delegates in Baltimore in February 1986. First, the House of Delegates endorsed a Section proposal supporting a controversial extradition treaty with Great Britain that would eliminate, for crimes such as hijacking, kidnapping, and bombing, the century-old "political offense" exception to extradition law. Previously under this exception, those accused of committing a crime in another country could defend against extradition on the grounds that their acts were politically motivated. Shortly following the ABA action, the Senate gave its advice and consent to ratification of this treaty.

The House of Delegates also adopted a Resolution submitted by the Section urging the President of the United States to sign and ratify the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA). MIGA was a World Bank proposal designed to increase and protect private investment in developing countries through issuance by MIGA of investment guarantees, co-insurance, and reinsurance against enumerated non-commercial risks for investment from developed countries. As Chair Arthur Rovine stated, "MIGA will represent an outstanding opportunity for the world community to help protect and encourage private investment in developing countries."

At the Baltimore meeting, other Resolutions proposed by the Section were placed on the consent calendar and therefore were adopted by the House of Delegates without debate. The first was a Resolution supporting efforts of the United States and other nations to bring about reform in the United Nations Educational, Scientific, and Cultural Organization (UNESCO). This Resolution was particularly directed at the elimination of the politicizing of UNESCO and a reform of the budgetary and management practices to eliminate waste. [As called for in this Resolution, reform of UNESCO did actually take place and, as of this writing, the United States was considering rejoining the organization.]

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\*At the time Arthur Rovine became Section Chair in 1985, he was, and still is, a partner with Baker & McKenzie in New York. Prior to joining Baker & McKenzie, he served as Assistant Legal Adviser for Treaty Affairs at the Department of State. After his service as Chair, he served as Delegate to the ABA House of Delegates (1988-90), was elected to the Council on Foreign Relations (1987), and was selected as a member of the Board of Editors of the *American Journal of International Law*.

Finally, the American Bar Association urged the United States to sign promptly and ratify the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (the so-called Torture Convention).

The Section sponsored a very successful ILEX briefing trip to Scandinavia in May 1986. This briefing trip examined the legal and judicial systems of Denmark, Finland, Norway, and Sweden and focused on commercial and trade relations between those countries and the United States. The program devoted considerable time to the financing of international trade and investment, the handling of international trade disputes through international commercial arbitration in the Stockholm Chamber of Commerce, and litigation and arbitration in the unique Danish Commercial and Trade Court.

The Soviet Union and Japan dominated the Section's Annual Meeting in New York in the summer of 1986. The Section Council focused on recent Japanese legislation that subjected U.S. law firms in Japan to certain potentially significant restrictions. The Section sponsored a Resolution, which was adopted by the House of Delegates, citing the importance of the scope-of-practice issue in calling on the governments of the United States and Japan to work toward minimizing the impact of certain "... restrictive features [considered to be] regrettable." This Resolution was directed toward the United States Trade Representative who was resuming negotiations with the Government of Japan on this point and was intended to influence the drafting of the Resolutions governing the practice of foreign lawyers in Japan. This issue has continued to plague relations between the United States and Japan.

The Declaration of Cooperation between the American Bar Association and the Association of Soviet Lawyers had previously come under criticism for appearing to endorse a bar group that in fact was an agency of the Soviet government. At the request of the Section, this Declaration was reviewed in great detail by the Association. It was felt, however, that the Declaration should be continued since it represented an important, perhaps irreplaceable, opportunity to press on the Association of Soviet Lawyers the views of the ABA as to various issues, particularly human rights concerns. Finally, a Resolution was adopted by the House of Delegates supporting the continuation of cooperation under the Declaration, with the understanding that it includes a commitment to have a dialogue concerning human rights practices and laws and that the ABA should report back annually to the House of Delegates on the progress of its relationship and the implementation of the dialogue on human rights concerns. This Declaration was instrumental in opening up a dialogue with the U.S.S.R.

It became clear during 1986 that the Section had to gain more control over its financial situation. During the previous two years, the Section had lost more than \$160,000, and its reserve balance had been depleted seriously.

This problem was addressed in an urgent manner by Chair Robert Rendell when he took over the reins in August 1986. Chair Rendell was fondly referred

to as the "Hatchet Man" for his propensity to slash Section expenses to the bone and rejection of all budget requests. It is regrettable that his talents were not made available to the federal government in 1993.

## Section History, 1986-87

ROBERT RENDELL\*

In April 1987 the Section inaugurated its very successful spring program entitled "Update on International Agendas from Official Washington." More than twenty general counsels and other officials from the executive branch, Congress, and the courts spoke at the Section's ambitious two-day program. This program provided the opportunity for leading legal officials in the various government agencies dealing with international matters to provide up-to-date briefings on the international agendas of their agencies. There were also more than a dozen committee workshops for specialists dealing with such matters as international finance, international trade, and a perspective from the judiciary. Speakers included Abraham Sofaer, Legal Adviser to the Department of State; Peter J. Wallison, Counsel to the President; and Ibrahim Shihata, Vice President and General Counsel to the World Bank.

At this meeting, Peter Pfund, Assistant Legal Adviser at the Department of State was presented with the Section's annual Leonard Theberge Prize for 1986-87. Mr. Pfund's work at the Department of State in connection with the Convention on the International Sale of Goods and other private international law treaties was cited.

In May 1987 the International Legal Exchange (ILEX) Committee sponsored a very successful briefing trip to Argentina, Brazil, and Uruguay, which focused on current developments with respect to the legal systems in those Latin American countries with emphasis on laws and regulations governing foreign investment and trade. The delegation visited Buenos Aires in conjunction with the Annual Meeting of the Inter-American Bar Association.

The focus on Latin America was also evident when the Section inaugurated a very successful Central America technical assistance project under an award of \$117,000 from the United States Agency for International Development. Under

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\*At the time Robert Rendell became Chair of the Section, he was a partner in the law firm of Johnson & Gibbs in Dallas. Prior to moving to Dallas, he practiced with Rogers & Wells in New York and from 1973 to 1977 as Deputy General Counsel of the Export-Import Bank of the United States in Washington, D.C. Mr. Rendell is currently a partner in the Dallas law firm of Vial, Hamilton, Koch & Knox, where he specializes in international finance, banking, and corporate law. Mr. Rendell also served as chair of the Committee on International Business Law of the ABA Business Law Section from 1988 to 1992 and is president of the Dallas Council on World Affairs.

this project, the Section conducted eight labor and commercial arbitration conferences in El Salvador, Costa Rica, Guatemala, and Honduras.

The Section participated in the Bicentennial of the United States Constitution and its international impact by sponsoring a showcase program at the ABA's 1987 Annual Meeting in San Francisco entitled "The Role of the Judiciary in a Modern Society: An International Constitutional Perspective." Other programs at the San Francisco meeting focused on the Far East with particular emphasis on Japanese investment in the United States as well as trading with the "four tigers"—Hong Kong, Korea, Singapore, and Taiwan. The final showcase focused on the internationalization of the world's capital markets.

At this meeting the Section also proposed four Reports and Recommendations, which were adopted by the House of Delegates. The first supported the efforts by the United States Government at the Uruguay Round to urge member countries to adopt appropriate measures to discourage the use of trade related investment measures (TRIMs) that significantly distort international trade investment flows. The second Recommendation urged the United States Congress to enact legislation necessary to implement the harmonized commodity distribution and coding system that provides a uniform basis for all foreign trade classification systems, i.e., for customs, tariffs, import and export statistics and transport documents. The third Recommendation concerned the Hague rules relating to bills of lading and supported ratification by the United States of the 1968 protocol that would amend the Hague rules. The final Recommendation urged the United States to continue its efforts to achieve effective verification measures for the threshold Test Ban Treaty and the Peaceful Nuclear Explosion Treaty.

The Section also cosponsored Resolutions dealing with human rights in the Soviet Union and violations of international law in the Republic of Chile with reference to the extradition requests made by the United States in connection with the 1976 assassination of former Chilean Foreign Minister Orlando Letelier.

## Section History, 1987–88

JOSEPH P. GRIFFIN\*

Financial responsibility and accountability continued to be one of the areas of greatest concern to the Section in 1987 and 1988. However, the outlook continued to improve. During the Association year ended August 1987, the Section had a very significant swing in financial fortunes, moving from a \$30,000 deficit to

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\*At the time Joseph P. Griffin became Section Chair in 1987, he was, and is still, a partner in Morgan, Lewis & Bockius. He served as Chair of the International Division of the D.C. Bar from 1980-1981. He is a member of the American Law Institute and the Panel of Arbitrators of the American Arbitration Association and the Euro-Arab Arbitration System.

a substantial surplus that was used to replenish the otherwise depleted reserve fund. At the August 1987 Annual Meeting, Chair Griffin instituted the concept of zero-based budgeting and established a pool of reserve funds to finance Section projects and programs. Stricter procedures for programming budget requests were instituted. At a result, the Section ended the 1987-88 year with a \$120,000 surplus and never looked back.

In September 1987 ABA President Robert MacCrate created a new ABA-wide Special Advisory Committee on Relations with Foreign Lawyers and International Legal Organizations. This committee, on which Section representatives play a pivotal role, is always chaired by the immediate past president of the ABA. The committee was conceived as an attempt to identify and coordinate all the various international activities of the numerous ABA entities and to bring some degree of strategic planning to these activities.

During Chair Griffin's term the Section sponsored Recommendations to the House of Delegates concerning the appropriate dispute Resolution mechanisms in relation to the Canada/U.S. Free Trade Agreement, which were approved by the House and adopted by Congress after testimony by Chair Griffin before the House Judiciary Committee. Other Recommendations adopted during 1987-1988 included: opposition to unreasonable public disclosure requirements on foreign investors in the United States; supporting ratification of the U.S./U.S.S.R. Treaty for the Elimination of Intermediate Range Missiles; making extensive comments on the Justice Department's Antitrust Guidelines for International Operations; supporting the "Arias Plan" to establish peace in Central America; and supporting U.S. ratification of two antiterrorist agreements.

## Section History, 1988-89

STEVEN C. NELSON\*

The extraordinarily successful Annual Meeting in Toronto served as the launching pad for an extremely active year for the Section under Chair Steven C. Nelson. The year got off to a fast start, as the Fall Meeting took place in San Diego during

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\*From the time Steven C. Nelson became Chair of the Section in 1988 until the present, he has been a partner in the Minneapolis law firm of Dorsey & Whitney with a practice concentrating on the negotiation of international sales, distribution, licensing, and joint venture agreements as well as corporate acquisitions and the structure of foreign investments. Before his service as Section Chair, Mr. Nelson chaired the Section's Committee on Technology Exchange and became Vice Chair for each of the Section's Divisions. Since the end of his term as Section Chair, he has served on the ABA Special Advisory Committee on International Activities and as Chair of the Section's Committee on Transnational Legal Practice. He has been deeply involved in the development of rules for the licensing of foreign lawyers in the United States and in negotiations with foreign governments and bar organizations related to the practice rights of United States lawyers in other jurisdictions.

the last week in October under the able leadership of John Brooks. The program, entitled "Buying, Selling, and Manufacturing in the Pacific," drew a number of speakers from the Pacific Rim as well as a large number of serious Section members who passed up the local attractions to concentrate on the many stimulating presentations. Among other actions at its meeting, the Council expressed concern regarding the persistent delays of the United States Government in publishing treaties and other international agreements as well as such valuable reference materials as the State Department's *Digest of International Law* and established a new Committee on Government Publications to determine, in cooperation with the Office of the Legal Adviser, what might be done to rectify the problem.

Under the energetic leadership of Shelly Battram, Chair of the Section's CLE Committee, the Section continued to lead the Association in the presentation of high-quality, cutting-edge CLE programs. Following on the heels of an incredibly active program the previous year, this year saw the presentation of no fewer than five National Institutes, all extremely successful, of which the Section was the principal organizer and sponsor. Among the topics were Foreign Direct Investment in the United States, International Litigation, Joint Ventures Abroad, and 1992: New Opportunities for U.S. Banks and Businesses in Europe. In addition, a number of Section committees held highly successful programs. Particularly notable among these were the breakfast programs of the International Trade Committee and a program on the harmonization of international tax and customs law sponsored by the International Taxation Committee.

The major ILEX effort during the year was an unforgettable look at what provided to be the beginning of the unraveling of the Soviet Union. A highly varied but intensely interested delegation visited Moscow, Kiev, Tallin, and Leningrad in March. In addition to some fascinating tours, the delegation had a number of stimulating meetings, including a spellbinding morning with one of the members of the U.S.S.R. Supreme Court in the Court's main conference room; an afternoon observing a criminal trial followed by a no-holds-barred discussion with the judge in chambers; several sessions with Soviet experts on such matters as economic reform and the environment; and a number of social occasions involving members of the then newly-formed Association of Soviet Advocates. A Friday evening of dining and drink with several influential members of the nascent independent bar organization in Kiev was followed by an impromptu Saturday meeting with one or two professors at the Kiev University Faculty of Law, which somehow turned into a question-and-answer session with more than 100 law students who had abandoned their weekend pursuits to return to the University for the occasion. Those who participated owe a great deal to John Huhs and Edison Dick, the principal organizers of the trip, for what can only be described as a world-class experience.

The Spring Meeting in Washington, D.C., brilliantly orchestrated by Charlene Barshefsky and attended by more than 500 people, focused on three main themes. The first, entitled "Key Aspects of GATT and International Law: Recent Devel-

opments and the Most Difficult Issues Ahead," featured two leading international legal scholars, Detlev V. Vagts of the Harvard Law School and John H. Jackson of the Michigan Law School. The second, organized under the rubric of "Significant Judicial and Arbitral Decisions Affecting International Business and Trade Law," was presented by a panel consisting of prominent government lawyers, arbitrators, academics and practitioners, including former Section Chair Charles N. Brower, then judge of the Iran-United States Claims Tribunal. The third, more topical theme, with speakers from both sides of the Atlantic, was "Europe's Single Market: Business, Political, and Legal Consequences of 1992."

In addition, there were twenty-eight "miniprograms" covering an almost inconceivable range of interesting and timely subjects. The principal complaints at this meeting were that too many valuable sessions were being held simultaneously and that many were standing room only. The Council debated and acted upon a number of items, the most important of which—at least in the long term—was a Report and Recommendation prepared by the Blue Ribbon Committee established by the Section to consider whether and to what extent the United States should renew its acceptance of the compulsory jurisdiction of the International Court of Justice. Its conclusion was that the United States should do so on a limited basis.

Shortly after the Spring Meeting and fresh from his experiences in the Soviet Union, Section Chair Nelson, together with Past Chair Arthur Rovine and then-Vice Chair Louis Sohn, set forth on what proved to be—if anything—an even more remarkable experience in China. The small delegation had been invited to spend two weeks in the People's Republic as guests of the Vice Chair of the Standing Committee of the National People's Congress, which is responsible for the development of all legislation relating to economic reform and foreign investment in China.

Arriving in Beijing on May 15, the delegation found Tiananmen Square, which was only four blocks from its hotel, occupied by hundreds of thousands of students and the street in front of the hotel clogged with 24-hours-a-day processions staged by their supporters. During a dinner in its honor in the Great Hall of the People (which occurred, coincidentally, on the night that Mikhail Gorbachev entered the Great Hall through the backdoor for a well-publicized state dinner with the Chinese leadership), the delegation was able to hear the roar of the assembled masses in the Square. At another dinner with the entire Chinese Supreme Court, which was also attended by newly arrived United States Ambassador James Lilley, the justices assured the delegation that the situation was not serious. There was, however, little doubt, as the days passed, that the Chinese government had lost control of the situation in Beijing. The delegation left Beijing on May 21, the day after martial law was declared, and spent another ten days visiting Xian, Shanghai, Guilin, Guangzhou, and Shenzhen, before crossing into Hong Kong on June 3, leaving tearful guides at the border. The massacre at Tiananmen Square occurred on June 4.

After a hectic year, it was time for a vacation. We all repaired to Hawaii for the Annual Meeting, where the Section's program had been put together under the highly efficient leadership of Past Section Chair Robert S. Rendell and Jay M. Vogelsson of Dallas and Andy M. Ichiki and James M. Cribble of Honolulu. ABA President Robert D. Raven of San Francisco, himself an internationalist, had set as the theme for the Annual Meeting "Settling Disputes in Pacific Ways." Not surprisingly, the Section played a major role in the presentation of the substantive programs at the meeting, organizing Presidential Showcase Programs on both International Commercial Arbitration and Peaceful Resolution of International Disputes.

Two notable Resolutions sponsored by the Section were adopted by the House of Delegates. The first was set forth in the Report and Recommendation developed by the Section's Blue Ribbon Committee on the International Court of Justice, which withstood the challenge of a competing Resolution sponsored by the Standing Committee on World Order under Law and aggressively advocated by its Chair, former Senator and Secretary of State Edmund S. Muskie. The second was a Resolution strongly condemning the actions of the Chinese government at Tiananmen Square the previous June and calling on the government to punish those responsible. Upon conclusion of the Hawaii meeting, the gavel passed to incoming Section Chair James R. Silkenat.

## Section History, 1989-90

JAMES R. SILKENAT\*

Two themes emerged for the Section in 1989-90: one relating to service to individual members of the Section and one relating to a greater role for the Section in the broader ABA. These themes were evident in the physical growth of the Section (both in terms of members and finances) and in the expanded scope of Section activities (Resolutions, Delegations, National Institutes, and so forth).

By building on the strong base established by the previous leadership of the Section and trying to capitalize on the emerging talent evident among the Section Council and committee Chairs, the Section grew to more than 15,000 members by the end of the year and to a financial reserve in excess of \$689,000.

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\*When James R. Silkenat became Section Chair, he was a partner in the law firm of Morrison & Foerster. Prior to that, he was legal counsel to the International Finance Corporation (1980-1986), concentrating on privatization issues. Mr. Silkenat is immediate past Chair of the ABA Section Officers Conference. He was Chair of the Section's Committee on the Peoples' Republic of China and was the founder of *The China Law Reporter*. He currently is a partner in the law firm of Winthrop, Stimson, Putnam & Roberts, specializing in the areas of international finance, securities, and corporate law.



The substantive output of the Section, in terms of Resolutions proposed by the Section and adopted by the ABA House of Delegates (thus becoming ABA policy), was quite broad.

At the Midyear Meeting in Los Angeles in February 1990, the Section was ably represented by our Section Delegate, Arthur Rovine, who presented successful Resolutions: (1) urging that the United States become a party of the United Nations Law of the Sea Convention (under certain specified conditions); (2) urging early agreement between NATO and the Warsaw Pact on reduction of conventional arms in Europe; and (3) urging that the Code of Ethics for Arbitrators in Commercial Disputes be amended to provide that party-appointed arbitrators in international commercial arbitration should serve as neutrals. Additional Resolutions on Turks in Bulgaria and United States/Canadian tax issues were withdrawn.

Also at the Los Angeles meeting, the ABA for the first time (and not the last) held a spirited debate on the choice/abortion issues, with the House of Delegates, in a very emotional and intellectually stimulating debate, voting 238 to 106 in favor of the choice position (as opposed to taking a neutral stance). There was extensive television coverage of the debate on this issue.

This was also the first meeting from which Section Officers and Council were to receive detailed written Reports concerning the actual debates within the House of Delegates.

At the Annual Meeting in Chicago, Jim Silkenat filled in for Arthur Rovine as Section Delegate and successfully presented Resolutions to the House on the following issues: (1) favoring adoption of a Protocol to the Income Tax Treaty between Canada and the United States concerning estate tax issues; (2) supporting many aspects of a single integrated market for the European Community with special reference to legal services; and (3) favoring a new apportionment plan for Sections in the ABA House of Delegates such that international associates and law students would be counted for the purposes of House representation (thus allowing, for the first time, the Section to have more than one Delegate in the House).

In other actions by the House of Delegates in Chicago, the previously adopted ABA Resolution in support of a pro-choice position (which had been supported by the Section) was reversed by the House in favor of a neutral position. The Section was on the losing side in a very close vote on this issue.

In the Section Council meeting in Chicago, there was spirited debate on the extraterritorial application of Title VII as it applies to United States citizens employed abroad by U.S. companies. The Council's favorable vote on this issue, which was not taken to the House of Delegates, was confirmed in the following months when Congress removed any possible ambiguity with regard to Title VII by emphasizing that it did apply in these instances.

One of the main reasons the Section prospered during the year was because of the hard work and dedication of its staff. Cynthia Price, Mollie Miller, and Sarah Applegate all played such a central role in the Section during this year

(and the years preceding and succeeding it) that their contribution deserves special praise and recognition.

The Section sponsored two ABA delegations to foreign countries during 1989–90. The first delegation was to the European Community to discuss issues relating to the creation of a single market by 1992. More than thirty delegates met with senior European officials in Brussels, Luxembourg, and London during the trip. Meetings were held with various members of the European Commission; the United States Ambassador to the European Community, Tom Niles; the Luxembourg Minister of Justice; the President of the Luxembourg Supreme Court; the President of the Luxembourg State Council; Sir Gordon Slynn, a judge of the European Community Court of Justice; and numerous other government officials in Great Britain.

The second ABA delegation sponsored by the Section during the year was to Mexico. Participating in the delegation, in addition to a large number of delegates, were Bob Raven, immediate past president of the ABA, and Juan Cremades, president-elect of the UIA. Formal meetings were held with U.S. Ambassador John Negroponte, Mexican Attorney General Enrique Alvarez del Castillo, the President of the Mexican Supreme Court, and the mayor of Monterrey. Several delegates also met informally with Mexican President Salinas.

Monographs on both these delegations were published by the Section. Edison Dick, Chair of the ILEX Committee, continued to play a leading role in coordinating and planning these delegations. Tim Dickinson and John Stephenson also played leading roles in the European Community and Mexican delegations, respectively.

An important focus for the Section this year was on the sponsorship of CLE programs on a variety of international legal topics. These provided not only substantive speeches and written materials on timely and important topics, but allowed the Section to gain sufficient funding to sponsor a wider variety of programs and projects. Shelly Battram was particularly effective at leading the Section's efforts in this area.

National Institutes and other significant programs during the year focused on: Counselling the U.S. Multinational: Issues and Problems for the 1990s; International Mergers and Acquisitions; International Opportunities for Small Businesses; International Trusts and Estates; New Opportunities for U.S. Banks and Businesses in Europe (1992); The Rising Curtain for American Business in Eastern Europe; Changes in Eastern Europe and the Soviet Union: Implications and Opportunities for Western Business; Practical Aspects of Doing Business with South Korea; Japan-U.S. Trade and Investment Strategies for the 1990s; and Foreign Banking in the United States: New Powers, Opportunities & Products.

In addition to visits with Burt Reynolds and Dolly Parton at Universal Studios, the Section sponsored an ambitious program for the Fall Meeting in Los Angeles, combining the usual seasonable meeting programs with a National Institute on "Japan-U.S. Trade and Investment." The planning committee for

this series of events was composed of Gerry Libby, Marye Rasmussen, and Roger Rosendahl.

The 1990 Spring Meeting in New York, organized by Jim Carter, featured speeches by: Joseph Perella of Wasserstein Perella concerning international mergers and acquisitions; Ambassador Tom Pickering on U.N. activities; George Steinbrenner of the New York Yankees; and Rudolph Guiliani, then candidate and currently mayor of New York City.

The four showcase programs at the Spring Meeting were on International Law Firms in the 1990s; Annual Review of Significant Judicial and Arbitral Decisions Affecting International Business and Trade Law; Issues in International Securities Law Enforcement and Cooperation; and U.S. National Security and Perestroika.

The overall focus for the 1990 ABA Annual Meeting in Chicago, as announced by ABA President Stanley Chauvin, was international law and legal issues. Showcase programs sponsored by the Section were held on the Single European Market; Globalization of the Practice of Law; Legal Aspects of Investment in the New Eastern Europe; the Use of Force in International Law: Panama as a Precedent; and The 24-Hour Trading Day: Internationalization of Securities and Future Markets. Featured speakers at the Annual Meeting for the Section included Edward Leahy, Senior Vice President and General Counsel of Pepsico; Andreas van Acht, European Community Ambassador to the United States; and Richard Breeden, Chair of the U.S. Securities and Exchange Commission. The meeting was organized by Bill Hannay.

This meeting also saw the start of the Joint Reception for Foreign and International Lawyers cohosted by the Section and the Law Society of England and Wales, which has continued as one of the most heavily attended events at the ABA Annual Meeting.

The Section's Annual Leonard J. Theberge Award for Private International Law was presented to Lester Nurick, former General Council for the International Bank for Reconstruction and Development (World Bank).

At the beginning of a long and difficult effort to give Sections and Divisions a greater representative voice in ABA Governance (House of Delegates, Board of Governors, and Nominating Committee), the Section took a leading role in pursuing these issues within the Association. Section Chair Jim Silkenat was elected Chair of the ABA Section Officers Conference (composed of the officers of all ABA Sections, Divisions, and Forums) for a two-year term following the Annual Meeting in Chicago.

In related governance matters, the Section for the first time invited candidates for ABA office to meet with the Section Council to discuss issues of importance to the Association. Candidates for ABA president, secretary, and treasurer met with the Section Council during the year.

A diverse (not to say befuddling) range of topics was covered in the Chair's column in *International Law News*: "Fair and Equal Representation within the ABA"; "Eastern Europe and Mexico: Doing Good and Doing Well"; "The

'Dependable American Law Firm': International Visibility in the 1990s''; and "Columbia and Drugs: Lawyers and Valor."

Among the books published by the Section this year were *International Joint Ventures; A Practical Approach to Working with Foreign Investors in the U.S. and Abroad* by David Goldsweig and Roger Cummings and the second edition of *The Convention for the International Sale of Goods* (by Dan Magraw and Reid Kathrein).

Based on Resolutions approved by the Section Council and passed by the ABA House of Delegates, the Section Chair testified before congressional committees in support of the United Nations Convention on the Law of the Sea and in support of ratification of the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment.

The Section organized the submission of an amicus curiae brief by the ABA to the United States Supreme Court with regard to *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corporation* in a case involving act of state doctrine issues. Counsel of Record were Stanley Chauvin (then president of the ABA), James Silkenat, Michael Sander, and Roger Coven.

The two themes of membership service and great ABA involvement for the Section (respectively summarized by Michael Cohen's statement that "the Section is not a paramilitary organization" and Jim Silkenat's comment that "the Sections are the heart and soul of the ABA") made this a professionally exciting year for the Section. It was one in which friendships and shared interests created a special home in the ABA for Section members.

## Section History, 1990-91

HOMER E. MOYER, JR.\*

The 1990-91 ABA year was one of historic international developments. From armed conflict in the Persian Gulf to fissures in the Soviet bloc, change and crises altered the fabric of the world community. Not surprisingly, these momentous events presented numerous legal issues and significantly shaped the priorities of our Section.

The challenges before the Section were addressed by a strong Council and talented and diverse group of Committee Chairs. Under their leadership, total

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\*Homer E. Moyer, Jr., is a member of the Washington, D.C., law firm of Miller & Chevalier. Mr. Moyer is Vice Chair of the firm's Executive Committee and Chair of its international practice group. He previously served as General Counsel of the United States Department of Commerce. Before government service, he practiced law for three years at Covington & Burling. Mr. Moyer is the cofounder and executive board chair of CEELI, the ABA Central and East European Law Initiative. He is a former Chair of the Section's International Trade Committee (1984-86). Mr. Moyer conceived the 1990 Moscow Conference on Law and Bilateral Economic Relations and chaired the United States executive committee for the meeting.

membership of the Section grew to more than 15,000 with annual revenues, including grants for Section-generated projects, in excess of \$1 million. We concluded the year with a cash reserve modestly less than the reserve we inherited, but nonetheless respectable.

The year began with an extraordinary event, the Moscow Conference on Law and Bilateral Economic Relations. Held in the Kremlin in September 1990, this conference brought together more than 700 American lawyers and judges and more than 1,000 of their Soviet counterparts in plenary sessions and in 32 different workshops.

In discussions led by former cabinet officials, judges, human rights advocates, experienced practitioners, legal scholars, government officials—and their Soviet counterparts—these workshops addressed a range of economic and rule of law topics, in some cases issues that had never before been publicly debated in the Soviet Union. Many Soviet participants, including President Gorbachev, Vice President Lukyanov, Prime Minister Ryhskov, the Chair of the Soviet Supreme Court, the Minister of Justice, and others, divided their time between the conference and the divisive debate on radical economic restructuring that was underway across the Kremlin in the Supreme Soviet.

Highlights of the conference ranged from the profound to the anecdotal, from contentious to poignant: the Chief Justice of the Soviet Supreme Court telling a hushed plenary audience that the lack of independence of the Soviet judicial system had become “intolerable to society”; former Attorney General Katzenbach disclosing how, as a graduate student, he had read the entire works of Lenin and studied the similarities, as well as the differences, between the conceptions underlying our two systems; ABA president-elect Sandy D’Alemberte telling the Soviets at the opening plenary that “your transformation is every bit as bold, original and profound as the drafting of our Constitutional system 200 years ago”; a Soviet delegate embracing an American with the comment “We have wasted so much time. I have spent most of my life learning to hate your country. We must now move ahead.”

Similarly without precedent were the presence on Soviet soil of the general counsels of the CIA and NSA; United States delegates in the overflow crowd participating in Rosh Hashanah services at the Moscow Synagogue during a specially arranged break in the conference; the exuberant reception given the unannounced appearance of Mikhail Gorbachev; Alan Dershowitz’s personal plea to Gorbachev that he speak out against antisemitism; clashes among Soviet delegates in workshops on emigration, human rights, free speech, and others; and spontaneous dancing at the closing banquet, reportedly a first for the Kremlin Banquet Hall.

The conference was jointly sponsored by the Union of Soviet Lawyers and the Center for International Cooperation, in cooperation with the ABA Section of International Law and Practice, which conceived the conference and was responsible for the selection of the substantive topics and the U.S. faculty. Former

Secretary of State William P. Rogers was Chair of the United States Organizing Committee. ABA members of the U.S. Executive Committee included Robert Herzstein, Paul Stephan, Joe Griffin, Ernest Gellhorn, John Hazard, Weyman Lundquist, Eugene Theroux, and Homer Moyer (Chair). The complete conference proceedings have been published by the Section.

Judy Bello chaired and organized a highly successful and substantive Section retreat in early October at Amelia Island, Florida. Attended by Section officers, council members, committee leadership, and Section staff, the retreat not only served the traditional function of orienting new committees and discussing the Section's plan for the year, but also focused on a wide range of substantive topics. In the words of the meeting report: "With democracy blossoming in Eastern Europe and the Berlin Wall tumbling down, war threatened in the Mideast, unprecedented, ambitious multilateral trade negotiations scheduled to conclude soon, and the world's environment more imperiled than ever, we felt that it would be a good time to review some of the highlights of international legal developments and share our prognostications about the future."<sup>19</sup>

The nonsubstantive moments of the retreat captured the perennial budget debate between Section Budget Officer Ken Reisenfeld and service-to-members advocate Michael Marks Cohen. The irreverent rendition to the tunes, respectively, of "Buffalo Gals, Won't You Come Out Tonight?" and "Can-Can," parodied an irrepressible dialogue:

- Cohen: *I would like to say let's spend what we earn,  
We've money to burn.  
That is my concern.  
Our bank accounts are brimming with dough.  
Let's shorten our grip on cash flow.*
- Reisenfeld: *I have to guard the treasury . . .  
These programs are not free.  
We're courting imminent catastrophe.  
If we do not spend within our means,  
We'll find our budget is already blown  
to smithereens . . .*

To sustain us through the year, other retreat frivolities included the staff's view to the tune of "Another Op'ning, Another Show":

*Another meeting, another town;  
The chairman's up, and the staff is down.  
Agenda books are now overdue.  
We'd like to talk, but we've too much to do.*

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19. INT'L LAW NEWS (Fall 1990) at 23.

*We must serve lunch . . . but they'll have to pay.  
 Our speaker still hasn't left L.A.  
 His first class air fare we did not buy . . .  
 We'll have to give him a Section tie!*

Under the ebullient leadership of Edison Dick, the Section organized and sponsored two successful ILEX delegations that focused on events of immediate global interest. The first, during fall 1990, was originally billed as a trip to "The Germanys." Less than thirty days before the ILEX delegation arrived, however, East and West Germany were formally reunified. In Bonn, Cologne, and East and West Berlin, the delegations met with leaders of private legal and banking institutions, the newly unified governments of East and West Germany, and various government organizations, including the recently created *Treuhandanstalt* responsible for privatization of businesses of the former East Germany. Skillfully arranged by Section member Ute Toepke, the ILEX trip to the new, unified Germany generated a Section monograph on the legal challenges facing a unified Germany.

In spring 1991, less than four months after the Gulf War ended, the Section conducted a second ILEX trip to the Middle East countries of Saudi Arabia, Bahrain, and Kuwait. Led by past Section Chair Joe Griffin and organized by Homer Moyer and Jon Lonsberg, this trip included a trip into Kuwait through the polluted skies of the still-burning Kuwaiti oil fields for meetings in the immediate postwar atmosphere of Kuwait City. The monograph of this trip, "Legal Challenges Facing Saudi Arabia, Bahrain, and Kuwait," was published by the Section in 1991.

A third ILEX trip was organized by Bob Cassidy and Frank Schuchat with help from Chris Parlin in Geneva and Professor John Jackson to follow the conclusion of the Uruguay Round negotiations. When the negotiations were extended, the delegation was deferred, bequeathed to the Section for some later date once the Round is finally concluded. [The ILEX delegation and briefing trip took place in May 1994.]

One of the most enduring of the Section's initiatives was the launching of the ABA Central and East European Law Initiative, known as CEELI. Designed to facilitate the law reform process in Central and Eastern Europe, CEELI was developed, nurtured, and initially financed by the Section of International Law and Practice.

Under the leadership of its prior chair, Jim Silkenat, the Section supported and defended the concept of this ambitious law reform project. During 1990 the ABA formally approved the project, the National Endowment for Democracy awarded the initial grant, and in November 1990 CEELI held its first technical assistance workshop in Prague on revision of Czech criminal law. Through additional workshops, assessments of draft laws, and the initiation of the Sister Law School program, CEELI continued on its path of becoming one of the most significant pro bono projects in the history of the ABA.

CEELI was conceived and founded by Sandy D'Alemberte and Homer Moyer.

Its first executive board was comprised of Lloyd Cutler, Stan Chauvin, Max Kampelman, Justice Sandra Day O'Connor, and Homer Moyer, Chair. Day-to-day operations were guided by its outstanding executive director, Mark Ells, who in CEELI's first months was also its sole staff.

For the third time, John Jackson's intensive three-day seminar on the General Agreement on Tariffs and Trade was sold out. Coordinated by Mark Sandstrom, this unique conference, held at the Aspen Institute's Wye Plantation on Maryland's Eastern Shore, focused on the Uruguay Round negotiations in Geneva, from which Professor Jackson travelled directly to the seminar.

Covering "what every law clerk should know about international law," a seminar for judicial clerks of federal judges in the northeast was sponsored by the Section at George Washington University Law School. Five distinguished Section members provided more than eighty law clerks a walking tour of principles of international law ranging from the act of state doctrine to enforcing international arbitral judgments. The impresario of this unprecedented event was Section Council member Peter Ehrenhaft.

With deft handling by Section Delegates Charles Brower and Jim Silkenat, the ABA House of Delegates adopted ten Reports and Recommendations sponsored by the Section. Among them were Resolutions to create a blue ribbon committee on the establishment of an International Criminal Court, to take unilateral and cooperative measures for the protection of the global environment, and to urge ratification of the Treaty on Conventional Armed Forces in Europe. With respect to the Gulf Crisis, the ABA approved the Section's Resolution, cosponsored by the Standing Committee on World Order Under Law, that the United States and other United Nations members "use all necessary means including force as well as diplomacy to restore international peace and security."

With the Human Rights Committee and International Trade Committee, the Section produced a crowded agenda of educational programs. Tim Powers, the Section's CLE Chair, oversaw successful National Institutes on "Structuring International Commercial Transactions" (Chicago), "Uruguay Round Trade Negotiations" (Washington, D.C.), "Counseling Emerging Companies Going International" (San Francisco and New York), "Frontiers of European Litigation: 1992 and Beyond," and "Korea and the U.S. in the 1990s: Impact of Recent Economic Changes on Trade and Investment" (New York).

The Section's Fall Meeting emphasized international legal issues for emerging technologies and was fittingly held in San Jose, in the heart of California's Silicon Valley. Meeting cochair David Teichman and Nelson Dong orchestrated this innovative meeting, which featured an exceptional keynote speech by Wilfred Corrigan, President of LSI Logic and Chair of the Semiconductor Industry Association.

The Washington, D.C., Spring Meeting, chaired by Mark Herlach, attracted more than 450 attendees. Highlights included a reception at the new Canadian Embassy; a National Press Club Dinner discussion on arms control among three



former United States arms negotiators; former United States Trade Representative and Secretary of Labor Bill Brock at the "Insider's Breakfast"; addresses by the U.S. Ambassador to the United Nations, Tom Pickering, and Under Secretary of State Bob Kimmitt, and the swearing in of more than sixty at the Court of International Trade and the Court of Appeals for the Federal Circuit.

Gathering in Atlanta to focus on human rights issues, the Section concluded its 1990-91 year at the ABA Annual Meeting. The program array, devised by meeting cochairmen Tom Kassinger, Gray McCalley, and Mark Sandstrom, included a mock war crimes trial of Saddam Hussein that attracted national attention, a reception and human rights award at the Carter Presidential Center and Museum, presidential showcase programs on Common Market legal issues and East European and Soviet business and investment laws, and an informative and entertaining keynote luncheon address by U.S.T.R. General Counsel Josh Bolten.

As the year came to a close, the Section recognized the extraordinary contributions of, among others, Kim Parker, Homer Moyer's indispensable right arm; our indefatigable Meetings Director, Cynthia Price; and our sage Section Director, Mollie Miller. In a fitting and happy conclusion to the year, the baton was passed to the able hands of incoming Section Chair Gerold Libby.

*Another meeting—on Saturday,  
You know the Council will talk all day—  
Agenda books are still overdue.  
But Sunday morning, we can say "adieu."  
Sunday morning, we can say "adieu."*

## Section History, 1991-92

GEROLD W. LIBBY\*

The 1991-92 ABA year reflected continuing changes in both the international arena in the broadest sense as well as in the legal profession. Abroad, from Eastern Europe to Southeast Asia, countries in various stages of development continued to adopt market economy measures, and to look to western—primarily United States—models for purposes of economic, political, and legal development. At home, the beginning of economic recession introduced new pressures on lawyers and law firms, and therefore on the Section, which found it necessary to reduce the scale of continuing legal education and other programs.

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\*When Gerold W. Libby became Section Chair, he was the managing partner of the Los Angeles office of Whitman & Ransom. He currently is a partner in the Los Angeles office of Whitman, Broed, Abbott & Morgan, where his practice involves advising clients on international business transactions throughout the world, especially East Asia. Before his service as Chair, Mr. Libby served as Vice Chair of two committees and as Editor-in-Chief of *International Law News*. He has recently been nominated as Section Delegate to the ABA House of Delegates.

However, the Section remained one of the visionary and dynamic segments of the ABA. Section membership continued to grow, and the Section's highly dedicated officers and Council, supplemented by able Committee Chairs, proved effective both in maintaining traditional "core" services and in developing new initiatives in responding to global change. East and Southeast Asia were a particular focus of activity.

The Section expanded the geographic scope of technical legal assistance programs first implemented in connection with the Central and East European Initiative (CEELI) begun during the prior year. At the outset of the year, the Section sent Chair Gerold Libby and member Lawrence Serra to Thailand, Cambodia, Laos, and Vietnam to explore opportunities for providing legal assistance. This was a region on the eve of change, as the United States contemplated gradual resumption of the normalization of relations and the end of its trade embargo with Vietnam and as warring parties in Cambodia moved toward a peace agreement and the process of nation building in the most basic sense. Following that initial exploratory trip, the Section formally established the Southeast Asia Project, which today entails legal help in Cambodia in numerous areas of law, coordinated through two permanent resident liaison personnel. With the embargo regarding Vietnam lifted early in 1994, the Section continues to explore ways to provide legal assistance in that country.

The Section also became a finalist in a bid to become a prime contractor for a massive USAID law project in Indonesia. Although the Section ultimately was not selected for the project, the process of preparation of the bid, which would have led to the largest contractual undertaking in Section history, proved to be an invaluable exercise in mobilizing legal resources from throughout the United States, resources that have been applied elsewhere in the Southeast Asia region.

Another manifestation of the Section's Asia activities was its participation as a cosponsor of Lexpo '93, a conference on the Legal and Financial Aspects of Doing Business in India and the United States, eventually presented in New Delhi in February 1993. Section planning began in late 1991. Although Lexpo '93 was sponsored by the United States and the Foreign Commercial Service of the American Embassy in New Delhi and covered American as well as Indian topics, it was a profoundly Indian event. Most of the 560 delegates were Indian business executives, advocates, chartered accountants, company officials, and management consultants.

The Section's ILEX program continued to be active under the leadership of Edison Dick and featured two successful delegations and briefing trips. The first was an intensive trip to Tokyo and Singapore, where the Section presented joint programs in cosponsorship with the Inter-Pacific Bar Association on the subject of new Asian capital markets. The ILEX venture marked the first cooperative program with the recently formed Inter-Pacific Bar Association. In Tokyo, speakers from the United States, Japan, Korea, and Taiwan gave presentations on the security laws in their countries. Among the highlights was a discussion on the

efficacy and integrity of the capital markets of Japan in light of recent security industry scandals in that country. In Singapore, corresponding panels addressed capital markets in Indonesia, Hong Kong, Thailand, Australia, and Singapore.

The second ILEX delegation of the year visited Spain and Portugal. In Lisbon the delegation received extensive briefings on privatization in Portugal from the Secretary of State of Industry as well as from officials of the Luso-American Development Foundation, a government-sponsored institution headquartered in Lisbon that assisted greatly in organization of the Portugal portion of the trip. In Spain, the delegation participated in a seminar on foreign investment in Spain, visited the University of Madrid Law School, and received a briefing at the Spanish Parliament. In both Madrid and Lisbon, cities where the ILEX delegation spent most of its time, attention focused on the efforts of Spain and Portugal to continue to develop their economies and on relations between the host countries and the United States as well as the European Community.

The Section's Fall Meeting, held in Seattle and entitled "Pacific Currents: Charting Developments in the Americas and the Far East," reflected the continuing importance of Asia to the Section's activities and to the Pacific Northwest. Chaired by Michael Sandler, the program addressed an array of such diverse topics as license agreements with East Asian companies, how to take a deposition in Japan, and the new legal rules for doing business in the Soviet Far East. Software protection was the topic of a luncheon addressed by William H. Neukom, Vice President of Law and Corporate Affairs of Microsoft Corporation, and Raymond J. Waldmann, Director of Government Affairs of Boeing, talked about controversial European government subsidies of the airbus.

The Section's Spring Meeting was held in New York City and was chaired by Michael Marks Cohen. Substantive highlights of the meeting included showcase programs on the Iraqi Claims Commission and prospects for recovery of reparations in the aftermath of the Persian Gulf War and on anticipated developments in international commercial law, featuring presentations on UNCITRAL, UNIDROIT, and the Uniform Customs and Practice for Documentary Credits. At the Spring Meeting, the Section's Leonard J. Theberge Award for Private International Law was given to long-time Section leader Professor Louis B. Sohn, then serving as Section Chair-Elect.

The Section continued to develop, discuss, and approve Reports and Recommendations to the ABA House of Delegates. Reports and Recommendations adopted by the Section during the 1991-92 year addressed such matters as payment of the United States debt to the United Nations, the international sale of conventional arms, and the creation of an international criminal court. The latter was the subject of a Report presented at the Annual Meeting by the Section's Task Force on International Criminal Court, headed by Benjamin Civiletti, former United States Attorney General.

The ABA Annual Meeting in San Francisco marked the end of the Section year. The Section's showcase programs at the Annual Meeting addressed the

former Soviet Republics, Europe, and Japan. With respect to the first, attention focused on significant recent developments in business opportunities for U.S. companies seeking to invest or to facilitate investment in the republics of the former Soviet Union. European legal practice as well as positions on and economic interests in integration with the European community dominated the European agenda. The theme of the presentation on Japan was perhaps aptly reflected by the program title, "I Hear You Knocking, But You Can't Come In." Annual Meeting Chair Fred Brown ably introduced the Section to some delightful social settings of the host city.

The Section year marked a significant change in the Section Staff, the Section's indispensable supporting cast, with the appointment of Alaire Rieffel as the new Section Director. Cynthia Price continued in her invaluable role as Meetings Director. With the closing of the Annual Meeting in San Francisco, Professor Louis B. Sohn assumed the position of Section Chair for the 1992-93 ABA year.

## Section History, 1992-93

LOUIS B. SOHN\*

During 1992-93 Louis B. Sohn served as the Chair of the Section, after serving for many years as Chair of the Committee on International Courts and as Vice Chair in charge of the Division of Public International Law.

The Section took an active role in the discussion of the North American Free Trade Agreement (NAFTA) and in obtaining ABA support. Its Joint Working Group with the Canadian Bar Association on the Free Trade Agreement with Canada was enlarged to include the Barra Mexicana. It was able to agree on a Report on the dispute settlement clauses of NAFTA and the three bar associations approved the Resolutions included in the Report and presented to the three governments. Similarly, at a later stage, the Working Group prepared supplementary Reports on the additional NAFTA arrangements for environmental and labor matters.

Appropriately, the Fall 1992 Meeting of the Section at Dallas was devoted to "International Law and Business in the Americas," which highlighted the

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opportunities and the special legal problems involved in the rapidly expanding inter-American trade and investment markets. The various regional pacts were discussed as well as the latest developments in the Uruguay Round of GATT. A special program at Dallas considered the *Alvarez-Machain* case in which the United States Supreme Court refused to order the return to Mexico of a doctor kidnapped from Mexico by United States agents. The doctor was accused of helping some Mexican drug traffickers in interrogating a wounded U.S. antidrug agent. Different views on the subject by American and Mexican lawyers were presented, and it was pointed out that, apart from the U.S. Constitutional problem considered by the United States Supreme Court, there was an international law issue, on which the American Bar Association supported the Mexican view. The Section's Recommendation condemning the abduction of individuals from foreign countries was approved by the House of Delegates at the February 1993 Midyear Meeting. When the case was considered, on remand, by the district court in California, the judge dismissed it on the ground that the evidence presented by the prosecutor did not establish that the accused was actually guilty of any crime, and he was promptly sent back to Mexico. The United States Government then announced that this practice of bringing an accused to the United States, without going through appropriate extradition proceedings, will be discontinued, thus vindicating the view taken by the two bar associations.

The end of the Cold War brought with it great changes not only in the economics of Eastern Europe but also in other parts of the world, leading to the privatization of many industries. The Section established therefore a new Committee on Privatization under the able direction of cochairs Frederic C. Rich (Sullivan & Cromwell) and James R. Silkenat (Winthrop, Stimson, Putnam & Roberts). Another less desirable result of these economic changes was the increase in international bankruptcies, and the discovery by the ABA Central and East European Initiative (CEELI) that in several countries there were no modern bankruptcy laws, and in several others there were no bankruptcy laws at all. Originally proposed by the Section, CEELI later became an ABA-wide program that was soon extended to the republics of the former Soviet Union. To deal with this problem, the Section established another new International Creditors' Rights and Bankruptcy Committee, chaired by Don S. DiAmici (Ropes & Gray) to coordinate the activities of international lawyers with those of other organizations involved in the international insolvency area.

As a result of the initiative of Lane Porter, the Chair of the Section's International Health Law Committee, a voluminous interdisciplinary study of *International Law and AIDS: International Responses, Current Issues, and Future Dimensions*, was published by the ABA in Fall 1993. With the assistance of several experts from the World Health Organization's Global Program on AIDS, many international legal issues are discussed from a variety of points of view.

Another important publication of this period was a collection of *Commentaries on the Restatement (Third) of the Foreign Relations Law of the United States*.

The *Restatement* frequently is used by the courts as a modern guide to many issues of international law, and the ABA volume provides a valuable companion. Its analysis and critique of some of the more significant provisions of the *Restatement* from the point of view of practicing lawyers should be very useful. The Section also published a book of essays on *Careers in International Law* and an *ABA Guide to Foreign Law Firms*.

In September 1992 the Section's International Legal Exchange Committee (ILEX) had a successful briefing trip to Czechoslovakia (now the Czech and Slovak Republics) and to Hungary, during which a group of American lawyers was able to meet top officials and obtain firsthand information on current developments in the areas of trade and investment in this rapidly industrializing area.

Several members of the African Law Committee had a chance in the last quarter of 1992 to participate in Election Observation Teams monitoring the elections in Kenya and Angola, where multiparty elections were held for the first time.

After a Resolution on the need to punish persons responsible for war crimes in Bosnia, proposed by the Section and the ABA Standing Committee on World Order Under Law, was approved by the ABA Board of Governors in November 1992, the Section decided to present the 1993 Rule of Law Award to Srdja Popovic, a courageous Serbian lawyer who dared to oppose the atrocities committed as part of a "Greater Serbia" policy and to publish an independent periodical *Vreme (Time)* condemning these policies. As a result of threats to his family, he had to leave Serbia and seek political asylum in the United States. The award was presented at the ABA New York Meeting in connection with a special panel on "Crisis in the Balkans." In addition, a Task Force on War Crimes in the Former Yugoslavia was established by the Section Chair, which, under the direction of Monroe Leigh (Steptoe and Johnson), former Legal Adviser to the Department of State, prepared comments on the statute of the international war crimes tribunal established by the Security Council of the United Nations and on a later Report on the tribunal's rules of procedure and evidence. At its 1993 New York Annual Meeting, the ABA House of Delegates approved the Resolution proposed by the Section on the basis of this Report.

"International Law and Business in a Changing World" was the theme of the Section's 1993 Annual Spring Meeting in Washington, D.C. The Section's new program of Practitioners Workshops was inaugurated at that meeting. It is designed to familiarize international law practitioners with special problems encountered in various proceedings involving international law issues. These workshops are conducted in the form of a dialogue among experts, taking the audience through the whole proceedings step-by-step. The first three workshops considered the following problems:

- (1) "How to carry out an ICSID arbitration" dealt with an arbitration between a private company investing in a foreign country and having a dispute with that country's government or one of its subdivisions or agencies. This arbitration was a simulation of one conducted under the auspices of the

Center for Settlement of International Investment Disputes, which was established by the World Bank.

- (2) "How to draft an international joint venture agreement" considered from the point of view of both American and foreign lawyers the issues that need to be taken into account in preparing such documents to balance the business objectives of the parties. It took into consideration the various accounting, tax, regulatory, and other legal problems arising in countries with different legal systems of various countries and their respective merits.
- (3) "How to file an antidumping provision on behalf of U.S. industries" explained how a lawyer can evaluate the merits of such a case, what documents need to be gathered, however the available information should be analyzed, and what strategic and tactical considerations must be taken into account.

The experts involved in these presentations (and other topics at later meetings) prepared a practical set of documents and other useful materials that can be purchased separately.

In addition, the Section presented at the Spring Meeting three showcases dealing with: "International Business, Law, and Trade Issues" (as seen by the leaders of the new Clinton Administration); "Annual Review of Judicial and Arbitral Decisions Affecting International Business and Trade Law" (including significant decisions by U.S. courts, the International Court of Justice, international arbitral tribunals, and foreign courts); and "Privatization in Central Europe: Policy Choices and Practical Approaches" (countries of the former Soviet Union were also considered).

Various committees also presented panels. For instance, the Aerospace Law Committee discussed the malfunctioning of the government-to-government bilateral air services agreements which limit not only the routes that may be flown between each pair of nationals, but also allowable capacity as well as regulated fares, and may lead to inadequate service, thus affecting the level of commercial activity and the volume of trade. Other committees deal with such issues as extraterritorial jurisdiction (in such areas as antitrust, labor, export controls, the environmental and human rights) and multilateral humanitarian intervention (how to prevent new Bosnias).

At the Spring Meeting, the Section Council approved five Resolutions urging: the timely conclusion of the Uruguay Round of GATT negotiations and the establishment of a Multilateral Trade Organization; support for the Start II Treaty for the Reduction and Limitation of Strategic Arms; the adoption of model rules for the licensing of legal consultations, which were prepared by a Section task force under the leadership of Steven C. Nelson (Dorsey & Whitney) and were designed to provide uniformity among U.S. jurisdictions and reciprocity for U.S. lawyers abroad; the adoption of an amendment to Section 337 of the Tariff Act of 1930 concerning the protection of intellectual property rights; and the inclusion of questions covering international law on bar exams. The first four Resolutions,

as well as the previously mentioned Resolution prepared by the special Task Force on War Crimes, were approved by the House of Delegates at the 1993 New York Annual Meeting. The bar examination issue, however, was strongly opposed and rejected by the House of Delegates.

Also established was another task force, chaired by Lucinda A. Low (Miller & Chevalier) to study the question of U.S. legal technical assistance to countries coping with problems arising from democratization of their governmental systems and from their shift to a market economy and trying to promote at the same time human rights and the rule of law. Its Recommendations were approved by the House of Delegates at its 1994 Kansas City Midyear Meeting.

In another step in this direction, the Section was awarded a grant by the U.S. Information Agency to conduct a Latin American Sister Law School Program that would bring to the United States twenty law school deans for a three-week period. The purpose would be to familiarize them with the role and operation of U.S. law schools, their methods of teaching, and the subjects currently being taught. Each dean would attend a common symposium and spend some time at a sister law school, establishing with it (if possible) cooperative arrangements and exchanges of professors and students.

At the 1993 Annual Meeting in New York, the Section's Presidential Showcases dealt with two aspects of the Bosnia problem: "Could a Courtroom Battle Replace a Battlefield?" in which teams of U.S. trial lawyers and lawyers from states of former Yugoslavia presented to an international arbitration panel the evidence and arguments relating to the conflict between state sovereignty and the right of the international community to punish gross violations of human rights; and "From Nuremberg to Bosnia—Should the United Nations Prosecute War Criminals?" in which a panel considered the practical issues relating to the rules of procedure and evidence needed to protect both the interests of the victims and of the alleged violators of the Geneva 1949 Humanitarian Law Convention protecting civilian populations against grave breaches of this convention.

Other Section showcases considered "transnational litigation issues" facing American corporations abroad; "World Trading Rules and Institutions in a Dynamic Political Landscape," discussing the post-Cold War problems of transition from managed trade to market-oriented trade; and "After Maastricht: Europe the Morning After," pointing out the conflict between the increased powers of the Commission of the new European Union and the principle of "subsidiarity" (delegating authority to national governments whenever possible). A supplementary Joint United Kingdom-United States showcase considered the "Legal and Economic Consequences of the Expansion of Europe" as a result of the new agreement to form a European Economic Area, a common market embracing the European Community and the six nations of the European Free Trade Association. These countries account for almost half of all world trade.

The series of Practitioners Workshops was continued by three presentations: "How to Draft International Distribution, Agency, and Representation



Agreements,” illustrating the problems inherent in negotiating agreements with a foreign “partner” who acts on behalf of a U.S. company in a foreign country as an agent, representative, or distributor; “How to Conduct an International Arbitration Pursuant to the Rules of the International Chamber of Commerce,” examining the preparation and conduct of a case before a panel of the International Court of Arbitration; and “Developing Corporate Compliance Programs for International Business Regulation,” exploring the internal corporate programs needed to comply with United States export controls and sanctions, antiboycott laws, and the Foreign Corrupt Practices Act.

Altogether this was a year of expansion and resulted in the adoption by the ABA of a large number of the Section’s Recommendations.