

# **Report of the Chairman, 1975-1976**

## **Section of International Law**

### **American Bar Association**

This report summarizes the activities of the Section of International Law for the Association year 1975-76, the 43rd year since its organization in 1933. Section membership increased to 6,966 members as of May 1975, including 5,632 lawyers, 1,247 law students and 87 associate members.

#### **Organization**

The Section's activities are carried on by 54 committees, organized into five divisions, each headed by a Section vice-chairman. Thirteen committees comprise the International Law Division, eleven are in the Comparative Law Division, nine in the International Trade and Investment Division, five in the International Organizations Division and sixteen in the General Committees Division. Many of the committees have filed reports of their activities which are available upon request from ABA headquarters.

At the Spring meeting, the Council voted to abolish the Policy and Planning Committee and, in its place, to create a Long Range Planning Committee, chaired by the Chairman-Elect, and an Administration Committee, chaired by the Chairman, and consisting of the Chairman-Elect, the Divisional Vice-Chairmen, the Secretary and the Budget Officer.

The first task of the Long Range Planning Committee is to make recommendations concerning the allocation of Section financial resources and possible restructuring of divisions and committees. The role of the Administration Committee is to handle routine administrative matters, subject to ratification by the Council, and thereby allow Council meetings to confine themselves primarily to substantive and policy matters.

#### **Meetings**

The Section and Council met at the Annual meeting in Montreal August 8-13, 1975, at the Spring meeting in Washington, D.C. April 23-24, 1976 and in Atlanta August 6-11, 1976. The Council's Midwinter meeting was held in Cancún, Mexico December 5-7, 1975.

### House of Delegates Submissions

At the Montreal meeting, the House of Delegates adopted a recommendation by the Section for reform of the penalty provisions of Section 592 of the Tariff Act of 1930 relating to false and erroneous import statements.

At the Midyear meeting in Philadelphia, three resolutions emanating from the Section were submitted:

The first resolution, which originated with the Section's Committee on Relations between the Executive and Legislative Branches, dealt with the subject of executive agreements. It proposed that the Association go on record as being opposed in principle to, and questioning the wisdom of, enactment by Congress of legislation which would purport to veto executive agreements of the President by a resolution of either or both Houses. It also undertook to further define the phrase "international agreement" in the Case Act. Finally, it recommended that Congress adopt a concurrent resolution which would request appropriate participation by Congress in the making of certain international commitments. Those resolutions were adopted by a voice vote.

The second resolution urged approval of United States ratification of the United Nations Convention on Genocide. The Association had gone on record in 1948 and again in 1970 in opposition to ratification. Largely as a result of that opposition, the Senate has so far declined to ratify it and the United States has been the only major power not to do so. I am gratified to report that with very little opposition, the House of Delegates, by a voice vote, approved the resolution and thereby placed the Association on record as now favoring ratification. With this obstacle removed, it is quite likely that the United States Senate will take up the Convention and, it is hoped, will consent to ratification. The Association's action was commented upon favorably in *The New York Times*, *Time* and other news media.

The third Section resolution recommended that the Association seek accreditation with the United Nations Economic and Social Council, and, if accepted, designate representatives to the Council. Such accreditation would enable the Association to communicate its views on United Nations matters directly to the United Nations, as do other non-governmental organizations. That recommendation likewise passed by a voice vote.

At the Atlanta meeting, resolutions were submitted by the Section to the House concerning sovereign immunity, the 1925 Geneva Protocol and the 1972 United Nations Convention prohibiting the use of poison gas and bacteriological warfare, and a proposed International Criminal Court. The first two resolutions were approved by the House, but the third was disapproved.

### Elections

At the Annual meeting, the Section experienced its first contested election for membership on the Council. After three candidates had been nominated

by the Nominating Committee, a fourth candidate was nominated from the floor. A resolution was approved authorizing a written ballot and the candidate nominated from the floor was elected to a seat on the Council in place of one of the Nominating Committee's nominees.

### **Bicentennial Activity**

At the 1975 Annual meeting, the House approved a Section resolution under which the Association recognized the concept of the increasing interdependence of nations, and called upon the sections and committees having expertise in the field, as a bicentennial project of the Association, to study the problems created by that interdependence and make recommendations for further Association action.

Pursuant to that resolution, the Section organized a joint meeting in Philadelphia March 25 and 26 with the American Society of International Law, the American Branch of the International Law Association and the International Law Council of the Federal Bar Association. The topic was "The New Economic Interdependence—Legal and Policy Implications." Panelists discussed such topics as oil, food and the United Nations Charter of Economic Rights and Duties. The luncheon speaker was the former Undersecretary of State, Hon. Nicholas DeB. Katzenbach. The report of that meeting will form the basis for future Section recommendations.

### **Continuing Legal Education**

The Section presented in Chicago on October 3-4, 1975 a National Institute on "Current Legal Aspects of Foreign Investment in the United States," directed primarily at practitioners having foreign clients.

At the Midwinter Council meeting, two members of the bar of Mexico provided a highly informative discussion of the present legal and economic situation in Mexico, including the new laws relating to foreign investment and transfer of technology, as they affect foreign enterprises doing business in Mexico.

At the Spring Section meeting in Washington, the Section sponsored jointly with the American Society of International Law a luncheon at which Undersecretary of State, Joseph Sisco, presented a detailed analysis of the Middle East situation with particular reference to Lebanon. At a breakfast meeting, Jerome I. Levinson, Counsel to the Senate Foreign Relations Committee Subcommittee on Multinational Corporations, described the major features of that Subcommittee's investigation of payments by U.S. corporations to foreign governments and officials.

On Friday and Saturday, May 14 and 15, the Section, together with the Standing Committee on Education About Communism, jointly presented a workshop for law professors on "The Dilemma of Detente in an Open, Free

Market-Oriented Society." The panelists included Arthur A. Hartman, Assistant Secretary of State for European Affairs; Paul H. Nitze, former Deputy Secretary of Defense; Eugene V. Rostow, former Undersecretary of State for Political Affairs; Admiral Elmo R. Zumwalt (U.S.N. Ret.); Arthur T. Downey, Deputy Assistant Secretary for Commerce of East-West Trade and member of our Section's Council; and others. The topics included national security considerations, SALT, technical exchange and trade. Approximately 80 law professors from all over the United States attended and participated in a discussion of detente from the United States and Soviet perspectives.

At the Atlanta meeting, the Section presented programs on the following topics: "England's Accession to the EEC and the Conduct of Business in the Common Market"; "Protection of Civilians in Armed Conflict: The Geneva Conference on Humanitarian Law"; "Practical Aspects of International Regulation of Multinational Corporations and Business"; and "Arbitrating International Commercial Cases in England: New Developments and Old Differences."

The latter two programs were presented jointly with the Section of Corporation, Banking and Business Law. A featured speaker at the arbitration program was Lord Denning, Master of the Rolls. At a breakfast jointly sponsored with the American Foreign Law Association, Eli Whitney Debevoise, Past Chairman of the Executive Committee of the International Commission of Jurists, spoke on "Human Rights—A Growing Concern of the International Community." At the Annual luncheon, Sir Peter Rawlinson, Chairman of the Senate of the Inns of Court and of the Bar Council of England spoke upon "The English and Common Market Positions on Control and Disclosure Requirements of Multinationals."

The Section, in cosponsorship with the International Bar Association and the International Law Association, again hosted an international reception in honor of distinguished foreign guests of the Association and the consular corps of Atlanta. The Section's annual party in honor of its past Chairmen became for the first time a dinner-dance with music and entertainment.

### **Publications**

*The International Lawyer*, the Section's quarterly legal journal, continues its high standard of quality and variety under its new Editor-in-Chief, Alwyn V. Freeman. The lively and topical *International Law News* is likewise distributed quarterly, reporting current information concerning Section activities and up-to-the-minute developments in International Law. Both publications are distributed free to Section members.

The Section also published in *The International Lawyer* a special report of the proceedings of the National Institute on East-West Trade. The Section is presently publishing the following: *Current Legal Aspects of Doing Business*

*in Canada, Current Legal Aspects of Foreign Investment in the United States and a 1976 Supplement to the Commercial Treaty Index.*

### **Special Activities**

The Section has created an ad hoc committee to study the effect upon existing international legal principles of the positions concerning economic development now being espoused by the less developed countries.

We continue to maintain a Liaison with the American Society of International Law and the International Commission of Jurists and to have a representative upon the State Department Advisory Committee on Private International Law, which helps to formulate the United States positions to be taken at the quadrennial session of the Hague Conference on Private International Law.

At the Montreal meeting, the House of Delegates adopted a resolution expressing concern over instances when lawyers in foreign countries have been detained or harassed because of their representation of individual defendants. The resolution directed the President of the Association to bring that concern to the attention of the United States government, with the request that it be communicated where appropriate to foreign governments. During the course of the year, the Section called to the attention of the President the situation of a Yugoslav lawyer who had been so detained. At the Section's request, the President directed a letter to the Secretary of State concerning the facts and requesting the Secretary of State to communicate to the government of Yugoslavia the Association's concern.

The International Legal Exchange Program, with participation by a number of sections and committees, continues its activity in arranging job placements and visits involving individual lawyers, judges and law offices in the United States and abroad.

Work continues upon the War Powers study, the first volume of which is expected to be published in 1976.

### **Budget and Finance**

During the year, the Section operated on a budget of \$115,000, and all members received a complete financial report for the preceding fiscal year. The Section had achieved a slight surplus for the year ending June 30, 1975. The Section completed the year ending June 30, 1976 with a surplus of almost \$25,000, due largely to a strict policy of cutting down on expenses. At the Atlanta meeting, however, the Council approved certain new projects and the hiring of a part-time lawyer to act as Executive Assistant to the Chairman and the Council; the cost of these items may result in little or no surplus at the end of the 1976-77 year.

**Conclusion**

In a year characterized by American unwillingness to assume new political or military commitments abroad, by charges of improper payments by United States corporations to foreign governments and individuals, by a presidential election in which United States foreign policy and legal commitments have become partisan political issues, and by major international legal problems, such as SALT and the Law of the Sea, the Section of International Law continues to carry out its objectives of informing its members and the Association of international legal matters of concern to the organized bar and formulating recommendations for Association action in the international field.

Respectfully submitted,

Richard P. Brown, Jr.  
Chairman

# **Symposium on the Regulation of Multinational Enterprises**

## **PART I**

*Editor's Note:* With this issue the *International Lawyer* presents the first of a two-part series of papers dealing with various aspects of the regulation of multinational enterprises. The project was conceived by Roger C. Wesley, Sean McMillan, Richard Fine and other members of the Section of International Law who have had experience in their practice with this timely and vital subject. At its Cancun meeting, in December 1975, the Council of the Section approved publication of the papers in the *International Lawyer*, and directed the editor-in-chief to incorporate them in the fall and winter issues. In taking this action the Council manifested its conviction that the publication of such a written symposium would be of considerable interest and usefulness to all members of the legal profession concerned with international trade and investment. That conviction is reenforced by the ambitious and problematical aspects of some of the recommendations in the Report adopted by the United Nations Commission on Transnational Corporations at its session in March 1975.

This first portion of the symposium, after an overview by Roger C. Wesley, will discuss problems of taxation, securities and labor. The second half will take up antitrust matters, currency transfer and export controls. No pretense is made that the papers can serve as anything other than the broadest of introductions to an enormously complex area.

