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Chairman's Report Section of International Law American Bar Association

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Chairman's Report Section of International Law American Bar Association

The activities of the Section of International Law during the Association year 1976-1977, the 44th year since the establishment of the Section, are summarized in this report. As of June, 1977 the Section had 7,275 members, the largest number in its history, consisting of 5,970 lawyers, 1,144 law students and 161 foreign associates.

Organization

During the past year the Section's activities were carried on by thirty-eight committees organized into four divisions, each headed by a Section vice-chairman, plus sixteen general committees supervised by the Chairman-Elect. As a result of studies conducted by the Section's Long Range Planning Committee the structure of the Section was revised effective August, 1977 to consist of five divisions:

Comparative Law
General
International Law
International Organizations and
International Trade and Investment

each headed by a divisional vice-chairman. The general committees formerly supervised by the Chairman-Elect will henceforth be headed by a divisional vice-chairman, and the Chairman-Elect will be able to concentrate his attention upon long range planning and working closely with the Section Chairman.

In addition to the restructuring of the Section in the manner described above, a complete revision of the Section's By-Laws was adopted at the Spring Meeting in April, 1977. Various inconsistencies that had grown up over the years were eliminated and some basic changes, including procedures for contested elections, were introduced.

The Long Range Planning Committee and the Administration Committee, which were created in 1976, continued to play the constructive roles intended

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for them. Also, the employment of an attorney-consultant, Edison W. Dick, Esq., greatly facilitated the Section's activities on a substantive level and its fund-raising efforts.

The Section's goals as they are seen by the Long Range Planning Committee include:

- A. Alerting the Bar to significant issues and developments in the field of international law and, where appropriate, proposing positions on those issues for adoption by the Section and the ABA.
- B. Providing Section members and others with information on educational programs and publications relating to international legal matters with special emphasis on questions of direct practical interest.
- C. Promoting—to the extent that a professional organization is in the position to do so—constructive legal approaches to international problems including especially the cause of world peace. A corollary to this goal is the promotion of friendly relations with lawyers and jurists of other nations.

During the past year the Section made substantial progress in advancing these objectives.

With regard to the identification of international law issues and the formulation of positions on them, the Section presented four resolutions to the midwinter meeting of the House of Delegates in Seattle in February, 1977; and each of the four was adopted as ABA policy. These resolutions:

1. RECOMMEND THAT

- (a) the United States Senate give its advice and consent to the Additional (Montreal) Protocol No. 3 of 1975 Amending the Warsaw Convention of 1929, as Amended by The Hague Protocol of 1955 and the Guatemala Protocol of 1971, all relating to the compensation of airline passengers or their estates for death or personal injury occurring in international air travel; and further that
- (b) the ABA endorse the Supplemental Compensation Plan which would be an integral part of the program contemplated by Additional (Montreal) Protocol No. 3. On these matters our Section found itself in direct opposition to the Section of Insurance, Negligence and Compensation Law. The positions of the two Sections were judged by both of them to be irreconcilable and not susceptible to a compromise solution. Our Section's position was supported by the Standing Committee on Aeronautical Law and the Public Utility Law Section. After debate, the House of Delegates adopted our Section's proposal by a substantial margin. The report of the International Law Section had been prepared by the Section's Committee on International Transportation under the chairmanship of James W. Callison.

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2. **RECOMMEND** The extension of eight Executive Agreements (T.I.A.S. 7344, 7345, 7346, 7347, 7650, 7651, 7652 and 7876) between the Soviet Union and the United States, which would expire by their terms in 1977 and 1978. These Specialized Bilateral Cooperative Agreements, which relate to science and technology, environmental protection, medical science and public health, artificial heart, space, agriculture, world oceans and world transportation, were signed at summit meetings between 1972 and 1974 and represent an effort on the part of the United States to improve relations with the Soviet Union. Our Section's Committee on Aerospace Law, under the chairmanship of Edward R. Finch, Jr., prepared the Section's recommendation, which was unanimously approved by the House of Delegates.
3. **COMMEND** The adoption of the Declaration on International Investment and Multinational Enterprises by the twenty-three governments of the Organization for Economic Cooperation and Development (OECD); express its approval of the open process by which the United States delegation to the OECD proceeded in the formulation and negotiation of the United States position; and endorse the OECD Declaration as a balanced and constructive statement on the responsibilities of both multinational enterprises and governments with respect to foreign investment which should serve as a basis for the United States position on these subjects in other international discussions. Our Section's recommendation, which was prepared by the Subcommittee on Multinational Corporations under the chairmanship of Timothy Atkeson, was adopted unanimously by the House.
4. **RECOMMEND** That Congress enact legislation amending the Foreign Assistance Act, 22 U.S.C. Sections 2191-2200a, to provide that (a) Overseas Private Investment Corporation (OPIC) continue its efforts to increase participation by private insurers in the writing of political risk investment insurance, (b) OPIC's authorization be extended until at least December 31, 1981 and (c) OPIC continue to act as a primary insurer of political risks, alone or in cooperation with private insurers, to at least the extent necessary to ensure the continued availability of political risk insurance to eligible investors on commercially reasonable terms and conditions. The Section's report was prepared by the Subcommittee of Insuring Overseas Investments, chaired by Joseph P. Griffin. The House of Delegates gave its unanimous approval to this recommendation.

Our Section presented two resolutions to the House of Delegates at the 1977 Annual Meeting in Chicago:

1. One endorsed the adherence by the United States, with certain reservations, to the United Nations Convention on the Elimination of All

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Forms of Racial Discrimination. This resolution failed to be adopted.

2. The other opposed the removal from New York to Vienna of the Legal Office of the United Nations Commission on International Trade Law. This resolution was approved by the House.

Educational Programs

In the field of educational activity the Section has been creative and effective during the past year. The Section's regular publications, *The International Lawyer*, edited by Alwyn V. Freeman, and *The International Law News*, edited by Charles A. White, Jr., continued to maintain their previous high standards. Two highly successful National Institutes were produced:

1. Legal Aspects of Doing Business in the Middle East held in Washington, D.C. in November, 1976 and organized by Warren G. Wickersham; and
2. Legal Aspects of Doing Business with Japan and East Asia, held in Seattle, Washington in April, 1977 and organized by E. Charles Routh and John O. Haley. These were quality programs; they were well attended and favorably received. The proceedings are being published in the Section's "Legal Aspects" series.

During the past year a project initiated by the Section in 1972 for the preparation of an in-depth study of the respective powers under the Constitution of the president and Congress to enter into and conduct war resulted in the publication of a first volume of that study by Professor Abraham D. Sofaer of Columbia University covering the period 1789 to 1829. This work represents a unique and substantial contribution to the understanding of a very significant subject. The financial and moral support of our Section, spearheaded by a former Section Chairman, Lyman M. Tondel, Jr., played an essential part in its accomplishment.

Of special interest, I think, are the workshops sponsored by the Ad Hoc Committee on Law and the Developing Countries through the efforts of Don Wallace, Jr., Lyon L. Brinsmade and Leonard J. Theberge. The Ad Hoc Committee, which was created to study the legal ramifications of the Third World's drive to alter existing economic patterns, and which has now been converted into a regular Section Committee, held workshop programs in Washington, D.C. and Houston, Texas where audiences participated in give and take discussions designed to elicit information and viewpoints. It is likely that the same format will be used for further Section programs in this and other fields in the future.

Various other Committees of the Section also sponsored or participated in educational programs and produced valuable written reports.

International Understanding

In respect of the third Section objective mentioned above, the support of the rule of law on the international level, the Section has this year initiated a joint study with the Canadian Bar Association of existing disputes between the United States and Canada and mechanisms for their resolution. Under the guidance of Henry T. King, Jr., Chairman-Elect of the Section, a distinguished group of United States and Canadian lawyers met on several occasions to organize the project and to engage in substantive discussions. To my knowledge this represents a type of project that is a pioneering effort for the Section and, perhaps, for the ABA.

Our Section continues to support with enthusiasm the International Legal Exchange Program; and the Section's Committee on Relations with Lawyers of Other Nations, under Katherine Hallgarten's chairmanship, has organized a briefing trip to France for this fall. During the year the Section made contact with representatives of the People's Republic of China, and it is hoped that an ABA trip to China by experts in legal matters of mutual interest will take place this coming year.

Budget

Unaudited figures for the year ended June 30, 1977 indicate that the Section's revenues exceeded its expenses by over \$29,000. Sale of Section publications, National Institute revenues and an increase in membership played a part in this satisfactory result. However, some unbudgeted expenses toward the end of the fiscal year as well as committed but unexpended charges are not reflected in the surplus mentioned above. While the Section's financial position is sound, there are many demands upon its funds for worthwhile projects, and I am hopeful that our recently initiated efforts to secure additional support from non-ABA sources will be successful. I am pleased to report that the Asia Foundation has again made a \$2,500 grant to the Section to assist the Section's cooperation with lawyers in various Asian countries.

Elections

At the Annual Meeting there was for the second consecutive year a contested election for a seat on the Section's Council. Virginia S. Mueller and Robert E. Herzstein were nominated by the Nominating Committee for the two openings for terms ending 1980, and Michael S. Shaw was nominated by petition under the procedures provided for in the new Section By-Laws. Mrs. Mueller and Mr. Herzstein were elected by a substantial majority.

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It is a truism that the work of the Section is done by its committees. Limitations of space do not permit me to acknowledge the contributions made during the past year by many of the Section's committee chairmen. I cannot conclude this report, however, without expressing my very special appreciation for the steady support provided by the Section's attorney-consultant, Edison Dick, and our Staff Liaison at ABA Headquarters in Chicago, Marilyn Neforas.

It has been a privilege and a pleasure to serve as Chairman of this Section and I thank all members for their support.

Richard C. Allison
Chairman