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The International Lawyer. A Stock-Taking of the Years 1975-78

Alwyn V. Freeman

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The International Lawyer: **A Stock-Taking of the Years 1975-78**

This is the last issue of *The International Lawyer* which will appear under my direction. I approach the end of my assignment as Editor-in-Chief with the comfortable conviction that the administration of our quarterly will be in highly competent hands. Joseph P. Griffin and his committee have made an excellent choice, and have discharged a very difficult burden in a manner which assures a smooth transition to the new regime. The wisdom of their decision has already been made evident by the manner in which Frank Ruddy, our new editor, has taken over, and by the broad expertise he has brought to the composition of the newly constituted Editorial Advisory Committee. The process augurs well for the future; I am confident that Mr. Ruddy will elevate the *International Lawyer* to new standards of quality. He knows, without my saying it here, that I wish him and his team every success, and that I will be available at any time for whatever help he may seek from me.

I consider the past four years of my stewardship as a privilege which the Council granted to me after Eberhard Deutsch fell ill. I confess, without embarrassment, that the mission has been a labor of love. Every time I held a new issue in my hands it was like greeting the arrival of a new child. I am also compelled to confess that some of the children have appeared more precious to me than others, but then that is not unusual of new arrivals in a family, is it? If I were asked which of the offspring pleased me most during the past four years, I would choose this past Spring, as that issue cleaves more closely to what I personally conceived the *International Lawyer* can be, on the guidelines previously approved by the Council, both from the standpoint of substance and form.

In that connection, I believe that some confusion has arisen as a result of a possible distortion of the Council's intent concerning the coverage of our quarterly. In his presentation to the Long Range Planning Committee last Spring, Joe Griffin suggested that the *International Lawyer* be restricted in scope almost completely to matters of international business law, topics of concern to the practicing international business lawyer. Joe will recall that I disputed that approach for a number of reasons. In the first place, we are all

aware that the present Section of International Law is a consolidation of two sections: the Section of International Law, and that of Comparative Law. Indeed, the title of the Section formerly was the "International and Comparative Law Section." It was only a few years ago that the two groupings were merged under the heading "The Section of International Law."

In the second place, the *International Lawyer* is an organ not only for the dissemination of information and legal discussion on international business and economic law, but also for the edification of our members on developments in the larger framework of public international law within which their daily professional activities must, perforce, operate. This does not mean to any degree that we should parallel or compete with the *American Journal of International Law*, which serves a somewhat different constituency. Such is not the way I have sought to guide the issues. One will find no theoretical or "cloud nine" disquisitions in the issues of the past four years. The goal sought was a judicious sandwiching of public international law papers of interest to members of the Section so as to ensure they were conveniently informed of developments in our field. One such example is the inclusion of outstanding judicial decisions in this area. Another has been a usable reproduction of the principal components of the Panama Canal Treaty process in the Senate.

I believe this to be consistent with the desires of the Council as expressed last Spring; for as I recall that discussion, it was accepted by the Council that the ratio of the treatment of private international business topics to public international law material should be of the order of 75 to 25 percent—in other words, the number of articles in the public international law domain (and by articles I mean leading articles as well as short, current notes) should not be more than 25 percent of the publication's total textual coverage. I consider that is still a desirable target.

In the third place, as a further argument to be invoked against the exclusive restriction in scope to private international business matters, I believe that restriction, that narrowing of treatment, could well depress or dilute the interest of students in joining the Section. After all, our principal reserve source of new members must come primarily from graduating law students. Most of them will have acquired an interest in public international law. We should not diffuse our appeal to them in an area with which they already have a nodding acquaintance. What I am voicing simply is the personal conviction that we will attract more student membership, if we preserve the Section's interest in *both* large areas, than if we constrict it only to one. To most of us this will probably appear to be laboring the obvious.

On a somewhat different level, I would hope that the funds available to the production of the *International Lawyer* (however processed, whether by ABA facilities or by an outside operation—which, incidentally, I tend to favor, other things being equal) would permit each issue to run up to 200 pages. As

some of the membership will recall, an attempt was made, within a few months after I entered upon my responsibilities, to curtail the size of its issue to 130 pages. I bitterly protested this move on the ground that it would destroy the quality and the reputation of the principal organ of the Section. Cutting the content by one-third meant an extension of the time authors would have to wait to see their papers in print. There is already at least a six-month backlog of papers in the pipeline. Many authors are unwilling to wait that long. They surely would withdraw from publication if the time lag were lengthened. We would, of course, lose the good articles; most of the garbage would remain—and we can do without any more garbage than we are already collecting.

In that connection, the breadth of the *International Lawyer's* topical coverage can be seen from the following selective summary: During the past sixteen issues, we have published over a dozen papers on the regulation and activities of multi-national enterprises, ranging from restrictive business practices to disputes settlement, while another half-dozen examined legal problems arising from various aspects of relations with European Common Market countries. Several papers investigated problems of private foreign investment in particular countries. Others dealt with the marketing of foreign technology, patent and copyright problems. A dozen papers addressed themselves to the law of the sea. Another half-dozen traced developments in the law of armed conflict and humanitarian law. During the first three years of this period, reports on the activities of international economic organizations complemented the writings of individual authors in that area to keep Section members current. Once a year, the *International Lawyer* carried, as a regular feature, a review of congressional activities relative to foreign relations and international law. Finally, a number of symposia were published on multi-national enterprises, the law of the sea, the extraterritorial effect of United States tax laws and sovereign immunity law in various countries.

As is to be expected in journalism, there have been some minor irritations in connection with the editorial process. One of the most frequent headaches I have had with contributors is the occasional cute stunt of an author who sends out his manuscript to several different periodicals without informing us, and if this is not caught in time, the result is to publish something which has already appeared, or appears simultaneously, elsewhere, or which engages the editor in frantic efforts to abort a printing process already on its way; and this *despite a clear injunction* in our acknowledgement to the authors that they must not submit their papers to other journals for a specified period of time without informing us. Failure to observe this basic requirement should bar the forum of this publication to an errant author in the future.

Another minor aggravation is the practice by some writers of sending articles to the editor by certified mail. Just why this is done escapes me. It has been the best way to ensure the nonreceipt of the manuscript; for, if the article

arrives on a weekend, or when the editor is absent from his office address, he is confronted with an exasperating notice of attempted delivery which compels him to make an often inconvenient trek to the post office to retrieve the manuscript.

On the whole, those who write for the *International Lawyer* have been receptive to recommendations of the editorial board that they make such modifications in their papers as will effectuate the will of the board. An egregious exception was provided by a certain admiralty lawyer in Massachusetts whose article on the law of the sea was carefully reviewed by two of our top experts in the field, who pointed out deficiencies which I passed on to the author. Instead of adapting the manuscript to the suggested changes, the author proceeded to furnish me with a five page, single-space typed brief in justification of what he had written, assuring me that the editors did not fully appreciate his approach and that they knew less about his subject than he did. Subsequently, in response to his inquiry as to why we had not proceeded further with his manuscript, I informed him that if I were to engage in an extended dialogue with each author as to the propriety of suggested changes, I would have no time to get out the *International Lawyer*, and that, as I was leaving in October, he might wish to take the matter up with the new editor.

That did it. The author then proceeded to blast me for not doing my job properly, and informed me that he was most pleased to learn I was being replaced!

So much for the lighter side. If there is a pejorative reaction I have had during these four years the only one would be the perfunctory manner in which the Council disposed of the Panama Canal Treaties of 1977. I was frankly appalled at the virtually complete disregard by the Council of the drafting deficiencies of these treaties. Instead, we handled them most exclusively from the *political* standpoint, on the basis of whether a new canal regime was desirable. But our Section, after all, is the supreme voice of the American Bar Association on *international law*, and we should have examined those instruments as *lawyers*. I would hope that we will not see a repetition of that performance in the future.

It has also troubled me that I have been unable to tap a valuable potential of manuscripts for the *International Lawyer* which surely must repose in the files of our Section's members. These files undoubtedly contain memoranda, briefs and materials which could readily be worked up by them into publishable materials matching the quality of many which we have published and of at least equal general interest. Once again the membership is urged to respond to this appeal.

I cannot terminate this somewhat lengthy report without expressing my deep appreciation for the invaluable assistance given to me by the members of my editorial board. Without their support, their unselfish cooperation, I could not

have done my job. They were a source of great strength to me especially during my post-surgical convalescence. Special commendation is due Dick Allison, Carl Christol, Victor Folsom, Al Golbert and Win Haight for lightening my burden during a difficult period. Harry Leroy Jones, a former chairman of the Section, was our most reliable collator of legislative activities in the field of foreign relations and international law. Marilyn Neforas deserves greater than usual accolades of appreciation for her unstinting help, and for putting up with an editor's idiosyncracies, and the same should be noted for Carol Planera of the ABA editorial office, who struggled valiantly, often against odds not of her own making, to keep the *International Lawyer* on schedule.

