International Lawyer

Volume 50
Number 1 *Fifty Years of Excellence*

Article 6

2017

# A Tribute to the International Lawyer

Roger S. Clark
*Rutgers Law School*

THE INTERNATIONAL LAWYER
A TRIANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

# A Tribute to *The International Lawyer*

ROGER S. CLARK*

It is a delight to contribute a few words to this celebratory issue of *The International Lawyer*, marking the fiftieth year of its life. For about two decades of that time, I have been proud to be a member of its External Advisory Board. I am particularly appreciative of the sterling labor that the faculty and students of SMU Dedman School of Law have devoted to its production during that time, in collaboration with the ABA Section of International Law. As the most widely-circulated journal in the world on international law, it is important that the journal maintain the highest standards of professionalism. This it has done.

I cannot claim to have read every issue from cover to cover. But I can claim to have dipped into its pages since the very first volume appeared in 1966-67. In the fall of 1967 I came from my native New Zealand to New York to engage in graduate study at Columbia Law School. I remember browsing Volume 1 of *The International Lawyer* in the Columbia Law Library. That first volume set the basic format for what has always been an eclectic collection of material on what might broadly be categorized as public and private international law and on comparative law. At the same time, that first issue captured many of the burning issues of the day, and some historical ones as well (such as an account of Louis XVI's lawyers). There were, for example, articles on the (then new) Convention on the Settlement of Investment Disputes between States and Nationals of Other States, the Foreign Claims Commission and the Cuban Claims Program, the early drafting of what became the Principles of International Law Concerning Friendly Relations and Cooperation Among States, a series of items on the recognition of Mexican divorces in selected countries (including one by an Assistant Professor at Rutgers Law School named Ruth B. Ginsburg on Sweden and other Nordic Countries, and another by my Columbia Professor John Hazard on their recognition in the Soviet Union), as well as a thoughtful article on Post-Stalin Soviet Jurisprudence by Gray L. Dorsey and some thoughts on the re-emerging discussions on the law of the sea. There was a note on the recently-concluded Covenants on Human Rights. There was a book review by the Editor-in-Chief, Clifford J. Hynning, of the three-volume collective work edited by Richard Falk and Saul Mendlovitz entitled *The Strategy of World Order*, a review that could

* Board of Governors Professor, Rutgers Law School; Member, External Advisory Board, *The International Lawyer*.

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE INTERNATIONAL LAWYER
A TRIANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW



charitably be described as nasty.[1] Thurman Arnold waxed eloquent about the Law among Nations and explained the Vietnam War as an endeavor to enforce international law, not a position I found sympathy with. To the contrary I thought the war both immoral and illegal.

But it was the human rights discussions in the volume that most captured my imagination. This was one of my main areas of interest in coming to the United States. The previous year, a colleague at Victoria University of Wellington and I had done a program on New Zealand radio about the International Court of Justice's controversial decision in the *South West Africa Cases*. (That colleague, later known as Sir Kenneth Keith, recently completed a nine-year term as a Judge at the International Court.) The unfortunate result in denying jurisdiction in that case cast a pall over the reputation of the Court that took some years to dispel. I noted that Volume 1 contained both a symposium on the case which took place at the Annual Meeting of the ABA Section of International and Comparative Law (as it was then known) in August 1966, and vigorous comments in subsequent pages from counsel for both sides. Coming from a country where relations with South Africa and lack of sympathy with *apartheid* were an important issue in domestic politics, I was disconcerted to realize that the overall editorial approach to the topic seemed rather more sympathetic to South Africa's position than I expected.

South Africa was not all there was of controversy on the human rights front. The question of obtaining the Senate's advice and consent to the Supplementary Convention of 1956 on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the ILO Convention of 1957 Concerning the Abolition of Forced Labour; and the Convention of 1953 on the Political Rights of Women were matters of hot debate within the ABA and the Senate.[2] I was totally bemused to read in Volume 1 the Report of the ABA's "Standing Committee on Peace and Law through the United Nations," chaired by Eberhard P. Deutsch, on these treaties. "Aha," I thought, "a Committee devoted to United States ratification of human right treaties." Wrong call![3] The punch line in the Resolution accompanying the Report said it all:

> BE IT FURTHER RESOLVED that the Supplementary Slavery Convention, the Convention on the Abolition of Forced Labor and the Convention on the Political Rights of Women, now pending in the Senate of the United States for advice and consent to accession or

1. I must confess that I always enjoyed reading the book reviews and even contributed an occasional one, but that feature was discontinued a few years back.

2. The three became separated in the ratification process. The United States became party to the Supplementary Convention in December 1967, the Forced Labour Convention in 1991, and the Political Rights of Women Convention in 1976.

3. Someone with a sense of irony must have chosen the title of the Committee. I confess I was reminded at the time of the title of the South African legislation that established the Pass Laws in all their infamous glory. It was called the "Natives Abolition of Passes and Consolidation of Documents Act 1952."

> ratification, being concerned with matters essentially within the domestic jurisdiction of the United States, except for the provision of the Supplementary Slavery Convention that "any slave who takes refuge on board and vessel of a State Party to this Convention should *ipso facto* be free" and the American Bar Association opposes advice and consent to accession and/or ratification of said treaties.

A strong dissent to the Report, by long-time United Nations supporter Bruno V. Bitker, argued forcefully for the constitutionality of ratifying these three treaties and made some gratuitous comments in favor of ratifying the Genocide, then also languishing in the Senate Foreign Relations Committee.[4] Accompanying the Report were three other Statements made to the ABA supporting ratification, one by Edward D. Re, one by Richard N. Gardner, and a joint one by Benjamin Busch, Walter E. Craig, Donald K. Duvall, Harry A. Inman, Robert Layton, Leonard C. Meeker, Charles Norberg and John R. Stevenson.

Richard Gardner's piece, *The Three Human Rights Treaties: Good Law and Good Policy*, was, I think, the first writing I had seen by him. He would become the chair of my doctoral committee at Columbia.

I have, of course, gone back and re-read Volume 1 in order to pen this tribute. The afterglow I still get from the editorial approach of the volume is one of somewhat strident anti-communism, indeed of American exceptionalism. It was a different time, a different ABA and a different-toned journal. However, while people like Hynning and Deutsch were strident in their own anti-internationalist way, the pages were open to other views, pro-UN and pro its human rights program, like those of Bruno Bitker, John Carey, Richard Gardner and Edward Re. Then, as now, the journal reflected considerable intellectual ferment in the bar organization.

4. Sedgwick W. Green thought slavery and forced labor treaties were within the treaty power, but apparently did not think that ensuring the vote for women fitted the category.

THE INTERNATIONAL LAWYER
A TRIANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW