

INTRODUCTION: A PERSONAL NOTE

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The articles in this issue of the *N.Y.U. Journal of International Law and Politics* are a tribute to the academic and professional career of my friend and colleague Professor Andreas Lowenfeld. It was my privilege and honor to organize a conference in tribute to Andy – the Fourteenth Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium – which was held on April 16, 2009 at New York University School of Law, and at which the papers in this issue were initially presented. Not everyone who spoke at the conference was able to produce a published paper, but the Journal is immensely pleased to have eight wonderful articles to preserve the richness of the panels and the discussion of that day.

Both the presenters and their topics are a reflection of the breadth, diversity, and influence of Andy Lowenfeld. Andy began teaching at NYU in 1967, and took Emeritus status this past year in August 2009, thus having taught full-time at NYU for forty-two years. Prior to arriving at the Law School, Andy served for five-and-a-half years in the Legal Advisor's office of the U.S. State Department in the Kennedy and Johnston Administrations, and spent one academic year at the Kennedy Institute of Politics at Harvard University. Among the issues of public international law he encountered were ones raised by the Cuban Missile crisis, the invasion of the Dominican Republic, the Nuclear Test Ban Treaty, as well as the "Chicken War" and the struggle over damage limitations for victims of international air accidents. Each of these became the subject of a

* Martin Lipton Professor of Law, New York University School of Law. I would like to thank the 2008-09 and 2009-10 editorial boards and staffs of the Journal of International Law and Politics, who worked to make both the conference and symposium journal a great success. In particular, Clay Kaminsky (Editor-in-Chief of the Journal in 2008-09) and Adam Abelson (Managing Editor in 2009-10) gave extraordinary efforts and special attention to the project. Also, Monica Cortez, Professor Lowenfeld's secretarial assistant, and Jocelyn Burgos, a former LL.M. Research Associate to Professor Lowenfeld and to me, were a constant help in every way in bringing this event to fruition.

chapter in the pioneering teaching books on international law written by Andy, together with his State Department colleagues Abram Chayes and Thomas Ehrlich.¹ Over the following two decades, Andy developed a series of books on different aspects of international economic law – aviation law,² international investment,³ international trade,⁴ international monetary law,⁵ and economic sanctions.⁶ Most recently, Andy produced a comprehensive treatise on International Economic Law,⁷ embracing the GATT/WTO system, the IMF and related institutions, international investment law, the debt of developing countries, economic sanctions, and competition and intellectual property.

Two of the papers in this issue address themes developed in that treatise. Mario Giovanoli, Honorary Professor of the University of Lausanne and former General Counsel of the Bank for International Settlements in Basel, in his piece *The Reform of the International Financial Architecture After the Global Crisis*, recognizes the extensive contributions that Andy has made in the area of monetary law and singles out what he characterizes as “seminal remarks” made by Andy that apply to all international financial standards. In his paper, entitled *A BIT On Custom*, Jose Alvarez (who recently joined the NYU faculty from Columbia Law School) defends Andy’s view that the investment treaty regime has expanded traditional notions of customary international law and general principles of law by creating a form of “international legislation,”⁸ and Professor Alvarez explores the broader implications of that thesis.

1. ABRAM CHAYES, THOMAS EHRLICH & ANDREAS F. LOWENFELD, *INTERNATIONAL LEGAL PROCESS* (1968).

2. ANDREAS F. LOWENFELD, *AVIATION LAW: CASES AND MATERIALS* (1972) (subsequent edition published in 1981).

3. ANDREAS F. LOWENFELD, *INTERNATIONAL PRIVATE INVESTMENT* (1976) (subsequent edition published in 1982).

4. ANDREAS F. LOWENFELD, *INTERNATIONAL PRIVATE TRADE* (1975) (subsequent editions published in 1977, 1981, 1988, and 1996).

5. ANDREAS F. LOWENFELD, *INTERNATIONAL MONETARY SYSTEM* (1977) (subsequent edition published in 1984).

6. ANDREAS F. LOWENFELD, *TRADE CONTROLS FOR POLITICAL ENDS* (1977) (subsequent edition published in 1983).

7. ANDREAS F. LOWENFELD, *INTERNATIONAL ECONOMIC LAW* (2002) (subsequent edition published in 2008).

8. Andreas F. Lowenfeld, *Investment Agreements and International Law*, 42 COLUM. J. TRANSNAT’L L. 123, 125-30 (2003).

One of the hallmarks of Andy's work and scholarship has been his commitment to eliminating what he views as an unnecessary divide between public and private international law. He attempted to bridge that gap in his influential 1979 Lectures at the Hague Academy – *Public Law in the International Arena: Conflict of Laws, International Law, and Some Suggestions for Their Interaction*⁹ – and offered a mode of analysis adopting conflict of laws principles to take account of interests of other States in the public law arena. These lectures became the foundation for his later work as Associate Reporter on the American Law Institute's Restatement (Third) of Foreign Relations Law project,¹⁰ where he was the architect of the provisions in Part IV of the Restatement which encompassed such issues as jurisdiction to adjudicate, to prescribe, and to enforce, recognition of judgments, and issues of sovereign immunity. Although the Restatement probably did not go as far as Andy may have hoped to break down the public law taboo, it did embrace the need for consideration of other States' interests where issues of public law were at stake. In 1994, Andy was asked to give a second course of Hague lectures, where he once again attempted to bridge the public-private law divide.¹¹ Lawrence Collins, editor of *DICEY, MORRIS & COLLINS ON THE CONFLICT OF LAWS*,¹² newly-appointed member of the Supreme Court of the United Kingdom, and fellow member of the Institut de Droit International with Andy, has focused on this aspect of Andy's work in his contribution to this issue, *Professor Lowenfeld and the Enforcement of Foreign Public Law*. Lord Collins provides a comparative overview of court decisions dealing with the enforcement of public law to “demonstrate the foresight shown by Professor Lowenfeld in his writings more than 20 years ago.” Looking more specifically in the

9. Andreas F. Lowenfeld, *Public Law in the International Arena: Conflict of Laws, International Law, and Some Suggestions for Their Interaction*, 163 RECUEIL DES COURS 311 (1979).

10. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1997).

11. Andreas F. Lowenfeld, *International Litigation and the Quest for Reasonableness*, 245 RECUEIL DES COURS 9 (1994). These lectures later formed the basis of ANDREAS F. LOWENFELD, *INTERNATIONAL LITIGATION AND THE QUEST FOR REASONABLENESS: ESSAYS IN PRIVATE INTERNATIONAL LAW* (1996).

12. *DICEY, MORRIS, AND COLLINS ON THE CONFLICT OF LAWS* (Lawrence Collins ed., 14th ed. 2006).

area of international law that is her specialty – antitrust – Eleanor Fox, Andy’s colleague and close friend, examines the influence of the Restatement (Third) in the antitrust field in her piece, *Modernization of Effects Jurisdiction: From Hands-Off to Hands-Linked*.

Andy has also written on traditional conflict of laws issues in the areas of tort, contracts, and wills and trusts.¹³ In addition to the basic U.S. conflicts material that is part of any casebook, his own Conflict of Laws casebook¹⁴ was one of the first to include both comparative and international materials, such that U.S. conflicts could rightfully be seen in his book as an aspect of “private international law.” Therefore, it is fitting that another colleague, Rochelle Dreyfuss, joined by two co-authors who are themselves both private international law specialists and comparativists – Graeme Dinwoodie and Annette Kur – produced an article in the intellectual property area that touches on comparative and international aspects of choice of law in *The Law Applicable to Secondary Liability in Intellectual Property Cases*.

Andy has always believed in an interaction and synergy between academics and practitioners. He has achieved this objective in numerous ways. He himself has litigated and consulted in some of the most important international law cases before U.S. courts and various international tribunals, and he has transferred that experience back to his students in the classroom. In the international litigation class that he designed, he has introduced students to the skills of written and oral advocacy by having them brief and argue cases that are based on actual pending disputes.¹⁵ He has taken the same approach in respect to his vast expertise in arbitration. Andy has served as arbitrator in traditional international commercial arbitration matters as well as in international investment disputes, and he has written objectively and provocatively

13. See, e.g., Andreas F. Lowenfeld, *Mass Torts and the Conflict of Laws: The Airline Disaster*, 1989 U. ILL. L. REV. 157 (1989); Andreas F. Lowenfeld, “*Tempora Mutantur . . .*”—*Wills and Trusts in the Conflicts Restatement*, 72 COLUM. L. REV. 382 (1972).

14. ANDREAS F. LOWENFELD, *CONFLICT OF LAWS: FEDERAL, STATE AND INTERNATIONAL PERSPECTIVES* (1986) (subsequent edition published in 1998).

15. Lowenfeld’s innovative casebook, *INTERNATIONAL LITIGATION AND ARBITRATION* (1993) (subsequent editions published in 2002 and 2006) was one of the first in the field.

about many of the conceptual issues in arbitration as well as many of the practical questions faced by arbitrators.¹⁶ Many of the issues about which he has written have surfaced for consideration by the Reporters in one of the new projects of the American Law Institute – the Restatement of the U.S. Law on International Commercial Arbitration. The Chief Reporter for that Restatement, Professor George Bermann of Columbia Law School, addresses a number of the issues Andy has written about, as well as the experience of trying to incorporate international law concepts into a U.S. Restatement, in his article *Restating the U.S. Law of International Commercial Arbitration*.

As Peter Trooboff, Senior Counsel at Covington & Burling, points out in his article, Andy has been a key advisor to State Department Study Groups dealing with various Hague Conference negotiations and treaties,¹⁷ the most recent being the new Hague Convention on Choice of Court Agreements. Trooboff, who was a member of the United States delegation that attempted to negotiate a broader treaty on jurisdiction and judgments and successfully concluded the narrower Choice of Court Convention, discusses some of the issues involved for the United States in trying to implement the new Convention in his contribution *Proposed Principles of United States Implementation of the New Hague Convention on Choice of Court Agreements*.

Of course, this tribute to Andy would not have been complete without the presence and praises of students and colleagues who have been an important part of his academic life. One of the most moving aspects of the day were the remarks of Andy's long-time international law colleague, the late Thomas Franck. Notwithstanding his own frailty and impending death, Tom participated in the day honoring Andy with a very personal commentary, *The New Clientage: Andy and Me at Vanderbilt Hall*, which has been transcribed and reproduced here.

Because Andy is so prolific and his work so expansive and eclectic, one would have needed a week-long and not a day-long conference to pay homage to his ideas and his work.

16. See, e.g., ANDREAS F. LOWENFELD, *LOWENFELD ON INTERNATIONAL ARBITRATION: COLLECTED ESSAYS OVER THREE DECADES* (2005).

17. Andreas F. Lowenfeld, *Thoughts about a Multinational Judgments Convention: A Reaction to the von Mehren Report*, L. & CONTEMP. PROBS., Summer 1994, at 289.

Thus many of his professional contributions escaped discussion and comment at both the conference and in this issue. Such issues as sovereign immunity¹⁸ and the Act of State doctrine,¹⁹ blocking statutes,²⁰ the Warsaw Convention,²¹ and the Constitution and foreign affairs²² come quickly to mind as examples.

More critically, however, what cannot be duplicated on the printed page but was clearly understood throughout the day and evening of the tribute was the enormous impact Andy has had on so many colleagues and students. This was evidenced by the large number of former students – many of whom have gone on to pursue successful careers in international law – and academic colleagues who came from across the country and around the world to honor him and pay tribute. Andy has been a wonderful mentor to a number of his NYU colleagues, and to me in particular, by opening the doors into the exciting world of international and comparative law and urging an expansion of our own work to include a broader perspective. He has offered his personal encouragement and generous collegiality, and invited many of us to co-author work and to participate in conferences and other projects. In my case it has been even a closer association. We have taught together, written articles together,²³ litigated cases

18. In his days at the State Department, Lowenfeld began the movement toward what eventually was to become the Foreign Sovereign Immunities Act and later wrote about the need for legislation in one of his very first articles, *Claims Against Foreign States—A Proposal for Reform of United States Law*, 44 N.Y.U. L. REV. 901 (1969). See also Andreas F. Lowenfeld, *Litigating a Sovereign Immunity Claim—The Haiti Case*, 49 N.Y.U. L. REV. 377 (1974).

19. See, e.g., Andreas F. Lowenfeld, *Act of State and Department of State: First National City Bank v. Banco Nacional de Cuba*, 66 AM. J. INT'L L. 795 (1972); Andreas F. Lowenfeld, *The Sabbatino Amendment—International Law Meets Civil Procedure*, 59 AM. J. INT'L L. 899 (1965).

20. See, e.g., Andreas F. Lowenfeld, *Sovereignty, Jurisdiction, and Reasonableness: A Reply to A. V. Lowe*, 75 AM. J. INT'L L. 629 (1981).

21. See, e.g., Andreas F. Lowenfeld & Allan I. Mendelsohn, *The United States and the Warsaw Convention*, 80 HARV. L. REV. 497 (1966).

22. See, e.g., Andreas F. Lowenfeld, *U.S. Law Enforcement Abroad: The Constitution and International Law*, 83 AM. J. INT'L L. 880 (1989); Andreas F. Lowenfeld, *U.S. Law Enforcement Abroad: The Constitution and International Law, Continued*, 84 AM. J. INT'L L. 444 (1990).

23. See, e.g., Linda J. Silberman & Andreas F. Lowenfeld, *A Different Challenge for the ALI: Herein of Foreign Country Judgments, an International Treaty, and an American Statute*, 75 IND. L. J. 635 (2000); Andreas F. Lowenfeld & Linda J.

together, and were co-Reporters on the ALI Project on Recognition and Enforcement of Foreign Judgments.²⁴ We share interests in theater and music (Andy's wife Elena is a talented musician and singer), and we sit together at the opera where I continue to learn so much from this Renaissance man.

Andy has always engaged and mentored his academic and professional colleagues as well as his students. He is generous with his time, his knowledge, and his contacts. He has shared his vast knowledge and insights about subjects to which he has dedicated his life, and he has encouraged others to embrace these issues and to offer their own solutions. Throughout his years at New York University, he has given to others the gift of himself and that is a legacy for which we will be forever grateful.

Silberman, *Choice of Law and the Supreme Court: A Dialogue Inspired by Allstate Insurance Co. v. Hague*, 14 U.C. DAVIS L. REV. 841 (1980).

24. ANDREAS F. LOWENFELD & LINDA J. SILBERMAN, AMERICAN LAW INSTITUTE, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE (2006).

