

GLOBAL TRADE AND INTERNATIONAL LAW

by Stuart S. Malawer, *J.D., Ph.D.*

Preface by Peter S. Watson

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PREFACE

Peter S. Watson

It is good news that Professor Stuart Malawer has selected and compiled almost 30 articles that he has authored over the last forty years and his recent blog entries.

Professor Malawer and I share the experience of having earned both a law degree and a doctorate focusing on international law and international trade. My professional experience includes serving on the National Security Council, Chairman of the U.S. International Trade Commission, President and CEO of the Overseas Private Investment Corporation. Our professional and educational interests in global trade, foreign policy, international investments, and national security significantly overlap.

Since the early 1990s, I have collaborated with Dr. Malawer on a range of global activities. Most notably, we worked together while he served as the founding director of the Graduate International Transactions Program at George Mason University and also as the founding director of the Oxford Global Trade Program. The latter was an innovative ten-year partnership between his university and St. Peter's College, Oxford University. We were both visiting professors at St. Peter's College, Oxford University, during those sessions. As part of that program, we developed week-long Geneva briefings held at the World Trade Organization in Geneva, Switzerland. This was one of the first global trade programs for graduate business, law, and trade students emphasizing the WTO and other international institutions in Geneva.

It is remarkable, as Professor Malawer points out in his introduction, the continuity of professional and policy issues from the 1960s through this decade. Although globalization has quickly spread and matured, many of the same issues persist. Some players have changed and new players (state and non-state) have emerged, but the challenges facing the business and policy worlds remain, along with newer ones.

Professor Malawer's treatment of a wide range of topics, including broad political issues confronting the global system to those confronting individual states and persons, clearly evidence the unique effect of globalization on all levels of government. Today's problems can only be effectively addressed by formulating actionable policies at all levels of society, from individuals, to corporations, to local communities, states, regional organizations, and global institutions.

If I were to summarize Professor Malawer's contribution, it would be the following: he clearly understands inter-connected business and public policy problems within an interdisciplinary construct. He understands the persistent clash of competing interests and the need to resolve them in an orderly way. This is demonstrated in his insightful discussion of a broad range of diverse topics, including antidumping duties, trade sanctions, treaty relations, the European Communities, U.S.- China relations, terrorism, and economic development, among others.

Professor Malawer's rigorous political assessment, reflecting an interest analysis approach to policy formulation, is proffered in a reasonable, pragmatic and professional manner—one steeped in optimism and a belief in the strength of the American system, both political and economic, and the opportunities of global integration.

We all owe a debt of appreciation to Professor Malawer for his significant professional and educational contributions over these more than forty years. His writings eloquently convey his comprehensive understanding of the technicalities and complexities of the world today and his careful analysis and policy assessment.

INTRODUCTION

by Stuart S. Malawer

This compilation contains selected articles that I have written over the last forty-five years on international law, foreign policy, international relations, and global trade. The articles focus on the legal, political, and policy aspects of these topics. The book concludes with a number of my recent blog posts written from 2011–2012.

This emphasis reflects my education and experience in law and international relations. My studies at the Cornell Law School and the University of Pennsylvania's doctoral program in international relations in the 1960s helped me to cultivate a multidisciplinary perspective. One focusing on the business and legal issues of a rapidly globalizing environment. I also became particularly aware of the interplay between various levels of institutions on the local, national, and international levels.

My articles written from the late 1960s until today reflect historical developments in the U.S. and global systems from the fall of the Berlin Wall and the Soviet Union to 9/11 and global terrorism. Many of today's issues are remarkably similar to those we confronted over forty years ago. For example, the legality of the use of military force by the president, the challenges of foreign competition, and the use of international mechanisms to regulate global trade are chronically contentious topics.

It is interesting that, after forty years of engagement in educational and professional aspects of the global arena, I find that the mere notion of "global" is still questioned over and over again. This is true within universities, professions, and the halls of power. While lip service is paid to understanding and participating in the global system, how many people are willing to change their localized notions of interest and place? How many empty debates do we hear?

The majority of the selections in this compilation appear in reverse chronological order. They are divided into two categories: global trade and foreign policy.

Regarding global trade, the articles begin with an emphasis on foreign investment and economic development in the U.S. and the World Trade Organization, primarily addressing U.S. trade litigation against China. The articles progress to issues such as foreign investment, Russia and India in global trade, international legal practice, and the place of law in international business studies.

Regarding foreign policy, the articles begin with the issue of cyber-warfare and then address various topics dealing with general issues of law and foreign policy. They conclude with the law of the seas, terrorism, the European Communities, constitutional law aspects of the Vietnam War, and the use of force in treaty law.

After the articles, I included blog posts that I have written over the last two years discussing important trade issues, such as money laundering, global business, resource nationalism, global taxation, foreign corruption, ASEAN, the European Union, trade reorganization, corporate responsibility, currency wars, cyber espionage, and extraterritoriality of U.S. economic legislation.

The progression of the articles in this collection and my recent blogs reflect my shift in focus from writing on law and foreign policy to examining pragmatic aspects of international business and trade. This shift closely mirrors the changing emphasis in the larger society over the last forty years from broader political questions to the economic and security issues of this decade.



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