

ESSAYS ON  
INTERNATIONAL  
LAW

by  
**Stuart S. Malawer**  
*J.D., PH.D., Dipl.*

*Preface*  
**Stephen P. Gibert**

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**To Hilary and Gregg  
and the future with  
law and justice**

## ABOUT THE AUTHOR

Dr. Stuart S. Malawer is Professor of Law at the George Mason University Law School in Arlington, Virginia. He has earned degrees from the Cornell Law School (*J.D.*), the University of Pennsylvania (International Relations) (*M.A., Ph.D.*) and the Hague Academy of International Law (*Diploma, Research Centre*); and has done graduate law studies at Oxford University and the Harvard Law School. He is the author of *Studies in International Law* (1977), *Imposed Treaties in International Law* (1977), *Federal Regulation of International Business* (5 vols., 1981-1983).

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# INTRODUCTION

Included in this collection are many articles, reviews, and commentaries which I have written over the last few years. In the main part they deal with foreign policy issues confronting the United States during the 1980s. I have addressed them from both the perspective of a lawyer and an international relationist.

While this book is entitled *ESSAYS ON INTERNATIONAL LAW* it deals with issues of constitutional law, public international law, foreign policy, terrorism, the United Nations, international business, international trade, and comparative law. I view the world of international law as encompassing all of these areas and more.

If the last decade has taught us anything, it is the internationalization and interdependence of the market place and of policies of all sorts. Terrorism, foreign policy and international trade are among the most important concerns of the 1980s. The legal aspects of these problems are great and so are the political and historical.

My principal goal has been to participate in the national debate of ideas in order to formulate more clearly the choices available and to suggest more viable public policies.

STUART S. MALAWER  
*McLean, Virginia*  
1986



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## PREFACE

Volumes about American foreign policy and public law abound, but they are two different mountains of treatises. Those dealing with American foreign policy say little about law; the other expounds only theories and rules, but says little about policy choices confronting decisionmakers today.

Louis Henkin once observed that "the law of foreign affairs fell somewhere between the constitutional lawyer and the international lawyer."\* I would add it has fallen also between the foreign policy and international relations experts.

Avoiding these pitfalls, Professor Stuart Malawer of George Mason University merges his foreign policy assessments with relevant constitutional and international legal analyses and political and historical considerations. I agree with his conclusion that newer international legal rules need to be fashioned to give more emphasis to American national interests. I agree also with his general view that American foreign policy needs to be both practical and true to its traditional philosophical underpinnings.

The foreign affairs and legal communities owe a debt of gratitude to Dr. Malawer, who brings to bear his training both as a lawyer and an expert in international relations, to address many of the perennial and controversial foreign policy issues. His treatment of terrorism, foreign policy, and international trade are exceptionally well done. I commend the interdisciplinary approach for determining policy, and Dr. Malawer's assessment of the issues and contending choices.

Professor Malawer's recognition of the legal, historical and economic context, both in their national and international settings, as being essential in addressing policy issues, is beyond dispute. All too often the busy practitioner is overwhelmed with detail and issues of the moment. It is context and judgment which are needed. Dr. Malawer has attempted to provide them and has produced an excellent set of essays.

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\* *Louis Henkin, Foreign Affairs and the Constitution* vii (1972).