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In Honor of Professor Harold G. Maier

*David P. Stewart**

Among his many other significant accomplishments and career achievements, Professor Maier can count a singular experience which few in the field of international law are privileged to enjoy—that of spending a year as the Counselor on International Law at the U.S. Department of State in Washington, D.C.

The Counselor occupies a senior position within the Office of the Legal Adviser. Organizationally, the incumbent reports to and works directly with the Legal Adviser and his Deputies in advising the Secretary of State and other senior officials on whatever fast-moving issues might occupy the foreign policy attention of the government at a given moment. Normally drawn from the ranks of the most gifted and respected up-and-coming academics in public international law, Counselors have in practice also served another important function—bringing fresh ideas and intellectual perspectives into the process of providing legal advice and counsel to the Department as a whole. In that regard, they have traditionally served as a valuable resource for the attorney advisers and Assistant Legal Advisers in the Office.

Equally important, at least in theory, is the benefit that the visiting academics themselves may derive from experiencing the legal dimension of the foreign policy process firsthand and seeing how public international law does (and on occasion does not) actually influence the analysis and choice of foreign policy options.

I had the privilege of meeting and working with Professor Maier during his tenure as Counselor from 1983-1984. My assignment at the time involved managing what we called the Iranian Claims program, the presentation and defense of claims before the Iran-United States Claims Tribunal in The Hague. Many will recall that the Tribunal was established in 1981 as part of the so called Algiers Accords which resolved the hostage crisis in Tehran. The Tribunal's jurisdiction encompassed inter alia claims by private U.S. nationals against the Iranian government arising out of events occurring during the revolution which toppled the Shah (they have now been

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resolved, along with claims by Iranian citizens against the U.S. government) as well as claims between the U.S. and Iranian governments (the process of adjudicating some of these claims still continues twenty-five years later). At the time, the Tribunal represented the largest international claims program ever undertaken (eclipsed, subsequently, by the U.N. Compensation Commission in both number of claims and amounts asserted). Obviously it was (and remains) among the highest priorities of the Office of the Legal Adviser. As a consequence, we naturally drew heavily on Professor Maier's knowledge of public international law and his sound professional judgment in formulating policies and crafting specific claims and defenses. Both of us worked closely with Davis Robinson, who served as the Legal Adviser from 1981-1985.

Professor Maier, of course, has never claimed to be a specialist in international claims and state responsibility—few people are—but it was precisely the breadth of his learning and experience that made his advice so valuable to us in this particular endeavor.¹ Perhaps the most impressive aspect of his long and varied career has been the way in which he has managed to combine broad expertise in public international law with his work in conflict of laws, international civil litigation, and the constitutional law of foreign relations—areas that for many international lawyers, in and out of government, have very practical applications. In that very important respect, he really has been as much a true “transnational” lawyer as a specialist in public international law—a legacy accurately reflected in the title of this Journal. That is one reason why he was a terrific selection as Counselor and, I suspect, such a wonderful educational presence in the classroom for so many years.

Another area in which Professor Maier became involved as Counselor, and which also reflects his ever-present practical orientation, includes cases involving jurisdictional conflicts between competing domestic systems and interests. One focus of his efforts concerned the Cuban embargo, about which he published on several occasions. His scholarly articles in the field of extraterritorial jurisdiction are well known and still widely read. They cover the field from issues raised by legislative regulation of U.S. business in foreign markets, to trade sanctions and embargos, to the

1. Professor Maier did, of course, testify on several occasions in support of the compensatory claims of U.S. nationals held as prisoners of war (POWs) by the government of Japan and forced into slave labor during World War II. The thrust of his testimony was that the 1951 San Francisco Peace Treaty between the United States and Japan did not, as a matter of law, preclude legal actions by the former POWs to seek compensation from Japanese corporate defendants and their U.S. subsidiaries—an interpretation of the treaty with which the U.S. government strongly disagreed and which did not in the end prevail. *Justice for United States Prisoners War Act of 2001: Hearing on H.R. 1198 Before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary*, 107th Cong. 106 (2002).

extraterritorial application of criminal law (for example in the context of the war on terrorism). As his co-chair of the Committee on Extraterritorial Jurisdiction of the American Branch of the International Law Association, I have often enjoyed hearing him argue persuasively for rational “interest balancing” in the exercise of antitrust and trade regulation authority over business activities abroad. He taught us to think carefully about the role of the state and the consequences of excessive assertions of territorial sovereignty in an era of “globalization” long before that term gained currency.

As a transnationalist as well as a “comparativist,” Professor Maier frequently focused on issues at the “intersection,” as he termed it, between public and private law—but always with an eye on the human dimension.² It is an area often overlooked by those who concentrate solely on the public international law issues, but it is vitally important for students as well as practitioners. Over a long and distinguished career, Professor Maier’s expertise in transnational aspects of domestic litigation (including foreign sovereign immunity, extraterritorial service of process and discovery of evidence, choice of law and forum, and enforcement of judgments) took him deep into the heartland of private international law. It is no surprise, then, that he has continued his long association with the Office of the Legal Adviser by serving as a member of the Secretary of State’s Advisory Committee on Private International Law—which works directly with the office I now head. Even less surprising is the value we still place on his contributions in that context.

I cannot resist noting yet another unique point of contact that I have shared with Professor Maier’s career—we have both been privileged, at different times, to co-author small volumes with an international lawyer, teacher, and jurist of incomparable wisdom and stature: Thomas Buergenthal, who now sits as a Judge on the International Court of Justice.³ Both Judge Buergenthal and Professor Maier represent the very best traditions in U.S. legal scholarship and education as well as public service and a dedication to the development and use of the law and legal institutions for the benefit of the larger community.

It is not for me to speculate what insights or other benefits Professor Maier may have gained, personally or professionally, from his time as Counselor or his subsequent associations with the Office

2. See Harold G. Maier, *Extraterritorial Jurisdiction at a Crossroads: An Intersection between Public and Private Law*, 76 AM. J. INT’L L. 280, 280 (1982) (“Public international law regulates activity among human beings operating in groups called nation-states, while private international law regulates the activities of smaller subgroups or of individuals as they interact with each other.”).

3. See THOMAS BUERGENTHAL & HAROLD G. MAIER, PUBLIC INTERNATIONAL LAW IN A NUTSHELL (2d ed. 1990); THOMAS BUERGENTHAL, DINAH SHELTON & DAVID P. STEWART, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL (3d ed. 2003).

of the Legal Adviser. I do know that we always gained from his contributions and are delighted to join in celebrating the conclusion of his long and distinguished career as an international lawyer, educator, and public servant.