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# Professor John A. Spanogle at the UN

By Ilene Fleischmann

Since 1982, UB Law Professor John "Andy" Spanogle has played a prominent role in the increasingly important arena of international commerce. As chief of the U.S. delegation to two major committees of the United Nations Commission on International Trade Law (UNCITRAL), he has been serving as the top U.S. negotiator at meetings in New York and Vienna. He and his counterparts from the United States and 36 other countries, representing diverse legal systems, have been developing a base of world-wide laws that will vastly simplify and expedite global business transactions.

Two other members of the U.S. delegation assist him in this work: Ernest Petrakis, general counsel of the Reserve Bank of New York, and Professor Carl Felsenfeld of Fordham University Law School. Appointed by the U.S. State Department, Spanogle serves without compensation.

A faculty member here since 1974, he is renowned for having the kind of special expertise in comparative commercial law that is needed to head our negotiating team in UNCITRAL talks. A graduate of Princeton University and the University of Chicago School of Law, he teaches courses in banking law, commercial law, international commercial law and consumer law at UB.

At UNCITRAL meetings, where the process requires the building of consensus, Spanogle is well suited to his role. "Consensus doesn't mean unanimity, but you have to be pretty darn close to it," he says. Blessed with an easy-going personality and ready sense of humor, he quickly puts others at ease and is adept at the art of persuasion.

Spanogle predicts progressively more international legislation.

"It's not going to be formulated by a super-government, but by people of goodwill and a fair amount of technical

*"We're going to get progressively more international legislation. . .*

*It's not going to be formulated by any super-government, but by people of goodwill and expertise sitting down and working out compromises."*

*—Professor John "Andy" Spanogle*

expertise sitting down around a massive table and working out compromises that everybody thinks acceptable."

It is UNCITRAL's mission — and Spanogle's fondest hope — that a set of treaties creating a uniform international commercial law code soon will become available and effective. It should then be as easy to do business with a company in Korea as one in New Jersey.

According to Spanogle, such a set of international treaties should contain equivalents of the most important articles

found in the American Uniform Commercial Code regarding the regulation of sales transactions, payment methods and financing. Thanks to his efforts and the contributions of other volunteers, the work that was begun by UNCITRAL in the late 1960s is almost completed.

The most important step for a uniform international commercial law code, Spanogle believes, came when UNCITRAL developed a treaty providing uniform treatment of international sales transactions, and that treaty became effective international law. Called the Convention on Contracts for the International Sale of Goods, the treaty has been ratified by the United States and 14 other nations to date and became effective as U.S. law on January 1, 1988.

The likelihood that this agreement will become universally accepted and used is "fairly good . . . Major nations — China, France, America and Italy — have joined and there is a bandwagon effect at this point," he believes.

While most people are not familiar with the provisions of the pact, Spanogle says, "It's a lot easier to understand than trying to figure out the sales laws of China, France or Italy, where the words may — or may not — mean what you think they mean.

"In cases where each party's attorney insists on his or her own law, the convention provides a viable alternative. At the very least, you would know where to get hold of it and can get some reference works on it."

From 1981 to 1987, Spanogle worked on another crucial component — a proposed treaty on payment and credit transactions — as our country's Chief Delegate to UNCITRAL's Working Group on International Negotiable Instruments. Their proposal, known as the Convention on International Bills of Exchange and International Promissory Notes, is now before

the United Nations General Assembly.

If adopted by the General Assembly and ratified by 10 nations, a uniform worldwide law for new types of international negotiable instruments would be created. "It may take another six years, though, before it is signed and ratified," he says.

A third important set of agreements that will provide a secured financing component are also currently being developed — a Convention on Lease Financing and a Convention on International Factoring.

Spanogle is optimistic. "Everything seems to be on track," he says. "I think we have a once in a lifetime opportunity to get this process going in a major way." But he is quick to point out there is still much work to be done.

His current project, for instance, will fill a gap in the Convention on International Bills of Exchange and Promissory Notes. That pact doesn't cover the vast bulk of payment transactions: it excludes checks and does not cover electronic funds transfers, "a different kind of animal, legally," Spanogle explains.

"Right now, more money is transferred internationally by electronics than by any paper based mechanism, whether you're talking about currency in shopping bags or suitcases, checks, or credit card slips. That is because securities markets are now world-wide, integrated and international. To settle up those transactions, you need to transfer massive amounts of funds."

How much? A mind-boggling \$5 billion dollars per day.

To remedy this situation, Spanogle now serves as Chief of the United States' Delegation to UNCITRAL's Working Group on Electronics Fund Transfers (EFT). In this capacity, he represented the United States in a series of meetings last November and July that were held at the United Nations to develop model rules on electronics fund transfers. Spanogle expects the project to last three years. At present, the United States is in the process of drafting proposed legislation in this area.

"The exciting thing about this is that there is no national law anywhere to cover



*Professor John "Andy" Spanogle*

even domestic electronic funds transfers from customer to customer. What we're doing is cutting edge stuff," he says.

"One of the reasons we call it model rules is that we hope domestic law will be modeled on the product that we put out. Whether that will happen or not I don't know. But almost every country in the world has some committee trying to create domestic law. If those domestic laws can at least look similar in structure, so they can work together, then we will have been helpful."

He loves the work because "You're learning how civil law lawyers approach dealing with problems of the development of law. To me, the legislative process is terribly fascinating and I see this as the international analog of what we think of as the legislative process."

He once ran into a problem with a delegate from the Soviet Union, but the disagreement stemmed from an interpreter's error and had nothing to do with politics. Simultaneous translations into six languages occasionally cause some confusion. Unlike the General Assembly, however, UNCITRAL is not dominated by politics, says Spanogle.

"UNCITRAL works the way the UN

was supposed to work, probably because most of us are technical experts," he says.

"I wouldn't know a dialectical argument if I tripped over it, and that's true of most everybody else. I'm just as likely to agree with the delegate from China as from France or Switzerland."

In the Fall, Spanogle began a one year leave of absence to occupy the Lobingier Chair of International Law at George Washington University in Washington, D.C.

"I think professors get paid to do more than just teach classes," he says. "You expect research to be done, but there is a public service component as well." ■

## **Avery, Binder Share Magavern Award**

**T**he William J. Magavern Fellowships for 1988-89 have been awarded to two faculty members: Associate Professor Dianne Avery and Professor Guyora Binder. Both will share in a \$10,000 award from a fund established by Samuel D. Magavern in honor of his father, to support special research projects at the Law School.

Avery, who teaches family law and labor law, will be engaged in a study of conflicts between private property rights and rights of collective action under federal and state labor laws. "The inquiry is an important one and we are pleased that she has undertaken it," said Dean Filvaroff.

Binder will pursue two areas of scholarship and writing with the support he will be receiving as a Magavern fellow. First, he expects to complete his book manuscript which explores delicate but critically important issues surrounding the theoretical foundations for an historically sensitive interpretation of the Civil War amendments to our Constitution.

His second project is a comparative study of President Lincoln's constitutional thought, one of a series of essays that Binder is writing. According to Dean Filvaroff, "Binder's analytical scholarship has made significant and useful contributions to the development of legal theory." ■