4-1-1978

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PREFACE: INTERNATIONAL LAW AND AMERICAN LEGAL PRACTICE

Kingman Brewster, Jr.*

This issue of the Notre Dame Lawyer marks a special recognition of the pervasive importance of international awareness in the thought of legal scholars and the work of legal practitioners. International transactions and their legal aspects are nothing new. The key word is "pervasive." Father Hesburgh's "space ship earth" is not just a romantic vision or a simplistic metaphor.

Unavoidably (and nostalgically) I measure the development of the larger world in terms of the seventeen years since I left full-time teaching and scholarship. The international dimension has come to pervade private individual life for the increasing numbers who spend some time in a country other than their own. Each year more and more companies either sell or license or invest abroad. Each decade has brought to the surface urgent problems which no single nation-state can handle wholly on its own. Finally, even though cosmic panaceas which speak in terms of "world government" may seem as unreal as ever, problem by problem new transnational authorities have been developed. Others are urgently demanded, not by force of a crusader's rhetoric but by the inexorable force of circumstance.

Almost twenty years ago, Milton Katz and I ventured a new casebook entitled somewhat pretentiously The Law of International Transactions and Relations. It was not worthy of its title. But its title and its purpose were worthy of a need. Exposure to the problems inherent in "foreignness" was becoming as much a part of the average law student's training as the problems inherent in a federal system had long been recognized to be.

If that idea was a bit ahead of its time twenty years ago, I have some reason to believe that its time has now come.

At the most human level, United States consuls throughout the world shoulder the moral overload of trying to administer an immigration law which is tangled beyond unraveling. It confers a discretion which invites subjectivity at best, whimsy at worst, in deciding the fate of hundreds of thousands who aspire to the American opportunity. Whether your role is petitioner, administrator, appellate adjudicator or policy reformer, the impact of "foreignness" hits everyone who would spend some time abroad, let alone transfer his residence or allegiance. Not far removed from the dreary waiting lines of visa applicants are the higher issues of freedom of movement and political asylum. Through it all runs the pervasive question of human rights and their international protection. Law is waiting to be made in the name of simple decency and minimal fairness. Law is also waiting to be made in the development of the final act of Helsinki as reviewed by the Belgrade Conference. It is not fortuitous that the

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spokesmanship for the West was entrusted to a distinguished advocate, negotiator and jurist. This was not because the Belgrade Conference and its aftermath would be enshrined as positive law, but because Helsinki raised problems and relationships which demand the perceptions sharpened by a lawyer's craft. Also, the law of international human rights has become more positive than mere abstract resolutions were once thought to be. The British have learned that the procedures of the European Commission on Human Rights can have political effect. Through Helsinki the Universal Declaration has taken on new significance. These official international formulations have added considerably to political self-consciousness, even if they do not have the "force" of law.

Again, my new post has made me acutely aware of the law-consciousness which permeates private international transactions. Sometimes it is municipal law in its extraterritorial reach. Sometimes it is the law of bilateral agreements affecting taxation or trade. With increasing frequency, it is the law of multinational agreement, such as the General Agreement on Tariffs and Trade or the European Economic Community.

Lawmaking by private groups such as the International Chamber of Commerce may try to supplement or forestall public prescriptions or proscriptions on a regional basis such as the Organization for Economic Cooperation and Development; or law on a universal scale as developed through the Economic and Social Council of the United Nations. All three levels of lawmaker have been brought to bear on the problem of bribes as a way of obtaining international business.

In relations among nations, it is clear that some problems have recently emerged which by their nature require a degree of multi-national cooperation. These problems may require adoption of instruments of investigation, regulations and sanctions in the common interest of the international community. The problems posed by international terrorism are an example. These, of course, are not without precedent in the area of international police, piracy and drug control.

When the activity to be regulated involves the legitimate pursuit of a nation's peaceful economic aspirations, the challenge to both substantive and procedural ingenuity is awesome. Such is the nature of the development of nuclear energy for peaceful purposes in a way which minimizes the chances of nuclear accident, hijacking and weapons proliferation. Both Euratom and the International Atomic Energy Agency have been conscientiously at work on facets of this problem. Much more remains to be done if the world is to live safely in the plutonium era.

Most horrendous of all, of course, is the effort to reverse the upward spiral of the capacity for annihilation. Not only do the weapons of frightfulness demand control, reduction, and eventual abolition; but also patient negotiation is needed if the confrontation of potentially aggressive forces is to be disengaged and "conventional" destructive capacity reduced to less provocative levels.

Ultimately, of course, weapons prevention is not as reliable as war prevention. The consensual, quasi legislative and administrative law of peacekeeping is a congeries of legal challenges which demands the best of legal talent. This very obvious catalogue is now almost trite. It has always inspired the vision of generations of international lawyers. The exciting thing to me as an obsolete academic lawyer and neophyte diplomat is that in all these areas—in-
dividual, business, governmental—and at all levels—private, unilateral, bilateral and international—thought and work and action are now going on at an extraordinarily active pace.

I have to concede that without the political will and the capacity for mutual deference no amount of legal gimmickry will serve the ends of peace and justice in the transactions or relations among nations. In many areas we are a long way from that.

After a brief exposure to relations among two nations most amicably disposed toward each other, I also know that good will and common purposes are not enough. Agreed standards and procedures are essential if arrangements are to be reliable enough to withstand differences in perception, misunderstandings and conflicts of short-run self-interest.

For the many, a degree of sophistication about the role of law in transnational transactions and relations is essential to professional usefulness. For the happy few who make it their speciality, the rewards, tangible as well as intangible, are great.