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ARTICLES NOTED

ATLANTIC COMMUNITY

Rostow, *Europe and the United States — The Partnership of Necessity*, 6 *ATL. COM. Q.* 216 (1968).— The author challenges those propositions concerning United States foreign policy which signify the disappearance of cooperation between the United States and Europe. He submits that the bonds between the United States and Europe appear to be strengthening. After the Second World War, the United States assumed the primary role of shaping a system of peaceful coexistence. The primary method of accomplishing this objective has been to encourage the organization of several overlapping systems of regional cooperation, which could "deter and counterbalance destructive tendencies, and provide a framework for stability and progress in the several regions of the world, and in the world as a whole." The ultimate goal is for Europe to once again become independent of, as well as a powerful competitor with, the United States. The result in Western Europe is the considerable progress made in reconciling the fact of nationalism to the fact of independence.

However, an interdependence among the nations of Western Europe is not sufficient to meet the needs of the future. The capability for Russian influence around the world must be counterbalanced by a strong coordinated Western grouping. This is the only basis, according to the author, for stable cooperation with Russia. A strong Atlantic Alliance will act as a nuclear deterrent as well as a beginning for further integration of the European and American economies. The author believes that NATO is vital to the attainment of an independent Europe and that its abolishment would expose Europe to Russian political and military power. He believes that peace can be attained only through a close association with Europe. (HG)

CONFLICT RESOLUTION — THE MIDDLE EAST

Forward, Jay, Koslow, Linsider & Mezan, *The Arab-Israeli War and International Law*, 9 *HARV. INT'L L. REV.* 232 (1968).— There is probably no area of international concern which evokes more partisan evaluation than the Middle East. In this article, however, an objective and realistic consideration is presented of the entire situation. The writers persuasively assert that in order to understand the present crisis in the Middle East, it is imperative to fully comprehend and apply the history of the region. After achieving an historical perspective, the authors focus upon the June 1967 War. Both the Arab and the Israeli justifications based on legal precedents are noted, with the major controversy being the Arab blockade of the Strait of Tiran. After considering the overall international legal implications and the validity of the present positions taken by Israel and the Arab countries, the status of the conquered territories, especially Jerusalem and the Golan Heights, is described. In conclusion the authors outline and succinctly adjudge the various opportunities for resolution of the existing explosive situation.

This article gives an effective overview of the background and present condition of the Middle East without resorting to a biased representation. The aspirations and necessities of both sides are presented in light of the War and its complex aftermath. (LNS)

Johnson, *Some Legal Problems of International Waterways: With Particular Reference to the Straits of Tiran and the Suez Canal*, 31 MOD. L. REV. 153 (1968).— This article discusses the status of the Strait of Tiran in the Arab-Israeli crisis. The author first examines the conventions adopted at the Geneva Conference on the Law of the Sea in 1958 — particularly the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the High Seas, and their relation to the Strait of Tiran and the Gulf of Aquaba. With respect to territorial seas and contiguous zones, the author points out that although base lines separating "internal waters" from "territorial seas" are drawn, the Convention leaves unclear the definition of "innocent passage" and the breadth of the territorial sea. He stresses the criticism of the Convention on the High Seas as placing too rigid a distinction between the regime of the territorial sea and that of the high seas while seemingly de-emphasizing the framework of freedom of navigation.

Considering these conventions and the geography of the Strait of Tiran and of the Gulf of Aquaba, the author believes that Israel is not in a position to consider the strait as connecting two sections of the high seas. Nor can the concept of freedom of the seas be relied upon by Israel when available access is provided by Mediterranean ports. Consequently, the conclusion that Saudi Arabia and Egypt could, by agreement, close the strait for periods of time would appear to be persuasive. Such a conclusion is of particular interest because it is reached without the necessity of considering the Gulf of Aquaba historically as an Arab bay. (DJR)

Wright, *Legal Aspects of the Middle East Situation*, 33 LAW & CONTEMP. PROB. 5 (1968).— The clarity with which the author views the Middle East situation is communicated succinctly and interestingly throughout this article. The background of the crisis in 1967 and 1968 is not one of purely antagonistic relations between Arab and Jew, Russian and American, but rather one that could have been — with less politics and more diplomacy — a model program for human relations development. Because of misunderstandings and miscommunications, the militarily weak Arabs and the domestically disunified Israelis have been plunged into crisis after crisis since World War II. The belligerents have not agreed on the causes of the situation, the United Nations has been unable to resolve any part of the difficulties, and neither of the super-powers is certain of what approach to take in its relations with the involved states.

Out of this hot bed of confusion and misunderstanding, the author culls 13 legal issues which have developed out of the years of crisis in the Middle East. Among them are questions concerning the legality of the original creation of a national home for Jewish people, the use of Jordanian waters, the legality of the original partition of Palestine, the rights of navigation of Israel in the Suez Canal, the obligation of Israel to evacuate occupied territory, and the responsibilities of the United Nations and the great powers in relation to the crisis area. Each of these and others are discussed briefly in valid historical and political perspective, but no immediate solution can be posited. In the final analysis, the author suggests that the best solution for all parties concerned might be to reconsider the recommendation of the United Nations in 1947, that Israel, a Palestinian Arab state, and Jordan unite in a federation in which each group would have political independence, but economic union. Though the immediate prospect for such a solution is unlikely, the hope that such a new Middle East compromise could arise should not die. For those who are not entirely

familiar with the background, issues, and prospects for peace in the Middle East, this article and its conclusion are both enlightening and inspiring. (RDM)

FORENSIC MEDICINE

Dorolle, *Old Plagues in the Jet Age: International Aspects of Present and Future Control of Communicable Disease*, 1968 BRIT. MED. J. 789.— In this article, the author thoroughly presents the existing and potential problems in controlling the spread of communicable diseases in view of the nature and quality of current modes of transportation. He relates what has been done to deal with the problem and suggests what should now be done. The problem is a multivariate one. The countries in which both "quarantinable" and "non-quarantinable" diseases exist are generally poor and underdeveloped. As such they do not have the resources to prevent or even report the outbreak of diseases. Moreover, even if they could report an outbreak they might fail to do so because of the negative effect that such information might have on their international trade and tourism. Thus, a visiting tourist or a cargo of produce might carry the disease back to a watchful, but unwarned foreign country.

A study of measures taken in the past illustrates the inadequacies of present precautions in light of the ever increasing capability of air travel to transport huge numbers of persons with their germs a great distance in a very short time — the Hong Kong influenza is a recent example of the problem. The author contends that tight surveillance must be maintained throughout the world and that this can be accomplished only by the introduction of greater cooperation among nations and by considerably greater expenditures. The privately funded drive to control influenza demonstrates what can be done if a spirit of cooperation replaces what has traditionally been a police action. The author concludes that this transformation in viewpoint must take place and must be accompanied by a marked increase in international responsibility if this potentially great threat to world health is to be eliminated. (LJD)

HUMAN RIGHTS — SINCE THE U.N. CHARTER

Humphrey, *Human Rights, The United States and 1968*, 9 J. INT'L COM. JUR. 1 (1968).— This article deals with both the structure and the progress of the United Nations machinery for the promotion of human rights. Human rights became a subject of the United Nations Charter through the energetic lobbying of certain non-governmental organizations, the attitudes of certain small countries, and the imaginative leadership of the United States delegation which obtained the agreement of the other sponsoring powers. The result was the inclusion of human rights provisions in several articles of the Charter. While the Charter did not establish a "Bill of Rights" and promises only to "promote" rather than to protect human rights, article 68 provides for the establishment of the Commission on Human Rights.

Another important development was the creation of several specialized commissions and subcommissions within the U.N. to deal with human rights problems. Moreover, the Universal Declaration of Human Rights, adopted in 1948, and the two complementing covenants of 1966 cover the whole spectrum of human rights. While it is only a resolution of the General Assembly, the Declaration nevertheless represents a considerable de-

gree of international agreement. In the 20 years that the Declaration has been in effect it has acquired a moral and political authority second only to the Charter itself, which has caused some international lawyers to suggest that it has become part of customary law and is, therefore, binding on all states. The weakness of the Declaration is its failure to provide for the implementation of its goal. The 1966 Covenants attempted to implement the Declaration through the establishment of reporting and conciliation machinery, but these procedures have many limitations.

The author suggests several ways of improving implementation of the Declaration: an independent committee of experts should be created to analyze the governments' reports; the Human Rights Commission's global study effort should be improved with respect to factual and critical content; also he suggests the creation of a High Commissioner of Human Rights. This article provides extensive background on the treatment of human rights by the United Nations and of the progress achieved to date. (PJD)

JUDICIAL PROCESS — INEXIGIBILITY

Merrills, *Morality and the International Legal Order*, 31 MOD. L. REV. 520 (1968).— The author focuses on the question of whether the principle of inexigibility (the exceptional cases where morality predominates over positive law) can be incorporated effectively into the field of international law. In approaching the question, the author attacks the theory of inexigibility as stated in an article by Professor Silving, 55 AM. J. INT'L L. 307, where Silving claimed the incorporation of such a principle into international law would have justified the abduction of Adolph Eichmann from Argentina by Israel in 1960. After reviewing briefly the operation of inexigibility in municipal law, which is a hierarchical or vertical system, the author turns to the international order which is essentially horizontal. He points out several areas where the structural differences between the two systems are most apparent: the fact-finding process, the law-developing process, and the dispute-settling process. He concludes that the international system is not yet ready to adopt the principle of inexigibility.

The author then discusses the Eichmann incident, giving consideration to three issues: (1) the moral consensus that would be necessary to invoke inexigibility in the Eichmann case; (2) the morality of Israel's action, whether inexigibility would completely justify it or apply only to diminish its responsibility; and (3) the "perceived" interests of Argentina. He concludes that, given the horizontal structure of international law, the value of protecting the "perceived" interests of a state far outweigh the value to be gained by applying the sophisticated principle of inexigibility.

This article is a good analysis of inexigibility as applied to international law and points out the problems encountered in attempting to apply principles of morality to the international legal order. (RHS)

JUDICIAL PROCESS — RECOGNITION

von Mehren & Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601 (1968).— The utilization of domestic adjudicatory processes may give rise to unique international repercussions. Traditional legal relationships among nations may be altered significantly by a decision in one legal system as to whether that system should recognize or give effect to a judgment rendered by a foreign state. The authors note that "in international practice, the interrelation-

ships among adjudicatory jurisdiction, choice of law, and recognition are evident, and recognition depends significantly on jurisdictional and choice-of-law considerations." The discrepancies of policy among states with regard to the application of those primary considerations in both American interstate and general international recognition situations are succinctly enumerated and thoroughly analyzed. Dealing primarily with the legal systems of France, Germany, England, and the United States, the authors relate and merge the essential policy considerations underlying the standards currently employed in those states for jurisdictional purposes.

Certainly the authors are correct in their initial assumption that some formula for recognition is required to avoid the injustices which are inevitable if nations are permitted to pursue their parochial interests at the expense of other members of the community of nations among whom relationships are becoming increasingly complex. Unfortunately, the article fails to delineate a concise, viable model for international recognition principles and procedures, perhaps because of the complexity inherent in the problem itself. The excellent analysis within the article, however, is basic to the building of such a model and is certainly worth careful consideration in any future attempts at policy formulation in this area. (RAS)

JURISDICTION

Brown, *Criminal Jurisdiction Over Visiting Naval Forces Under International Law*, 24 WASH. & LEE L. REV. 9 (1967).— This article delineates the problem of jurisdiction where a seaman in the service of one sovereign performs an act which, except for his national status, would be a crime within the jurisdiction of another sovereign. The author analyzes the background of the contemporary rules governing this area, which have become structured in such documents as the NATO Status of Forces Agreements. They stem from the basic principle that each sovereign state has jurisdiction to try criminal cases arising within its geographical boundaries. If a vessel is considered to be an extension of these geographical boundaries, then a conflict arises when an action is taken which is a crime under the law of both the host and the visiting states. Otherwise, the state whose law has been violated has exclusive jurisdiction.

To resolve the problem of concurrent jurisdiction, a number of theories have been propounded. The doctrine of *extraterritorial jurisdiction* is that the vessel is part of the nation under whose flag it sails and that such nation's jurisdiction is exclusive. On the other hand, the doctrine of *implied immunities* laid down by Chief Justice Marshall states that the host state has absolute sovereignty over its territorial waters, but that immunity to such jurisdiction could be implied from the license granted a foreign naval vessel to enter a neutral or friendly port. After discussing several cases which have applied these doctrines in various manners, the author illustrates the present status of the law with various hypothetical examples. He concludes that the law in this area is unsettled and that considerable effort is required to stabilize the rules governing conflicts of international jurisdiction. (THK)

LABELING IMPORTED ARTICLES

Note, *Labeling Imported Articles with Country of Origin*, 1 CASE W. RES. J. INT'L L. 29 (1968).— This note surveys the complex laws and regulations with respect to marking imported articles. It first considers the cus-

toms laws and the regulations promulgated by the Federal Trade Commission and discusses the necessary protection for the "ultimate purchaser." A number of cases are presented in the text and footnotes in order to help delineate the general scope of the laws and regulations. Next, the note discusses trademarks on imported articles as governed by sections 42 and 43 of the Lanham Act. Reference is made to pertinent provisions of other statutes and customs regulations, with special attention being given to the Federal Food, Drug, and Cosmetic Act, the Textile Fiber Products Identification Act, and the Fur Products Labeling Act. The note follows the same approach in considering each of these acts, first giving a short discussion of the relevant provisions, and then dealing with some of the problems involved in order to provide the reader with an idea of the scope of the law. The case by case method which is presently used to clear up some of the specific problems merely accentuates the already complicated situation. The article concludes with a suggested amendment to the Lanham Act. This amendment proposes to eliminate some of the confusion by concisely codifying the rules, opinions, and regulations.

The most important feature of this note lies in its concise and accurate presentation of the general scope of the law, regulations, and cases in the area of labeling imported articles. Moreover, it discusses the relevant problems commonly encountered by importers. Counsel for clients dealing in importing products will find this note an excellent introduction and analysis of the foreign labeling area. (CDD)

LAWS OF WAR — HOT PURSUIT

Note, *International Law and Military Operations Against Insurgents in Neutral Territory*, 68 COLUM. L. REV. 1127 (1968).— Noting that the phrase "hot pursuit" has been used to characterize pursuit of the Viet Cong by United States forces into Cambodian territory, the writer makes the careful distinction that the phrase was originally conceived in the context of international maritime law. It is necessary to recognize that the traditional application of the concept is not directly analogous to the land warfare context, but that some of its inherent principles may, nonetheless, be germane to a debate between the United States and Cambodia in which international guidance is sought. Pointing out that infringement by hot pursuit is a violation of a neutral state's territorial integrity and that the pursuer has the burden of proving justification if it wishes to avoid international sanctions, the writer addresses himself to an examination of possible claims by the belligerent that its conduct was justified either as a matter of self-defense or that the neutral state had violated its duty by allowing its territory to be used as a refuge. Proper analysis of the self-defense claim requires an examination of the problem in each of the following contexts: action against anticipated attack; action against tactical retreat; and action against actual attack. Comparison of these claims with existing principles of law yields the conclusion that such infringement should be justifiable under international law when certain conditions prevail.

Violation of neutral duties inherently is the weaker of the two defenses because it is difficult under international law to determine when the duty has been violated, thereby justifying hot pursuit. Accordingly, the writer advises that this defense should not be employed until certain other remedies (*e.g.*, diplomatic protest) have been exhausted. Moreover, international law should encourage primary reliance on self-defense as a justifica-

tion because it imposes additional sanctions on the neutral state, thereby lending affirmation to its inherent neutral duties.

In short, this article realistically supports traditional justifications for hot pursuit within the growing framework of international law. It is a sober and sound evaluation of a clearly volatile issue. (WJM)

SOCIAL PROGRAMS — HEALTH INSURANCE

Rajan, *Medical Care Under Social Insurance in India*, 98 INT'L LAB. REV. 141 (1968).— India has provided for a system of compulsory insurance. This variety of "social security" is regulated by the Employee's State Insurance Corporation (E.S.I.C.) and provides coverage to all employees and their dependents in non-seasonal factories and establishments (excluding mining) with the requirements that power be utilized in the manufacturing process and that there be a minimum of 20 employees so employed. The E.S.I.C. provides five specific cash benefits to its insured: sickness, maternity, disablement as a result of an employment injury, death (survivor benefit), and medical treatment and attendance. The latter is the most important benefit, for it not only provides much needed curative care to insured workers, but simultaneously provides a system of preventive medical care for its beneficiaries.

The scarcity of doctors and paramedical personnel within India severely restricts the quantity and quality of the medical care given. Yet, those persons insured under the E.S.I.C. have easier access to medical services and receive a higher standard of medical care than do the general public. Moreover, although the E.S.I.C. plan is problemed with staff and facility shortages, it is the narrowness of its scope that is in essence the plan's greatest failing. Coverage is now provided only to industrial workers and their dependents, provided they meet the aforementioned criteria. The framers of the enabling act specifically provided for the government to extend the provisions of the Act "to any other establishment or class of establishments." The agricultural segment is especially important in this context, for more than 300 million of India's estimated 520 million people earn their livelihood in this manner. The majority of India's population must look solely to the government's public medical care. Until the government increases the currently insured occupational classes to include the majority of India's working force, the E.S.I.C. will continue to serve only a miniscule portion of the population. (DSD)