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Articles Noted

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CONTINENTAL SHELF

Oda, *Proposals for Revising the Convention on the Continental Shelf*, 7 COLUM. J. OF TRANSNAT'L L. 1 (1968).— This article is an up to date review of some problems concerning the continental shelf which were discussed in Professor Oda's book, *International Control of Sea Resources* (1962). There is a short review of the history of the various international conventions concerning the continental shelf and a specific discussion of four problems. The first is the problem of defining the extent of the shelf. There have been two methods generally proposed: Professor Oda clearly favors a method of definition by depth (200 meters) over a method of definition by "exploitability." The second problem is what resources should properly be included in the body of law covering the continental shelf. Specifically, it is whether to include certain bottom fish and crustacea, which historically have been considered property of the nation possessing that part of the ocean floor. The third problem is the control of the superadjacent waters. The conflict is between the navigation and fishing rights of all nations in the extraterritorial waters and the rights of the coastal nations in the continental shelf below. The last problem discussed in the article concerns the settling of boundary disputes between nations with common borders, including the question of offshore islands.

In considering these problems Professor Oda discusses the existing conventions and international agreements in the area and attempts to show various weaknesses. Professor Oda suggests more rational and specific criteria. As a result, he has presented a good survey of the topic and made specific suggestions for the resolution of the questions raised. (FIH)

CUSTOMS LAW

Berry, *The Esoteric World of Customs Law*, 54 A.B.A.J. 975 (1968).— Because of the speed and efficiency of modern transportation, almost every area of every country can compete for and derive benefits from world trade. Even small cities in Iowa, Montana, and Wyoming have dealings with foreign customers. The result of this expanded marketplace is that customs law is becoming more important to American lawyers. This article presents a broad overview of the disputes which can arise between an American importer and the federal government.

Disputes often arise over the placement of a specific article within a certain tariff schedule. (*See* 19 U.S.C. § 1202.) The amount of the duty is dependent upon the schedule in which the article is classified. Since the duty is a form of tax which the importer must pay, finding the proper schedule can save a significant amount of money for the importer. When disputes arise as to the nature of an article, the importer can file a protest with the Customs Service. The importer can appeal to the Customs Court if the district director of the Customs Service rules against him. But in court the Service is presumed correct in its determination. The importer must overcome this presumption and prove by convincing evidence the validity of his claim. While either party may appeal to the United States Court of Customs and Patent Appeals and to the United States Supreme Court, the author points out that the importer has an excellent chance of winning in the district court if he presents expert witnesses to testify in his behalf.

For example, the expert will presumably testify that article XZ is considered by the commercial world to be electronic rather than optical equipment, and thus have a lower duty. The success of the expert witness is usually due to the heavy burdens placed upon the government in this area. Often the Service will not have the time to present its own experts to combat the importer's witnesses.

This article presents a good introduction to the workings and problems in the area of customs law. Abundant references and citations should provide departure points of attorneys faced with related problems. (LSD)

DEEP SEABED

Creamer, *Title to the Deep Seabed: Prospects for the Future*, 9 HARV. INT'L L. REV. 205 (1963).— In connection with the world community's heightened interest in recent developments concerning underwater wealth, it has been realized that the establishment of title by direct claim to the continental shelf and to the deep seabed present problems of considerable international import. In his analysis of the current status of the deep seabed, the need for international control, and his conclusion that the United States will be highly influential in the development of international control, the author addresses himself to the following problems: if title to the deep seabed can be appropriated, then possibly the large and advanced states will claim the greater part of the ocean for their exclusive use; if title cannot be so claimed, then conflicting interests will have to be reconciled by a new regime. Title should be established by customary international law, traditionally regarded as capable of such determinations. Dismissing existing theories as inapplicable to the deep seabed, the author concludes that national claims made upon the basis of either military advantage or mineral exploitations are permissible under international law.

The need for international control is clear. One of the first issues likely to arise will involve the jurisdiction of coastal states over the adjacent submarine areas. International control could minimize both the ambiguities concerning the ideal definition of the continental shelf and the fears of coastal states that the adjacent submarine areas will fall into the wrong hands. Whether such control will be forthcoming is questionable. Pointing out that coastal states generally desire to monopolize the resources in the adjacent seabed, and that only non-coastal states have advocated international control, the author observes that recent ambivalent gestures by world powers indicate that "United Nations ownership" — meaning jurisdiction and control, but something less than sovereignty — is feasible within the existing state of international law. Because of its advanced progress in ocean sciences and because of its influence as a world power, the United States is in a unique position to affect the future of the deep seabed. The author concludes that short run national goals will ultimately be replaced by reliance on international control because the long run interest of the United States is to reject colonialism and to embrace international ownership within the framework of the United Nations. (WJM)

Young, *The Legal Regime of the Deep-Sea Floor*, 62 AM. J. INT'L L. 641 (1968).— The rapid technological advances which have been made in recent years in the field of ocean exploration and exploitation have focused much attention on the legal systems designed to discipline the development and use of ocean resources. In his brief note, Mr. Young deals with the various proposals which have been advanced with a view toward setting up

a legal system for the deep-sea floor. The present state of ocean technology already permits exploration well beyond the limits of the continental shelf as defined in article I of the Continental Shelf Convention of 1958. Even though actual exploitation of seabed resources may be some time in coming, it is suggested that a legal regime be created to avoid future chaos and disputes. Indeed, some argue that the Convention is impliedly applicable to the exploitation of the deep-sea floor, or that the Convention ought to be extended through express provision to include the sea floor. The author feels, however, that such a result, besides being unfair to non-coastal states, was never contemplated by the framers or signatories to the Convention and would not be desirable.

Some of the more far-reaching proposals include international organizations established to play varying roles. One such proposal would involve an international organization conducting exploration and exploitation, the benefit of which would accrue to all the nations of the world. A good deal of significance is attached to the fact that in December 1967 an *ad hoc* committee was set up in the General Assembly of the United Nations with the express purpose of examining the question of the deep-sea floor and how it can best be turned to the benefit of all mankind. The author seems to favor a type of organization which could act as a landlord of the sea floor, granting leases and concessions for specified areas and purposes of exploitation. (WDB)

DISARMAMENT

Ruina, *The Nuclear Arms Race: Diagnosis and Treatment*, BULLETIN OF THE ATOMIC SCIENTISTS, Oct. 1968, at 19.— Is the United States commitment to nuclear superiority consistent with its desire to de-escalate the arms race? In a clearly stated critique of our nuclear policy, Dr. Ruina, vice-president for Special Laboratories at the Massachusetts Institute of Technology, suggests that it is not. If stability is to be achieved, both sides must begin to think in terms of a "minimum deterrent." According to Dr. Ruina, the commitment to nuclear superiority resulted partly from the changed nature of air defense after World War II. In the event of nuclear war, every advantage lies with the offense, and a nation which is not willing to strike first requires overwhelming superiority as a deterrent.

Dr. Ruina suggests, however, that while this may have been a valid policy for the 1950's, it should be reconsidered in the light of present day capabilities. "The most that can be said is that there exists today a kind of parity between the two great nuclear powers with each able to kill more than half the population of the other side." In other words, the relative destructive capabilities of the two nations are about equal. While the United States has a greater number of warheads, the Soviet warheads are larger. Also, the United States is more vulnerable because its population is highly concentrated in urban areas.

The concept that the greatest safety lies in *superiority* dies hard, and there is always the possibility of a technological breakthrough by the other side which could alter the balance of power. Thus both sides are moving ahead with the arms race. The United States is attempting to increase the technical sophistication of its payloads while the Soviet Union is building new missiles at an unprecedented rate and developing new space weapons. Even if the Vietnam war is ended soon, and the nuclear non-proliferation treaty is signed, there is little chance of a meaningful de-escalation of the arms race, unless two key obstacles are overcome.

On the American side, the Congress, the public, and the press must accept the fact that superiority in nuclear weapons no longer has any meaning. On the Soviet side, the system of secrecy whether it be inherent in Soviet society, or just an aspect of Soviet military strategy, must be abandoned. Our need for superiority is aggravated by our uncertainty about Russian capabilities which, in turn, is increased by the bluffing techniques employed to exaggerate Soviet nuclear strength — techniques made effective by the rigid internal secrecy of the Soviet Union. (TRP)

EUROPEAN HUMAN RIGHTS CONVENTION

Morrisson, *The Rights of the Accused Under the United States Constitution and the European Human Rights Convention, 1968* WIS. L. REV. 192.— The author compares and contrasts the rights of the accused as protected in the United States by the Supreme Court under the Constitution, and those rights are protected in the member nations of the Council of Europe by the Human Rights Commission and by the Human Rights Court under the Convention for the Safeguard of Human Rights and Fundamental Freedoms. This study in comparative law focuses upon international law as a viable system. Professor Morrisson briefly outlines the procedures of the Convention agencies which have had the effect of greatly restricting the jurisdiction of the Human Rights Commission and the Human Rights Court.

The rights of the accused, as protected by the Convention agencies, differ in nature and extent from those protected by the Supreme Court of the United States. The article stresses that one of the major sources of difference is the inclination of the Commission to grant to Convention members "greater leeway in matters of criminal procedure" than the Supreme Court is wont to give the states. Despite the enumerated differences, the thrust of the article is that "the differences are less marked than the similarities" between "the living Constitution and its Court [and] the developing Convention and its Commission and Court." This contention finds more support in the author's final abstractions than in his analysis of the areas of of ostensibly common protection. However, there can be no doubt of the veracity of Professor Morrisson's assertion that "the participants in these two systems can learn from their mutual experiences." (HJF)

EUROPEAN NUCLEAR ENERGY AGENCY

Gorove, *The Inspection and Control System of the European Nuclear Energy Agency*, 7 VA. J. INT'L L. 68 (1967).— This timely and incisive analysis of the European Nuclear Energy Agency (ENEA) — one of the existing international procedures developed to control the peaceful uses of atomic energy — is the outgrowth of an on-the-spot survey and study sponsored by the American Society of International Law. Under the aegis of the Organization for European Economic Cooperation, currently known as the Organization for Economic Cooperation and Development, ENEA represents a response to the increasing cost and growing shortage of traditional energy sources in Western Europe. Moreover, the ENEA Statute and the Security Control Convention both recognize the dangers of nuclear proliferation, and expressly state that the "operation of joint undertakings and the materials, equipment and services made available by the Agency or under its supervision shall not further any military purpose." Other objectives include the prevention of losses of fissionable materials,

maintenance of health and safety standards, and establishment of uniform radiation norms (in cooperation with Euratom).

In this article, Professor Gorove clearly describes the scope, allocation of authority, and control procedures (including on-site inspection) of ENEA, and compares them with those of Euratom and the International Atomic Energy Agency. Although ENEA has no legal personality or capacity of its own, the spirit of economic cooperation among its member nations has contributed significantly to the successful functioning of control procedures during ENEA's first decade of existence. By making international inspections more "palatable" in the atomic energy area and by contributing, even slightly, to our experience in international atomic verification procedures, ENEA may aid in the development of international atomic weapons control schemes. (LTG)

FORENSIC MEDICINE

Levchenkov & Knight, *Forensic Medicine in the Soviet Union*, 6 MEDICINE, SCIENCE, AND THE LAW 94 (1966).— Bearing in mind that European efforts in forensic medicine are of longer standing and have been undertaken with greater strength and greater resources than has been the case in the United States, it is still startling to read of the extent to which it has been incorporated into the academic and law enforcement institutions of the Soviet Union. From the Director of the Institute for Scientific Research in Forensic Medicine down to the district expert, the authors point out that there is a clear delineation of authority, responsibility, and expertise whereby both "practical" and academic legal medicine is practiced and taught.

Nearly all of the efforts in the practical area are integrated into the work of the police. In Russia the medico-legal autopsy, ordered in all cases of sudden or unexplained death, is independent of the wishes of the relatives. This means not only that more people are needed in the field, but also that there are more opportunities for research, investigation, and compilation of data. Academic training is extensive, although not so long as that of a forensic pathologist in the United States. However, as this brief but comprehensive article shows, the seriousness with which the field as a whole is considered and developed provides interesting food for the thoughts of interested parties in this country. (LJD)

INTERNATIONAL ADJUDICATION

Higgins, *Policy Considerations and the International Judicial Process*, 17 INT'L & COMP. L.Q. 58 (1968).— The author proposes a new approach to international adjudication. Contemporary thought as to the nature of the legal processes in international affairs has been split into two camps: the *British approach* relies upon the application of traditional "standards of meticulous legal scholarship," *i.e.*, law as neutral rules to be applied to the dispute before the adjudicating body; the *American approach* seeks to involve the court in transitional value and policy considerations leading the adjudicating body, in essence, to make law. The author rejects both of these approaches as inadequate to deal with the two major areas of international problem solving — contentious litigation and advisory opinions. Also rejected are the traditional arguments distinguishing justiciable and non-justiciable issues before international legal tribunals. In place of the vital interests, objective rules, motives, and possibility of non-compliance doctrines,

the author proposes the following guideline: "[T]he terms 'political dispute' and 'legal dispute' refer to the decision-making process which is to be employed in respect of them, and not to the nature of the dispute itself."

To implement this distinction, the author proposes an initial broad reading of articles 38, 65, and 68 of the Charter of the United Nations by the adjudicating body to determine the justiciability of an issue. Once this analysis is complete, the adjudicating body may apply the "continuing process of authoritative decisions" as the basis for resolution regardless of the elements of the dispute. In other words, the adjudicating body would not be precluded from considering moral and humanitarian issues simply because they are not traditionally "legal disputes" if in fact they do not fall within one of the prohibitions of the above-mentioned Charter articles. If adopted, this approach could broaden the scope of international problem consideration beyond the traditional British approach. At the same time, it would tend to decrease the possibility of opening a pandora's box of litigious issues which would necessarily flow from the adoption of the American approach. (RAS)

INTERNATIONAL COPYRIGHT

Ringer, *The Role of the United States in International Copyright — Past, Present, and Future*, 56 GEO. L.J. 1050 (1968).— The article begins with a survey of the historical development of international copyright law. A short discussion of the Berne Convention is followed by an outline of the development of international copyrights in the United States prior to World War II. Next, the author presents the major developments during the period of 1952-1967, beginning with the Universal Copyright Convention which was signed in Geneva on September 6, 1952. The accomplishments and shortcomings of the Convention are discussed and comparisons are made with the Berne Convention.

Professor Ringer discusses the conflict between developing nations and developed nations with respect to international copyright law, which culminated at the Stockholm Conference on Intellectual Property in 1967. The author emphasizes the weak American involvement at this meeting which resulted in the Stockholm Act, subsequently made a part of the Berne Convention. This instrument specifically applies to developing countries. The United States opposed the Stockholm Act and proposed an alternate program. Professor Ringer suggests that the United States must take a more active role in international copyright because of its large exportation of literary properties. It is suggested that concessions be made to developing countries in order to protect authors' rights. The article is an excellent survey of international copyright and it provides a readable introduction to the area. (BCJ)

INTERNATIONAL COPYRIGHTS AND PATENTS

Sarogovitz & Dobkin, *Patents, Technical Data and International Defense Agreements*, 13 VILL. L. REV. 457 (1968).— The authors examine international cooperation in the exchange of patent and data agreements, defining the "legal and practical impact on participating governments and on private individuals" of the interchange of this *intellectual property*. The outline of the article is developed in terms of the general format of these agreements, while the material within the outline analyzes the problems

and suggests answers concerning protection of property rights balanced against free-flow of necessary defense information. The text covers such issues as responsibility for claims arising from use and disclosure of information, selection of the forum in which to recover, and theories for recovery. It illustrates the typical content and impact of present and possible future international contract agreements.

Although the authors are counsel for the United States Army Materiel Command, their concern for, and acute examination of, the difficulties in protecting the intellectual property of the private sector appears complete. Corporate counsel for firms with international subsidiaries or with valuable patents and technical data would be particularly aided by the analysis of problems and the suggestions for resolution in this article. This is a relatively new area of law; within this article theorists should find sufficient information to supply the "take-off" point for further study and hypothesis, both in the legal sense of adjudication and the political aspect of diplomatic effects upon operation of the agreements. (JRP)

INTERNATIONAL TRADE — DUMPING

de Jong, *The Significance of Dumping in International Trade*, 2 J. WORLD TRADE 162 (1968).— While supporting the GATT approach toward anti-dumping protection in international trade, the author feels that the price discrimination view to dumping taken by GATT is too narrow a position when the possibilities of distortion are considered. Mr. de Jong proposes that the GATT approach be modified by bilateral or multinational agreements which would more clearly define the nature and scope of anti-competitive behavior. Upon examination of the economic consequences of long- and short-term dumping practices from the viewpoint of third countries as well as that of the nations involved, de Jong concludes that only short-term practices are injurious. The long-term and short-term dichotomy is creatively approached in an analysis of the relationship between dumping margins and protective tariffs.

The author suggests that an exaggerated view of the undesirable effects of dumping tends to promote protective devices which ultimately may prove less desirable than the actual dumping itself. By dissecting the concept of dumping, this article provides an interesting discussion of the role that dumping can play in furthering competition in international trade and provides a focus for greater concern over dumping and anti-dumping polices. (DJR)

JURISDICTION

De Winter, *Excessive Jurisdiction in Private International Law*, 17 INT'L & COMP. L.Q. 706 (1968).— The Protocol signed at the Hague in October 1966 announced the beginning of an approach to international adjudicatory jurisdiction which emphasized uniformity rather than national self-interest. Mr. De Winter explains the international counterpart of the American "diversity" question with brevity and clarity. After surveying jurisdictional problems in the European community, the author proceeds with an orderly enumeration of fundamental issues which must be met before there can be international agreement on whether municipal procedural law of jurisdiction shall be applicable to international disputes. He leaves no stone unturned in his elucidation, favoring neither the civil law of his homeland nor Anglo-American common law in its application. Because of

his thorough understanding of both systems, the author paves the way for further study and declaration of the law in this confusing area. The article is a useful tool for research in international procedural and adjudicatory problems. (RDM)

LAWS OF WAR

Mallison, *The Laws of War and the Juridical Control of Weapons of Mass Destruction in General and Limited Wars*, 36 GEO. WASH. L. REV. 308 (1967).— Mr. Mallison asserts that laws of war *do* exist and that they are reflected in developments in methods of warfare. Pragmatism prevails in determining the "lawfulness" of military action: the basic principles of the laws of war usually refer to military necessity and to humanity, and military necessity legalizes only that destruction which is proportional to the military advantages gained. Without a possibility of enforcement, it would be illusory to refer to "laws" of war. Sanctions exist to the extent that there is a community of mutual and reciprocal interests shared by the participants. It may be that "rules of the game" would be more appropriate than "laws of war."

Historically, the only effective juridical control of weapons has related to weapons that no one could or wanted to use at the moment. Current weapons of mass destruction place the issue in a much more demanding context. If used to the obvious maximum, these weapons would destroy all life. The chemical and biological weapons currently available might prove more humanitarian (*i.e.*, less disproportionately destructive) than the conventional arsenal, yet there are conventional and customary prohibitions on their use. Accordingly, it appears that "clean" nuclear devices directed only at strategic targets might be interpreted in the same way. The author seems to suggest that such uses of these weapons means that they fall within the conventional military-necessity-human-value framework. However, the pessimistic question that has persisted throughout the history of war and its "laws" remains unanswered: How can one define the limits? (ADC)

PROCEDURAL RIGHTS OF ALIENS

Dawson, *International Law and the Procedural Rights of Aliens Before National Tribunals*, 17 INT'L & COMP. L.Q. 404 (1968).— Mr. Dawson focuses attention on a study by the Procedural Aspects of International Law Institute of New York entitled "International Procedures to Protect Private Rights." The project is concerned primarily with rights of aliens: human rights, property rights, and rights to relief in national tribunals. The basic problem is the failure of aliens to resolve their disputes by first going to the local courts and administrative agencies rather than to their own government representatives. Customary international law requires that an alien first exhaust the judicial and administrative remedies available to him in the foreign state before he demands the diplomatic protection of his national government. This is called the "exhaustion of local remedies rule." (The Interhandel Case, [1959] I.C.J. 6, 27.)

The author points out that an alien's right of access to and adjudication before the local tribunals is largely determined by two conflicting interests: the desire of the host nation to support its legal system, and the concern of the alien in obtaining relief which is meaningful within his own concept of law. Concern for the first of these interests manifests itself in "calvo clauses" whereby the alien agrees to settle contract disputes in the

local courts. The second interest usually results in the demand that disputes arising from a contract be settled according to the law of the alien's state.

In this article Mr. Dawson discusses the following reasons why aliens do not seek relief in local courts: unfamiliarity with local procedure, failure to appreciate the relationship between global stability and local administration of justice, desire to receive assistance from their own government's diplomatic legation, and the fact that local remedies may in fact be inadequate or nonexistent. The author then considers the procedures by which consuls advise their nationals who seek legal assistance. Some of the problems of bringing an action in a foreign court are reviewed. The conclusion of the article emphasizes the need to resolve disputes in local tribunals because of the impact of technology on commerce and travel. (CDD)

SOVIET INTERNATIONAL LAW

Note, *Soviet International Law: An Exemplar for Optimal Decision Theory Analysis*, 20 CASE W. RES. L. REV. 141 (1968).— This student Note represents an expermient in interdisciplinary analysis. By applying modern decision theory and traditional political science, an understandable pattern is derived from the continuing shifts in Soviet international law as theoretically expounded and actually practiced. The Soviet heritage of Czarist Russia's minimal contributions to traditional international law is briefly discussed. The article then attacks the theoretical concepts which give rise to the Soviet dilemma of reconciling Marxist doctrine with the predominantly Western-oriented body of international jurisprudence. The attempts of the various Soviet legal spokesmen (Korovin, Pashukanis, Vyshinskii, and Tunkin) to shorten the horns of this dilemma are delineated.

In 1956, with Krushchev backing the theme of peaceful coexistence, a compromise of the divergent legal systems was acknowledged by the Soviet government. The latest shift in Soviet international legal policy — from Krushchev's coexistence theme to Brezhnev and Kosygin's theme of cooperation — is discussed as a significant change not only in terminology, but in approach as well. "Indeed," the author points out after a detailed and comprehensive analysis, "the current East-West *détente* era has created a 'new' international law made up of *consensually*-based rules." This analysis provides the basis for suggesting an operational sociological approach based on a trans-cultural consensus as a potential solution to the dilemmas in international jurisprudence which have been created by a world of polarized ideological beliefs.

Before espousing the concept of a trans-cultural consensus, the author interjects a brief critical comparison "between the Soviet 'hang-ups' in effectuating a valid theory of international law and the inconsistency between the United States democratic ideals and American international relations," as evidenced by the United States commitment to the rationally deductive Domino Theory and by the United States refusal to sign the international human rights treaties. The trans-cultural consensus coupled with the policy-evaluation strategy of disjointed incrementalism is then posited as a means for averting human species annihilation because of misguided intraspecific aggression (*a la* Lorenz) and the territorial imperative behavior pattern (*a la* Ardrey), both of which are phylogenetically programmed into man's basically aggressive nature. The author stresses the necessity for a *mankind perspective* transcending national values and prejudicies. (JLH)