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# Book Reviews

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# BOOK REVIEWS

EL CONFLICTO HONDURAS-EL SALVADOR Y EL ORDEN JURIDICO INTERNACIONAL (1969) (Spanish language). James P. Rowles. Costa Rica: Editorial Universitaria Centroamericana (EDUCA), 1980. Pp. iv, 307. *Reviewed by Jorge L. Carro**

On July 14, 1969, the armed forces of El Salvador invaded Honduras. The resulting conflict lasted one hundred hours and left between 1000 and 2000 people dead. Many people were wounded and there were tens of thousands of displaced persons. Although the Organization of American States (OAS) was able to stop the fighting and secure the withdrawal of the Salvadoran troops on July 18, troop removal was not completed until August 3, 1969. This was a crucial test for the OAS, which "for the first time in its 21 year history, failed to avert a full-scale armed conflict between two of its member states."[1] It also challenged the foreign ministers of neighboring nations, who attempted mediation between the two countries prior to the invasion.

This book provides an almost hourly account of the events preceding the conflict, the war plans executed before the conflict started, the initiation of Inter-American System machinery for settling disputes, the heated discussions among the representatives of the different nations of the OAS, and the consequences of the war itself. Also included is the necessary background on the political and economic conditions prevailing in both countries before the war and a thorough analysis of what "role law and international legal machinery played—or might have played—at different stages of the conflict."[2] In approaching his task, the author focuses on what Professor Richard A. Falk has labeled "phenomenological perspectives."[3] This technique combines "concrete analysis of legal problems that are intrinsically interesting with

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1. J. ROWLES, EL CONFLICTO HONDURAS-EL SALVADOR Y EL ORDEN JURIDICO INTERNACIONAL (1969), 8 (1980).

2. *Id.* at 9.

3. Falk, *New Approaches to the History of International Law*, 61 AM. J. INT'L L. 477, 488 (1967).

the formulation of more general ideas about the relationship between international law and international behavior."[4] For the purpose of analysis, the book may be divided into four major components: (a) setting and anticedents; (b) the escalation; (c) the war; and (d) the conflict and the international legal order.

### A. *Setting and Antecedents*

The author contends that to understand the context in which legal claims were made and legal machinery employed, the reader must consider the setting. The first part of the book, therefore, provides a detailed and documented account of the economic, political, and social situations prevailing in both countries before the strife. To varying degrees, both nations faced extreme poverty, military political control, an unequal distribution of wealth and land, and a dramatic population explosion. The question of overpopulation was more dramatic in El Salvador than Honduras, but the situation in the Honduras was aggravated by the exodus of 300,000 Salvadoran immigrants seeking a better life in Honduras. The author then explores the following "antecedents" or immediate causes of the conflict: the imbalance between the demographic explosion and economic growth; the failure to create better living conditions; the natural reaction of nationalism; the failure to negotiate new treaties, or enforce existing treaties for the amicable solution of immigration problems; the lack of properly defined boundaries; a series of minor incidents on the border in 1967; and the complex political situation that generated social tension. In addition, the involvement of both nations in the Central American Common Market (CACM), is identified as a cause of the conflict. When CACM was created, El Salvador received more economic advantages than Honduras. This imbalance created a series of disputes and incidents provoking the additional resentment that generated the confrontation.

### B. *The Escalation*

Five weeks before the war started, Honduras defeated El Salvador's soccer team in an elimination round for the world championship. The Salvadoran fans who traveled the short distance to Honduras to support their team were victims of insults and harassment, and they returned home and reported the abuses. Other

4. *Id.* at 495.

incidents followed when the Hondurans traveled to El Salvador to play the second game of the series. This time the Salvadorans were victors, but their fans "brutally attacked"[5] their visitors before, during, and after the game. The bad news immediately reached Honduras, and Hondurans retaliated by attacking Salvadoran families, persecuting illegal Salvadoran immigrants, and expelling immigrants illegally occupying public lands. Violence prevailed in both countries for five more weeks.

Commentators have suggested that neither government seriously attempted to control the situation. Professor Rowles contends that both governments abetted the violence as a matter of convenience. He speculates that the extraordinary waves of nationalism would benefit both governments by diverting the attention of the people from the existing social problems, thereby curbing the growing leftist movements. This is an untenable position, however, because any conspiracy of this magnitude is very difficult to prove. The media also played a very important role in the events that took place. Inflammatory editorials, misrepresentation and exaggeration of facts, emotional reporting and appeals to national fervor, and patriotism added fuel to the fires.

During the days that followed the initial outbreak of violence, the situation became increasingly tense as the escalation process began. As though writing a journal, the author uses an abundance of details to trace the chain of events. He tells of the continuation of acts of violence, the expulsion of Salvadorans from Honduras, the Salvadoran attack of a Honduran plane, and the killing of four Salvadoran soldiers in a border incident. Parallel to the action, diplomatic maneuvering was taking place. The President of El Salvador accused Honduras of "flagrant aggression" and broke diplomatic relations. The Hondurans countered by accusing the Government of El Salvador of violating Honduran territory and preparing an invasion.

Neighboring nations started to express concern over the gravity of the situation and mediation efforts were set in motion. The foreign ministers of Costa Rica, Guatemala, and Nicaragua offered to act as mediators, and their offer was accepted. Following a request by Honduras, the OAS convened. Moreover, a subcommittee of the Inter-American Commission on Human Rights (IACHR) started an investigation and visited both countries on a

5. J. ROWLES, *supra* note 1, at 61.

fact-finding mission. Even the bishops of these two predominantly Catholic countries contributed their efforts toward a peaceful settlement. A series of meetings, resolutions, appeals, recommendations, accusations, denials, recriminations, and promises from the different actors in the drama followed.

One of the resolutions passed by the OAS on July 4, 1969, reflected Latin American culture in almost poetic language: "May this draft resolution open the door to the rainbow of peace which certainly we shall see again between Honduras and El Salvador, once understanding has chased away the fog that now darkens their common skies."[6]

The war began ten days later. On July 14, 1969, the armed forces of El Salvador invaded Honduras. The international news agencies identified the conflict as the "soccer war." According to Professor Rowles, however, the incidents around the soccer games acted only as "catalysts." Although the author recognizes those individuals, foreign governments, and international organizations who tried unsuccessfully to prevent the war, he is very critical of the entire process. He surmises that the OAS could have done more to prevent what eventually happened. He also believes that none of the outside groups that mediated in the conflict were actually aware of its gravity. Wars are unlikely and infrequent in Central America. Furthermore, history is replete with instances similar to this sitatuion where final confrontation was avoided.

### C. *The War*

There is a sharp contrast between the escalation phase and the war itself. While the escalation was of a long duration (five weeks), the war was brief—it only lasted one hundred hours. But the attack included air strikes by the Salvadoran air forces against eight Honduran cities.

Continuing his quasi-journalistic account, Professor Rowles describes the conflict and the OAS Council meeting held later that day in an attempt to resolve this situation. A late night council session produced a resolution calling for an immediate cease fire. The Council also created a committee of seven members whose mission was to "study on the spot the situation" and report its findings. On July 18, as the hostilities continued, the Council

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6. *Id.* at 81, (citing ORG. AM. STATES, O.E.A.-FER. G-II (C:709) 16-17 (July 4, 1969)).

passed a new resolution based upon the recommendation submitted by the Committee of Seven. In addition to ordering the suspension of hostilities, the Council called upon the parties to withdraw their troops within ninety-six hours. The resolution provided measures for supervising the cease-fire and withdrawal troops, called for guarantees for the security of nationals of each country residing in the other, and urged an end to emotional media campaigns. At 10:00 p.m. that day the cease fire went into effect, but the Salvadoran troops were not withdrawn within the ninety-six hour deadline. On July 26 the Thirteenth Meeting of the Consultation of Ministers of Foreign Affairs opened in Washington. El Salvador introduced a draft resolution calling for the condemnation of Honduras as an aggressor. The resolution called upon members to break diplomatic relations with Honduras. Other draft resolutions were introduced to declare El Salvador an aggressor and to demand economic sanctions against that nation. Both parties based their demands on articles 7 and 8 of the Rio Treaty. Three alternate resolutions were adopted. Under the first resolution, El Salvador was ordered to immediately effectuate its promised retirement of troops. The second resolution renewed the call for guarantees of life and property, inviting the two belligerent parties to submit their differences to procedures provided by the American Treaty on Pacific Settlement. The third resolution called for a continuing session of the meeting. Finally, on August 3, 1969, the Salvadoran troops were called back. Yet the conflict did not stop. The differences between the two countries continued, and incidents of less dramatic proportion were reported. It was not until June 4, 1970, that a permanent armistice agreement was adopted.

The United States played a secondary role during this process. The author believes that the United States Government wanted neither to offend the parties in the dispute nor to provoke a reaction of anti-Americanism. He hints that United States military aid to both countries may have contributed to the conflict. The accuracy of this assessment of United States behavior and the effect thereof is difficult to evaluate. The United States, however, is not the sole supplier of arms to the region.

### D. *The Conflict and the International Legal Order*

Once the author completes the background and the course of events that took place during the conflict, he analyzes the legal aspects of the situation in the light of international norms. Fur-

thermore, he evaluates the role of international machinery during the entire process.

Professor Rowles describes the collision between the principle of nonintervention and territorial inviolability and the principle that states should respect the basic human rights of individuals. El Salvador maintained the position that members of the regional organization are under the legal obligation to protect the human rights of individuals within their territorial jurisdiction. The Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the Charter of the United Nations, and article 5(j) of the OAS Charter, which proclaim the fundamental rights of individuals, were cited in support of the above proposition. In his analysis of this issue, the author looks to the legislative histories and the *travaux preparatoires* around article 5 and concludes that "the principles contained in article 5 were not meant to create binding legal obligations."[7] When analyzing article 13 of the Charter, however, he states that a binding legal obligation was created: "The State shall respect the rights of the individual and the principles of universal morality."[8] A problem results from the fact that article 15 of the Charter specifically prohibits any kind of collective intervention: "No State . . . has the right to intervene, directly or indirectly for any reason whatever in the internal or external affairs of another state."[9] The only exception provided by article 9 applies to situations in which the maintenance of peace is involved.

El Salvador's justification for its military invasion of Honduras was that it was trying to stop acts of genocide committed against Salvadoran nationals in Honduras. El Salvador also alleged it was acting in self-defense in response to those attacks that had already occurred and preventing possible future actions of the same nature. The author carefully recounts the factual and legal analyses of each of the Salvadoran arguments. He concludes that "the legality of the Salvadoran invasion of Honduras is extremely doubtful, to say the least."[10] He bases his conclusion largely on article 17 of the Charter of the OAS which refers to the inviolability of state territory. The El Salvadoran response was dispropor-

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7. J. ROWLES, *supra* note 1, at 205.

8. *Id.* at 210, (citing Charter of the Organization of American States, April 30, 1948, 23 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3).

9. J. ROWLES, *supra* note 1, at 210.

10. *Id.* at 226.

tionate to the actions of Honduras. The discrepancy between the response and the attack invalidates the self-defense theory. The author does not, however, condone the actions of Honduras.

When analyzing the role of the international legal machinery, numerous questions are posed by the author. He focuses on the competence of the organs involved, the lack of effort to secure compliance with the decisions made by those organs, and the parties' approach to the system. Rowles confesses that some of the questions will have to be the work of future researchers. He does, however, reach some interesting conclusions. First, the IACHR was not the proper body to assume primary responsibility for resolving the crisis. Only if its actions are made in conjunction with a stronger body like the OAS Council or the Organ of Consultation can this commission be effective. Second, the OAS erred in deferring the mediation efforts to three Central American ministers. When the OAS took over, the situation was already out of control. The OAS vacillated in its approach to the conflict and failed to apply international law to the conflict.

### E. *Conclusion*

Professor Rowles' book is an outstanding, well documented contribution to the literature in the areas of international law and international relations. The author presents a case study on the clash of two nations using a technique that combines the accuracy of the journalist with the analytical mind of the jurist. Furthermore, by focusing on the "phenomenological perspectives," he portrays the violation of international norms not as isolated events, but as something intimately related to the behavior of the violators and their setting. El Salvador and Honduras emerge from this analysis as two nations haunted by social, economic, political, and demographic problems, rather than merely two countries engaged in acts of violence. The single shortcoming in this method is the occasional speculation that unavoidably results from mixing political and legal analyses. The author's criticism of those who tried to prevent the conflict and failed is understandable. It was, however, a short war, and it was short because the diplomats eventually prevailed over the generals. It is encouraging that the peace settlement mechanisms finally worked.

This reviewer has had the opportunity to peruse the manuscript for the English version of this book and sincerely hopes it will be published soon. Professor Rowles owes this contribution to the English speaking community. The printed media recently has

reported that a proposal has been formally presented to the President and Congress of the United States to establish a national peace academy to train Americans in conflict-resolution skills. This book would provide a valuable contribution to its curriculum.

UNITED STATES FOREIGN RELATIONS LAW: DOCUMENTS AND SOURCES, VOL. I (EXECUTIVE AGREEMENTS). Michael J. Glennon and Thomas M. Franck. Dobbs Ferry, New York: Oceania Publications, Inc., 1980. Pp. ix, 474. $40.00. *Reviewed by David S. Clark**

This volume on United States executive agreements is the first of a multivolume series providing important documents and other materials dealing with the foreign relations power of the federal government and its constituent parts.

The foreign affairs issues presented here on executive agreements are developed from nonjudicial sources, although there is occasional reference in legislative hearings or Legal Adviser memoranda to important court cases. Professor Thomas Franck of New York University and Michael Glennon, Legal Counsel, U.S. Senate Foreign Relations Committee, believe that "the contours of the law are best revealed by the arguments and justifications offered by those vying for power."[1] In the United States, courts consider only justiciable cases. Cases and controversies require proper parties and appropriately drawn nonpolitical issues. Questions of foreign affairs, however, do not usually provide these parties and issues to the satisfaction of our courts.

Most foreign relations contests are fought within the political branches of government, as the materials selected for this book illustrate. Private interests normally are not directly affected; so the contests are illuminated by focusing upon allegations of presidential usurpation or congressional interference in the conduct of foreign affairs. Taking a process view of international law,[2] Glennon and Franck assert: "The ultimate court is that of public opinion, and much of the rhetoric in statutes and in legislative materials is directed at creating a 'record' for that 'tribunal.' "[3]

There is essentially no textual development of these ideas by

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1. 1 M. GLENNON & T. FRANCK, UNITED STATES FOREIGN RELATIONS LAW: DOCUMENTS AND SOURCES ix (1980).

2. *See* 1-2 A. CHAYES, T. EHRLICH & A. LOWENFELD, INTERNATIONAL LEGAL PROCESS: MATERIALS FOR AN INTRODUCTORY COURSE (1968).

3. 1 M. GLENNON & T. FRANCK, *supra* note 1, at ix.

the authors.[4] Rather, we are presented with the "record," a table of contents, and left to sink or swim by ourselves. This lack of guidance significantly limits the book's usefulness, precluding, for instance, most student applications. On the other hand, the gathered executive and legislative materials — primarily State Department memoranda, House or Senate resolutions, committee reports, hearings or floor debates, and legislative counsel memoranda — are valuable to have in one place. They are organized into four sections: (1) what constitutes an international agreement; (2) the power to enter into executive agreements and the role of Congress; (3) treaty or executive agreement: choice of instruments; and (4) congressional controls over executive agreements: recent proposals. These four categories overlap, and some of the documents included in one section could as easily have been placed in another section. What the scholar or practitioner requires to use this book effectively is a well-developed index to these multifarious materials.

The authors begin their sourcebook with the question, "what constitutes an international agreement?"[5] The focus is on the explicit modifier "international" or implicit modifier "legal," rather than on the United States distinction between treaties and executive agreements. An agreement is normally considered international when the parties intend to create legal rights and obligations governed by international law.[6]

Glennon and Franck, on the one hand, provided materials to illuminate what Professor Oscar Schachter refers to as "the twilight existence of nonbinding international agreements."[7] These agreements may have political or moral weight, such as the 1975 Final Act of the Helsinki Conference on Cooperation and Security in Europe,[8] providing support for international human rights,[9]

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4. *See id.* at ix, 3-4, 63, 199-200, 367.

5. *Id.* at 3-59.

6. Vienna Convention on the Law of Treaties, *opened for signature,* May 23, 1969, Jan. 27, 1980, art. 2(a), U.N. Doc. A/CONF. 39/27, at 289 (1969) (entered into force), *reprinted in* 8 INT'L LEGAL MATERIALS 679 (1969); Schachter, *The Twilight Existence of Nonbinding International Agreements,* 71 AM. J. INT'L L. 296, 296 (1977).

7. Schachter, *supra* note 6.

8. 73 DEP'T ST. BULL. 323 (1975); 1 M. GLENNON & T. FRANCK, *supra* note 1, at 15.

9. *See* Cassesse, *The Helsinki Declaration and Self-Determination,* in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORDS 83 (T. Bu-

but they are not legally binding. The State Department takes the position that this type of arrangement is not an "international agreement," at least with respect to the Case Act,[10] which requires all international agreements other than treaties to be submitted to Congress within sixty days after their conclusion.[11] This definitional problem is more fully examined with the 1977 Senate debates and committee proceedings concerning the continued observance of the SALT I Interim Agreement between the United States and Russia after it expired on October 3, 1977.[12] Senators Clark and McGovern, in commenting on a proposed concurrent resolution expressing a congressional view of the appropriate allocation of powers between the President and the Senate regarding this nonbinding accord, observe:

> If this resolution is not openly hostile to legal reality it is at least blissfully apathetic about it. In response to an international agreement that does not exist, it purports to authorize what does not need authorization, in a form that cannot constitute authorization.[13]

On the other hand, there are agreements between nations which similarly do not qualify as "international," even though they create legal relationships, since they are not governed by international law. A foreign military sales contract governed for purposes of interpretation and application by the law of the District of Columbia is an example.[14]

The second section of this volume provides documents on the President's power to enter into executive agreements and the appropriate role of Congress. From 1950 to 1955, Senator Bricker led a campaign to amend the Constitution with respect to the making and effect of treaties and executive agreements.[15] The authors introduce this section with the 1953 report of the Senate

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ergenthal ed. 1977); Henkin, *Human Rights and Domestic Jurisdiction*, in *id.* at 21.

10. 1 U.S.C. § 112b (1976 & Supp. IV 1980).

11. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 14; *see infra* text accompanying notes 17-20.

12. *Id.* at 29.

13. *Id.* at 38.

14. *Id.* at 15.

15. *Compare* Finch, *The Need to Restrain the Treaty-making Power of the United States within Constitutional Limits*, 48 AM. J. INT'L L. 57 (1954) (supporting), *with* Whitton & Fowler, *Bricker Amendment—Fallacies and Dangers*, 48 AM. J. INT'L L. 23 (1954) (opposing).

Judiciary Committee discussing the merits of the proposed amendment language: "Congress shall have power to regulate all executive and other agreements with any foreign power or international organization."[16]

The Bricker Amendment failed, but in 1972 Congress formally asserted its power by enacting the Case Act.[17] The remaining legislative materials in this part develop congressional concern about increasing presidential power. The issues are nicely framed by the contrasting statements before the Senate Foreign Relations Committee by Professors Ruhl Bartlett and Alexander Bickel.[18] The Case Act, as adopted, requires the State Department to transmit to Congress all international nontreaty agreements within sixty days after they enter into force. If the President deems public disclosure of the agreement prejudicial to national security, he submits it to the congressional foreign affairs committees under an injunction of secrecy which may only be removed by the President. The materials continue with the 1977 and 1978 amendments to the Case Act,[19] which make it applicable to oral as well as written agreements made by any United States agency or department, including the CIA.[20]

Section three of *United States Foreign Relations Law* deals with the selection process in deciding whether to proceed with a treaty or with an executive agreement. There are two major issues facing a President who oversees the negotiation stage of either type of instrument: (1) which kinds of international agreements *must* be concluded in treaty form subject to the advice and consent of the Senate; and (2) who is initially to decide (subject to possible review by the judiciary).[21]

The first question requires guidelines segregating the subjects of mandatory treaties from matters which may be dealt with by other international agreements. Glennon and Franck set out Circular 175[22] issued by the State Department, which lists factors to

16. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 67.

17. 1 U.S.C. § 112b (1976).

18. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 132-45.

19. 1 U.S.C. § 112b (Supp. IV 1980); 1 M. GLENNON & T. FRANCK, *supra* note 1, at 195-96.

20. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 185-88.

21. *See generally* United States v. Pink, 315 U.S. 203 (1942); United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936); Dole v. Carter, 569 F.2d 1109 (10th Cir. 1977).

22. Originally issued in 1955, the text provided is updated by amendments

consider in selecting among treaties and several types of executive agreements.[23] The factors are:

(a) the extent to which the agreement involves commitments or risks affecting the nation as a whole;

(b) whether the agreement is intended to affect state laws;

(c) whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;

(d) past United States practice with respect to similar agreements;

(e) the preference of Congress with respect to a particular type of agreement;

(f) the degree of formality desired for an agreement;

(g) the proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirabilty of concluding a routine or short-term agreement; and

(h) the general international practice with respect to similar agreements.[24]

This list obviously does not permit precise lineation, although it yields some rough impressions on which instrument to choose. It would be interesting to know, for instance, what role, if any, these factors[25] played in convincing President Reagan in his sale of AWACS radar planes to Saudi Arabia to select what Professor Louis Henkin calls a congressional-executive agreement (made with joint authority) rather than a "sole" executive agreement (relying only on the President's article II constitutional authority).[26] The authors further explore this general problem with legislative and executive materials on the 1975 Sinai Accords involving Egypt, Israel and the United States.[27] The disparate points of view from the executive branch and Congress are amply demonstrated, while Legal Adviser Monroe Leigh's statement ("the choice of treaty or executive agreement is not amenable to precise

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through 1974. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 203-16.

23. The Circular also considers and distinguishes three types of international agreements other than treaties: (1) agreements pursuant to treaty; (2) agreements pursuant to legislation; and (3) agreements pursuant to the constitutional authority of the President. *Id.* at 204-05.

24. *Id.* at 205.

25. Another factor undoubtedly influencing the President was the 1976 Arms Export Control Act, 22 U.S.C. § 2776 (1976 & Supp. III 1979). *See infra* note 33.

26. L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 173-84 (1972).

27. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 265-343.

rules of law")[28] appears confirmed.

The second question concerns which political branch of government should choose the international instrument to use, or how much input the Senate or Congress will have in the final agreement. Circular 175 defers to the Legal Adviser of the Department of State in consultation with its Secretary.[29] In 1978, the Senate expressed another view in its International Agreements Consultation Resolution: "It is the sense of the Senate that, in determining whether a particular international agreement should be submitted as a treaty, the President should have the timely advice of the Committee on Foreign Relations through agreed procedures established with the Secretary of State."[30]

Finally, the fourth section in this volume concerns recent congressional proposals to control the use of executive agreements. Two methods of control are surveyed through original sources.[31] First, a "legislative veto" was proposed by both the Senate and House during the mid-1970s. The House version, for instance, required the President to submit each executive agreement concerning the establishment or continuance of a "national commitment" to the Congress for review. A "national commitment" was defined as an agreement to introduce armed forces on foreign territory, or to provide a foreign country with military training or equipment, or with "any financial or material resources." The executive agreement would then come into force at the end of sixty days of continuous session in Congress after initial submission, unless both chambers agreed to a concurrent resolution disapproving the executive agreement.[32] The tension which this procedure may produce was illustrated by the 1981 House denial but

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28. *Id.* at 296.

29. *Id.* at 205.

30. *Id.* at 357.

31. The authors point to a third potential control over executive agreements. *Id.* at 367. This is a Senate "understanding" (suggested by Senator Case) of the Vienna Convention on the Law of Treaties, art. 46(1), *supra* note 6, that the United States Constitution's treaty clause constitutes a "rule of [our] internal law of fundamental importance," putting foreign countries on notice that an executive agreement may not comport with our constitutional requirements, thereby invalidating our consent to the agreement.

Since the table of contents is so general, and there is no index, it is difficult to determine whether this "understanding" is included somewhere in this part of the volume (it probably should be), or in a separate volume not yet published.

32. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 398.

narrow Senate approval of President Reagan's AWACS sale to Saudi Arabia.[33] Second, a 1977 Senate resolution proposed an amendment to the Standing Rules to deny funds for implementing any executive agreement which should have been submitted to the Senate as a treaty. This included "any international agreement which involves a significant political, military, or economic commitment to a foreign county," unless it has been expressly authorized by statute or treaty, or entered into under emergency circumstances which jeopardized our national security.[34]

In summary, the valuable contribution of this book lies in the authors' collection and organization of important documents, some previously unpublished, dealing with issues about executive agreements. On the other hand, the minimal textual treatment of these issues, and the absence of a comprehensive index, limit the book's utility to practitioners and scholars. Certain minor technical matters, in addition, may nettle the reader. The documents are reproduced from originals in the style used by *International Legal Materials.* When we come to Senate debates reported from the *Congressional Record,* however, the already hard-to-read original is reduced to yield, at times , thirteen lines per inch![35] Occasionally citations are incomplete or missing.[36] On balance, nevertheless, Glennon and Franck have compiled a volume which is both timely and useful.

33. Under the 1976 Arms Export Control Act, 22 U.S.C. § 2776(b)(1)(M) (1976 & Supp. III 1979), foreign military sales over $25 million may be vetoed by Congress within 30 days. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 419.

34. 1 M. GLENNON & T. FRANCK, *supra* note 1, at 448-49.

35. *Id.* at 43-59, 347-49.

36. The excerpt on pages 43-59 has no citation, and should be found in the *Congressional Record. Id.* at 41.

TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER. Mohammed Bedjaoui. New York and London: Holmes & Meier Publishers, 1979. Pp. 287. $16.50. *Reviewed by Burns H. Weston**

When tracing the ideologies that animate and condition the current North-South debate over what has come to be called "the New International Economic Order," MIT economist Jagdish Bhagwati identifies two dominant schools of thought regarding the existing international economic order:[1] first, the traditional "benign neglect and intent" view which, paralleling the classical utilitarian theory that "the invisible hand" works to promote universal well-being, considers that links with the rich nations and their international institutions (*e.g.*, the World Bank group) create benefits for, and transmit benefits to, the poor nations;[2] and second, the more recent "malign neglect and intent" view, favored by Marxist and New Left observers, which maintains that the aim and impact of these links between the rich and poor nations are by and large detrimental to the developing countries.[3] His Excellency Mohammed Bedjaoui, Algeria's Permanent Representative to the United Nations and a member of that organization's International Law Commission, clearly is sympathetic to, if not wholly won over by, the second of these persuasions. "For centuries past," he writes, "the prosperous countries have steadily grown richer at the expense of the underdeveloped countries, which have become progressively poorer. . . . The world economy is organized on the basis of asymetrical relationships between the domi-

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1. Bhagwati, *Introduction,* in THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE 1, 2-3 (J. Bhagwati ed. 1977).

2. According to this view, Bhagwati writes, "[p]rivate investment is regarded as motived by the desire to spread the fruits of modern technology and enterprise to the developing countries. In particular, the foreign aid programs are conceived as humanitarian in origin, reflecting the Western ideals of liberalism and the enlightened objective of sharing the world's resources with the poor countries." *Id.* at 3.

3. Bhagwati writes that according to this view, "[f]oreign aid is seen as a natural extension of the imperialist designs on the poor nations aimed at creating dependence. Private investments, following the flag in past models, are seen now as precursors of the flag, with brazen colonialism replaced by devious neocolonialism." *Id.*

nant 'centre' and the dominated 'periphery,' the exploiting and the exploited countries being integrated in this inequitable system, and finding themselves indissolubly linked."[4] Whereupon the learned author sets out to substantiate, albeit rather more impressionistically than empirically, what he calls "the international order of poverty" wherein "the circulation of goods, capital and labour, the geographical localization of technological innovations, and the part played by the multinational companies" may seem to "perpetuate the underdevelopment of the least advanced countries."[5]

The primary purpose of this book is not, however, to prove unequivocally the validity of this essentially "malign neglect and intent" perspective (though in this conservative United States there is an absolute need for greater understanding about how the present world order systematically discriminates against the poor). Ambassador Bedjaoui's purpose is, rather, in Part One, to expose the international legal rules, procedures, and institutions which have been and continue to be in part responsible for "the international order of poverty," and then, in Part Two, to recommend how international law might be reformed (I hesitate to say "transformed") to help create and sustain a new international economic order, characterized inclusively as "the 'integrated development' of the whole world," "the development of all human societies," or "the development of the whole of man" in a way compatible with the dignity of the individual person.[6] To these ends, in what must be described as an oftentimes lyrically passionate and sometimes repetitious and one-sided discussion, Dr. Bedjaoui succeeds to an important degree, but not completely.

Ambassador Bedjaoui's success in exposing traditional international law as a handmaiden of the present-day "international order of poverty" is due in part, but only in part, to his Third World origins. Equally as significant is his eagerness to eschew formalistic legalism — dubbed "legal paganism" because it is detached from "the social reality it is supposed to express"[7] in favor of a sociological jurisprudence viewing the law as simultaneously reflecting and shaping the political economy it governs, hence simultaneously reflecting and shaping the historically fundamental

4. M. BEDJAOUI, TOWARDS A NEW ECONOMIC ORDER 23-24 (1979).
5. *Id.* at 24.
6. *Id.* at 72-74.
7. *Id.* at 98-99.

social structures through which legal process moves. He is thus able to discern, from the overseas discoveries of the 15th and 16th centuries through the Age of Empire to the formal decolonizations of recent times, a classic or traditional international law that, "[t]o keep in line with the predatory economic order [of the day]," was "obliged to assume the guise of: (a) an *oligarchic law* governing the relations between civilized States members of an exclusive club; (b) a *plutocratic law* allowing these States to exploit weaker peoples; (c) a *non-interventionist law* . . . , carefully drafted to allow a wide margin of laissez-faire and indulgence to the leading states in the club, while at the same time making it possible to reconcile the total freedom allowed to each of them."[8] He is also able to pierce "the froth and veneer of [formal] decolonization"[9] to reveal how inherited preindependence legal structures, certain postindependence technical cooperation and other state succession devices work to produce "phantom sovereignties" — *i.e.*, "[f]ictious political independence and effective economic subordination," designated "the characteristics *par excellence* of the state of underdevelopment"[10] — and thereby to continue old forms of domination that help maintain, in new dress, the imperialist grip of a bygone international law era. One legitimately may quarrel with the author's undefined jurisprudence, which appears excessively rule-oriented for its intended rejection of formalistic legalism.[11] Additionally, one properly may question the author's seemingly unqualified condemnation of "the family of nations," "global participation," "the common interest of spaceship Earth," and other notions of planetary solidarity which, he says, are designed "to inhibit the newly independent States" and "to accentuate the new [state] member's dependence on international society."[12] The essential message of Part One is nonetheless clear and generally persuasive: "[I]nternational society can no longer admit a legal order 'derived from the laws of the

8. Ambassador Bedjaoui also writes: "[C]lassical international law . . . consisted of a set of rules with a geographical basis (it was a European law), a religious-ethical inspiration (it was a Christian law), and economic motivation (it was a mercantilist law) and political aims (it was an imperialist law)." *Id.* at 50.

9. *Id.* at 78.

10. *Id.* at 81.

11. For example, the author is given to such observations as the following: "[T]he law is a set of agreed rules to govern relations between different parties." *Id.* at 109.

12. *Id.* at 96.

capitalist economy and the liberal political system"[13] which does no more than reconcile the feedom of each of its members with that of the others"[14] because such an order, "in all its socio-economic and juridico-political manifestations, represents a tragic absurdity and injustice."[15]

This leads Ambassador Bedjaoui, in Part Two, to consider how international law might be used as a tool to reverse this egregious state of affairs and reshape the present international economic order in service to human dignity worldwide. To this end he proposes "normative action" and "institutional action." These proposals are remarkable not only because monographs of this kind often tend to be long on criticism and short on solution but also because, despite the unprecedented world order challenge and all the shortcomings of law-in-action on the international plane (particularly well understood from Dr. Bedjaoui's Third World vantage point), the author remains a believer in the capacity of international law to act as an instrument of progressive global change. In anticipation of his programmatic recommendations, he accurately observes, however, that "[to] wonder whether international law is really capable of taking on such a task and of becoming a suitable instrument for promoting economic development and social justice in the world . . . is to misstate the problem."[16] He continues: "What we should be asking is whether, until now, the science of law has not restricted the legal norm to a narrowly and exclusively conservative function, tricking it out with all the devices necessary to make it appear a vehicle of ethical, social and economic values which [are] both superior and permanent."[17] He answers, I think correctly, "the violent shocks which may affect the existence of [a] legal rule affect simultaneously . . . a mistaken conception of legal science. The traditionalists lament the politicization of international law, for which they hold the Third World responsible. They diagnose a 'crisis in law,' whereas in fact what they are talking about is a crisis in their own conception of law."[18]

In any event, it is from this activist perspective that Ambassa-

13. *Id.* at 49.
14. *Id.* at 114.
15. *Id.* at 117.
16. *Id.* at 110.
17. *Id.*
18. *Id.* at 106-07.

dor Bedjaoui offers his proposals for "normative action," which in large part may seem to constitute theoretical rationales for the acceptance as law (*lex lata*) of the 1974 Charter of Economic Rights and Duties of States[19] and related United Nations declarations and resolutions. They may be summarized as follows: first, make international law more like domestic law by causing it to be more responsive to notions of majority and minority rule, and to this end be wary of the traditional international law "source" of custom, whose venerable repetitive and consensual elements "are not irrelevant to the attachment of the industrial countries to it";[20] second, recognize the reformist limitations of treaties, which "are not always a true manifestation of free will";[21] and finally, above all, acknowledge the value of the intergovernmental resolution (particularly within the United Nations) as "a new and abundant source of law,"[22] subject to modified versions of the repetitive and consensual elements familiar to customary law and without succumbing to the temptation of consensus which is too easily "corrupted" and "obstructed" by "the fraudulent practice of reservation" and "the adoption of [internally] conflicting norms."[23]

Without doubt, these proposals will be opposed vigorously within the established international law community, and up to a point such opposition will be warranted. For example, considering that international organization vote-casting by member states is increasingly recognized by leading scholars to evidence state practice or to express overtly an *opinio juris*,[24] and considering that custom is sometimes on the side of the angels, it is appropriate to question the author's almost summary dismissal of custom as an

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19. G.A. Res. 3281 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974).

20. M. BEDJAOUI, *supra* note 4, at 136.

21. *Id.* at 139.

22. *Id.* at 188.

23. *Id.* at 170-74.

24. *See, e.g.*, O. ASAMOAH, THE LEGAL SIGNIFICANCE OF THE DECLARATIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS 52-55 (1966); R. HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS 2 (1963); Arangio-Ruiz, *The Normative Role of the General Assembly in the United Nations and the Declaration of Principles of Friendly Relations*, 136 RECUEIL DES COURS 419, 471-78 (1972-III); Bleicher, *The Legal Significance of Re-citation of General Assembly Resolutions*, 63 AM. J. INT'L L. 444, 450 (1969).

authoritative law-creating process. Additionally, the author may be chastised for not going far enough in his advocacy of law-by-resolution, his discussion being insufficiently contextual to account for the manifold conditioning variables in the process of norm creation.[25] Further, he is subject to criticism — throughout his discussion — for not understanding, or at least not appearing to understand, that the key to law is not consent but expectation, and that consequently no state or even small group of states can alone effectively and forever prevent the process of norm creation. Nevertheless, Ambassador Bedjaoui's core thesis is valid and urgent, namely, that "[i]nternational law must . . . accept the challenge being made to it . . . by the structural disorder of the world economy,"[26] that "[it] cannot properly and effectively undertake its own transformation if it confines itself to its traditional sources alone,"[27] and that through the resolutions of international organizations we may witness the "authentic development of international law."[28] This central message should not be taken lightly by anyone who is earnest about redressing the economic obscenities currently afflicting the vast majority of the human race.

Ambassador Bedjaoui's proposals for "institutional action" deal primarily with the "democratization of international relations"[29] through the reformation of the United Nations and the creation of new international administrations both in and out of the United Nations. Among his proposals are such short- and long-term measures as strengthening the developmental role of the General Assembly and the Economic and Social Council,[30] increasing regional "outpost" commissions to coordinate and apply decisions relating to economic and social development,[31] appointing an assistant Secretary-General with the title of Director-

25. For example, per Myres McDougal: "Who voted for [the resolution]? Who voted against it? What was the relative and effective power of these voters? How compatible is the asserted policy with past expectations? What followed from the resolution? What were the expectations coming from other sources? and so on." McDougal, *The Effect of U.N. Resolutions on Emerging Legal Norms*, 1979 PROC. AM. SOC'Y INT'L L. 300.

26. M. BEDJAOUI, *supra* note 4, at 128.

27. *Id.*

28. *Id.* at 192.

29. *Id.* at 194.

30. *Id.* at 202.

31. *Id.* at 202-03.

General for Development and International Economic Co-operation and with overall control of all United Nations development activities,[32] creating as a principal organ a Council for Science and Technology and a post of Under-Secretary-General for Science and technology,[33] revising the constitutions of the World Bank group,[34] revising the participatory terms of the Governing Body of the ILO's International Labor Office,[35] merging UNCTAD and GATT into a single international organization for trade,[36] transforming the United Nations Industrial Development Organization into a specialized United Nations agency competent to control the activities of multinational corporations,[37] and creating "new forms of directly operational international bodies"[38] both within and outside the United Nations system, including so-called international public establishments. In addition, Ambassador Bedjaoui specifically challenges the Security Council veto which, he contends, gives the big powers excessive control; to prove his point he quotes from what appears to be a little-known 1978 "Report of the [United States] Secretary of State to the President on reform and restructuring of the United Nations system,"[39] which details a plan to reshape the United Nations system to further protect the developed nations and preserve their power of decision against an assumed "automatic majority" of Third World countries.

Of course, none of Ambassador Bedjaoui's proposals are likely to meet with great enthusiasm from the rich countries, and for this reason one wishes the author had devoted more space to the particular transition steps required to make his proposal reality. Considering the nature and scope of the economic challenge in question, it seems fair to ask whether Ambassador Bedjaoui's proposals, most of them more in the nature of "face-lifting" than "rebuilding," are up to the task. If, as growing numbers of world order analysts are coming to believe, the state system is, in fact,

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32. *Id.* at 203.
33. *Id.* at 205.
34. *Id.* at 206.
35. *Id.*
36. *Id.* at 207-09.
37. *Id.* at 209-10.
38. *Id.* at 212.
39. Ambassador Bedjaoui claims to have seen a mimeographed copy of this report which circulated at the United Nations on February 28, 1978. *Id.* at 161 n.1.

responsible for the major economic and other calamities that endanger our planet, then genuinely transformist as well as reformist strategies will have to be ventured. On the other hand, this is no excuse for disregarding Dr. Bedjaoui's program. Because he is intimately familiar with the workings of the United Nations, his proposals should be considered with utmost seriousness.

In sum, Ambassador Bedjaoui has written a most provocative book, the first in a series newly launched by United Nations Educational, Scientific and Cultural Organization (UNESCO) under the title "New Challenges to International Law." UNESCO chose well in selecting Dr. Bedjaoui as the first author. His book merits wide attention, especially in the industrial North, if only because it makes a compelling case for genuine international cooperation and economic interdependence and for a democratically and collectively determined global development rather than the more or less unilateral process that now prevails, directed by and benefiting only a few countries. Perhaps even more important, however, it wages a much deserved frontal assault — not always convincingly, to be sure, but nonetheless much deserved — upon a permissive international law system that we in the West, have accepted too long without question, but that shows increasing signs of dangerous indifference to the common good of humankind.