Letters to the Editor

Articles in Foreign Languages

Dear Editor:

In reference to "articles in foreign languages" in *The International Lawyer*, I would like to add my comments. I was born and brought up in a Latin American country, and thus, I am fluent in Spanish. I mention this as it certainly has affected how I relate to the issue.

As suggested by Richard J. Boles in a letter to the editor in the Fall 1983 edition, it would be a great idea to have a foreign language section where articles could be published in their original language, and if space allowed, an English translation.

I fail to see how the publication of an article in a foreign language in any way should affect those who neither understand the language nor desire to understand the language. To those of us who have a desire to be able to communicate with our peers abroad in their language, it would be most helpful to keep abreast of what is going on abroad by reading articles as published in their original language.

Jeremiah J. Gorin
Providence, Rhode Island

Articles on Agency and Distributorship Termination

Dear Editor:

I just received the latest edition of *The International Lawyer* [vol. 17, no. 4—Ed.], which contains articles by Jacques Sales and Thad Simons.

These articles were produced as part of the work of the subcommittee on agency and distribution which I chair on our Committee. For future publications I would like to suggest that contributions such as these include more identifying information than just the author's name. Specifically, this information might include law firm, business or other affiliation and should include a statement that the author is a member of a Section Committee

when, as here, the contribution comes out of that Committee's activities. Finally, I hope that Messrs. Sales and Simons received reprints of their fine articles.

Ronald Wellington Brown
Co-Vice Chairman
European Law Committee

Dear Ron:

Every effort will be made to give credit where credit is due. Authors that write committee reports, or are members of a committee of the Section related to the subject matter of that contribution, will be identified as such (e.g. Gordon, Sohn and Chessman articles Symposium on Mexico of this issue). Generally, law firm affiliation has been omitted. However, I would like to hear from readers about whether this policy should continue or whether readers would like to see firm or business affiliation mentioned.

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Articles from Section Committees

Dear Editor:

Both issues [Winter and Spring 1984—Ed.] look quite appetizing, a healthy mix of issues of broad interest and specialized, practical pieces.

It occurred to me that your assumption of the position of Editor-in-Chief may be a good opportunity to write to the chairpersons of the various committees to impress upon them the need to stimulate research and writing for publication in your journal.

I wish you every luck in your important position.

Eric Stein
Section Council Member

Dear Eric:

Thank you for your suggestion. I concur and am using the Editor's Page and Letters to the Editor portions of this issue to initially make that request of committee chairpersons and committee members.

REL

Doing Business in Japan

Dear Editor:

We enjoyed the Fall 1983 article in *The International Lawyer* by Paul Lansing and Marlene Wechselblatt on "Doing Business in Japan: The

Importance of the Unwritten Law," but the article contains several historical errors.

On page 648 the article states that, "Eventually, Tokugawa Ieyasu emerged as Shogun (Supreme lord), beginning a four hundred year period marked by peace and feudal custom."[2] Footnote 2 states: "This period began in the sixteenth century."

Actually, Tokugawa Ieyasu was appointed Shogun (according to George B. Sansom the word means "General" or "Commander," but it is generally used as an abbreviation of Seii-tai-Shogun, a title conferred by the Court upon Military Dictators; page 550 of *Japan, A Short Cultural History*, 1943 revision) in 1603 (*Id.* at page 440). The resignation of the fifteenth and last Tokugawa Shogun, Ooshinobu took place in 1867–68 according to Sansom (*Id.* at page 526). Thus the duration of the Tokugawa Shogunate is about 265 years, starting in the seventeenth century and ending in the nineteenth century.

On page 648 of the Lansing and Wechselblatt article they state, "According to Neo-Confucian theory, society could be divided into four classes: the samurai, the hyakusho (farmers), shokunin (merchants/artisians), and the eta (outcasts, usually animal tanners or undertakers)."

According to Edwin O. Reischauer in his 1953 edition of *Japan, Past and Present*, on page 85–86, "The Tokugawa—created a hierarchy of four social classes—the warrior-administrator, the peasant, the Artisian, and the merchant." It should be noted that the Artisian is placed before the merchant and not combined in one class.

In Y. Takenobu's *Kenkyusha's, New Japanese-English Dictionary of 1942* the Japanese word Shokunin is translated as "Artisian" in English on page 1745. The dictionary shows the Japanese word Shonin for "merchant" on page 1749.

It should be noted also that the eta are *not* listed by Reischauer as one of the four classes of Tokugawa Japan. James Murdoch in Volume III of *A History of Japan* published in 1926 states on pages 43–44 that, "Besides all these (samurai, farmers, artisians and merchants) a remaining class—that of the outcasts—here merits a few words. No exhaustive census of Tokugawa Japan was taken until the early eighteenth century, and even then outcasts were not generally included. Nay, more, the portions of the highway that ran through eta villages were not reckoned in computing the mileage."

On page 650 of the Lansing and Wechselblatt article they state that, "With the arrival of Commodore Perry in 1868, Japan's period of isolation was ended, and with it the Tokugawa period."

Actually Commodore Matthew Perry arrived in Japan in *1853* with an invitation to Japan to sanction foreign trade and stated he would return for an answer the following year. In 1854, Perry returned to Japan. These facts are contained on page 526 of George Sansom's *Japan, A Short Cultural History*.

Again, despite these historical lapses, we found the concepts about Japanese perceptions of contracts quite instructive (and hopefully accurate).

Paul and Virginia Mueller
Sacramento, California

The Kissinger Commission's Omission

Dear Editor:

The Kissinger Commission focused—rightly—on the economic, military, and political problems in Central America. It failed, however, to examine the legality of overt or covert aid to insurgents.

Why is law relevant in a struggle? To some it clearly isn't; to law-abiding nations—and we claim to be law-abiding—it should at least be taken into account. And several aspects of customary international law—law that has developed through practice, treaties, judicial opinions, treatises—are applicable to the strife raging in El Salvador and Nicaragua today.

One point which should be clearly understood about international law as it applies to civil strife is that it is only applicable when the strife is purely civil or internal—and revolution today is so easily exported. Under the guise of wars of national liberation, "exported revolution" blends very easily with existing local conditions to produce a conflict which, to outsiders, has the appearance of being indigenous.

If there were no local conditions which warranted change, "exported revolution" would be both obvious and ineffective. Yet with so much injustice around the world—and certainly in Central America—it is not particularly difficult to hide outside interference under a mantle of apparently local and popular reactions to oppressive regimes.

What does existing international law provide? It distinguishes, to begin with, among the three stages of civil strife: rebellion, insurgency, and belligerency. (Rebellion is nothing more than sporadic violence directed against the state; insurgency is a more sustained conflict in both place and time; and belligerency exists when there is a general armed conflict, insurgents occupy and administer a substantial portion of territory and their forces adhere to the rules of war, and circumstances require outside states to recognize the belligerency.)

In applying these principles to El Salvador and Nicaragua, it is clear that the struggle in each instance is something less than a belligerency. Although it may be arguable as to whether the conflict is a rebellion or insurgency, the distinction is one without a difference in terms of the actions of outside states.

Under international law, an outside state may, in *any* internal strife short

of belligerency, and at the request of the legitimate government, provide assistance to that government. However, under *no* circumstances may assistance be provided to the rebels or insurgents, since any such aid would undermine the principles of self-determination and world order. And, although scholars have recently subjected the insurgency-belligerency doctrine to scrutiny and advanced other theories which (it is argued) would better provide for self-determination and world order, none of these scholars has questioned the illegality of assistance to insurgents.

What if, by stretching the definition of belligerency to the breaking point, the civil strife in El Salvador and Nicaragua was deemed to be a belligerency? The result would be that outside states would have to take a hands-off, neutral stance with respect to the belligerents, and, if those states continued to aid what was formerly the legitimate government (once belligerency is declared, there is no longer a legitimate government), they would be said to be co-belligerents with the aided party in its war against the nonassisted side.

A state's affirmative duties under international law also play an important role. For instance, states have the duty to police their borders to insure that their territory is not used as a base of operations by rebels or insurgents operating against another state; to withhold premature recognition to the insurgents, since any such recognition would be an act of interference in the internal affairs of another state; and to respond to (not prompt) any request for assistance.

These historic legal doctrines are supported by conventions. In 1928, the Convention on Duties and Rights of States in the Event of Civil Strife prohibited in the Americas "the traffic in arms and war materiel, except when intended for the government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied"; in 1957, a Protocol to the 1928 Convention barred the "exportation or importation of any shipment of arms or war materiel intended for starting, promoting, or supporting civil strife in another American state" (the Senate advised and consented to United States ratification of the protocol by a vote of 82 to 0). And the United Nations Charter provides additional support for the proposition that assistance may not be granted under any circumstances to insurgents, although it should be noted that in recent years—as a result of Afro-Asian and Soviet support for wars of national liberation to overthrow racist regimes in Africa—there has been a slight wavering in the United Nations' ironclad position of opposition to external assistance for insurgent groups.

Applying these general legal principles to the "troubles" in Central America today, one is left with two inescapable legal conclusions: *any* aid—be it overt or covert—to the rebels in El Salvador and Nicaragua by *any* outside state is illegal by *any* and all international standards; and *any* requested aid to the governments of El Salvador and Nicaragua (or of

Honduras in the case of joint United States-Honduran military exercises and efforts to block Nicaraguan assistance to the insurgents in El Salvador) is permissible to assist those governments in ending the strife within their respective borders.

What is the practical effect of this position? Would acceptance of this legal perspective put the US at a disadvantage vis-à-vis the Soviet Union in Central America? Does the adoption of existing legal standards put the United States in a position where it is supporting the status quo in El Salvador by aiding a regime that really does not warrant our support? The answer to these questions is no.

We as a nation have every right under existing conditions, if we wish and if requested, to support the government of El Salvador, and the Soviet Union and Cuba have every right to support the government of Nicaragua; and neither the United States in the case of Nicaragua nor the Soviet Union or Cuba or Nicaragua in the case of El Salvador has the right to supply insurgents with any type of assistance. Although this particular viewpoint would appear to be nothing more than the maintenance of the status quo, it also places a great deal of emphasis on the importance of world order and peaceful change. Individuals within a state have the right of self-determination; states within the world community have a right to try to limit conflict, even if the accompanying effect is to restrict the right of revolution to the powerful. And both individuals and states must find an acceptable middle ground, a middle ground that will not always please everyone.

In the final analysis, therefore, it would be helpful if the United States and the Soviet Union (and its Cuban and Nicaraguan allies) recognized that they are acting illegally by providing assistance to insurgents or, alternatively, if the insurgents are viewed as belligerents, that they are co-belligerents and at war. If legally at war with a government against whom those "belligerents" are fighting, they can very easily find themselves at war with each other.

A legal perspective obviously won't be controlling in Central America or elsewhere. In fact, we may find that providing aid to Nicaraguan insurgents is in our best interests, since, as the Kissinger Commission stated, the "Nicaraguan insurgents represent one of the incentives working in favor of a negotiated settlement." But it would be nice if decision-makers in Washington and Moscow—at least when claiming to be acting legally—recognized the legal implications of their actions.

Roger H. Hull
President
Beloit College

An Interesting Idea?

Dear Editor:

In 1986 *The International Lawyer* will be 20 years young. Isn't it interesting to look at its record and find out that excellence has been a continuous and distinctive characteristic of this publication during all these past years?

We extend our most sincere congratulations for a work so well done and suggest the following: "Why not prepare for the 20th anniversary a complete INDEX for the material published with updated notes and appropriate comments?" We are confident that you will agree such an undertaking would prove beneficial and rewarding.

At this time we are preparing a very simple one of our own to help the many lawyers interested in your publication.

Dr. Antonio A. Naranjo
Int'l & Foreign Law Dep.
Cook County Law Library

An interesting request—any volunteers to undertake such a task?

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