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Notice to Members of the International Law Section's Subcommittee on Economic Rights and Duties

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Abstentions: Austria, Canada, France, Ireland, Israel, Italy, Japan, Netherlands, Norway, Spain.

24. At its 1649th meeting, on 6 December, the Committee decided to authorize the Rapporteur of the Committee to present the report of the Committee on this item to the General Assembly, with only the numerical results of the voting under this item, on the understanding that delegations would refer to the summary records for the full list of the results of the voting, that this decision should not be considered as a precedence and that a full record of voting would appear in the final version of the report.

Notice to Members of the International Law Section's Subcommittee on Economic Rights and Duties

On Friday, December 6, the main economic committee of the United Nations General Assembly voted 115-6-10 to adopt the Charter of Economic Rights and Duties in a form objectionable to the United States and inconsistent with the standards set forth in the American Bar Association resolution on the subject adopted by the House of Delegates last August.

I am pleased to report, however, that the United States did vote against the Charter as a whole and was joined in the negative vote by Belgium, Denmark, the Federal Republic of Germany, Luxembourg and the United Kingdom. The ten abstentions came from Austria, Canada, France, Ireland, Israel, Italy, Japan, The Netherlands, Norway and Spain.

The efforts of the Association, both in adopting its resolution and in implementing it in an active way in Washington, were quite helpful in assuring that the United States did vote against the Charter. There is no doubt that Secretary of State Kissinger was quite conscious of it, and that it was brought to the attention of foreign representatives. Senator Percy, who is a member of our delegation to the United Nations this season, also made good use of it, as reflected in the enclosed copy of his letter addressed to the Chairman of the Subcommittee. We have had numerous other evidences that the work of the Association in adopting and implementing this resolution was a very useful influence.

I am enclosing several other items which may be of interest to you. Enclosed is a copy of a letter written by the President-Elect of the Association, Lawrence E. Walsh, who in his capacity as liaison between the Section of International Law

and the Board of Governors of the Association addressed himself to the Deputy Secretary of State. Also enclosed is a copy of a Letter to the Editor published by *The New York Times* as the lead letter in its Sunday edition of December 8 authored by the Chairman of the Subcommittee.

It is anticipated that the full General Assembly will shortly adopt the Charter upon the recommendation of the main economic committee, presumably the vote falling about the same way. As soon as this has taken place and a copy of the Charter is available in definitive form it will be circulated to the members of the Subcommittee together with advance notice of the next meeting of the Subcommittee at which the text would be discussed and initial comments solicited preparatory to the preparation of a report.

Charles N. Brower
Chairman
 Subcommittee on Economic
 Rights and Duties

Enclosures

Letters to the Editor
 [The New York Times, Sunday, December 8, 1974]

U.N. Economic Charter: The Absent Item

To the Editor:

While Mexican President Echeverria was greeting President Ford at the border in October, warmly praising "norms of law" as the historical basis for our mutual relations, his agents at the U.N. were enthusiastically excluding these same norms from the proposed Charter of Economic Rights and Duties of States now being considered by the General Assembly. Under Mexican leadership the less-developed countries have adamantly refused to include in the charter a statement of what should be obvious (and what Echeverria told Ford): that international law should govern a country in exercising its economic rights and fulfilling its economic duties.

Since Echeverria himself is the principal champion of the charter, he either is ignorant of what is being done in his name or is applying the diplomatic double standard. In either case it should stop.

All of this might be written off as just another U.N. squabble, to end in disarray, were it not for persistent suspicions that the United States just might knuckle under when the charter comes up for a final vote in the General Assembly.

President Ford stated at the Mexican border meeting that the charter "has very great merit and very great support," and Echeverria quickly proclaimed that these favorable noises represented "a complete change" in the hitherto negative American position. Although our U.N. mission issued a public statement three days later saying that "there has been no secret understanding" with Mexico on the charter and cited "serious reservations on important points," there has been lingering concern that the United States might not oppose the charter. Many organizations have expressed concern about the matter, including the American Bar Association, whose House of Delegates passed a resolution in August calling on Secretary of State Kissinger not to support the charter unless it requires countries to "act in accordance with international law."

No one should delude himself as to what is at stake. This is not simply an esoteric exercise. The central American lesson of 1974—that the law is our ultimate protection—is no less valid internationally. Throughout the world, as at home, the weak and weary are shielded by the law from arbitrariness and aggression. As America becomes strikingly less able, and indeed less willing, to protect her interests by the defensive use of force, while hitherto quiescent nations adopt policies of economic stridency, the protection afforded by international law becomes more critical to us. Having reaffirmed at home that the law still reigns supreme, we must not fail to insist on that principle abroad.

CHARLES N. BROWER
Washington, Dec. 5, 1974

The writer, a former State Department legal adviser, is chairman of the American Bar Association Subcommittee on Economic Rights and Duties.

December 3, 1974

The Honorable Robert S. Ingersoll
Deputy Secretary of State
Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

I am writing to invite your urgent attention to the Charter of Economic Rights and Duties of States, which I understand is to be voted upon in a Committee of the United Nations General Assembly in a few days, on Friday, December 13, 1974, and to reiterate the strong position taken on this subject by the American Bar Association at its 1974 Annual Meeting.

The resolution of the Association, a copy of which was previously submitted to the Secretary of State by the Secretary of the Association under cover of a letter dated September 18, 1974 (a copy is enclosed herewith for your handy reference), urges that the United States not support the proposed Charter if it does not provide that in the exercise of their economic rights and fulfillment of their economic duties states must act in accordance with international law, and that it shall not be interpreted in any way to derogate from international law or to prejudice any negotiations on international law.

The Section of International Law of the Association has been keeping abreast of developments regarding the Charter during the current session of the General Assembly and I have been apprised of the current status in my capacity as the liaison between the Section and the Board of Governors of the Association. In its present form the Charter does not meet the standards set forth in the resolution, and it particularly falls short of international law standards by abandoning the rule that prompt, adequate and effective compensation must be given in the case of nationalizations or expropriations.

In these circumstances the Association feels strongly that the United States must cast a negative vote against the Charter as a whole. Only such a strong stand will prevent the Charter, if it is adopted in its present form, from altering or adversely affecting traditionally accepted international law. If the United States were to stand mute and permit the Charter to pass by consensus, or even to abstain, rather than cast a negative vote, this could be urged by its proponents as an inference that the Charter substantially reflects new international law. It is important that the United States act to prevent such a result.

I understand that the United States will be called upon to take a position on this matter in connection with a vote on this Charter on Committee on Friday, December 13, 1974. Inasmuch as this will be the first occasion for the United States to declare itself publicly on the Charter in its final form it is important that the United States cast a negative vote at that time. I respectfully solicit your attention to this matter in the hope of assuring that the United States will act in this fashion.

Very truly yours,
Lawrence E. Walsh

Enclosure

December 3, 1974

Dear Mr. Brower:

I very much appreciate your letter of November 4th.

I wish to assure you that the point of view you have discussed coincides exactly

with my own view of what must be done if the United States is to vote favorably on the Charter. In the exercise of their economic rights and the fulfillment of their economic duties, states must act in accordance with international law, and the Charter should not be interpreted to derogate or prejudice negotiations on international law.

I note that Steve Schwebel has been keeping you up-to-date on the work that we have done over the past few weeks in insisting upon these principles. The position that the American Bar Association has taken has been very important and helpful in connection with these negotiations.

Warmest personal regards,
Charles H. Percy

Mr. Charles M. Brower
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

cc: Mr. Steve Schwebel

American Bar Association
Section of International Law

BE IT RESOLVED, that the American Bar Association urges that the United States endeavor to insure that the Charter of the Economic Rights and Duties of States which the United Nations General Assembly has expressed the intention of adopting at its Twenty-Ninth Session starting September 17, 1974 provide, and that the United States should not support such Charter if it does not provide:

(1) that in the exercise of their economic rights and the fulfillment of their economic duties states must act in accordance with international law, and

(2) that it shall not be interpreted in any way to derogate from international law or to prejudice any negotiations on international law:

BE IT FURTHER RESOLVED, that a true copy of this Resolution be communicated to the United States Secretary of State for his consideration; and

BE IT FURTHER RESOLVED, that the President of the American Bar Association or his designee be authorized to communicate the position of the American Bar Association to other appropriate governmental authorities in accordance with this Resolution.

Adopted August, 1974

