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International Regional Trade Courts - Need and Feasibility

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Preliminary Comment

A civilized society presupposes that whenever there are conflicts between the members of the society, which they are unable to resolve between themselves, there shall be some lawfully constituted judicial body to which they may present their controversy for fair consideration and just solution by which they are required to abide. Efforts to achieve this end are more easily accomplished between persons conducting transactions within a particular nation than where their undertaking involves international action in which what may be regarded as just may be resolved differently by the tribunals of the two nations in which the adverse parties reside. With the expansion of international commerce in modern world affairs it would seem reasonable to provide some court, international in character and composition, to which opposing litigants could submit their causes for independent determination. In the simplest form, this presents the case for the establishment of an international regional trade court.

The need for, and practicality of, regional trade courts has been considered by the Section of International and Comparative Law of the American Bar Association through its committee on the subject for some period of time. Approval for the creation of international regional trade courts, should they otherwise be established, is found in Article 52 of the United Nations Charter in Chapter VIII on Regional Arrangements, and is in accord with other provisions regarding economic and social considerations. The treaty power of the United States in Article II, Section 2 of the Constitution, is believed sufficiently broad to include authority for a regional court dealing exclusively with international trade, although the Supreme Court has had no occasion to rule on the issue.

In a letter from Richard D. Kearney, Acting Legal Advisor to the

Department of State, to Richard A. Baenen of Washington, D.C., responding to a request for comment upon the Pennsylvania proposal,[1] an unfavorable reaction was indicated. The comments may be summarized briefly as follows: (1) A question was raised as to the use of the treaty-making power "to require individual citizens of the United States to submit adjudication of their rights in the area of international trade to a multinational court system." (2) A doubt was expressed as to the existence of a present substantial need for the proposed court system. (3) It was considered that the trade court would be limited to the substantive law of the nations of which the private litigants were citizens, and out of which the international transaction arose. Thus, the function of the trade court would be limited to the determination of conflict of law questions. As there would be no *lex fori* there would be a questionable basis upon which to make a choice of laws. The comment of the State Department assumes that the trade court would have no law-making authority of its own. (4) The states included in the Pennsylvania proposal all have sophisticated legal systems with court facilities adequate for the needs of litigants. (The nations proposed were all of the English-speaking nations, and possibly Japan.) If less developed states were invited to join, the State Department felt that they might regard the proposal as a means of circumventing their domestic courts. (5) The view was expressed that case-by-case decisions of the proposed trade court would be less effective in accomplishing uniformity, than efforts to obtain an acceptance of an international commercial law similar to the effort of Commissioners and the American Law Institute for the Uniform Commercial Code. The State Department was expressed a preference to await efforts of unification of trade law on an international basis, which is currently under consideration in the United Nations. Directing effort at this time toward establishment of an international trade court was regarded not to be a profitable course.

The observations of the State Department initially expressed, however, were not final, and the State Department has recently looked more favorably toward consideration of further views on the subject. The Department was much impressed, with the efforts which the Philadelphia Bar Association had made in its proposal for an international trade court. The Department felt that the thoughts of other bar groups on

[1] This proposal is a draft of the organization of an international regional trade court with annotations and comments which appears in the Pennsylvania Bar Association Quarterly, January 1966.

an international and local level, would be valuable in assessing the need, and in considering the feasibility and utility of the court. Professor Arthur Larson, who has worked extensively in the World Peace Through Law Program, favors continued consideration of regional trade courts as a coextensive effort with the various undertakings in this country to prepare and obtain the adoption of a unified international private law governing international commercial transactions.

Background Observations

The proposal for the establishment of regional trade courts has special merit at this time, when world trade means so much to the economic life of almost every nation. Freer distribution of products through commercial interchange, so that each country may share the benefits of the abundance of other nations, and may also find a means of disposal of the things produced by it for which there is a need elsewhere, would be a forward step in the solution of world-wide economy. International commercial transactions involve law as well as products, and require a safe means of enforcing their understandings and predicting the consequences of their engagements. The problem is as old as the existence of nations.

The Greek city-states were engaged in trade with each other and with other governmental units of the Hellenic world, and recognition of mutual obligations was obtained through compacts.[2] The development of the Roman Empire, and its dominant position among the cities in the Mediterranean area, was accompanied with the creation of legal sanctions to carry out the trade activities during the Roman period. The early commercial law which has had so great an influence on commercial law in modern times, was created through the development of the *jus gentium* which gave the benefits of the Roman civil law to foreigners, and to the trade relations of the Romans with their Mediterranean neighbors. It was built upon understanding, custom and experience of the Romans. The *jus gentium* was implemented by the *jus naturale* which was regarded as universal in character and was derived through principles of reason, justice and equity common to all people.

[2] For an excellent discussion of the origin and development of an international law system, *see* Working Paper for the First World Conference, held at Athens, Greece, Ch. 1(1963). Upon the Greek and Roman Periods, see pp. 3-6. *See also,* Working Paper, Washington World Conference on World Peace through Law (1965).

The Roman ideal, as expressed by Cicero, for people to live honorably, to offend no one and to render unto each his own, provided a basis for universality of law applicable to all people. The *jus gentium* and the *jus naturale* of the Roman law were applied in handling controversies between Roman citizens and foreigners. They provided the legal means of carrying out far-reaching commercial engagements of that time.

From the Roman era to the present day, the quest for solution of the international trade problems has been continuous, but with the rise of nations with their independent sovereignties and separate laws, uniformity has been difficult to obtain. The principles of Hugo Grotius,[3] the great international lawyer of the seventeenth century, who stressed the universality of law and its natural origin, have influenced the law of nations, but have still not been organized into a governing law; nor has there been established an overall judicial system of international composition to adjudicate disputes arising out of private international commerce.

Many efforts have been made to facilitate international commerce through multilateral commodity trade agreements, international investment programs, international banking operations, and regional commissions for economic association.[4] The United Nations has sponsored regional economic commissions in different areas of the world with the common purpose of raising the economic activity of each region through cooperative planning. It is not proposed to describe or discuss each of these many efforts to achieve greater harmony in international commerce. This has been ably done in the Working Paper for the First World Conference under the auspices of the Committee on World Peace Through Law of the American Bar Association for the meeting held in Athens, Greece, in July, 1963. That paper also discusses the many undertakings for the unification of law to facilitate international transactions.[5]

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[3] *See* R. POUND, JURISPRUDENCE, VI, pp. 45, 46, V. VII, p. 43 (1959); R. A. WORMSER, THE LAW, Ch. 43 (1949); W. FRIEDMANN, LEGAL THEORY, p. 114 (5th ed., 1967).

[4] Working Paper for the First World Conference, Chs. V and VI, (1963).

[5] Among the various agencies discussed as working in the preparation of international commerce agreements, are the International Cotton Advisory Commission, the International Rice Commission, the International Rubber Study Group, the International Sugar Council, the International Tin Study Group, the International Wine Office, the International Wool Study Group and the United Nations Coffee Conference. The General Agreement on Tariffs and Trade has now forty-four contracting parties, and three countries participating by special agreements.

Substantial achievements have been made in special fields of law such as copyright, patent and maritime law. Extensive work in the process of unification of private international law, including a uniform law on international sales, is also being conducted by regional, national and non-official organizations engaged in the unification-of-law effort. The widespread activity in international affairs is a recognition of the interdependence of the nations of the world to each other.

Modern methods of transportation and communication have created a greater mutuality of interests and activity between nations which, in turn, require a legal order capable of resolving differences which arise, and have provided guidelines for control of international transactions. A legal order is dependent upon courts of justice. Should the international issues in private law be resolved by national courts, or is it possible to reach more uniform law with greater impartiality of decision through the establishment of international tribunals? The success of the expansion of international trade depends upon the same type of certainty and security of transactions and acquisitions required for business undertakings among the people within a nation.

When the legal consequences of foreign trade agreements and their enforceability are uncertain, the growth and expansion of international trade are materially impaired. The solution involves both the means for determining the controversies which arise in international trade, and the law applicable to their determination. It presents a problem both of courts, and as to the law to be applied by the courts. If the establishment of an international court awaited the establishment of a universal law to be applied by the courts, or if the establishment of a universal law between nations awaited the establishment of international courts to apply the law, the solution might never be accomplished. The ideal solution would be the creation and adoption of substantive rules of commercial law having international application at the same time as the establishment of international tribunals to resolve the conflicts under the law.

The project for the unification of private international law and of unification of trade law on an international basis, is a matter of first importance in the interests of international commerce. It is equally appropriate to consider the possibility of regional international trade

Known as GATT it was initiated in 1947 after World War II, and amended in 1955. It provides a means for harmonizing and negotiating in respect to trade barriers and the facilitation of international trade. See *supra,* note 4, subsection D, pp. 194-199, discussing the problem, achievements and work of various organizations for the unification of law to facilitate international transactions.

courts which would apply the unified law concerning trade when determined and adopted. In the meantime, should the court be established before agreement were reached in the unification of the law, the court would provide a forum in which international trade controversies could be adjudicated. This court, regional in character and established through treaties among the nations over which the court would have jurisdiction, would provide an independent judicial body made up of outstanding jurists of each of the nations to apply the rules as they exist today in international private law, or as they would resolve it to be in the determination of the controversies which would come before it.

Should An International Trade Court Be Regional?

Some questions may be raised in respect to the establishment of international trade courts on a regional basis. Ideally it would be desirable to have one acceptable international trade court system applicable to all nations, with an organizational structure to provide complete unification. A perfected judicial organization would be one in which all the nations of the world functioned under one acceptable system of commerce, with agreement to accept the decisions of the international trade courts as final and binding. The problem arises out of the practical impossibility of obtaining treaties with all nations embracing this concept. In the state of affairs of the world today, to await the accomplishment of this objective would be hopeless.

There must be some beginning, and the regional trade court affords this possibility. It has the advantage of location in the regional area in which the transactions ordinarily occur. This would reduce the expense of litigation which would be almost prohibitive with one central court located at the Hague or at any other selected place. The regional court would be located within the region, or at several places, operating within a circuit. Also, the countries which would participate in the treaties establishing the court, would be those in which there was a large interchange of commerce creating a need.

Within the region, the trade problems would naturally have considerable similarity, and the law could be adapted to fit the functional business and industrial operation of transactions among nationals of the different states of the region. A unified law developed through the regional courts would create a common understanding by people at both ends of a commercial transaction. This would facilitate commerce by removing the ambiguity and uncertainty from international

business engagements. A new safety through reasonable prediction of the consequences of a contemplated transaction would engender confidence in international business affairs.

The too-often existing fear of an unhappy ending and ultimate loss which causes reluctance to enter into an international negotiation would be reduced if it were known that questions arising there under could be adjudicated through a court composed of judges selected from the different countries of the region whose sole function was to administer justice independently, free from the conflicting precedents of the law of the countries of the nationals. Until a precedent was established, the parties would know that their litigation would be resolved through the regional court with authority to take a fresh look at the problem and with the objection of solving the issues fairly in their process of reaching conclusions having present and future significance in international business affairs. The position of the litigants would be no more precarious than at present, when they do not know which side of a fixed conflict of existing law will be applied in a national court into which their cause may fall.

Law To Be Applied by International Trade Court

As previously indicated, a question reasonably arises as to what the source of law ought to be, should an international trade court be established before a code unifying international private trade law could be drafted and agreed upon between the nations within a region. This problem of selecting law exists today in making decisions by national courts within the various nations in which actions are instituted involving international trade. The court of the country in which jurisdiction is acquired must reach a decision upon the matters presented to it, and determine which law shall govern.

Should an international regional trade court be established, there would be two possible sources of law for determination of cases brought before the court. First, it would be possible to give the court complete freedom in applying general principles of law based upon reason, custom, justice and equity.[6] The function of the judges would be to define the law much as courts have done in the development of the common law.

[6] JENKS, THE COMMON LAW OF MANKIND, (London 1958); *Regionalism in International Judicial Organization,* 37 A.J.I.L. 314 (1943); LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE COURTS, (London, 1958); Faught, *United Nations Courts of Justice,* 32 A.B.A.J. 498 (1946); Monat, *A Gradualist Approach: Establishment of a Free World Court System,* 49 A.B.A.J. 49 (1963).

The court would examine precedents on a world-wide basis, but would be given authority to arrive at what it regarded to be a just decision, to determine independently of precedent the governing law. This, of course, would be subject to any codification of law adopted for the region through convention.

Broad authority given to international trade courts could result in the development of a general private international law of commerce between peoples of different nations, which would be universal and authoritative in the region. It would provide one way of accomplishing unification. Undoubtedly, questions would be raised which would tend to prevent states from accepting the establishment of compulsory jurisdiction, if the international trade tribunal were given such freedom of action in their judicial determinations. The court, however, would not be totally free, and in many instances could be restrained by the treaty establishing regional courts, to observe constitutional and other limitations of the various countries.

By selection of the highest quality of judges from the nations represented in the regional trade court, and with independence of their action in a multi-national tribunal, the danger of wrong decisions would be no greater than that of objectionable determinations to the unsuccessful party in accepted judicial decisions today. The principle of judge-made law is always necessary in cases of first impression in every court; and in a newly created regional trade court, all cases would be of first impression before it.

This does not mean that the judges of the regional international trade court would be acting without law, because they would have all existing opinions of courts of the countries of the litigants and elsewhere for their guidance. Regional international trade courts would soon have their own decisions as precedents. Actually, their situation would be very little different from that of common-law courts in periods of growth and change in the law. The same cases could be argued before international trade tribunals as are now argued before national courts in cases involving international trade. There is no more reason to fear a departure from established custom and precedent where there has been a unified treatment by the national courts of the countries involved, than there is to depart from an accepted legal order by national courts considering international problems. In situations in which the law was not in doubt or in conflict, the predictability of the outcome would be little different from what it is today. The eminent judges selected as members of the court would realize the magnitude

of their decisions as they affect international trade, and would be motivated only to reach conclusions consistent with sound legal principles after exploring all sources.

Second, it would be possible, but difficult, to establish an international regional trade court which would apply only rules of law previously established. This would bar the court from rendering a decision upon a factual situation as to which there was no existing determinative authority. It is difficult to conceive of a court which would refuse its judicial function of pronouncing judgment in a case because there was no established rule applicable thereto. One of the principles of the common law is that there is a solution to every problem, and that upon the general principles common to mankind or recognized in the civilization of time and place, there is a source for judicial determination. Whether this source is designated as natural law, as expounded by Thomas Aquinas, Hugo Grotius and others in the period of formative law, whether it be the product of the capacity of the human mind to analyze and reason, or whether it is derived from the normative standards of time and place in which the interests of people are balanced for the common good, there is the capacity for judicial determination necessary for any system of law.

The regional trade court, in the absence of freedom to apply general principles of law, will be faced with the task of selecting the law applicable whenever there is a conflict between the law of the nations of which the adverse litigants are parties. This would involve the selection of a conflict-of-laws doctrine which would require the court to adopt its own rule of conflicts, or to take the rule of one or the other of the countries as a basis of determination. The conflict-of-laws rule itself would be determinative of the issues. This problem, with its many facets, is one which national courts must solve under the present law in adjudicating international disputes, and, depending on the nation whose court has first obtained jurisdiction, the results may be different. With the uncertainty in international transactions because of the conflict-of-laws rules, the international trade court should be given freedom in its decision, if the benefits of uniformity and improvement in the law are to be gained.

The confusion of the process of the selection of governing law as well as the possible feeling of partisanship of national courts, causes serious consideration to be given to regional trade courts with full authority to decide the issues with complete independence. Without

an international court having authority to resolve trade disputes, the parties cannot know which of the national laws will ultimately be applied when a controversy arises.[7] It may be that the establishment of an international trade court, with no law other than basic principles, would provide as much certainty as exists today in matters in which the law of different countries is in conflict.

Proof of foreign law, once it is decided that it applies, also presents perplexing problems. In our federal judicial system, our courts take judicial notice of federal law and of the common, statutory and constitutional law of the states, but reject the notion that the federal courts should attempt to take judicial notice of the law of a foreign country. The city of New York and many other large cities have experts available on the laws of various foreign countries and remote regions. The need of using this method of finding out what the foreign law is, is itself indicative of the need of an international trade court with broad powers in formulating precedents. This also is indicative of the need of codification of the law through adoption of an international

[7] The problem presented by conflict of laws is a crucial matter in the solution of international private litigation, and has been the subject of extensive writing. *See* Darby, *Conflict of Laws and International Trade,* 4 San Diego L.Rev. 45 (1967); Sandstrom, *International Sales and the Conflict of Laws,* J.BUS.L. 122 (1966); Overbeck, *Ronvoi in the Institutes of International Law,* AM. J.COMP.L. 544 (1963); Nadelman, *Uniform Law on International Sale of Goods:* Conflict of Laws, 74 YALE L.J. 449 (1965); Reeves, *International Law Cases in the Courts of the United States,* 1 THE INT'L LAWYER 500 (1967).

In the United States, when jurisdiction has been obtained in the federal courts through diversity of citizenship, the conflict-of-laws problem is especially difficult when the laws of the states to which the transaction relates are in conflict. Weintraub, *Edie Doctrine and State Conflict of Laws,* 39 IND.L.J. 228 (1964); Freund, *Chief Justice Stone and the Conflict of Laws,* 49 HARV.L.REV. 1210 (1946); Currie, *Change of Venue and the Conflict of Laws,* 22 U.CHI.L.REV. 405 (1955). Note, *Choice of Law After Transfer of Venue,* 75 YALE L.REV. 90 (1965).

In diversity cases, the forum of the court provides a basis for applying the substantive law which the state of the forum has adopted and would have applied had the case been initiated in a state court. If international regional courts were established, they would not have a prior determination of the conflict of laws issue, and would have to adopt their own.

In the solution of international conflicts, both in public law and in private and commercial law, extensive use has been made of arbitration as a means to resolve conflicts. For a careful consideration of the background and international agencies providing for arbitration and other methods of settlement of national disputes other than by court procedures, see Working Paper for the First World Conference, Ch. IV, and subsection B on commercial arbitration, pp. 93-113 (1963). *See also* Hynning, *The World Bank's Plan of Handling International Disputes,* 51 A.B.A.J. 558 (1957). SIMPSON, INTERNATIONAL ARBITRATION, LAW AND PRACTICE (Frederick A. Praeger Publishers, New York 1959).

commercial code to serve in international transactions in the same way that the new commercial code serves the commerce between states in the United States.

There may be a reluctance of nations to accept compulsory jurisdiction of an international tribunal without restrictions in respect to internal law, but the authority to use general principles either in the selection of competing local laws or in the creation of judge-made law is essential in the development of a rule of law in international commerce. The establishment of an impartial international trade tribunal should provide a means of securing just decisions in international commercial conflicts preferable to the present procedure, which permits international forum-shopping as a means of resolving the conflict.

Efforts Toward Establishing Regional Courts

The most recent experience in the establishment of a court exercising jurisdiction in a specialized area, and over a designated group of nations, is the Court of Justice of the European Communities organized under the treaty establishing the Common Market.[8] This court was established for the benefit of the Common Market community enterprise. It is regional, in that its authority extends over the territory of the six nations which joined in the treaty establishing the Common Market.[9] Its purpose, according to Article 164, is to ensure "observance of law and justice in the interpretation of . . . the 'treaty'." Basically, the court serves to resolve conflicts arising between member states, and between private litigants, where the terms of the treaty are involved.

The organization of the Court of Justice of the European Communities is detailed, and the judicial system through which it exercises its functions provides for original jurisdiction and for appellate review. The Court, although regional and having limited jurisdiction, is markedly different from an international regional trade court. The treaties under which it operates, the legislative action of the Council of Ministers, provide a body of law subject to interpretation and application. The court may not go beyond the bounds of the treaties and the law to be applied as set forth therein.

On the other hand, regional trade courts as herein suggested, would not have an established law to interpret and apply, but would

[8] Working Paper for the First World Conference, pp. 81-85 (1963).

[9] *Id.* By separate treaties, the same six nations established the Coal and Steel Community and the European Atomic Energy Community.

rather create the law applicable to the problems involving international trade as presented to them. If the regional trade courts were given authority to decide cases dealing with controversies in international trade within the region on general principles of law, they would be in a position to create law as well as to apply it. They would have the benefit of existing law as a source of selection or determination but until codified rules of law were adopted for each region, there would be no established law to guide their decisions. Each regional court would have to establish its own precedents, since there would be none initially.

Should an International Regional Trade Court Be Compulsory or Optional?

Whether the regional trade court should have concurrent jurisdiction with national courts, or be the only court having jurisdiction over transactions in international commerce, raises several problems of both law and policy. One limitation, analagous to that applicable to the American Federal System, should probably be fixed, namely, a jurisdictional amount in a substantial sum. The costs of litigating a case in the regional court would usually be somewhat higher than in state or national courts. Thus, litigants having smaller claims should be required to resolve them in local courts.

As a matter of policy, it may be better to permit the parties to choose a national court if either party preferred; but the defendant should have the right to demand removal to the international regional court at his election. This should certainly be the case if the party against whom the action was brought was a citizen of a nation different from that in which the action was commenced. A strong argument can be made that the actions should be brought only in the regional court if the requisite amount was involved and the transaction was between citizens of different nations. This would provide uniformity of law in international commerce, and would strengthen the position of regional courts.

However, it is believed preferable that litigants be given the option of initiating their actions either in a national court or in the regional trade court. If then, a defendant against whom an action is instituted in a national court does not petition for removal to the regional trade court, the national court may render final decision. It is also considered desirable that a defendant be entitled to removal to the regional trade

court, whether he be a citizen of the nation of the court which his opponent chose as the forum, or be a foreigner.[10]

Conflict with U.S. Constitution?

Whether compulsory jurisdiction of the regional trade court would be within the constitutional authority of the United States, raises a question as to the scope of treaty power provided in the Constitution and the interpretation of Article III. This question would also arise in respect to the power for compulsory removal from a national to an international court. It would seem that if an international commercial law governing international trade transactions could be established as governing law applicable to American citizens, the court could also be established through the treaty power to decide cases under that law. No constitutional problem should impair the validity of regional international trade courts, assuming the treaty process would be used as the method of creating the new courts, since the treaty would be the supreme law of the land.

The Pennsylvania Bar Proposal suggested concurrent judicial authority of courts of a nation and the regional trade court, but with the right of removal of cases commenced in national courts.[11] This proposal also provides for jurisdiction over governments in cases in which the trade court would have had jurisdiction if the action were between private parties. Many international governmental arrangements having trade consequences are often more political in character than contractual. They involve policy considerations variable with changing conditions. The continuance of the obligation may depend upon reciprocal performance of other understandings between the nations rather than rest

[10] The Pennsylvania proposal for an international trade court provided in Section V, Removal Jurisdiction, that "A defendant to an action brought in the courts of a member state who is not a citizen or resident in the state in which the action is initiated would have the right to remove the action to the proposed trade court if the action is one which could originally have been initiated in that court." If an action were brought by a foreigner in the court of a nation against a defendant who was a resident of that nation, removal to the regional court would not be permitted. This has some justification in principle as the defendant should not ordinarily be permitted to complain against jurisdiction of a court of his own country. If, however, he could have initiated the action in the regional court had he been plaintiff, it seems reasonable that he should be permitted to remove the cause to the regional court when the action is brought in the national court.

[11] *Id.*

upon contractual law. Many of the American Aid programs, although promoting business, industrial or social development of the benefited country, are so closely associated with trade agreements that it may be difficult to determine whether they fall into the area of fixed obligations of a contractual type or rest upon the discretionary authority based upon policy considerations. It would therefore appear to be advisable not to compel nations to use the regional trade court for the solution of their trade disputes but rather provide for their availability should both governments wish to use them. Each government could then determine independently whether it wished to submit a cause to the regional trade court, and either governmental power could decline judicial determination. This would provide a permissive but not compulsory use of regional international trade courts. At the present time, with the many and diverse international governmental arrangements and programs, it would appear preferable that the governments should come under the jurisdiction of the regional court only by their mutual assent. The Pennsylvania proposal would treat nations the same as individuals when engaged in trade matters. This has merit, but it might impair the effect of the operation of the government in its desire to assist nations with freedom and without feeling bound as in the case of the typical quid pro quo agreement.

Enforcement of Decrees

A final judgment of a regional trade court should be enforced in the same way as any other court determination in the country in which the loser in the case has property or resources. The pattern of the Uniform Foreign Money-Judgments Recognition Act of the National Conference of Commissioners on Uniform State Laws could be applied to the trade court judgments. Provision for filing of the judgment in the records of the national courts, with authority to use the judicial process of the national courts to cause their satisfaction, would be a part of the treaty obligation. Filing alone should authorize the execution of the judgment by the national courts. The only attack upon the judgment would be the failure of the trade court to have acquired jurisdiction over the parties upon whom it pronounced judgment. The judgment would always be subject to attack for want of jurisdiction, but upon that ground only. As long as the judgment had been rendered, it is only important to assure a party not subjected to process the right to show that he had not had his day in the regional trade court.

Conclusion

This study is related to the establishment of international regional trade courts, with the purpose of exploring the problems presented in undertaking their establishment. A detailed proposal setting out the organization of regional courts has not been drafted, as it is believed that the many factors involved in its organization, jurisdiction, compulsory or concurrent authority, and in the selection of nations to be included within the regions, should have the benefit of the ideas and suggestions by the Section of the Association on International and Comparative Law and by the American Bar Association through the House of Delegates. A consideration of the matter and ideas in respect to it should also be considered by the major industries, business organizations and those engaged in international trade. Their interests in the project should be known and the character of the problems actually faced by them should be understood both in determining the nations to be included in the regions and in determining the scope and limitations for the establishment of the trade courts. This is a new area for governmental action but it is dealing with both an old and a new problem. Trade intercourse has, perhaps, always been a major concern of nations, but the world today presents a greater need than in earlier times because of modern transportation, large-scale production in both foods and through industrial production, so that it is important to facilitate international commerce for the benefit of all people. With the vast expenditures involved, a security in international business exchange is essential. The law and the courts provide this.

It is suggested that any proposal for the establishment of international regional trade courts should include the following major divisions:

1. Membership—designation of nations comprising the region.
2. Admission of new members—a procedure for enlarging the region.
3. The law to be applied by the court—provision for application of general principles of law based upon reason, custom, juristic theory and equity when the law has not been defined through adoption by treaties of governing rules of law.
4. Jurisdiction over private parties through original actions and removal procedures. Designation of the scope of subject matter with which the court may exercise judicial power.

5. Availability of court to governments in trade controversies arising from inter-government contractual undertakings.
6. Related matters pertaining to jurisdiction arising through counter-claims, cross-claims and the claims of third parties arising through intervention or otherwise.
7. Provision for protection of litigants in basic human rights, such as due process, privilege against self-incrimination, admission of evidence illegally seized, and other guarantees regarded as fundamental rights under the Constitution or laws of the member nations.
8. Organization and procedure of the trial courts, including original actions and the method of removal if an action was initiated in a national court.
9. Organization of appellate review—scope and procedure.
10. Location of districts and divisional or circuit operation.
11. Selection and payment of judges.
12. Enforcement of judgments.

It is believed that the consideration of a regional trade court should not await the formulation and adoption of an international commercial private law, although the undertaking of that project is strongly supported. The difficult task of creating appropriate tribunals should not be deferred until the law which they would apply of legislative character has been determined and authorized through international treaties. The establishment of international trade courts may well precede the final unification of an international commercial code. In the meantime, the regional courts, if established, would proceed to solve the disputes arising in international trade, deciding what law to apply. New problems are certain to arise requiring solution irrespective of the existence of an established and completely defined law. If an international trade code is adopted, the trade court should be controlled by, but not limited to, the provisions of the code if trade matters arose which were not covered by the code.

It is recommended that the consideration of a regional trade court deal with matters of international business, industry and commerce, rather than broaden the scope of jurisdiction to all matters of private and public law within the region in which disputes might arise between the nations or between their citizens. It is not proposed to include tort claims between citizens of the different countries within the region, nor does the proposal contemplate matters of public international law.

Much consideration has been given to international regional courts by the Section of the American Bar Association upon International and Comparative Law and the special committee working on trade courts. The national consciousness of the multifold problems involved in international trade has suggested that extensive inquiry should be made as to all possibilities of resolving the inevitable disputes concerning international transactions which usually involve large-scale undertakings. It has been with this in mind that the proposal for the organization of international regional trade courts has been presented. As complex as the problem may be and as difficult as the task is, because of the involvement in international treaties requiring agreement and approval of different nations, the objective is simple—namely, to provide a judicial system through which legal problems arising in international trade may be resolved. Although in some aspects the proposal may be visionary because of the necessity of approval by the government of each of the nations involved, which must be within the power of their constitutional authority, the need may be so great, with the expanse of commerce and the interdependence of nations in their commercial affairs, that an international trade court could now be established upon a regional basis.