RECENT CASES

ACT OF STATE DOCTRINE

Leases

Occidental of Umm Al Qaywayn, Inc. v. Cities Service Oil Co., 396 F. Supp. 461 (W.D. La. 1975).

Plaintiff and defendant were the holders of offshore oil concession agreements granted by two different Persian Gulf sheikdoms, Sharjah and Umm Al Qaywayn. Disputes arose between the sheikdoms as to their respective sovereignty over the territorial and offshore waters. Sharjah and Iran collaborated in a successful assertion of physical jurisdiction, thus depriving plaintiff of the exercise of its concession. Plaintiff brought suit in a U.S. district court to recover extracted oil arriving in the United States. The court recognized the defendant's oil concession after the defendant invoked the act of state doctrine.

The case turned on the applicability of the Hickenlooper Amendment's[1] limitation on the act of state doctrine. If the Amendment did not apply, the act of state doctrine would prevent the court from reaching the merits.

The Hickenlooper Amendment was a Congressional response to *Banco Nacional de Cuba v. Sabbatino*,[2] and changed the Court's presumption in cases involving act of state arguments. Under the Hickenlooper Amendment, the courts could hear these cases unless specifically requested not to by the Executive Branch. Formerly, the courts would decline to decide such cases without a request by the Executive Branch because of the act of state doctrine. In

1. The relevant portion of 22 U.S.C. § 2370 (1970) reads as follows:
Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of state in violation of the principles of international law . . . . *Provided*, That this subparagraph, shall not be applicable . . . (2) in any case with respect to which the President determines that application of the act of state is required in that particular case by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf in that case with the Court.
22 U.S.C. § 2370 (e)(2) (1970).

2. 376 U.S. 398 (1963).

Occidental, however, the court noted that the Amendment has been very strictly applied to cases where a claim of title or other right to specific property has been expropriated abroad.[3] As in *Sabbatino*, the claim was based on confiscation in violation of international law.

The court refused to apply the Hickenlooper Amendment in this case, as there was no "confiscation" as defined in the Amendment. The court rejected the contention that a confiscation of plaintiff's concession agreement occurred when the territorial water boundary dispute arose and that the plaintiff's concession was no longer recognized. The court stated that a claim to submerged lands under a leasing agreement was not what was envisioned by Congress when it drafted the Amendment.

The *Occidental* court also went on to note that the Amendment's application has been limited to cases involving claims of title to American-owned property nationalized by foreign governments, and that is has not been held applicable to contract claims.[4] This distinction was drawn in *French v. Banco Nacional de Cuba*, which held that the repudiation of a contractual obligation was not a confiscation or other taking within the meaning of the Hickenlooper Amendment.[5] Therefore, the court felt that the dispute was not over an alleged confiscation of oil or oil wells. The property which was allegedly confiscated was the plaintiff's concession agreement. This was nothing more than a lease contract—a contractual right to explore and extract oil in a given area. It did not involve a claim of title or other right to property and thus did not fall within the ambit of the Amendment.

The court concluded, as well, that this was definitely a case in which the act of state doctrine should be applied, as it could not have been Congress' intention to have American courts make decisions concerning a foreign government's sovereignty over their territorial and offshore waters, or submerged lands.

Sales

United Bank Limited v. Cosmic International, Inc., 392 F. Supp. 262 (S.D.N.Y. 1975).

This was an interpleader action, with Cosmic International,

3. *See* French v. Banco Nacional de Cuba, 23 N.Y.2d 46, 242 N.E.2d 704, 295 N.Y.S. 2d 433 (1968).

4. Menendez v. Saks & Co., 485 F.2d 1355, 1372 (2d Cir. 1973), *cert. granted sub. nom.*, Alfred Dunhill of London, Inc. v. Republic of Cuba, 416 U.S. 981 (1974).

5. 23 N.Y.2d at 64.

Inc. as the stakeholder. Cosmic held the proceeds of sales to it of jute products made in East Pakistan and shipped to the United States during 1971. Before Cosmic could make payment, East Pakistan declared its independence from Pakistan and became Bangladesh on April 10, 1971. On February 28, 1972, the new government of Bangladesh issued a decree expropriating all property owned by citizens of a state at war with Bangladesh, namely Pakistan. No provision was made for compensation. On March 26, 1972, the Bangladesh government nationalized all industries and banks whose title had not already vested in the government under any prior law.

The Pakistani plaintiffs contended that the funds in the hands of Cosmic should be paid to them because the goods were delivered and the right of payment arose in the United States before Bangladesh declared its independence and nationalized all Pakistani property in the country. The Bangladesh plaintiffs claimed the proceeds as the successors to the Pakistani's property under the nationalization order and in accordance with the act of state doctrine.[6]

Under the act of state doctrine, courts of the United States may not inquire into actions of the Bangladesh government if the property in question was in Bangladesh and under its control at the time of the taking, even if such taking violates principles of international law.[7] However, in this case the property was not in Bangladesh either at the time of the declaration of independence or during the ensuing expropriation decrees. The sales had already been consummated—all that remained was the right to payment which was to be made in New York City. The court held that the act of state doctrine did not apply in this case. It found that New York was the situs of the obligation at the time of the attempted taking by the Bangladesh government.[8] Therefore, U.S. courts need only give

6. The classic statement of this doctrine is found in Underhill v. Hernandez, 168 U.S. 250, 252:

> Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of another done within its own territory.

7. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1963). The doctrine is based on the notion that the courts should not intervene in the political affairs of foreign governments.

8. *See also* Republic of Iraq v. First National City Bank, 353 F.2d 47 (2d Cir. 1965); Menendez v. Saks & Co., 485 F.2d 1355 (2d Cir. 1973) *cert. granted sub nom.*, Alfred Dunhill of London, Inc. v. Republic of Cuba, 416 U.S. 981 (1974). These cases hold that, if property is not in the expropriating state at the time of the taking, the act of state doctrine does not apply.

effect to those acts of state consistent with the law and policy of the United States.[9]

The court went on to note that the situs of the debts were with the debtor.[10] It rejected the claim of the Bangladesh plaintiffs that, because Cosmic would be subject to the jurisdiction of the Bangladesh courts if a suit had been brought there, the situs of the debt was Bangladesh and the act of state doctrine would apply. However, the court felt that it should not upset long established American precedent as to the situs of a debt.[11]

The court also rejected the Bangladesh plaintiffs' claim to the proceeds of the sale based on the financial needs of their country due to previous economic exploitation. Although the court was aware of the difficulties of newly emerging nations, it felt required to follow neutral principles of law. The Pakistani plaintiffs were awarded the proceeds of the sale.

ADMIRALTY

Jones Act

Hicks v. Ocean Drilling and Exploration Co., 512 F.2d 817 (5th Cir. 1975).

Plaintiffs, three crew members working on a submersible oil storage facility,[12] brought suit against defendants, Ocean Drilling Development and Exploration Co. (ODECO), the owner of the submersible oil facility, and H.B. Buster Hughes, Inc.,[13] an oil field

9. *See* 353 F.2d at 51; 485 F.2d at 1361.

10. *See also* 485 F.2d at 1365.

11. Harris v. Balk, 198 U.S. 215 (1904).

12. The submersible oil facility is known in the trade as a "Round Barge." In addition to being equipped to store oil, the facility was equipped with a galley and quarters for the crew. The facility operated primarily on the seabed, but surfaced to relocate and for repairs. The court described the facility in this manner:

> This facility is made up of a superstructure two hundred feet in length and fifty-four feet in width constructed approximately forty feet above cylindrical storage tanks fourteen and one-half feet in diameter. Two of the tanks run the entire length of the superstructure. These are connected to four storage tanks evenly spaced and running the width of the superstructure. This rectangular assemblage of tanks forms the lower structure of the Round Barge. There is a continuous fin or skirt five feet in height around the entire underside of the cylindrical storage tanks, specifically designed to sink the structure in a vertical position in the mud floor of the Gulf of Mexico and to hold the facility in a stationary position. The fin was attached to the outer tanks.

512 F.2d at 819.

13. Only two of the three plaintiffs filed claims against H.B. Buster Hughes, Inc., and these claims were dismissed by the plaintiffs at the conclusion of the testimony before the jury. 512 F.2d at 821.

contractor, to recover damages for personal injuries under the Jones Act.[14] The plaintiffs alleged that the facility was not seaworthy, and that this unseaworthiness caused the facility to shake, tilt, and to refloat on its side when ballast was removed to surface the facility, causing the injuries to the plaintiffs. The jury, which had been provided with specific interrogatories, found for the plaintiffs, and the district court entered judgment accordingly.[15] The court of appeals affirmed.

ODECO contended on appeal that the jury's finding of fact that the oil storage facility was a vessel within the scope of the Jones Act was not supported by the evidence presented at trial. Citing *Atkins v. Greenville Shipbuilding Corp.*,[16] ODECO analogized the oil storage facility to a dry dock, which *Atkins* held not to be a vessel within the Jones Act.

Rejecting ODECO's contention, Judge Jones, writing for the court of appeals, first stated that ODECO's reliance upon *Atkins* was misplaced. The dispositive factor in *Atkins* was "the absence of the element of risk and the hazards of the sea."[17] The attachment of the oil storage facility to the seabed was not analogous to the attachment of the drydock to the shore; the protective factor was not fixation per se, but fixation to the shore. Finally, the oil storage facility was not permanently stationary, but was towed to various locations, further distinguishing it from a drydock.

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14. Jones Act, 46 U.S.C. §688 (1971), provides in pertinent part:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable . . . .

15. The case raised five principal issues: (1) whether the oil storage facility was a vessel within the Jones Act; (2) whether the plaintiffs were borrowed employees; (3) whether the accident was within the indemnity provision of the contract between ODECO and Hughes because defendant ODECO cross claimed against Hughes for indemnity; (4) whether the indemnity provision was contrary to Louisiana public policy; and (5) what was the contractual limit on liability. The court of appeals affirmed the judgment of the district court giving judgment for the plaintiffs against ODECO, and giving judgment in favor of ODECO in its cross claim against Hughes. This case note will consider only the issue of whether the oil storage facility was a vessel within the Jones Act.

16. 411 F.2d 279 (5th Cir. 1969).

17. 512 F.2d at 823.

In *Cook v. Belden Concrete Products, Inc.*,[18] this same court had rejected the "permanence of fixation" test as not determinative in distinguishing structures which are vessels under the Jones Act, and had adopted the position that "the purpose for which a facility was constructed and the business in which it was engaged are the controlling considerations."[19] *Cook* held that a submersible drilling barge was a vessel within the context of the Jones Act, and in *Hicks* Judge Jones held that an oil storage facility is very similar to an oil drilling barge: "Such structures are vessels for Jones Act jurisdictional purposes."[20] The court also cited with approval *Offshore Company v. Robinson*,[21] another case holding that the Jones Act covers:

> "[a]lmost any structure that once floated or is capable of floating on navigable waters" and the word "vessel" includes "special purpose structures not usually employed as a means of transport by water but designed to float in water . . . ."[22]

The court concluded that there was sufficient evidence to support the jury's finding that the unseaworthiness of the oil storage vessel was the proximate cause of the injuries suffered by the plaintiffs.

AIRLINE LIABILITY

Embarkation

Day v. Trans World Airlines, Inc., 393 F. Supp. 217 (S.D.N.Y. 1975).

This action grew out of terrorist shootings by two members of the "Black September"[23] organization at Athens' Hellenikon Air-

18. 472 F.2d 999 (5th Cir. 1973), *cert. denied*, 414 U.S. 868 (1973).

19. 512 F.2d at 823.

20. *Id.* at 824.

21. 266 F.2d 769 (5th Cir. 1959).

22. 512 F.2d at 824, *quoting from* 266 F.2d at 771, 779.

23. At approximately 3:00 PM on August 5, 1973, two or more Jordanian terrorists commenced a violent attack on passengers in the transit lounge of Hellenikon Airport. The terrorists threw three grenades exploding in rapid succession, followed with several gunshots fired into the crowd. Taking 32 people as hostages, the terrorists demanded an aircraft to take them to a "friendly country." Finally at about 5:20 PM after tense and lengthy negotiations, the terrorists surrendered.

As a result of the terrorist attack, 40 TWA passengers were wounded, three TWA passengers died, four TWA employees were injured, and an indeterminable number of passengers and employees of other airlines were wounded.

Statements made by terrorists to the police subsequent to their arrest indicate that they

port in August of 1973. Passengers, who were in the airport's transit lounge awaiting departure of a TWA flight to New York, sued the airlines under the Warsaw Convention for personal injuries sustained in the shootings. At the time of the attack, plaintiffs had already presented their tickets at the TWA checking desk, had been issued boarding passes, and had been assigned seat numbers and baggage checks. Plaintiffs had proceeded through passport and currency control, and were waiting to go through or had just gone through physical and hand baggage checks.[24]

Plaintiffs specifically relied on Article 17 of the Warsaw Convention, which provides for the strict liability of carriers for bodily injury to passengers sustained on board the aircraft or while "in the course of any of the operations of embarking or disembarking."[25]

The court's decision to grant plaintiffs' motion for summary judgment on the issue of TWA's liability turned on its determination that these plaintiffs had completed a sufficient number of the procedures required to be considered in the process of embarking. After delineating 11 steps through which passengers were required to proceed in order to board the aircraft,[26] the court concluded that the passengers had been in the course of embarking within the meaning of Article 17, as they all had completed at least five of those steps.[27]

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had intended to attack Israel immigrant passengers on TWA flights going to Tel Aviv, but in error struck when passengers, including plaintiffs, were boarding the New York bound flight.

24. 393 F. Supp. at 219.

25. Article 17 provides:

> The carrier is liable for damages sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, art. 17, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (effective Oct. 29, 1934).

26. 393 F. Supp. at 221. The court delineated the following procedures to which passengers were required to submit before boarding the aircraft:

1. Presenting tickets to the TWA checking desk.
2. Obtaining boarding passes.
3. Obtaining baggage checks.
4. Obtaining an assigned seat number.
5. Passing through passport and currency control.
6. Submitting to search of person for weapons and explosives.
7. Submitting to search of carry-on luggage for weapons and explosives.
8. Walking through gate for bus to aircraft.
9. Boarding bus.
10. Riding on bus 100 yards to aircraft.
11. Getting off bus and onto aircraft.

27. *Contra*, Evangelinos v. Trans World Airlines, Inc., 396 F. Supp. 95 (W.D. Pa. 1975).

The Court reasoned that, although the Warsaw Convention had not defined "embarking," it designated "in the course of any of the operations of embarking" as a purposeful activity[28] and that Article 17 should be liberally construed to achieve the intent of the Convention.[29] Thus, the court concluded that, under modern conditions of international air travel, the period between the moment a passenger enters the airport until he is safely on board the aircraft often comprises a substantial amount of time and effort, much of which may reasonably be said to constitute embarking.[30]

The district court was careful to indicate that it was not attempting to draw inflexible rules regarding air carrier liability to passengers not yet on board the aircraft, but was restricting itself to the totality of the circumstances affecting these particular plaintiffs.[31]

Mental Anguish

Husserl v. Swiss Air Transport Co., 388 F. Supp. 1238 (S.D.N.Y. 1975).

Consistent with the expansion of carrier liability to passengers under the 1966 Montreal Amendment to the Warsaw Convention,[32]

In another suit arising from the very same incidents involved in *Day*, the court held contra to *Day*. The court in *Evangelinos* reasoned that all eleven steps of embarkation (*see* 393 F. Supp. at 221) are "absolutely essential," and that "without one, a passenger could not 'embark' upon the aircraft." 396 F. Supp. at 102.

28. 393 F. Supp. at 222. *See* Sullivan, *Codification of Air Carrier Liability by International Convention*, 7 J. AIR L. & COM. 1, 18-22 (1936).

29. 393 F. Supp. at 222. The court relied on two premises: (1) that a court should look to the diplomatic and legislative history of the convention to determine the correct interpretation of Article 17, Choctaw Nation v. U.S., 318 U.S. 423 (1943); Jactor v. Laubenheimer, 390 U.S. 276 (1933); MacDonald v. Air Canada, 439 F.2d 1402 (1st Cir. 1971); and (2) that the convention is to be liberally construed so as to carry out the intention and purpose of the parties. *See* Detenorio v. McGavan, 364 F. Supp. 1051 (S.D. Miss. 1973).

30. 393 F. Supp. at 222. Although the drafters of the Convention established a test based on a purposeful activity, "embarking," occasionally it may be unclear when liability was to attach as the term is not a clear cut one. The court suggested that what constitutes embarking is still a question of degree, and that reasonable men may differ widely as to where the line should be placed and when liability should attach.

31. 393 F. Supp. at 223. The court distinguished this case from Felismina v. TWA, 13 Av. Cus. 17, 145 (S.D.N.Y. 1974), which concerned disembarking. There the court noted that, unlike the present plaintiffs, passengers leaving an aircraft have few activities if any which the air carrier requires them to perform in specific sequence as a condition to completing the journey. *Id.*

32. Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (effective Oct. 29, 1934). The United States became dissatisfied with the level of liability provided for by the

the U.S. District Court for the Southern District of New York has held that claims solely for mental pain and anguish are actionable under Article 17[33] of the Warsaw System.

Plaintiff's claim in *Husserl* grew out of the hijacking of a Swiss Air plane by Arab terrorists in September of 1970. Shortly after takeoff from Amman, Jordan, the terrorist group directed the pilot to fly to a deserted area near Amman, where passengers were forced to remain on board for some 24 hours. Passengers were then moved to a hotel in Amman where they remained until September 11. It was not until September 13 that they finally arrived in New York, their original destination.

Plaintiff alleged, *inter alia*, liability of Swiss Air for mental pain and anguish resulting from expectation of severe injury and/or death, and that the trauma of the hijacking experience, including the return trip and questioning in Zürich, caused various mental and psychosomatic injuries.[34] Swiss Air moved for summary judgment and dismissal on the grounds: (1) that the Warsaw System provides the exclusive relief available for injuries sustained in international transportation; and (2) that the phrase "death or wounding . . . or any other bodily injury"[35] did not comprehend mental anguish, pain, or suffering. Consequently, Swiss Air argued that plaintiff's claim did not fall within the Warsaw System. The district court, however, held that Swiss Air was not entitled to summary judgment on the grounds asserted, as a matter of law,[36] since there

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Convention, and in 1966 arrangements were made wherein certain airlines filed tariffs with CAB, raising their limit of liability to $75,000, and waiving the defense allowed them under Article 20(1) of the Convention. Article 20(1) provides:

> The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damages, or that it was impossible for him or them to take such measures.

Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol (The Montreal Agreement), 31 Fed. Reg. 7302 (1966).

The Warsaw Convention, as modified by the Montreal Agreement, is referred to as the Warsaw System. For a discussion of events leading up to the Montreal Agreement see Lowenfeld & Mendelson, *The United States and the Warsaw Convention*, 80 HARV. L. REV. 493 (1967).

33. Convention For the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, art. 17, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (effective Oct. 29, 1934). See note 25 *supra*.

34. 388 F. Supp. 1238, 1242 (S.D.N.Y. 1975). *See* Lowenfeld, *Hijacking, Warsaw, and the Problem of Psychic Trauma*, 1 SYR. J. INT'L L. & COM. 345 (1973).

35. 388 F. Supp. at 1242.

36. The defendant, Swiss Air, had previously moved for summary judgment on the grounds that "hijacking" was not an "accident" and therfore not within the contemplation of the Warsaw Convention and Montreal Agreement. The same district court denied the

were material issues of fact yet to be resolved.[37]

The court's decision identified two legal premises. First, citing substantial precedent, the court reiterated that the Warsaw System did not create a claim for relief but merely created a presumption of liability, and that the System set the maximum limitation on carrier's liability if, and only if, the substantive law of the jurisdiction provided a cause of action.[38] The court concluded that the Warsaw System is exclusive only in that it specifies the exclusive relief available for certain types of injuries sustained in international transportation if such injuries were described in Articles 17, 18, and 19 of the Convention.[39]

Second, despite case law to the contrary,[40] the court reasoned that "death or wounding . . . or any other bodily injury" in Article 17 did in fact comprehend mental and psychosomatic injuries. Conceding that the intent of the Convention was to regulate in a uni-

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motion, holding that hijacking is within the meaning of the term "accident," and that like sabotage (which was specifically discussed at Montreal) it was the intent of all parties to hold carriers "liable to the innocent victims of such intentional acts." 351 F. Supp. 702, 707 (S.D.N.Y. 1972), *aff'd* 485 F.2d 1240 (2d Cir. 1973). After denying Swiss Air's motion, the court went on to suggest that mental anguish and suffering were not contemplated in the phrase "wounding or other bodily injury." It reasoned that, whereas the Guatemala Protocol had substituted that phrase for "personal injury," and the Montreal Agreement did not see fit to make a similar change, the intention must have been that the phrase bodily injury be literally interpreted. 351 F. Supp. at 708.

37. In determining whether Swiss Air's motion should be granted, the court viewed the plaintiff's case in a light most favorable to her, putting aside any doubt that she would not be able to prove injury and causation. Chapter III of the Convention provides for a presumption of the carrier's liability if carrier is engaged in international transportation. However, in order to obtain relief under the Warsaw System, the plaintiff must prove that the accident was the proximate cause of her injuries, as well as actual damages. *See* MacDonald v. Air Canada, Inc., 439 F.2d 1402 (1st Cir. 1971).

38. *See* Noel v. Linea Aeropostal Venezolana, 247 F.2d 677 (2d Cir. 1957), *cert. denied*, 355 U.S. 907 (1957); Komolos v. Compagnie Nationale Air France, 111 F. Supp. 393 (S.D.N.Y. 1952), *rev'd on other grounds*, 209 F.2d 436 (2d Cir. 1953). The court further comments that, had Articles 17, 18, 19, and 24 been intended to create independent causes of action, they would have referred to causes "arising under" those articles rather than "covered by" them. 388 F. Supp. at 1251.

39. Articles 17, 18, and 19 raise presumption of the carrier's liability for delay and personal injuries. However, Article 17 is the only one which deals with the presumption of liability for personal injuries and is therefore the only article applicable to this case. 388 F. Supp. at 1245.

40. Burnett v. Trans World Airlines, Inc. 368 F. Supp. 1152, 1158 (D.N.M. 1973) held that mental anguish alone was not covered, but that emotional distress directly precipitated by bodily injury could be considered as part of that bodily injury. Rosman v. Trans World Airlines, Inc., 34 N.Y.2d 385, 314 N.E.2d 848, 857, 358 N.Y.S.2d 97, 110 (1974), held airlines liable for palpable objective bodily injuries, including those caused by psychic trauma of the hijacking, but not for trauma as such or for non-bodily or behaviorial manifestations of that trauma.

form manner the conditions of international transportation with respect to carrier liability, the court nevertheless rejected Swiss Air's *inclusio unius est exclusio alterius* argument.[41] It pointed to the fact that Articles 16, 17, and 18 provide relief for any action based on injuries "however founded,"[42] and noted that the Convention's drafter chose these specific words in order to accommodate the multifarious bases upon which a claim might be founded in different countries, as well as to include all bases upon which a claim for relief might be had in one country.[43] Furthermore, the court reasoned that had the drafters intended to limit preexisting rights, their expression would have been clear, since ambiguity or silence is rarely, if ever, sufficient.[44]

In further support of its conclusion, the court noted that, since the drafting of the Warsaw Convention, vast strides have been made in the field of physiology and psychology, and that it is commonly recognized today that mental reactions and functions are merely subtle and less well understood physiological phenomena associated with physical trauma. Therefore, the court concluded that the phrase "bodily injury" could easily be construed to comprehend all personal injuries which directly and adversely affect the organic functions of a human being.[45]

The district court's opinion in *Husserl* apparently indicates that an airline passenger unable to show physical bodily injury (that is, a wound) may seek relief under the Warsaw System, thereby taking advantage of the presumption of liability and waiver of defenses of the carrier, assuming, however, that the plaintiff can show proximate cause as well as actual injury.

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41. 388 F. Supp. at 1246.

42. *Id.*

43. *Id.* at 1245.

44. 388 F. Supp. at 1246. *See* Eck v. United Arab Airlines, Inc., 15 N.Y.2d 53, 203 N.E.2d 640, 255 N.Y.S.2d 249 (1964). The court suggested that the most plausible inference to be drawn from the Convention's silence as to some types of injuries is that the drafters had neglected to deal with a problem which they would have wished to resolve, if they had been aware of its existence. 388 F. Supp. at 1246.

45. 388 F. Supp. at 1250. *See also* Lowenfeld, *Hijacking, Warsaw, and the Problem of Psychic Trauma*, 1 SYR. J. INT'L L. & COM. 345 (1973). Without elaboration, the court indicated that it would construe "on board the aircraft or in the course of any of the operation of embarking or disembarking" in Article 17 to include the time spent by plaintiff in Amman where passengers were forced to leave the airplane. 388 F.2d at 1247.

ALIENS

Homosexuals

In re Brodie, 394 F. Supp. 1208 (D. Ore. 1975).

Petitioner, a citizen of New Zealand and a veteran of the United States Army, sought naturalization as an American citizen. Because of his military service,[46] the conditions of naturalization such as permanent residency in the United States were waived.[47] However, there remained the burden of establishing "good moral character."[48]

The Immigration and Naturalization Service argued that petitioner's homosexual conduct made him unfit morally. The district court conceded that such sexual deviation could have been used to deny him admission to the country,[49] but that grounds for exclusion are not necessarily identical to grounds for denying citizenship because of moral unfitness.

Recognizing an increasing tolerance of homosexuality among consenting adults, the court held that the petitioner was entitled to be naturalized.

Misrepresentation

Reid v. Immigration and Naturalization Service, 420 U.S. 619 (1975).

Petitioners, husband and wife, had entered the country by falsely asserting that they were U.S. citizens. Thereafter they had two children. In this action they sought to use the citizenship of their children as a defense to a deportation proceeding commenced against them.

Aliens are subject to deportation under 8 U.S.C. §1251(a) if either: (1) they were "excludable" at the time of entry; or (2) they entered the United States without inspection, in violation of law.[50]

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46. Petitioner was honorably discharged by reason of homosexual acts. 394 F. Supp. at 1210.

47. 8 U.S.C. § 1440 (1970).

48. 8 U.S.C. § 1427(a) (1970) provides in pertinent part: "No person except as otherwise provided in this subchapter shall be naturalized unless such petitioner . . . (3) . . . is a person of good moral character . . . ."

49. *See* 8 U.S.C. § 1182(a) (1970), which states in part: "[T]he following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States . . . (4) Aliens inflicted with psychopathetic personality, [or] sexual deviation . . . ."

50. 8 U.S.C. § 1251(a) (1970) provides in pertinent part:

Any alien in the United States . . . shall, upon the order of the Attorney Gen-

Because of their misrepresentation as to their U.S. citizenship, petitioners were excludable at the time of entry under 8 U.S.C. §1182(a)(19). This section sets out those persons who can be denied entry into the United States:

> Any alien who . . . has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact . . . .

Thus, petitioners were deportable under Section 1251(a)(1). Additionally, petitioners were deportable under Section 1251(a)(2), where misrepresentation of citizenship is held to be equivalent to entry without inspection.[51]

Section 1251(f), however, contains a "saving" clause, providing that:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who . . . have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the . . . parent . . . of a United States citizen or an alien lawfully admitted for permanent residence.

Thus, the petitioners assert that Section 1251(f) prevents their deportation, because of the birth of their children in the United States.

The Court rejected petitioners' argument and held that subsection (f) waives deportation only for aliens who are excludable by reason of the fraud referred to in Section 1182(a)(19), and hence deportable under Section 1251(a)(1). If the Immigration and Naturalization Service relied on these sections alone, deportation would not be in order. However, subsection (f) does not protect petitioners under Section 1251(a)(2) (entry without inspection), because subsection (f) deals only with entry procured "by fraud or misrepresentation." Section 1251(a)(2) does not make fraud an element of deportation. Therefore, subsection (f) does not apply. Thus,

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eral, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry; [or]

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States . . . .

51. *Ex parte* Saadi, 26 F.2d 458 (9th Cir. 1928), *cert. denied*, 278 U.S. 616; Goon Mee Heung v. Immigration and Naturalization Service, 380 F.2d 236, 237 (1st Cir. 1967), *cert. denied*, 389 U.S. 975 (1968).

the petitioners were held deportable despite their familial ties in the United States.[52]

ARBITRATION

Bankruptcy

Fotochrome v. Copal Co., 517 F.2d 512 (2d Cir. 1975).

This case presented questions concerning the effect of a foreign arbitral award rendered after the filing of a Chapter XI petition in a U.S. bankruptcy court.

Fotochrome, a Delaware corporation, entered into a contract with Copal, a Japanese corporation neither present nor doing business in the United States. Pursuant to the contract, Copal filed a petition for arbitration with the Japanese Commercial Arbitration Association in 1967. Toward the conclusion of over two years of proceedings, Fotochrome filed under Chapter XI of the Bankuptcy Act in New York. A stay was issued on March 26, 1970, enjoining creditors from commencing or continuing any action, suit, or arbitration proceeding against the debtor.[53]

The arbitral tribunal in Japan was informed of the stay but decided that the order was not effective in Japan. Copal was awarded $624,458 on October 21. The next day, October 22, Copal filed a proof of claim in Fotochrome's bankruptcy proceeding for this amount. The district court below[54] reversed an order of the bankruptcy court, which had refused to recognize the arbitral award. The Second Circuit Court of Appeals agreed with the district court that since the bankruptcy court did not enjoy personal jurisdiction over Copal until they filed proof of claim on October 22, the stay did not operate against them, thus entitling Copal to continue

52. Brennan and Marshall, J.J., strongly dissented, arguing that subsection (f) is a humanitarian provision aimed at keeping families united and that, therefore, it should be interpreted in favor of the alien, and not against him as the majority had done. They pointed to a prior decision, Immigration and Naturalization Service v. Errico, 385 U.S. 214 (1966), as requiring a holding contrary to the majority. 420 U.S. at 631.

53. The referee issued an order enjoining "all creditors of the debtor . . . from commencing or continuing any actions, suits, arbitrations or the enforcement of any claim in any Court against the debtor." 517 F.2d at 514.

54. 377 F. Supp. 26 (E.D.N.Y. 1974).

55. Nor did the stay operate against Fotochrome, as it was only directed at creditors. The court assumed, *arguendo*, that a bankruptcy court could stay domestic arbitration proceedings. However, to be effective against foreign arbitration proceedings, the court must have (as it did not have here) in personam jurisdiction over the creditor in question. 517 F.2d at 516.

the arbitration proceedings. The arbitral award was a "binding adjudication on the merits and unreviewable by the Bankruptcy Court."[56]

However, the court held that the arbitral award could not be considered a "judgment" provable against the debtor in possession.[57] The court reasoned that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[58] distinguishes between the granting and the recognition and enforcement of arbitral awards, allowing for refusal to enforce for specified conditions.[59]

Copal could, however, seek confirmation of its arbitral award, and if successful, could thereafter file such as proof of claim in a Chapter XI proceeding.[60]

CHOICE OF LAW

Strict Liability

Challoner v. Day & Zimmerman, Inc., 512 F.2d 77 (5th Cir. 1975).

Plaintiff, a member of the United States Army, was seriously injured by a premature explosion of a howitzer round while serving in combat in Cambodia. The shell was manufactured in Texas by the defendant, a Maryland corporation with its principal place of business in Pennsylvania. The district court judge held that the strict liability principles of Texas law governed and gave judgment for the plaintiff.

In this appeal, the defendant challenged, *inter alia*, the choice

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56. 517 F.2d at 517-18. The court also pointed out that under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, art. III, [1970] 3 U.S.T. 2517, 2519, T.I.A.S. No. 6997, 330 U.N.T.S. 38, 40 (1970):

> Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon . . . . There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition and enforcement of the domestic arbitral awards.

57. 11 U.S.C. §103(a) (1970) states:

> Debts of the bankrupt may be proved and allowed against his estate which are founded upon
>
> (5) provable debts reduced to judgments after the filing of the petition and before consideration of the bankrupt's application for a discharge . . . .

58. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, art. VI, [1970] 3 U.S.T. 2517, 2520, T.I.A.S. No. 6997, 330 U.N.T.S. 38, 41 (1970).

59. Such conditions of enforcement are not here applicable.

60. 9 U.S.C. §207 (1970). This section provides for the confirmation of arbitral awards. *Compare* N.Y. C.P.L.R. §§5301-09 (McKinney Supp. 1974-75) *with* 9 U.S.C. §205 (1970). 517 F.2d at 518-19.

of law. It argued that the lower court erred in applying the substantive law of Texas and instead should have applied the conflict of law rules of the Texas forum—which would apply Cambodian law.[61]

The Fifth Circuit Court of Appeals affirmed the lower court's choice of law. It reasoned that it would not apply the law of a jurisdiction, Cambodia, that had no interest in the case.[62] The court noted that, in the present suit, all the states with any possible interest in the case—Wisconsin, the plaintiff's domicile; Tennessee, the domicile of another serviceman injured by the explosion; Pennsylvania; and Texas—were strict liability states. On the other hand, Cambodia had no interest in applying its own law, which required that fault be proven. Such laws were aimed at protecting Cambodian manufacturers but were indifferent toward American companies.

The court also reasoned that, under established principles of international law, Cambodia had no standing to determine rights and liabilities between foreigners arising out of the military activities of a foreign power.[63]

EXTRADITION

Plea Bargaining

Geisser v. United States, 513 F.2d 862 (5th Cir. 1975).

This case involved the duty of the United States to adhere to its promise, made pursuant to a bargain in a criminal case, not to extradite the petitioner.

Petitioner, a Swiss national, had an uncompleted prison sentence for murder outstanding against her in Switzerland. She was subsequently arrested with a companion in Miami, and both were charged with being couriers in a large drug chain. In an effort to induce their cooperation, the U.S. Government made a bargain in which for their testimony they would be able to plead guilty to a lesser charge and receive a shortened sentence.

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61. Klaxon v. Stenton Electric Mfg. Co., 313 U.S. 487 (1941).

62. *See* Lester v. Aetna Life Insurance Co., 433 F.2d 884 (5th Cir. 1970), *cert. denied*, 402 U.S. 909 (1971). There, as here, the court refused to apply the conflict of law principles of the forum in a diversity action, where the result would be application of the law of a jurisdiction that had no interest in the case.

63. "'A [nation] is understood to cede a portion of [her] territorial jurisdiction where [she] allows the troops of a foreign nation to pass through [her] dominions.'" 512 F.2d at 81, *quoting* Marshall, C.J., in The Schooner Exchange v. McFadden, 11 U.S. (7 Cranch) 116 (1812).

In addition, the U.S. Government agreed that it would "use its best efforts to get them to a country other than Switzerland." In other words, they were to be protected against deportation to Switzerland.[64]

During her imprisonment, Switzerland instituted extradition proceedings against the petitioner. Upon learning that the Justice Department was not making an effort to live up to its promise, petitioner brought this suit.[65] The district court below held that the petitioner should be discharged from further detention based on the Miami conviction, and enjoined and set aside the execution of the extradition order.[66]

The Fifth Circuit Court of Appeals vacated and remanded this order. It held that the U.S. prosecutor had a duty, at a minimum, to make a presentation to the Department of State concerning the bargain reached. The principle of "primary jurisdiction" requires that before the case could be properly adjudicable, the court would need to know what the Secretary of State proposed to do. Without a unified sovereign pronouncement of the U.S. Government between the two departments involved, the judicial remedy was not available.

The court indicated, however, that if the U.S. Government's position was not favorable toward petitioner, full hearings should be held by the district court concerning the apparent failure of the Justice Department "to use our best efforts."[67]

CRIMINAL JURISDICTION

Kidnapping

United States *ex rel.* Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975).

This case is one of several recent decisions[68] that substantially

64. 513 F.2d at 863.

65. *Id.* at 867-68. Towards the end of the prison term provided for by the bargain, following which she was to have been paroled, petitioner learned through a customs agent that Swiss authorities wanted her returned and that the U.S. Government would probably not fulfill its promise to prevent extradition to Switzerland. She subsequently escaped and was at large two years. It was upon her recapture and return to prison that the Government specifically refused to keep the bargain. Following the return to Switzerland of petitioner's co-defendant, this suit was brought.

66. *Unreported.* The three year sentence orginally agreed upon had been served. 513 F.2d at 868.

67. 513 F.2d at 872. The district court found an even stricter standard of absolute liability, requiring specific enforcement of the plea bargain. 513 F.2d at 868.

68. *See also In re* David, 390 F. Supp. 521 (E.D. Ill. 1975). In an extradition proceeding,

limit the doctrine announced in *United States v. Toscanino.*[69] In *Toscanino,* the Second Circuit Court of Appeals held that, where the custody of a defendant was secured by abusing him and kidnapping him from a foreign nation, the criminal courts are thereby deprived of jurisdiction.

In the present case, a warrant was issued for the arrest of Lujan, who was located in Argentina. A licensed pilot, Lujan was hired to fly to Bolivia an individual who represented himself as a businessman. The entire scenario was actually planned by American agents who arranged for Lujan's apprehension through paid Bolivian policemen, not acting under the orders of their superiors. Lujan was then placed on board an airliner to New York where he was brought to trial.[70]

The court compared the facts of this case with those in *Toscanino,* and held that the *Toscanino* doctrine does not apply to mere "irregularity in the circumstances of a defendant's arrival in the jurisdiction."[71] Unlike *Toscanino,* Lujan's abduction did not involve allegations of shocking government conduct.[72]

Similiarly, the court rejected Lujan's contention that his abduction violated Article 2, paragraph 4, of the United Nations Charter[73] and Article 17 of the Charter of the Organization of American States.[74] Unlike *Toscanino* (where violations of the conventions had been found),[75] there was no protest made by the state, here Bolivia, where the abduction took place. The court held that, as the

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the defendant brought a motion to compel answers to interrogatories as to whether he was kidnapped and brought into the United States. The defendant claimed that agents of the United States engaged in such activity in securing his custody from Brazil.

The court denied the motion stating, *inter alia,* that David failed to allege conduct so outrageous and shocking as to fall within the *Toscanino* exception to jurisdiction.

69. 500 F.2d 267 (2d Cir. 1974).

70. 510 F.2d at 63. At no time was any request for extradition made.

71. 511 F.2d at 65.

72. In *Toscanino,* the defendant was kidnapped, beaten in front of his pregnant wife, subjected to torture, denied sleep and food for several days at a time, etc. In the present case, allegations of conduct of this nature were lacking. 510 F.2d at 64.

73. Article 2, paragraph 4, of the United Nations Charter provides:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.

74. Article 17 of the Charter of the Organization of American States provides:

The territory of a State is inviolable, it may not be the object, even temporarily of military occupation or of other measures of force taken by another State directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

75. 500 F.2d at 277-78.

cited provisions were drafted for the protection of state sovereignty, any individual rights they might generate are derivative only through the state. Thus, by its failure to protest, the court held, Bolivia had waived its rights and had acquiesced in the abduction.[76]

Hence, the petition for habeas corpus was denied.[77]

LAW OF THE SEA

Continental Shelf

United States v. Maine, 420 U.S. 515 (1975).

The United States was granted leave to file a complaint invoking the original jurisdiction of the Supreme Court against 13 states[78] located on the Atlantic seaboard: Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.[79] The complaint asserted a separate cause of action against each of the states, alleging that:

> "The United States is now entitled, to the exclusion of the defendant State, to exercise sovereignty rights over the seabed and subsoil underlying the Atlantic Ocean, lying more than three geographical miles seaward from the ordinary low watermark and from the outer limits of inland waters on the coast, extending seaward to the outer edge of the Continental Shelf, for the purpose of exploring the area and exploiting the natural resources."[80]

In addition, the United States alleged that each state asserted some right or title repugnant to the claim of the United States of exclusive jurisdiction, and requested a decree declaring the precise rights of the United States.[81]

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76. 510 F.2d at 67.

77. *See also* United States v. Lira, 515 F.2d 68 (2d Cir. 1975). Although the United States requested the arrest and expulsion of the defendant which was followed by his torture by Chilean authorities, in the absence of a substantial role of American misconduct, *Toscanino* does not extend to illegal conduct of foreign authorities.

78. Original jurisdiction in the Supreme Court pursuant to U.S. Constitution, article III, section 2, 28 U.S.C. § 1251(b)(2) (1970), was granted in 395 U.S. 955 (1969).

79. The complaint against Florida was severed because of significant issues not in common with the other defendant states. In United States v. Florida, 420 U.S. 531 (1975), the Court referred the case to a Special Master to consider the following issues: (1) whether Florida Bay was a juridical bay; and (2) whether the closing lines delimiting the internal waters of Florida Bay should be delimited by drawing the closing lines around the three groups of islands which constitute the Florida Keys. The case awaits further adjudication upon recommendation from the Special Master.

80. 420 U.S. at 517.

81. *Id.*

This case represents the fourth installment in a series of cases in which the United States has sought a judicial declaration of its exclusive jurisdiction over the continental shelf.[82] In each of the three previous cases, *United States v. California,*[83] *United States v. Louisiana,*[84] and *United States v. Texas,*[85] the Supreme Court held that the United States had exclusive jurisdiction over the continental shelf appurtenant to the respective states. The principles which the Court held dispositive in *California,* and which were reaffirmed in *Louisiana* and in *Texas,* may be briefly summarized. Jurisdiction over the continental shelf of the United States is absolute in the Federal Government as an incident of sovereignty; whatever rights the individual states may have had prior to joining the Union ceased at the moment of statehood. As a matter of constitutional law, "protection and control of the [marginal sea] has been and is a function of national external sovereignty."[86]

The Court's discussion in each of the previous cases incorporated the defendants in *Maine* by reference within the rule of the case, however:

> the defendant States were not parties to United States v. California or to the relevant decisions [thereafter] and they are not precluded by res judicata from litigating the issues decided by those cases.[87]

The defendants in *Maine* contended that as successors in title of the Crown of England they had "the exclusive right of dominion and control over the seabed underlying the Atlantic Ocean seaward from its coastline to the limits of the jurisdiction of the United States."[88] The defendants also alleged that any U.S. interference with the exclusive rights of the states over the continental shelf would be violative of the Constitution.[89] In support of their position, the defendants refer to the Submerged Lands Act of 1953,[90] which

82. *See generally* Convention On The Continental Shelf, *done* April 29, 1958 [1964] 1 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (effective June 10, 1964).

83. 332 U.S. 19 (1947). Held that the United States has exclusive jurisdiction over the continental shelf appurtenant to California in the Pacific Ocean.

84. 339 U.S. 19 (1950). Held that the United States has exclusive jurisdiction over the contintental shelf appurtenant to Louisiana in the Gulf of Mexico.

85. 339 U.S. 707 (1950). Held that the United States has exclusive jurisdiction over the continental shelf appurtenant to Texas in the Gulf of Mexico.

86. 332 U.S. at 34, *quoted in* 420 U.S. at 520.

87. 420 U.S. at 527.

88. *Id.* at 518.

89. There was no reference to specific sections of the Constitution in the defendants' allegation.

90. Submerged Lands Act, 43 U.S.C. § 1311 (1970).

enumerates states rights regarding the continental shelf. Finally, the defendants alleged that *California, Louisiana,* and *Texas* "were erroneously decided and should be overruled."[91]

The Court, in full agreement with the Special Master to whom the case had been referred, declined to overrule the principles established in *California, Louisiana,* and *Texas*. In giving judgment for the United States, the Court reaffirmed its previous holdings that, regardless of any claim prior to statehood, jurisdiction over the continental shelf is an incident of national sovereignty. Further:

> "[T]he Constitution allotted to the federal government jurisdiction over foreign commerce, foreign affairs and national defense" and that "it necessarily follows, as a matter of constitutional law, that as attributes of these external sovereign powers the federal government has paramount rights in the marginal sea."[92]

Maine is the first case since the passage of the Submerged Lands Act of 1953 which has raised the issue of which governmental authority—the individual states or the Federal Government—has jurisdiction over the continental shelf. The Court conceded that the Submerged Lands Act transferred to the states various rights to the seabed appurtenant to the coast. "[H]owever, this transfer was in no wise inconsistent with paramount national power but was merely an exercise of that authority."[93] The Submerged Lands Act expressly provides that:

> Nothing in this chapter shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable water . . . all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is confirmed.[94]

The Court noted that its decision here was further buttressed by the Outer Continental Shelf Lands Act of 1953, which provides in pertinent part:

> The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters . . . and of which the subsoil and seabed appertain to the

91. 420 U.S. at 518-19.
92. *Id.* at 522-23, *quoting from* Special Master's Report at 23.
93. *Id.* at 524.
94. Submerged Lands Act, 43 U.S.C. §1302 (1970).

United States and are subject to its jurisdiction and control.[95]

In conclusion, the Court held that the practices of business, both public and private, had been conducted in accordance with and in reliance upon the decisions in *California, Louisiana*, and *Texas*, and that reversal of those decisions would, therefore, be inappropriate.[96]

Historic Bays

United States v. Alaska, 422 U.S. 184 (1975).

The United States brought suit in federal district court[97] against the State of Alaska to quiet title and for injunctive relief, contending that Cook Inlet[98] constituted high seas and thus fell under U.S. jurisdiction. Alaska alleged that Cook Inlet is an historic bay, and therefore internal waters subject to state jurisdiction. The court of appeals[99] affirmed the decision of the district court[100] which gave judgment for Alaska. The Supreme Court, Mr. Justice Blackmun writing for a six justice majority, reversed the decisions below.[101]

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95. Outer Continental Shelf Lands Act of 1953, 43 U.S.C. § 1332(a) (1970).

96. Since 1953, when this legislation was enacted, 33 lease sales have been held, in which 1,940 leases, embracing over eight million acres, have been issued. The Outer Continental Shelf, since 1953, has yielded over three billion barrels of oil, 19 trillion m.c.f. of natural gas, 13 million long tons of sulfur, and over four million long tons of salt. In 1973 alone, 1,081,000 barrels of oil and 8.9 billion cubic feet of natural gas were extracted daily from the Outer Continental Shelf. Exploitation of our resources offshore implicates a broad range of federal legislation, ranging from the Longshoremen's and Harbor Workers' Compensation Act, incorporated into the Outer Continental Shelf Lands Act, to the more recent Coastal Zone Management Act [of 1972].

420 U.S. at 527-28.

97. 352 F. Supp. 815 (D. Alas. 1972). The Court noted that the United States appeared to have qualified to invoke the original jurisdiction of the Supreme Court under Article III, section 2, clause 2 of the Constitution. 422 U.S. at 186 n. 2.

98. The inlet extends northeastward well over 150 miles into the Alaskan land mass, with Kenai Peninsula to the southwest and the Chigmit Mountains to the northwest. The city of Anchorage is near the head of the inlet. The upper, or inner portion, of the inlet is not in dispute, for that part is conceded to be inland waters subject to Alaska's sovereignty.

422 U.S. at 185.

99. 497 F.2d 1155 (9th Cir. 1974). For a discussion of this case at the court of appeals level see 2 Syr. J. Int'l L. & Com. 347, 363-65 (1974).

100. 352 F. Supp. 815 (D. Alas. 1972).

101. Stewart and Rehnquist, J.J., dissented, agreeing with the courts below that Alaska sustained its historic bay argument. Douglas, J., took no part in the consideration or decision of the case.

State jurisdiction over the continental shelf appurtenant to the United States is delimited pursuant to the Submerged Lands Act, which provides for state ownership of the continental shelf extending three miles from the coastline.[102] In *United States v. California*,[103] the Court concluded that the definitions contained in the Convention on the Territorial Sea and the Contiguous Zone[104] should be incorporated into the Submerged Lands Act. The Con-

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102. Submerged Lands Act, 43 U.S.C. § 1311(a) (1970), provides in pertinent part:

> It is determined and declared to be in the public interest that: (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters; and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States . . . .

The Submerged Lands Act defines a state's boundaries in 43 U.S.C. § 1301(b) (1970) which states in part:

> The term "boundaries" includes the seaward boundaries of a State . . . as they existed at the time such State became a member of the Union . . . but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean.

103. 381 U.S. 139 (1965).

104. Convention on the Territorial Sea and the Contiguous Zone, *done* April 29, 1958, art. 7, [1964] 2 U.S.T., 1606, 1609, T.I.A.S. No. 5639, 516 U.N.T.S. 205, 208 (effective June 10, 1964) which provides:

> 1. This article relates to bays the coasts of which belong to a single State.
>
> 2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
>
> 3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.
>
> 4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
>
> 5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.
>
> 6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

vention provides that 24 miles is the maximum width allowed base lines measuring the breadth of the natural entrance points of a bay, before that bay ceases to be classified as internal waters. Historic bays are excepted, however, from the 24-mile rule.[105] The distance between the natural entrance points of Cook Inlet is approximately 47 miles. The parties agreed, therefore, that the dispositive issues of the case was whether or not Cook Inlet constitutes an historic bay. The Court, noting the absence of a definition of "historic bay" in the Convention, adopted the following definition from the *Louisiana Boundary Case*,[106] as accurately reflecting the view generally accepted among nations:

> [A]t least three factors are significant in the determination of historic bay status: (1) the claiming nation must have exercised authority over the area; (2) that exercise must have been continuous; (3) foreign states must have acquiesced in the exercise of authority.[107]

The district court traced Alaska's historical claims to Cook Inlet through three periods of history: a period of Russian sovereignty between 1786 and 1867;[108] a period of U.S. sovereignty between 1867 and 1958 during which time Alaska was a possession, and later a territory of the United States;[109] and finally the period of Alaska's statehood in the United States. The district court concluded that in each successive period the respective sovereign exercised control and dominion over Cook Inlet with the acquiescence of foreign nations, thus conferring historic bay status on Cook Inlet.

In reversing the decision below, the Supreme Court made a detailed review of each respective historical period and held that the proof amassed by Alaska (accepted by the courts below) was insufficient to confer historic bay status on Cook Inlet, and that the conclusion of the district court "was based on an erroneous assessment of the legal significance of the facts it had found."[110] Regarding the period of Russian sovereignty, the Court held that the sparse evidence of the early Russian settlement indicates a claim to the land

105. *Id.*

106. United States v. Louisiana, 394 U.S. 11 (1969).

107. 422 U.S. at 189.

108. The first Russian settlement in Alaska was in 1786. The United States gained possession and sovereignty over Alaska in the Treaty of Cession of 1867. 422 U.S. at 190, 196.

109. This period began with the Treaty of Cession of 1867, continued with Alaska becoming a territory in 1912, and ended with Alaska becoming a state in 1958.

110. 422 U.S. at 203.

adjacent to Cook Inlet, but that there is little evidence indicative of an exercise of sovereign jurisdiction over the entirety of Cook Inlet.[111] The Court found that the several federal statutes constituting fishing and wildlife regulations which were in force during the period of U.S. sovereignty prior to Alaska's statehood were not indicative of a U.S. intention to treat Cook Inlet as internal waters, which is requisite to confer historic bay status on Cook Inlet.[112] The fact that Alaska has enforced fishing and wildlife restrictions over Cook Inlet similar to those previously promulgated by the United States is an insufficient claim for historic bay status for the same reasons which were applied to the period of U.S. sovereignty.[113] Finally, the lack of foreign protests to whatever rights were exercised over Cook Inlet is not sufficient to constitute acquiescence in the claim of historic bay status for Cook Inlet. Alaska failed to prove that foreign nations either knew or should have known of an historic bay claim, and this was necessary prior to their silence being interpreted as acquiescence.[114]

SECURITIES REGULATIONS

Extraterritorial Jurisdiction

Securities and Exchange Commission v. Kasser, 391 F. Supp. 1167 (D.N.J. 1975).

The Securities and Exchange Commission (SEC) instituted this action for injunctive and other relief against nine defendants, of whom four were American citizens, three were American corporations, and two were Canadian corporations allegedly owned by one of the American citizen defendants. The complaint filed by the SEC alleged an elaborate scheme to defraud a Canadian corporation. This corporation had been authorized by the Canadian provincial

111. The Court's detailed discussion of the period of Russian sovereignty appears at 422 U.S. at 190-91.

112. In international law, the distinguishing characteristic of "internal waters" is that the sovereign exercises complete jurisdiction over the waters, including the right to prohibit innocent passage. *See* J. BRIERLY, THE LAW OF NATIONS 223 *et seq.* (6th ed. H. Waldock 1963). An historic bay is within the internal waters classification. Therefore, the exercise of sovereignty necessary to confer historic bay status must be the exercise of exclusive and complete jurisdiction. The several wildlife and fishing regulatory acts do not treat foreign vessels differently from U.S. vessels, hence they do not constitute "internal waters" jurisdiction. For the Court's discussion of the history of U.S. sovereignty see 422 U.S. at 192-200.

113. For the Court's detailed discussion of the period since Alaska's statehood see 422 U.S. at 200-03.

114. 422 U.S. at 199-200.

government of Manitoba to create a forestry complex. The SEC claimed that this scheme violated numerous sections of the Securities Act of 1933[115] and the Securities Exchange Act of 1934.[116] They conceded that there was no direct impact on U.S. securities markets,[117] and that the fraud was perpetrated against a Canadian entity. Most of the frauds' primary activities took place in Canada. However, there was significant American involvment. In addition to the participation of U.S. citizens and corporations, a New York office of the Swiss Bank Corporation had been utilized as a conduit for a percentage of the manipulated funds.[118] Second, a Master Finance Agreement, part of the fraudulent scheme, was executed in the State of New York.[119] Finally, facilities of U.S. commerce such as mails, telephone, and telegraph had been utilized in furtherance of the scheme.[120]

Each of the nine defendants moved that the case be dismissed for lack of subject matter jurisdiction.[121] This motion was the single issue upon which the court focused for disposition. For the purposes of the motion, all well-pleaded allegations of the complaint were accepted as true and the merits of the case were not to be reached until subject matter jurisdiction had been established.[122]

The defendants argued "that the transactions alleged in the complaint were essentially foreign in nature having no significant impact on either the domestic investing public or the domestic securities markets,"[123] thus the court lacked subject matter jurisdiction. This argument was based on the decision in *United States v. Aluminum Co. of America*,[124] and embodied the objective principle of extraterritorial jurisdiction.[125]

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115. Securities Act of 1933, § 17(a), 15 U.S.C. § 77q(a) (1970).

116. Securities Exchange Act of 1934, §10(b), 15 U.S.C. § 78j(b) (1970); 17 C.F.R. § 240.10b-5 (1975).

117. 391 F. Supp. at 1173 n.1.

118. *Id.* at 1176.

119. *Id.*

120. *Id.*

121. FED. R. CIV. P. 12(b)(1).

122. Sabolsky v. Budzanoski, 457 F.2d 1245, 1249 (3d Cir.), *cert. denied*, 409 U.S. 853 (1972); Lasher v. Shafer, 460 F.2d 343, 344 (3d Cir. 1972).

123. 391 F. Supp. at 1172-73.

124. 148 F.2d 416 (2d Cir. 1945).

125. The objective principle of extraterritorial jurisdiction is explained in RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES § 18 (1965):

> A state has jurisdiction to prescribe a rule of law attaching legal consequences to conduct that occurs outside its territory and causes an effect within its territory, if either

The court said in response:

> Conceding that there has been no direct impact, the Commission [SEC] nevertheless asserts that the federal courts are vested with jurisdiction where a scheme to defraud foreign entities is devised in this country by Americans who utilized the means of interstate commerce to achieve their objectives.[126]

This is the principle of subjective extraterritorial jurisdiction[127] expressed in *Leasco Data Processing Equipment Corp. v. Maxwell.*[128]

The court's analysis began with evocation of the principle that extraterritorial application of federal regulatory legislation must be a question of municipal, not international, law.[129] Therefore, whether subject matter jurisdiction obtains in a particular case is a matter of legislative intent. The question here is whether Congress intended the Securities Act of 1933 and the Securities Exchange Act of 1934 to have extraterritorial application.[130] The fact that foreign relations law, through the subjective principle of extraterritorial jurisdiction, does not preclude subject matter jurisdiction does not resolve the issue of whether jurisdiction was to be invoked in this particular case.[131]

The language of the respective statutes in question, according to the court, "did not prescribe an immediate jurisdictional solution to this problem of transnational law,"[132] nor did the court find legislative history focusing on the precise jurisdictional issue presented

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(a) the conduct and its effect are generally recognized as constituent elements of a crime or tort under the law of states that have reasonably developed legal systems, or

(b) (i) the conduct and its effect are constituent elements of activity to which the rule applies; (ii) the effect within the territory is substantial; (iii) it occurs as a direct and foreseeable result of the conduct outside the territory; and (iv) the rule is not inconsistent with the principles of justice generally recognized by states that have reasonably developed legal systems.

126. 391 F. Supp. at 1173.

127. The subjective principle of extraterritorial jurisdiction is explained by the RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES § 17(a) (1965) which states in pertinent part:

A state has jurisdiction to prescribe a rule of law

(a) attaching legal consequences to conduct that occurs within its territory, whether or not such consequences are determined by the effects of the conduct outside the territory . . . .

128. 468 F.2d 1326 (2d Cir. 1972).

129. *See* U.S. v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945); Leasco Data Processing Equipment Corp. v. Maxwell, 468 F.2d 1326 (2d Cir. 1972).

130. 391 F. Supp. at 1172.

131. *Id.* at 1175.

132. *Id.* at 1173.

in *Kasser*. However, from a review of the language of the statutes, the general legislative history, and prior decisional law, the court concluded that it was beyond dispute that the principal objective was protection of American purchasers who are exposed to fraudulent offers of sales of securities in interstate commerce.[133]

In dismissing the case for lack of subject matter jurisdiction, Chief Judge Whipple, writing for the *Kasser* court, held that, notwithstanding the American individual and corporate defendants, and the utilization of American facilities of commerce in effecting the fraudulent scheme, Congress did not intend for the securities legislation to apply to an essentially foreign transaction where there had been no effect on the U.S. securities market or on U.S. investors. In so holding, Chief Judge Whipple distinguished *Kasser* from several prior cases[134] in which subject matter jurisdiction had been invoked with far less participation of American citizens and corporations, and with far less utilization of U.S. commerce facilities, but where there had been at least a minimal effect on U.S. securities markets or on U.S. investors.[135]

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133. *Id.* at 1175. *See also* Schoenbaum v. Firstbrook, 405 F.2d 100 (2d Cir. 1968).

134. *See* Leasco Data Processing Equipment Corp. v. Maxwell, 468 F.2d 1326; Travis v. Anthes Imperial Ltd., 473 F.2d 515 (8th Cir. 1973); SEC v. Gulf International Finance Corp., 223 F. Supp. 987 (S.D. Fla. 1963).

135. Although the precise jurisdictional issue presented in *Kasser* has not been presented in other cases, two recent cases involving extraterritorial application of the Securities Act of 1933 and the Securities Exchange Act of 1934 anticipated and responded to the jurisdictional issue raised in *Kasser*. In two companion cases in the second circuit, Bersch v. Drexel Firestone, Inc., 519 F.2d 974 (2d Cir. 1975), and I.I.T. v. Vencap, Ltd., 519 F.2d 1001 (2d Cir. 1975), Friendly, J., writing for the court, indicated that there would exist subject matter jurisdiction in a situation similar to that in *Kasser*.

In *Bersch*, Friendly, J., wrote:

> We are indeed *holding* in IIT. v. Vencap, Ltd., . . . decided this day, that Congress did not mean the United States to be used as a base for fraudulent securities schemes even when the victims are foreigners, at least in the contexts of suits by the SEC or by named foreign plaintiffs.

519 F.2d at 987 (emphasis added).

The "holding" referred to by *Bersch* in *Vencap* was expressed in the following language:

> We do not think Congress intended to allow the United States to be used as a base for manufacturing fraudulent security devices for export, even when these are peddled only to foreigners. This country would surely look askance if one of our neighbors stood by silently and permitted misrepresented securities to be poured into the United States. By the same token it is hard to believe Congress meant to prohibit the SEC from policing similar activities within this country. . . .

319 F.2d at 1017.

BOOK REVIEW

CONTEMPORARY SOVIET LAW. Edited by D. Barry, W. Butler, O. Ginsburgs. The Hague: Martinus Nijhoff, 1974. Pp. xxvi, 242, 52.50 guilders.

It is surprising, given the intense interest the United States has shown since the close of World War II towards the Soviets, that the Soviet legal system should be virtually ignored. Few U.S. lawyers have been aware of the existence of a Soviet legal system, much less concerned with its study. Among the few is John N. Hazard, who for 40 years has followed a distinguished legal career, a considerable portion of which devoted to the study of socialist law. It is to him that this volume of essays concerning contemporary Soviet law is devoted. Unfortunately, paucity of U.S. interest in socialist law is still indirectly evident, even in this endeavor, for this series of essays are the product, for the most part, of non-U.S. lawyers and professors. In these days when detente is a slogan and the media is full of grain deals, oil purchases, and an overall cooling of East-West tensions, one would assume that modest attention might be paid to the legal underpinnings of the world's second power. But such a trend is not discernable. Even this highly informative series of essays may do little to create additional interest in this neglected field.

There are several reasons for this. One reason is an apparent lack of interest in Soviet affairs per se within the United States, except as they affect political and military strategy.[1] Another is that Soviet legal nomeclature and emphasis can be very confusing to Western readers, who may be likely to dismiss *Contemporary Soviet Law* as too abstruse. This would be unfortunate, as this volume provides an illuminating insight into the mechanics, philosophy, and direction of a Socialist legal system.

Standing beside the other legal systems of the world, the Soviet legal system presents a refined, sophisticated, and well-designed scheme conceived to fulfill the social, political, and economic goals of the underlying ideology. Whereas Western legal systems seek to achieve a rough effectuation of their basic ideologies, experience has shown that all too often this is accomplished in a random fashion

1. Ironically, the U.S. attitude toward the Soviet legal apparatus may have been initially influenced by attitudes of the Soviets themselves. It was an early assertion of Lenin (following Marx and Engels) that the courts (and government bureaucracy in general) were merely instruments of power designed to oppress the masses, and that with the growth of the classless society they would become unnecessary and wither away. V. LENIN, THE STATE AND REVOLUTION 78-85 (1932).

with little evidence of skillful design or articulated thought as to goal or purpose. Although the strength of Western systems may indeed lie in that fact, nonetheless it is fascinating to contrast a system which, rather than evolving to meet changing political, social, and economic milieus, was conceived from the outset to meet specific goals. Perhaps there is a lesson to be gleaned by appreciating what foresight can accomplish. The central theme of this work, if one can be defined, is the role of planning—which is as evident within the legal system as in the economic sector. The traditional place of planning in the socialist scheme of things is well-known, but perhaps often overlooked, as a moving force in the development of a legal structure.

The editors of this book do not survey the entire Soviet legal system, but rather focus on topical areas which are familiar to Western legal minds. The Soviets too are facing the legal problems posed by environmental changes, computers, increasingly sophisticated industrial change, and a kaleidoscopic international scene. This is not to say that the more traditional areas of legal concern, criminal law, civil procedure, and social control are neglected here, but rather that these essays are intended to reflect the current concerns of socialist law, which are seen as requiring growth and evolution.

A particularly interesting selection by Dietrich A. Loeber treats what may be a peculiar Soviet phenomenon, the *Samizdat*—a form of self-publishing, which is both increasing and outside the control of the State to a large degree. *Samizdat*, although originally concerned with the publication of *belles-lettres*, has of late become the principal vehicle for the dissemination of dissident political writings. *Samizdat* encompasses all publication which falls outside of government publishing procedures, and to this extent can be considered a covert and clandestine activity. This article is apparently the first to consider the legal aspect of *Samizdat*, although its political and social influences have been the source of much publicity. Although the author does not discuss specific instances as much as the overall legal treatment of *Samizdat*, the reader cannot help but be reminded of the works of Solzhenitsyn and other Soviet dissidents which had first been published via the vehicle of *Samizdat*. Loeber's contribution alone would make the reading of this volume rewarding.

Another role of Soviet law, which in Western systems is regarded as a useful but not critical element of the legal system, is the educative function of the law, particularly in Soviet criminal law and civil procedure. The Soviets view this aspect of the law as vital

to the development of character in the people, the inculcation of the Soviet value system, and finally the training of the population to think and react in the manner demanded by the State. The author distinguishes the educative role (*vospitatel' naia rol'prava*) of the law from the mere dispersal of knowledge about law and legal values among the population. As with many other facets of Soviet law, the educative machinery is designed to accomplish very specific ends and should not be confused with the general collateral educative by-product of most legal systems. Harold Berman's treatment of this aspect is highly informative and interesting. Parenthetically, it might be noted that Professor Berman is also a qreatly respected scholar of Soviet law and, like Hazard before him, is one of that band which has not dismissed socialist legal systems (and socialistic societies in general) as a passing phenomenon.

Even if one has not intended to become a student of Soviet law, this work will provide a much deeper knowledge of the mechanics in the treatment of political dissent and a greater appreciation of the struggle a monolithic legal system must endure if it is not to be rent asunder by a growing body of liberal thought and concern. A reader who has formed his attitudes toward Soviets from association with the "Gulag Syndrome" noted in the works of Solzhenitsyn cannot but be impressed with the means by which a legal system must confront and resolve the problems created by a Gulag mentality. In total this book deserves a place on the shelf of anyone interested in East-West relations and concerned about the future directions the current detente will take.

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BOOKS RECEIVED

THE FUNCTION OF DOCUMENTS IN ISLAMIC LAW. Edited by J. Wakin. Albany, N.Y.: State University of New York Press, 1972. Pp. ix, 121. $30.00. Often Western lawyers entering into legal relations with Islamic societies fail to anticipate the enormous influence religion has had on the shaping of Islamic legal systems. While the role of religion in legal relations is becoming smaller with the "Westernization" of Mid-Eastern commercial relations, an understanding of the traditional Islamic law in this area is essential to the international lawyer. The editor has annotated a major Islamic work on the law of sales, Tahāwī's *Kitāb Al-Shurūt Al-Kabīr*. He has included the text of this document in the original Arabic, with annotations and an introduction to Islamic commercial law in general. Although perhaps not of immediate use to the newcomer to Islamic law, this book would be a valuable tool to the serious practicioner or scholar in this area.

INFLATION, GROWTH & INTERNATIONAL FINANCE. By A. Cairncross. Albany, N.Y.: State University of New York Press, 1975. Pp. 136. $14.95. This volume provides an excellent introduction to the principles, dynamic and control of international economic forces. Authored by the former head of the U.K. Government Economic Service and the Economic Development Institute in Washington, the book outlines and analyzes the techniques now utilized for international economic control, such as the floating exchange rate, and speculates on future possible restrictions on international capital movements and upon the future of controls in general.

INTERNATIONAL CONCERN WITH HUMAN RIGHTS. By M. Moskowitz. Leyden, Netherlands: A.W. Sijthoff/Dobbs Ferry, N.Y.: Oceana Publications, 1974. Pp. ix, 239. $18.50. Former Secretary General of the Consultive Council of Jewish Organizations—an independent consulting agency working with the United Nations and the Council of Europe—the author outlines what he feels to be a necessary reform in the present United Nations approach to human rights problems. It is the author's thesis that the United Nations should not be a mere passive defender of human rights, but an active advocate of a coherent human rights position. The book contains a history of human rights issues and a model program whereby ideas about human rights could be molded into social attitudes.

INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER. By M. Bassiouni. Leyden, Netherlands: A.W. Sijthoff/Dobbs Ferry, N.Y.:

Oceana Publications, 1974. Pp. xix, 630. $27.50. With the increase of international crime, both conventional and political, the problems of extradition have become manifold. This volume outlines the present state of the law in the areas of asylum, unlawful seizure, irregular rendition, and denial of extradition, while evaluating present policy, practice, and theories of jurisdiction. The author discusses both international and United States law and indicates several areas and outlooks badly in need of reform.

THE LAW OF THE NEAR AND MIDDLE EAST. By H. Liebesny. Albany, N.Y.: State University of New York Press, 1975. Pp. 316. $22.00. Designed for the practitioner or scholar new to the Near and Middle East, this volume attempts to give a broad background to the subject. It covers both the history and principles of traditional Islamic law and the impact of Western law (both civil law and common law) upon this tradition. The author has included Islamic legal texts, modern treatise writers, and recent court decisions to illustrate the hybrid that Near and Middle Eastern law has become. An appendix of related readings and a glossary of Arabic legal terms serve as an excellent aid to those seeking an introduction into this complex but increasingly important area of world law.

VERTRÄGE UND DEKLARATIONEN ÜBER DEN FESTLANDSOCKEL. Edited by B. Rüster. Frankfurt : Alfred Metzner, 1975. Pp. 181. 22.00 deutschmarks. At a time where energy sources and raw materials have become major political issues and the continental shelves are being increasingly exploited for their mineral wealth, this collection of Continental shelf treaties is an invaluable tool in the study of the law of the sea. The volume contains some 45 continental shelf delimitation treaties, either in the language of the original or in English translation, eight multilateral declarations, and maps of the most critical delimitation areas. The editor supplies, as well, an overview of continental shelf boundary issues.

U.S.-JAPANESE COMPETITION IN INTERNATIONAL MARKETS. By E. Roemer. Berkeley, California: University of California Institute of International Studies, 1975. Pp. xvii, 242. $3.95. Subtitled "a study of the trade-investment cycle in modern capitalism," this volume explores direct foreign investment patterns and trade trends of these two capitalist giants in their competition for third country markets. The analysis is extremely detailed and well-documented, and should prove a substantial asset to those concerned with the foreign investment area in general.

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