ARTICLES

SOVEREIGN DEBT RESOLUTION THROUGH THE INTERNATIONAL MONETARY FUND: AN ALTERNATIVE TO THE
Allied Bank Decision ....................... Ettore A. Santucci 1

This article offers the mechanism necessary for a uniform response to defaults on international debts caused by nation states. The equivocal response by the Second Circuit, to the case brought by a conglomerate of banks, represented by Allied Bank, against the state-owned Banco Credito Agricola de Cartago, reveals the depth of the problem faced by creditors and debtors alike, when the outcome of the litigation is quite arbitrary. Mr. Santucci offers the International Monetary Fund (IMF) as the crucial actor in this situation, in order to bring about uniformity and certainty to international monetary markets through the centralization of decision-making. The IMF has a system of conditionality in place that bases access to additional funds upon the implementation of austerity measures. The proposed solution would extend this conditionality to Article VIII, Section 2 of the IMF Agreement, in order to control actions that cause defaults on debts. The country seeking restrictions would be given protection against foreign creditors, so long as exchange controls are "maintained and imposed consistently with the [Fund] Agreement." The privilege will be granted to those countries which formulate controls designed to encourage the normal flow of exchange funds as soon as possible. The present piecemeal reaction to defaults will not be adequate once the stakes get higher. The mechanism involving the IMF is the systemic and institutional change necessary to counter the escalating debt crisis.

REDEFINING TAXATION OF INTERNATIONAL ENTITIES: THE UNITARY CONTROVERSY (A CONSTITUTIONAL APPROACH) .............................. Mark B. Baker 35

Professor Baker addresses unitary taxation as it has been practiced by state taxing authorities in their efforts to tax the full income of corporations doing business both inside and outside their boundaries. The author notes that as states have shifted from taxation only of the income of the corporation's subsidiaries located in the state to taxation of the income of the foreign parent companies of domiciled subsidiaries, three constitutional issues have been raised. These issues arise from the fourteenth amendment due process clause, the interstata commerce clause and the foreign commerce clause. Professor Baker analyzes these issues, as they have been addressed by the United States Supreme Court, and suggests that the Court has shown an unwillingness to "limit the scope of the states' taxing power." The author points out that the Supreme Court's decision in Japan Line, where international commerce was involved, "mandated" two additional factors
beyond the normal commerce clause factors: the enhanced risk of multiple taxation and the possibility that a state tax might impair federal uniformity. However, the Court's subsequent decision in Container Corporation has "left open the question of whether the worldwide unitary method may be applied to tax the worldwide income of a foreign corporation that has a U.S. domestic subsidiary." The author closes with the observation that the use of unitary method in the international arena may have serious ramifications and calls for a more "affirmative position" by the Executive branch in resolving the problems involved with the use of unitary taxation by the states.

IN PERSONAM JURISDICTION IN FEDERAL COURTS OVER FOREIGN CORPORATIONS: THE NEED FOR A FEDERAL LONG-ARM STATUTE .................. Barry E. Cohen 59

This article examines the current status of federal long-arm jurisdiction, the practical problems associated with its use, and the constitutional limitations on federal in personam jurisdiction. Since current law creates a significant loophole through which alien corporations can avoid personal jurisdiction in any federal court, the conclusion reached by this author is that a generally applicable federal standard for long-arm jurisdiction presents the possibility of a more rational assertion of in personam jurisdiction by federal courts over distant parties — especially alien corporations. Such a standard should be authorized either by statute or as an amendment to Rule 4 of the Federal Rules of Civil Procedure.

CRITICAL ESSAYS
AN EXCHANGE ON U.S. FOREIGN POLICY IN CENTRAL AMERICA

IGNORING INTERNATIONAL LAW: U.S. POLICY ON INSURGENCY AND INTERVENTION IN CENTRAL AMERICA ....................... Louis René Beres 75

The article considers U.S. actions towards Nicaragua as being totally void of justification in international law. Beres notes that the Reagan administration no longer feels the need to justify their position, and that the rationale has been reduced to pure Realpolitik considerations. There are proper grounds for intervention into a foreign state, such as for humanitarian concerns, but according to Beres, none are present in this case. The article goes beyond the single situation presented by Nicaragua. The whole process of foreign policy, based on Realpolitik considerations, breeds contradictions. For instance, the concept of independence, would be applied to groups fighting against a regime hostile to the U.S., but those fighting against an ally are not accorded the same honor, no matter how repressive the regime.

CONFUSING VICTIMS AND VICTIMIZERS: NICARAGUA AND THE REINTERPRETATION OF INTERNATIONAL LAW .................... Robert A. Friedlander 87

Initially, the article considers the present state of international law. Friedlander concludes that this body of law has been nothing more than an attempt to thwart the Darwinian progression of global power. The
only reliable source of compliance is nothing more than the concept of good faith obligations to carry out the terms of agreements. By depicting the United Nations within a North-South dichotomy, the power to formulate rules rests with the non-Western majority without a corresponding power in reality. The rules formed within the past few decades are not entirely clear in application. This claim applies to the concept of humanitarian intervention with equal force. With the void in enforcement capabilities, the United States must fend for itself in regard to the division of global power. The Reagan administration has decided not to rely upon recent formulations of international law that inherently possess a non-Western bias. Since no one else will help to prevent Soviet intervention in this hemisphere, the U.S. must take the initiative and act on its own.

THE NUCLEAR COLLISION COURSE: CAN INTERNATIONAL LAW BE OF HELP? ........................................ John H.E. Fried 97

It is the thesis of this article that international law prohibits nuclear war. The thesis is based on the premise that, since no specific norms concerning nuclear warfare exist, the rules generally applicable to all weapons must apply. The author enumerates many of the rules that currently govern warfare, and concludes that the use of nuclear weapons must inevitably and intolerably break those rules. In addition, the author analyzes the U.S. Administration’s Strategic Defense Initiative and considers its impact on the arm’s race. The author concludes with a recommendation that the U.S. reciprocate the Soviet Union’s no first-use pledge.

STUDENT COMMENT

INTERNATIONAL LEGAL AND POLICY IMPLICATIONS OF AN AMERICAN COUNTER-TERRORIST STRATEGY ........................................ Gregory F. Intoccia 121