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Editor's Note

University of the Pacific, McGeorge School of Law

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As *The Transnational Lawyer* concludes its fourth volume, one cannot help but observe the dramatic and sometimes ironic events shaping the future direction of both world politics and international relations. Indeed, the corresponding effect these changes have on the practice of law across international boundaries cannot be underestimated. First among these revolutionary events was the late August coup attempt in the Soviet Union which threatened to undue concrete gains attained during the last five years of United States-Soviet cooperation. At this time of great international instability, the transnational attorney must be ever cognizant of the geo-strategic and political changes which directly effect the legal advice his clients' seek. While expanding notions of national sovereignty present international lawyers with a new frontier of opportunity such as in the European Community (EC), many perplexing counter examples complicate the international attorney's ability to adequately protect his clients.

The fragmentation of the Soviet Union and Yugoslavia, each by rather different methods, illustrates the counter trend in international economics and politics of entity disintegration, which inevitably transfers rule making and jurisdictional powers away from central authorities to local governing bodies. A transnational practitioner must reorient himself recognizing that a rule promulgated in either Moscow or Belgrade will have little in common with a rule enacted in new centers of power such as Yerevan, Armenia or Zagreb, Croatia. In fact, it might even be inappropriate to speak of Soviet investment law today since each of its constituent republics, most prominently the Ukraine, seems intent on retaining the economic characteristics of a nation state. A treaty organizing the economic and military relationship between the republics is being orchestrated by Soviet President Mikhail Gorbachev, but the planned nature of the Soviet economy and rules which governed this arrangement are probably relics of its centralized past. Increasingly, transnational attorneys will find the need to focus on the decision-making bodies of the republics to ascertain the nature of foreign investment laws, for example. This disintegration of centralized decision making also can be seen in

the Czech and Slovak Federal Republic, as Slovakia clamors for more independence, in Yugoslavia, where Serbian dominance has led to civil war, and even in Canada, where the province of Quebec asserts its unique status.

Despite these examples where culturally distinct groups reassert their national identities, the most prevalent trend in international relations is regional economic integration. Every continent on the globe is exploring the possibility of some form of legal harmonization in the economic sphere. The Association of Southeast Asian Nations recently endorsed the establishment of a free trade area.[1] The newly liberated Baltic Republics plan to form a customs union modeled after the European Community in order to promote growth and economies of scale.[2] As a means of creating a massive, European-wide "super trading bloc," the EC and the nations of the European Free Trade Association (EFTA) plan to form a European Economic Area (EEA), thereby creating a nineteen nation economic region of massive proportions. Notably this proposal has met some conflicts, and nations such as Austria and Sweden hope to gain early entrance into the EC itself which might obviate the need for an EEA.[3] In other regions, such as in Africa, where nations of the Magreb Cooperation Council and members of the Organization of African Unity attempt to integrate, or in South America, where Brazil, Argentina, Uruguay, and Paraguay try to do the same, bright prospects for the future seem linked to removing internal barriers to trade and to promoting economic cooperation and development.

Following on with this trend, the incorporation of the former German Democratic Republic into the Federal Republic of Germany, of course, expands the potentially endless contours of the EC. This step which was followed by a currency union has

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1. *ASEAN Endorses Free-Trade Area*, Wall St. J., Oct. 9, 1991, at A11, col. 1.
2. *Baltics Plan A Customs Union*, Wall St. J., Sept. 25, 1991, at A8, col. 1.
3. A pact signed on October 22, 1991 in Luxembourg signifies the beginning of a nearly 400 million person trade entity encompassing most of Western Europe. This agreement comes into effect on January 1, 1993, thus establishing the world's largest trading bloc. A new EEA Council of Ministers and an EEA Court will be established under the pact to coordinate policies and to resolve outstanding legal issues. Nelson & Du Bois, *Pact Expands Europe's Common Market*, Wall St. J., Oct. 23, 1991, at A12, col. 1.

produced large scale unemployment in eastern Germany and has provoked a resurgence of xenophobia among the disaffected and jobless. Such a circumstance demands a prompt and compassionate response from the New German Government. While Germany looks inward and deals with rising skinhead activity, the rest of Europe ponders possible solutions to a problem which bring Germans to a major precipice in their post-War history. Regional integration brings with it many potential benefits, but also the frustrations of centralized decision making, which led to the fracture of the Soviet Union. Only the parallel implementation of democratic ideals can lead to successful regional integration. This fact is amplified by the breakup of the nascent Arab Cooperation Council (ACC), composed of Iraq, Egypt, Jordan, and Yemen, which lost its impetus due to the Persian Gulf War. Nations which respond to their people's needs and have institutional mechanisms to provide such feedback, unlike those of the ACC, are much more likely to sucessfully integrate and participate cooperatively in the world economy.

Another very important institution related to harmonizing world trade rules can be found in the General Agreements on Tariffs and Trade (GATT). The current Uruguay Round remains unsettled as negotiators attempt to resolve the very emotional issue of agricultural subsidies. Hope of a breakthrough rose recently as both Germany and France pledged to establish a time table for the eventual elimination of these market distorting price supports and export subsidies. Successful completion of the Uruguay Round will go along way towards restoring confidence in not only the GATT process, but in the world economy, which has experienced recent capital shortages and increasing protectionist sentiments as trade bloc formation and non-tariff barrier introduction surges. To illustrate continued interest in multilateral trade negotiations, however, Guatemala recently became the 103rd signatory to the GATT Treaty in early October.

A complimentary phenomenon to economic integration is privatization of formerly state-owned property and industries. Privatization has occurred in most East European states, India, Pakistan, Australia and New Zealand, in parts of South America,

notably Brazil, in Mexico, and even in nations like Mongolia.[4] The benefits of privatization include technology transfer, capital infusion, the intermeshing of the world economy thus reducing the possibility of warfare, product and management innovation, and the standardization of goods and services worldwide. Because nations undergoing privatization are often also committed to market liberalization (and are usually short on hard currency), unprecedented unemployment has resulted in fragility of governments and unstable investment climates. In order to cushion the effect of economic contraction, international organizations such as the International Monetary Fund and World Bank are providing bridge loans to certain nations such as India and Czechoslovakia, which are committed to market and political reform.

Other international events such as the summer assassination of Indian Prime Minister Ragiv Ghandi, the Bank of Credit and Commerce International scandal, the Yugoslavian conflict which threatens to involve the rest of Europe, and prospects for peace in the Middle East as a U.S.-Soviet sponsored conference convened in late October in Madrid, provide a sober backdrop for this edition of *The Transnational Lawyer.*

The Fall edition of *The Transnational Lawyer*, volume 4, number 2 contains an international cross-section of articles and student comments which collectively and individually explore issues and phenomenon important to the international practitioner.

A regular contributor to this journal, Professor J. Clark Kelso reviews significant opinions of the United States Supreme Court delivered in the past term (1990-91) which impact the international attorney. His decisive analysis leaves no question that the Court rejects arguably expansive interpretations of both international conventions to which the United States is a signatory (the Warsaw Convention) and domestic legislation such as Title VII. Kelso also reviews a forum selection clause case in which a big corporation (Carnival Cruise Lines, Inc.) prevailed over a less sophisticated vacationer who was forced to litigate claims thousands of miles

4. Carey, *Free From Moscow, Mongolia Makes Up for Lost Time by Embracing Markets*, Wall St. J., Oct. 3, 1991, at A14, col. 4.

from her home jurisdiction. He finally previews the Court's upcoming 1991-92 term with the addition of a controversial new member, Justice Clarence Thomas.

Mr. Rexford L. Coleman, an expert on Japanese law and a member of *Transnational's* International Advisory Board, contributes what may be the first of its kind in English, an exhaustive review of the procedures and methods of Japanese Defense Procurement. *The Transnational Lawyer* is especially proud to publish such an outstanding paper which was assembled using primary documents previously untranslated in the United States. Any firm interested in bidding for contracts with the Japanese Self-Defense Forces will need this article in order to understand the complex maze involved in Japanese government procurement.

In an exciting tandem of articles, Mr. Leonard Feldman and Mr. Christopher Murphy explore some of current issues relevant in the debate over the North American Free Trade Area negotiations. Mr. Feldman strongly advocates the conclusion of a U.S.-Mexico Free Trade Area as a prelude to a farsighted North America Free Trade Agreement. Mr. Murphy, a recent graduate of both McGeorge School of Law and the Georgetown Law Center's LL.M. program, discusses the novel dispute resolution mechanism found in the U.S.-Canada Free Trade Agreement. Both of these articles could not be more timely as the debate ensues in Washington, Ottawa, and Mexico City as to the possible contours of this vitally important, transcontinental, trade promoting agreement. Economic and political leaders in both Tokyo and Brussels are paying very close attention to the political and legal developments occurring in North America, which may have the intended effect of expediting the successful conclusion of the GATT Uruguay Round.

In Practitioner's Perspective, Dr. Marek Wierzbowski, a professor of law at Warsaw University School of Law and a partner in a Warsaw law firm, provides the historical, cultural, and legal context for Eastern Europe's rather remarkable transformation to active democracy with economies based on market principles. He advocates foreign direct investment in his country, Poland, concluding that arrangements such as associate membership in the

EC for Poland would go a long way towards promoting the appropriate conditions for such investment. A member of both the Korean and the New York State Bars, Mr. Won-Mo Ahn presents for the practitioner who has clients interested in doing business in Korea a more cost effective means to acquire needed equipment. He details the legal requirements involved in equipment leasing in Korea. Since foreign builders or businessmen often are disadvantaged when operating outside local markets, an understanding of the advantages of equipment leasing in foreign economies might promote the aggressive international marketing of transferable skills and business expertise.

With the inclusion of two student Comment pieces, each discussing a piece of controversial U.S. legislation effecting the international practitioner (The Marine Mammal Protection Act and the Exon-Florio Amendment), *The Transnational Lawyer* presents a solid edition dedicated to furthering the transnational practice of law. Since the last edition, this journal has added five new and distinguished members to our International Advisory Board: Dr. Ivo Greiter, Mr. Steven A. Hammond, Professor Robert M. Jarvis, Professor John B. Quigley, Jr., and Dr. Karl William Viehe; all of whom are either past contributors or have rendered valuable assistance to *The Transnational Lawyer* (see the International Advisory Board page for additional information). These individuals exemplify the highest qualities that this journal seeks to attain. The 1991-92 Board of Editors welcomes these excellent additions to our family of advisors.

As always, the Board of Editors hopes the reader gains valuable insights as a result of this publication. The next edition, volume 5, number 1, promises to be of exceptional quality as *The Transnational Lawyer* celebrates its Fifth Anniversary. For example, the journal will inaugurate a subject matter index which should be a helpful research tool for practitioners, scholars, and students. As the opportunities for international practice expand, as the world becomes a more integrated whole, and as peoples and nations realize that they have more in common than in past generations, *The Transnational Lawyer* promises to enter the 21st century well focused and readily adapted to the new realities facing

the international attorney. Paraphrasing the current U.S. President, the New World Order certainly will not pass us by.

Harry Julian Gottfried
Editor in Chief