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International Law and the United States Military Intervention in the Western Hemisphere. By Max Hilaire. The Hague; Boston: Kluwer Law International, 1997. 148 pages.

In *International Law and the United States Military Intervention in the Western Hemisphere*, Max Hilaire, a member of the Department of Political Science at Colgate University, traces the history of US military intervention in the Western Hemisphere. In his book he examines Twentieth Century cases of American intervention in Guatemala, Cuba, Grenada, Nicaragua, Panama and the Dominican Republic within the context of international law and concludes his study by looking at the United States intervention in the post-Cold War era. Hilaire observes that essentially every relationship between the United States and its Latin American or Caribbean neighbor is in fact a hegemonic one.[1] He concludes that, in true hegemonic fashion, the US continuously undermines the political sovereignty of its Latin American and Caribbean neighbors all in the name of US regional security. Throughout this book, the dramatic language and sometimes weak conclusions employed by Hilaire cannot help but belie his true feelings that the United States' relationship with its neighbors is nothing more than mere subordination.[2]

In his introduction, Hilaire provides a historical background of American and European intervention in the Western Hemisphere. He notes that after declaring independence, the United States essentially adopted a policy of non-intervention with an eye towards ridding the Western Hemisphere of its European colonies. Hilaire writes that from the creation of the Monroe Doctrine, the United States adopted a policy of intervention in the Western Hemisphere to protect its national security interests.[3] Hilaire concludes that the Monroe Doctrine effectively substituted American intervention for that of European intervention.

In his first chapter Hilaire turns his attention away from the failed Monroe Doctrine to the evolution of other measures aimed at banning the use of force and intervention in the Western Hemisphere. Of special importance is Hilaire's discussion of the Charter of the United Nations and its impact on the states of Latin America and the Caribbean. The Charter prohibits states from intervening in the domestic jurisdiction of other states as well as from using threats of force inconsistent with the pur-

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1. *See* MAX HILAIRE, INTERNATIONAL LAW AND THE UNITED STATES MILITARY INTERVENTION IN THE WESTERN HEMISPHERE vii-x (1997).

2. *See id.* at 5. In his discussion of intervention in Guatemala and Cuba, Hilaire writes, "Guatemala became the first *victim* of United States anti-communist policy in the Western Hemisphere."

3. *See id.* at 1.

poses of the organization. The Charter makes only two exceptions to this ban. Countries are permitted to use force against another nation or intervene in another nation's affairs: (1) in self-defense if an armed attack occurs; or (2) if an enforcement action is authorized by the UN Security Council. Despite these very clear guidelines, this ban was regularly disregarded by the United States.[4]

In Chapter Two, Hilaire demonstrates how the United States clearly violated the ban with regard to Guatemala and Cuba. Hilaire posits these two states as the first *victims* of indirect United States intervention in the post-World War II era. During the 1950's and early 1960's, the United States openly decided to intervene in the affairs of these two sovereign nations to prevent the spread of communism into our hemisphere.[5] Despite this open condemnation of communism by the US, preventing the spread of communism was not an internationally sanctioned reason for intervening in the affairs of other countries. Yet this did not prevent the United States from training and arming Guatemalan rebels to undermine the legitimate Arbenz government in 1954 or training and arming Cuban rebels in the failed 1961 Bay of Pigs invasion. As Hilaire juxtaposes the United Nations' edict against intervention and the use of force with the United States' blatant disregard for that edict, Hilaire highlights the relative ineffectiveness and powerlessness of these bodies to condemn acts of intervention. While Hilaire provides the popular arguments of the day against the spread of communism put forth by Secretary of State John Foster Dulles at the Tenth Inter-American Conference,[6] these arguments do little to dissuade the reader or Hilaire himself that the United States was in clear violation of international law. In concluding this chapter, Hilaire notes that the crises in Guatemala and Cuba legitimized the United States' determination to establish its own regional rules to govern relations between itself and its "client" states in the Western Hemisphere.[7]

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4. *See id.* at 19-21. Hilaire reminds readers that the United States has effectively undermined the legitimacy of these rules as one of the *few* violators of this ban. This blatant disregard by the United States largely contributes to Hilaire's view that America is a hegemon, acting in total disregard of international law.

5. *See generally id.* at 23-54. Tacitly, it was Guatemala and Cuba's ties to the Soviet Union that most worried the United States.

6. See *id.* at 32-33. The United States resolution drafted and maintained by Secretary of State Dulles stated, "[T]he domination or control of the political institutions of any American state by the international communist movement, extending to this Hemisphere the political system of an extra-continental power would constitute a threat to the sovereignty and political independence of the American states, endangering the peace of America . . . " *Id.* at 34.

7. *See id.* at 54.

In Chapters Three through Six, Hilaire examines the UN Charter ban through case studies of US intervention in the Dominican Republic in 1965, Grenada in 1983, Nicaragua in 1985 and Panama in 1989. Hilaire focuses particular attention on two justifications given by the United States — protection of the intervening state's citizens and intervention by invitation. Hilaire essentially dismisses both of these reasons as simply after-the-fact justifications by the United States to mask its illegal actions. Moreover, Hilaire notes that the UN has not created any new exceptions to the UN Charter's ban on foreign military intervention. Essentially, Hilaire refuses to accept any United States justification for intervention, despite strong evidence to the contrary. This ideological purity is one of the main weaknesses of Hilaire's book.

In dismissing these justifications Hilaire first turns his attention to President Johnson's intervention in the Dominican Republic. Hilaire contends that President Johnson's deployment of Marines to the Dominican Republic in 1965 was contrary to international law. Despite Johnson's justification that such action was for the protection of American citizens, Hilaire believes that this was an entirely political intervention. As the President himself notes, the intervention in the Dominican Republic was to prevent "the establishment of another communist government in the Western Hemisphere."[8] For Hilaire this was the United States' only possible motivation for intervention. If American lives were really in imminent danger, why didn't President Johnson use diplomatic channels to secure the safety of his citizens? Moreover, if the United States was only intervening militarily in the Dominican Republic to protect American lives, why did the United States send so many troops to the Dominican Republic with no limit on the length of their stay or their mission? To Hilaire, the answer is clear. He concludes that US troops stayed in the Dominican Republic to maintain law and order, to give protection to an unpopular regime, and to prevent the victory of a communist government.

Although Hilaire clearly believes that the US wrongly used the justification of "saving the lives of Americans" as a way to obtain public support for its actions, the international community remains split on this point.[9] Regardless, Hilaire undermines his own thesis in his discussion of

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8. *Id.* at 65.

9. *Id.* at 60-61. Hilaire notes that some countries, such as the United States, have always believed that intervention to protect one's nationals is permitted under international law. The states which adhere to this belief hold that intervention to protect one's nationals has become customary international law. However, other states and legal scholars hold that the UN Charter ban on the use of force and intervention includes a ban on the right to intervene to protect an intervening state's citizens. Hilaire goes on to note that some

the US intervention in Panama. While Hilaire decries that there was "no indication that the lives of American nationals were in imminent danger or . . . were targeted for abuse and harassment,"[10] he quickly overlooks the fact that one American was killed and another beaten in Panama during the same time period.[11] In reconciling these contradictory statements, one must remember Hilaire's bias. He views US intervention in the Western Hemisphere as both legally and morally wrong, regardless of the reasons. Throughout his book the United States is portrayed as the hegemon and the states of Latin America and the Caribbean are portrayed as poor, defenseless entities trying to maintain their right to self-determination. Political views aside, it is indeed true that the United States had a number of motivations for intervening in Panama, including its economic interest in the peaceful operation of the Panama Canal and its dissatisfaction with Manuel Noriega. However, at the same time it is disingenuous on the author's part to dismiss the danger to American nationals, simply because their protection was not the United States only motivation for intervening in Panama.

The next justification which Hilaire rejects is that of intervention by invitation. Once again the precise allowance of this measure under international law remains open to debate. Hilaire writes that the international community generally agrees that a state which falls victim to an external attack can request assistance from other states. However, the author finds the US intervention by invitation in both Latin America and the Caribbean dubious at best. Hilaire cites accounts which grant the actual invitation subsequent to the intervention, as in the case of Grenada. Moreover, Hilaire questions the legitimacy of many of the governments which extended the invitation to the United States. The author points out that many of these "invitations" came from governments which hoped to stay in power because of American intervention. Yet, Hilaire cannot accept the proposition that a legitimate government needs to ask for help. He proposes that if a "leader" has to ask for help, it consequentially implies that the government is illegitimate.[12] This argument seems a little self-serving on the author's part. Hilaire uses the illegitimacy argument as an easy way to find all US intervention by invitation illegal under international law.

In his final chapter Hilaire looks at US intervention in the post-Cold War era and the new justifications for intervention. To this end he pro-

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states believe that this right to intervene has survived the UN Charter's ban since there is not an explicit prohibition against such action within the text of the Charter.

10. *Id.* at 116.

11. *Id.*

12. *See id.* at 63.

vides a number of new "policy" reasons which the US is currently employing to explain its military involvement in the affairs of other countries. These modern justifications include intervention to stop drug trafficking and intervention to maintain democracy. Of particular significance is Hilaire's discussion of intervention to prevent terrorism. Hilaire writes that armed intervention to combat terrorism remains illegal under international law and the UN Charter.[13] This discussion raises serious questions as to the legality of the United States' recent attacks on terrorist bases in Afghanistan and Sudan.

Under Hilaire's analysis, the United States' attacks in Afghanistan and Sudan would be considered illegal under international law and the UN Charter. Yet, one must remember that there is no true consensus as to what the Charter of the UN permits and does not permit. The legality or illegality of a particular act really depends on a state's broad or narrow interpretation of Article 51. One must also recognize that the United States holds the US Constitution to be its supreme law, and the provisions of the UN Charter would be subordinate to this document. Moreover, the International Court of Justice ("ICJ") does not wield great power over the United States. This became quite evident when the United States refused to recognize not only the Court's jurisdiction over it, but also the Court's subsequent ruling against it in the 1986 case of *Nicaragua v. United States of America.*[14] The United States may face censure from certain countries over these latest bombings, but the question of whether such attacks were in violation of international law remains unanswered.

Although Hilaire's analysis is at times self-serving, he nevertheless provides the reader with a sound historical and political background for US military involvement in the Western Hemisphere. Despite Hilaire's exhaustive examination of the six cases of intervention outlined in his book, the author does not entirely answer his own question regarding which military interventions constitute a violation of international law. However, what is clear from Hilaire's analysis is that the dictates of international law hold little restraint for a powerful country, such as the United States, from asserting its will to protect its national interests in its own hemisphere.

Kimberly S. L. Essary

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13. *See id.* at 18. Under the UN Charter there are only two exceptions to the ban on the use of force and intervention; (1) in self-defense, if an armed attack occurs (Art. 51), and (2) enforcement action authorized by the Security Council (Art. 42).

14. *See generally* Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*), 1986 I.C.J. 14, 103-123.

The Status of Palestinian Refugees in International Law. By Lex Takkenberg. Oxford: Clarendon Press; New York: Oxford University Press, 1998. 411 pages.

Although a vast body of literature exists on the Arab-Israeli conflict, surprisingly little has been written, from a legal perspective, on what author Lex Takkenberg calls the "human dimension" of the conflict — the Palestinian refugees and their status under international law. In what began as a doctoral dissertation, Takkenberg analyzes refugee law, the law relating to stateless persons, humanitarian law, and human rights law, to uncover the legal protections to which Palestinian refugees are arguably entitled. As a former legal officer for the Dutch Refugee Council and an international staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA"), Takkenberg brings his experience as both a legal practitioner and specialist on Middle Eastern politics to shed light on the legal questions affecting Palestinian refugees. His treatise is exceptionally useful because it comprehensively describes the unique legal consequences associated with being *both* a refugee and a stateless person under international law. Moreover, Takkenberg's work comes at an opportune time. If the recently signed Wye Plantation Agreement fails to keep the peace process on track, Palestinian refugees will most certainly require even greater international protection. On the other hand, if the agreement enables the permanent status negotiations to begin in May 1999 as originally intended by the 1993 Oslo Accords, Takkenberg's analysis will be invaluable to the search for a durable solution to the Palestinian refugee problem.

In order to determine the legal status of Palestinian refugees under international law in a comprehensive manner, Takkenberg divides his work into three parts and ten chapters. The first part explores the status of Palestinian refugees under existing refugee law. To begin his analysis, Takkenberg spells out his unique definition of Palestinian refugees. He defines the group as "those Palestinians who fled that part of Mandate Palestine which in 1948 became the state of Israel, as a result of the war accompanying the establishment of that state, and who were subsequently prevented from returning there — as well as their descendants."[1] At first blush, Takkenberg's factual definition seems very broad. Upon closer examination, it is clear that the definition fails to include those Palestinians who fled as a result of the Six Day War in 1967 or who were exiled as a consequence of the 1990-91 Gulf War. Takkenberg himself notes these

1. LEX TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW 49 (1998).

exceptions, but fails to clearly articulate why he omits these Palestinians even though they possess qualities of refugeehood — namely, the inability to return to their places of residence and the lack of diplomatic protection by their national government. Nevertheless, Takkenberg is quick to point out that the Palestinians who do not fall within his definition are often protected as stateless persons and individuals under international law.

Aside from his own understanding of the term Palestinian refugee, Takkenberg also explores several definitions employed by the international community. The meaning of "Palestinian refugee" as understood by UNRWA, the United Nations agency largely responsible for the support and care of hundreds of thousands of Palestinians since 1949, has special significance. As Takkenberg explains, Article D of the 1951 Convention on the Status of Refugees ("Convention") temporarily excludes from the Convention's protection those Palestinians receiving assistance or protection under UNRWA. However, once UNRWA's assistance and protection ceases, those Palestinians who were previously excluded automatically become entitled to the benefits of the Convention. Thus, according to Takkenberg, the scope of UNRWA's mandate is critical because it necessarily determines who is entitled to benefits under the 1951 Convention for Palestinian refugees. Given that UNRWA assistance and relief under the 1951 Convention are mutually exclusive, one could reasonably ask which instrument provides the best protection? Although Takkenberg does not explicitly address this question, his thorough analysis suggests that neither provided sufficient legal protection for most Palestinian refugees due to varying interpretations of both instruments and general problems with enforcement. UNRWA never pretended to adopt a legal theory but continually revised its mandate according to exigent circumstances. Remarkably, though, Takkenberg explains that Article D was originally motivated by the desire of the *Arab states* to ensure that the Palestinian refugees would not get lost among the rest of the 1951 Convention refugees In other words, the Arab countries believed that Palestinians would be better served if they remained the special responsibility of the United Nations.

After concluding that Palestinian refugees are unsatisfactorily protected under international refugee law, Takkenberg logically turns to other areas of international law to determine what protections Palestinian refugees may derive under these sources. Part Two of the book is devoted exclusively to examining the law relating to stateless persons, humanitarian law and human rights law. Takkenberg argues that the crux of the Palestinian refugee problem is largely related to their status as stateless persons. Many of the vulnerabilities shared by Palestinian refugees — not having a passport of a state, not having at least the theoretical op-

tion of returning to their original residence, and not having an internationally recognized "nationality" with all of its protections — could be solved by the establishment of a Palestinian state. Unfortunately, the political compromises that would have to be made to realize this solution seem increasingly distant. Nonetheless, Takkenberg concludes that in order to create an enduring peace in the Middle East, solutions for these problems will have to be found.

In Chapter Six, Takkenberg successfully demonstrates that international humanitarian law provides some protection for those Palestinian refugees who have been frequently subjected to armed conflict. In particular, those Palestinians who sought refuge in the West Bank and the Gaza Strip and came under Israeli occupation after 1967 are not only refugees but also persons protected by international humanitarian law. Most of the international community, including Israel, agrees that these Palestinians are protected under the 1907 Hague Resolutions. However, unlike most other countries, Israel disputes the fact that the Fourth Geneva Convention applies to Palestinians living in the occupied territories. Thus, these Palestinians, although likely entitled to the full protections of the Fourth Geneva Convention, have not been able to enjoy them.

Under the label of human rights law in Chapter Seven, Takkenberg explores the international agreements that recognize the rights of all individuals and the applicability of these agreements to the Palestinian refugee problem. Takkenberg persuasively demonstrates that the International Covenant on Civil and Political Rights ("ICCPR") identifies a right to return and compensation, although the extent to which it applies to the Palestinians is hotly debated. The ICCPR also establishes a right to self-determination, which when applied to the Palestinians may alleviate statelessness, one of the most difficult problems shared by the refugees. The creation of an independent Palestine would provide the refugees with a nationality and with a place to which to return if they so desire.

Finally, Takkenberg devotes Part Three of his book to the implementation of the standards of treatment that he believes Palestinian refugees deserve under international law. He argues that the international community has an obligation to provide protection to Palestinian refugees by virtue of the fact that they, as with all refugees, cannot turn to the government of their home country for protection. Further, Takkenberg identifies an implied obligation of the international community to find durable solutions to refugee problems because, as a basic human rights principle, every person in entitled to a nationality.[2] While many international refugee problems are solved either through voluntary repatriation,

2. *See id.* at 177.

local integration, or resettlement in third countries, Takkenberg recognizes that a solution to the Palestinian refugee problem will likely have to employ all three options. Compensation for Palestinian, as well as Jewish refugees who were forced to flee Arab countries after the creation of Israel, will also be necessary.

Takkenberg's book arrives at a politically sensitive and tense moment in Arab-Israeli relations as the peace process that began in 1993 is struggling to survive. His rich analysis of numerable sources of international law clarifies the complex legal status of Palestinian refugees. While Israeli and Palestinian decisionmakers will likely benefit from Takkenberg's thoughtful interpretations of international law, they should also heed his warning that the application of legal principles cannot, by itself, solve the underlying issues. Although the Wye Agreement signals that differences over Israeli security issues and Palestinian efforts to combat terrorism can be overcome, even more difficult challenges lie ahead. At this point it is uncertain whether both parties can compromise in order to create a lasting and just peace. However, if both parties do not try to reach a lasting solution, we are all sure to lose in the long run.

Hebba Hassanein

War Crimes Against Women: Prosecution in International War Crimes Tribunals. By Kelly Dawn Askin. Cambridge, Mass.: Kluwer Law International, 1997. 455 pages.

In *War Crimes Against Women: Prosecution in International War Crimes Tribunals*, Volume I in a two-part series,[1] author Kelly Dawn Askin examines the historical development of international humanitarian and human rights law and its relation to gender-specific war crimes. Specifically, Askin argues that although the international community has received ample documentation of these gender-related crimes, it has almost universally ignored pressure for action. Although courts in every country

1. KELLY DAWN ASKIN, WAR CRIMES AGAINST WOMEN: PROSECUTIONS IN INTERNATIONAL WAR CRIMES TRIBUNALS xiii (1997) [hereinafter Askin, *Prosecutions in International War Crimes*]. In the preface, the author notes that this book is the first of a two-part series. *Id.* The author anticipates that Volume II of the series, KELLY DAWN ASKIN & PATRICIA VISEUR-SELLERS, WAR CRIMES AGAINST WOMEN: PROSECUTION OF GENDER CRIMES IN THE YUGOSLAVIA AND RWANDAN WAR CRIMES TRIBUNALS (*forthcoming*), will contain a more detailed analysis of the Yugoslav and Rwandan War Crimes Tribunals.

regularly prosecute perpetrators of such violence, international courts have provided no such protection for women. As a result, Askin believes that the international community should recognize gender-specific crimes as a violation of international humanitarian law. She believes that this is the only way to assure that the international community will give these crimes the attention and the resources necessary to prevent further violence against women. To aid in that endeavor, Askin proposes that the International Criminal Tribunal for the Former Yugoslavia should prosecute gender-related crimes committed during the Balkan conflict. She believes that the Tribunal possesses the power and the necessary authority to end the glaring omissions of the past and aid in future criminal trials at the national and international level.

In Chapter One, Askin traces the laws of warfare from 500 B.C. until the Second World War. Specifically, she turns her attention to the legal and societal treatment of sexual violence against women. Askin begins her analysis in the United States during the Civil War. In that war, the United States took the first step in codifying international customary laws of land warfare.[2] Regarding sexual assault, the Lieber Code of 1863 mandated, "[A]ll rape . . . [is] prohibited under the penalty of death."[3] One year later, international delegates met at the first Geneva Convention, laying the groundwork for what was to become the humanitarian law movement.[4] The author also discussed the Hague Conventions of 1899 and 1907 with particular emphasis on the 1907 Convention which gave particular protection to women regarding "family honour and rights."[5] Askin ends the chapter with an analysis of the failure of the World War I War Crimes Commission to prosecute any war criminals for the violation of women's rights. However, she does credit the Commission with including rape and forced prostitution in their report on the violation of the laws and customs of war committed by the Axis powers.

Chapter Two, "Gender Specific Crimes in WWII," provides graphic testimony of the victims and eyewitnesses of wartime sexual assault.

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2. *See* Askin, *Prosecutions in International War Crimes*, *supra* note 1, at 36. This code, drafted by Frances Lieber in 1863 as General Orders No. 100, was derived from international custom and usage and became the official U.S. Army regulation guide on the laws of land warfare. *Id.*

3. *Id.* at 36.

4. *Id.* at 37. "Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armed Forces in the Field" (22 Aug. 1864), 129 CTS 361 (Parry, ed.); 22 Stat. 940; 1 Bevans 7.

5. *Id.* at 40. "Convention with Respect to the Laws and Customs of War on Land" (First Hague, II), (29 July 1899), 32 Stat. 1803, T.S. No. 403 (entered into force 4 Sept. 1900); "Convention Respecting the Laws and Customs of War on Land" (Second Hague, IV), (18 Oct. 1907), 36 Stat. 2277, T.S. No. 539 (entered into force 26 Jan. 1910).

These eyewitness accounts illustrate a wide range of gender-related violence including the crimes of rape, forced prostitution, forced sterilization, forced abortion, and infanticide. Askin uses this eyewitness testimony to demonstrate that violence based on gender is as repugnant as any based on race, religion, ethnicity, political affiliation, or nationality.

In Chapters Three and Four, Askin discusses the events leading to Nuremberg and the Nuremberg Trial itself. The Charter for the International Military Tribunal ("IMT") at Nuremberg was an important step because it included two new classes of crimes that had not previously been seen in international law — namely, the "Crimes Against Peace" and the "Crimes Against Humanity."[6] Although these two new classes of crimes represented an important step in international humanitarian justice, neither of these two crimes specifically included rape. As a result, Askin writes that gender-related crimes remained undifferentiated from the other atrocities of wartime. Although complainants provided for the IMT numerous reports of torturous rape, forced prostitution, forced sterilization, forced abortion, pornography, sexual mutilation, and sexual sadism; the prosecution did not try any of these crimes or publicly document these atrocities. Once again, the world was left with no legal precedent for the wartime prosecution gender-specific crimes.

In Chapter Five, Askin discusses the International Military Tribunal for the Far East, or the Tokyo War Crimes Tribunal.[7] The Tokyo War Crimes Tribunal followed the Nuremberg Trial by six months. The Tokyo Tribunal relied upon much of the precedent established by the Nuremberg Trial. However, the Tokyo Charter did charge counts of rape in the indictment, despite the fact that the crime was not specifically enumerated. These charges were included under "inhuman treatment," "ill treatment," and "failure to respect family honour and rights." In contrast to the Nuremberg Tribunal, the Tokyo Tribunal documented rape crimes in the public record. Askin believes this was not enough. She argues that there was "abundant notice" following World War I that sexual assault

6. *See* Askin, *Prosecution in International War Crimes*, *supra* note 1, at 117. "Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis", London, 8 August 1945 [hereinafter, the London Agreement] 8 UNTS 279; 59 Stat. 1544, 8 AS No. 472. Attached to the London Agreement is the "Charter of the International Military Tribunal, Annexed to the London Agreement" , 8 August 1945, [hereinafter Charter of the IMT]. "Crimes Against Peace" and "Crimes Against Humanity" can be found in Charter of the IMT, Ch. II, Art. 6.

7. *See* Askin, *Prosecutions in International War Crimes*, *supra* note 1, at 165. "International Military Tribunal for the Far East," Proclaimed at Tokyo, 19 January 1946 and amended 26 April 1946, TIAS No. 1589 (entered into force 19 January 1946)[hereinafter "IMTFE"], Annex, Charter of the International Military Tribunal for the Far East (Tokyo) [IMTFE Charter or Tokyo Charter.].

during war was foreseeable.[8] As a result, for the second time in a half-century the testimony and records of wartime sexual assaults were neglected, the victims of sexual assault remained unrecognized, and those responsible for the atrocities remained unprosecuted.

In Chapter Six, Askin analyzes the evolution of women's rights in domestic and international law. She argues that as women have gained access to political, educational, and economic rights, the international laws have begun to reflect their contributions. The author cites the "Women's Convention" and the "Declaration Against Violence" as international accords addressing women's issues. However, the author also criticizes these documents for their lack of remedial and enforcement mechanisms. Askin also believes that the international community has made very little progress toward preventing wartime sexual assault. Specifically, she mentions the Fourth Geneva Convention. Of the 459 articles of the Convention, only one sentence in Article 27 expressly prohibits rape and forced prostitution.[9]

In Chapters Seven and Eight, Askin focuses her attention on the possibility of dramatic change in the prohibition, prosecution, and punishment of wartime abuses against women with the establishment of the International Criminal Tribunal for the Former Yugoslavia.[10] The Balkan conflict can be set apart from other wars in its manipulation and abuse of the female gender to further ethnic cleansing and genocide. During that conflict, Askin notes that women were raped, forcibly impregnated, and forced into sexual slavery in the name of ethnic purity. Although this may well be characterized as an age-old conflict based on religion and ethnicity, nonetheless women bore a heavy toll of violence based strictly on their gender. To that end, Askin believes the ICTY holds great promise for the protection of women from rape and sexual assault during times of armed conflict.

First, Askin argues that the Tribunal clearly has jurisdiction over sexual assault during time of armed conflict. As support, she explores the

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8. *See* Askin, *Prosecutions in International War Crimes*, *supra* note 1, at 203.

9. *Id.* at 260 n.859.

10. In SC Res. 808 (Feb. 22, 1993), the UN Security Council called for the establishment of an international tribunal. hence the International Criminal Tribunal for the former Yugoslavia ("ICTY") was established pursuant to SC Res. 827 (May 25, 1993) to prosecute "Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991." UN Doc S/25704 (May 3, 1993) contains the "Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808" (1993). The Statute of the ICTY is attached to the Secretary-General's report in UN Doc S/25704, Annex 91993) [hereinafter Yugoslav Tribunal Statute]. *See* Askin, *Prosecutions in International War Crimes*, *supra* note 1, at 7 n.15.

statutory jurisdiction of the Yugoslav Tribunal. She begins her analysis with Article 2 of the Yugoslav Statute which provides for jurisdiction over "grave breaches" of the Geneva Convention of 1949.[11] Although neither sexual assault nor rape was specifically listed as a "grave breach," Askin argues that sexual assault falls within the purview of several of the enumerated grave breaches within the Convention — namely, torture or inhuman treatment, and willfully causing great suffering or serious injury to body or health.

Furthermore, Askin notes that many Articles of the Yugoslav Statute would also appear to cover these gender-related crimes. Of particular note to Askin is Article 3 of the Yugoslav Statute, "Violations of the Laws or Customs of War."[12] She argues that because rape has long been prohibited by conventional or customary law, it could reasonably be prosecuted under international law. The author also considers Article 4 of the Yugoslav Statute, "Genocide."[13] She argues that sexual assault meets the elements of genocide when committed in systematic, massive proportions in an attempt to destroy a particular group or when committed to harm a single woman who is part of a protected group. Askin argues that the Genocide Convention should protect gender as it does religion, ethnicity, race, or nationality.

Finally, Askin assesses the likelihood that sexual assault might be prosecuted under Article 5, "Crimes Against Humanity."[14] In her analysis, she probes the weaknesses of Article 5. That Article lists "enslavement, imprisonment, torture, rape, persecution on political, racial and religious grounds, etc.," as crimes that can be prosecuted as crimes against humanity.[15] Despite the expanded definition of criminal acts under this Article, Askin argues that the statutory language still has inherent weaknesses which could prevent a successful prosecution. She notes that the statutory language requires that a crime be "committed against a civilian population during an armed conflict."[16] This requirement would seem to exclude a number of commonly violated populations. Moreover, it is doubtful whether Article 5 would protect women in combat or women who experience sexual assaults before or following an armed conflict.

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11. *See* Yugoslav Tribunal Statute, supra note 10. *See also* Askin, *Prosecutions in International War Crimes, supra* note 1, at 298.

12. *See* Askin, *Prosecutions in International War Crimes, supra* note 1, at 299.

13. *Id.*

14. *Id.* at 300.

15. *Id.* In order to be prosecuted, these crimes must be committed during times of armed conflict against a civilian population.

16. *Id.*

Overall, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* provides a sobering view of how the international community has failed to acknowledge, prosecute, or punish crimes against women during times of war. Despite overwhelming evidence of gender-motivated crimes this century, the international community has repeatedly failed to protect women's most basic rights. This inaction has left past and present victims of gender-specific crime with little more than guilt and a sense of grave injustice.

Readers should be aware of the graphic testimony of sexual abuse and sexual assault by victims. Author Kelly Dawn Askin thoroughly details the crimes committed against women before, during, and after armed conflict. Although these testimonials are useful for demonstrating the injustice of allowing the perpetrators of such crimes to go unprosecuted, the numerous accounts can overwhelm the reader. These accounts distract the reader's attention from the real legal arguments. Had the author simply limited the amount of victim testimony to the most poignant examples, her cogent legal analysis would have shone more brightly.

In her conclusion, the author provides the reader with a sense of hope for the future as she discusses the Rwandan and Yugoslav Tribunals' efforts to address women's issues and redress sexual assault crimes. Through the author's overwhelming historical evidence and enthusiastic advocacy of her cause, the reader feels assured that this time the tribunals "will go a long way toward replacing aggressive denial with aggressive pursuit of women's issues and gender crimes."[17]

Trish L. Hessel

The Effectiveness of UN Human Rights Institutions. By Patrick James Flood. Westport, Conn.: Praeger Publishers, 1998. 166 pages.

While many legal scholars, political activists and social commentators have struggled in vain to pen the clearest, most comprehensive definition of human rights, the totalitarian systems of our century have proven the ultimate consequence of abandoning the endeavor. In *The Effectiveness of UN Human Rights Institutions*, Patrick James Flood succinctly articulates the identity of human rights and human dignity in a contemporary social and political context. Drawing on his broad-based knowledge, gained as the former officer in charge of human rights affairs

17. *Id.* at 379

at the U.S. Mission to the United Nations in Geneva, Flood offers a historical perspective on the international community. He focuses on how it, through the United Nations ("UN"), influences the global community's observation of fundamental, yet equivocal, human rights standards.

Flood's opening chapter pronounces the normative political and legal value of continuing a visible and viable discussion of human rights. The Introduction provides guidance concerning the historical backdrop of human rights issues, key terms and their usage, as well as the author's personal background. Basic questions and general propositions regarding his examination of UN human rights institutions are also included.

In Chapter Two, Flood examines the notion of human rights, how the concept entered the language of political discourse in the late seventeenth and eighteenth centuries, and how it gradually became an international prescriptive and behavioral norm. Flood begins by tracing the evolution of human rights. Its genesis, he explains, was as a part of the natural law tradition in Rome. This interpretation of human rights incorporated the concept of intrinsic human dignity. However, it lacked the understanding that dignity gave rise to individual rights. Its contemporary formulation, he argues, is a way of expressing the requirements of human dignity in a social context and of safeguarding respect for that dignity.

Flood's emphasizes that the discussion of human rights should not only take place within the realm of practical application. It should also be marked for theoretical consideration. The author observes that it is often only during times of international crisis that the topic of international human rights is broached. To prove this point, he examines the historical record of the human rights debate; a debate that intensified during the American and French Revolutions, slavery and the Second World War—times when massive assaults on human dignity were apparent—and waned during the peaceful years in between.

Chapter Three surveys and analyzes the existing system of UN human rights institutions. Flood deals, more specifically, with the operational advantages and disadvantages of the two types of UN human rights implementation machinery: treaty-based programs and charter-based mechanisms. Treaty-based human rights programs, which Flood concludes are ineffective, find their authority in a specific intergovernmental agreement that covers a specific subject. These programs bind only those states that have become a party to the agreement. The much broader charter-based mechanisms, which derive their authority from human rights and general provisions of the UN charter, bind all member states of the UN. These mechanisms and are, by Flood's account, more politically meaningful than their treaty-based counterparts.

Flood divides charter-based human rights institutions into two categories: thematic and country-specific mechanisms. In the next two chap-

ters, Flood explores two thematic human rights mechanisms. The premise of the thematic institution is that the international community of states, acting in a legislative capacity, can establish a device to insure that all states promote, observe and protect a single, identified right or theme. Conversely, country-specific mechanisms, discussed in Chapters Six and Seven, allow the international collective to mandate that one specified country improve its human rights practices.

Chapter Four, "The Working Group on Enforced Disappearances," presents the first of two case studies illustrating thematic institutions. In this chapter, the author delves into the UN's reaction to Argentina's clandestine detention, mistreatment, and often summary execution of millions of that State's own citizens and residents. Forced disappearance, which was practiced by certain Western countries in the 1970's, is a multiple human rights violation. Abduction and detention is not only an arbitrary deprivation of liberty, but it is also a denial of judicial due process.

The UN responded with the creation of the *Working Group on Enforced Disappearances* ("Working Group"). The Working Group was set up to assist families and to determine the fate and whereabouts of their missing relatives. Made up of five representatives from member states of the Human Right Commission, the Working Group sent communications demanding information from governments about the location and status of persons believed to have been abducted by official forces. Flood concludes that this first of the charter-based "thematic" mechanisms made a valuable contribution to the diminution of the practice of disappearances by the Argentine military regime. He states that this effectiveness was largely a result the Working Group's rapid intercession.

Flood continues his exploration of thematic institutions in Chapter Five by investigating the UN's response to religious bigotry. The atrocities committed during the Second World War against entire religious communities led to the first incorporation of religious freedom as a fundamental human right. This response took the form of *The Universal Declaration of Human Rights* and later, the *International Covenant on Civil and Political Rights*. The focus of the chapter, however, is a discussion of the effectiveness of the Human Rights Commission's ("HRC") appointment of Angelo Vidal d'Almeida Ribeiro as Special Rapporteur on the Elimination of Religious Discrimination and Intolerance.

Ribeiro, who was charged with seeking reliable and creditable information from governments, specialized agencies and intergovernmental organizations, examined and reported to the HRC incidents and actions inconsistent with the provisions of the *Universal Declaration of Human Rights*. Flood concludes that the effectiveness of the thematic institution of Special Rapporteurs is dependent largely upon the Rapporteur's per-

sonality. In this case, Flood explains, Ribeiro's passive personality led to a significantly diminished effect on religious intolerance.

In the next chapter, Flood changes his focus from a thematic focus to a country-specific platform. Titled "Special Rapporteur on Chile," Chapter Six discusses the UN country-specific human rights mechanism employed to press the Chilean military government to halt human rights abuses in the early 1970's. In September 1973, armed forces, led by General Augusto Pinochet, initiated a bloody coup, followed by a period of repression so massive and violent that it quickly put the Chilean human rights situation on the global agenda. During the months following the uprising there were hundreds of disappearances,[1] widespread torture, and thousands of arbitrary arrests. Flood concludes that over time and together with other domestic and international factors, the UN made important contributions to the evolution of the human rights situation in that country and also influenced Chile's willingness to cooperate with the international community.

The Chilean authorities became aware that being singled out by the UN and the international community could lead to extreme diplomatic isolation. Moreover, Chile believed that the UN and UN member states might institute economic sanctions. Recognizing that the UN human rights structure and campaign were an integral and important part of its external environment, the Chilean military government sought to accommodate the organization.

As was true in the case of Chile, human rights practices in Iran became an issue of international scrutiny following the seizure of power by a radical regime. In Iran's case, the regime was lead by the Ayatollah Khomeini. Chapter Seven considers another UN country-specific human rights mechanism. Under rule by Islamic fundamentalists, Iran saw Jews, Christians and Zoroastrians persecuted and forced to flee the country for fear of severe punishment and brutality. In response, the UN appointed a Special Rapporteur on Iran.

As Flood asserts in Chapter Six, the personality of the Rapporteur is often the determining factor of whether the system is effective. In the case of Iran, this was particularly true. Unlike the Chilean government, the Iranian establishment mounted considerable opposition to UN intervention in the early 1980's. This made the presence of a Rapporteur with a patient and persevering character crucial.

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1. The UN Working Group on Chile determined that at least 600 disappearances occurred during 1973-79. Most of these took place in the first year or two of the Pinochet regime.

Flood is not so quick to attribute the success of this mission to the quality of the Rapporteur, however. Sometimes the political climate changes, thereby opening a country to the influence of external forces. In early 1989, the Ayatollah Khomeini called for the execution of Salman Rushdie for the ideas contained within his book *Satanic Verses*. Flood notes that after the death of Khomeini, Iran was willing to offset some of the unusually strong negative international reactions to the Rushdie case by cooperating with the UN in the early 1990's. With the succession of the moderate Heshemi Rafsanjani to the Presidency, Iran got that chance. Flood acknowledges that the Human Rights Commission and the Special Rapporteur were important contributing factors to the UN's success in the case of Iran.

In the end, *The Effectiveness of UN Human Rights Institutions* offers an excellent foundation for a more detailed understanding of international human rights issues. Flood provides an in depth analysis of many mechanisms used by our world's primary peace keeping organization. For those interested in seeing the exact provisions which grant the UN power to create these human rights institutions, the author provides them in the appendix. At times, painfully technical prose may confuse those unfamiliar with the United Nations and human rights issues. However, discriminating readers will complete the book with a clear understanding of the outlined topics. *The Effectiveness of UN Human Rights Institutions* provides an enjoyable introduction to the operations of the United Nations.

Essentino A. Lewis, Jr.

The World Trade Organization: Constitution and Jurisprudence. By John H. Jackson. London: The Royal Institute of International Affairs, 1998. 193 pages.

For the past fifty years world economics have been shaped substantially by the General Agreement on Trade and Tariffs ("GATT"). On January 1, 1995 the World Trade Organization ("WTO") came into existence, marking the beginning of another potentially significant development in the history of world trade. While the WTO did not replace GATT, it did attempt to provide a remedy to the procedural regulations that were lacking in GATT. With its emphasis on procedural rules, most importantly its Dispute Settlement Process ("DSP"), the WTO is successfully resolving international trade conflicts where earlier agreements failed.

In *The World Trade Organization: Constitution and Jurisprudence*, Georgetown law professor John J. Jackson, a leading authority on international trade law, presents a thoughtfully concise report on the institutional structure of the WTO. His analysis focuses on the new legal structure that the WTO brings to world trade through its methods of solving international trade conflicts. More specifically, Jackson examines how the WTO is effectively using the binding international legal authority of the DSP to resolve complicated trade disputes between member nations.

Following an overview in Chapter One, Jackson proceeds in Chapter Two by chronicling the history of GATT as a way of understanding the purpose of the WTO. GATT was born out of post-World War II efforts to peacefully avoid international armed conflicts. When the drafting nations met in New York in 1946, they shared the belief that economic affairs affect the likelihood of armed conflict between nations. GATT was formed with the intention of restricting governments from imposing various tariffs and restraints on international trade in an effort to reduce the possibility of armed conflict. It is to this end that GATT has had its greatest success. Despite this success, however, GATT had inherent flaws. Foremost, it lacked a constitution which could regulate its organizational activities and procedures. Additionally, its members were not bound by the findings or rulings made by GATT. As a result, members of GATT lacked the ability to discipline countries that violated its international laws and treaties. Out of this need for a system that could bring legal structure to international trade, the WTO was formed.

Chapter Three describes the WTO's constitutional provisions which govern the organization and its member nations. These provisions provide the legal structure that is the basis for the WTO; such provisions were noticeably absent from GATT. While GATT allowed nations to pick and choose which constitutional provisions they wanted to adopt, the WTO advances a "single-package concept."[1] As of May 1998, the 132 signatory nations to the WTO had adopted all of the substantial portions of the constitution in order to gain membership. This affords the WTO the authority to resolve disputes based upon mutually agreeable regulations. While this book is focused on the structure of the WTO, Jackson also outlines the text annexed by the WTO.

The substance of the WTO is contained in four Annexes. The Annexes contain copies of adopted international agreements such as GATT, the General Agreement on Trade in Service, the Agreement on Trade-

1. The WTO requires member nations to adopt all the substantial parts of its constitution, including the DSP which binds the signatory nations to the WTO decisions. This binding authority provides the WTO with an enforcement mechanism, previously absent from GATT.

Related Intellectual Property, the DSP, and the Trade Policy Review Mechanism. By contrast, the Charter contains the procedural and institutional matters that govern the agreements contained in the Annexes.

The organizational structure of the WTO provides a better legal method for resolving international trade conflicts than did the old GATT model. Besides the top governing councils which are similar to those used under GATT, the WTO provides a decision making body in the form of the Dispute Settlement Body ("DSB"). Nothing as comprehensive as the DSB existed under GATT. While some of the GATT provisions did call for settlement methods, the WTO procedures now trump any of the limited methods supplied by the GATT provisions.

Chapter Four addresses the DSB which constitutes the heart of the WTO. Jackson begins by explaining how the DSB could have easily evolved into a far different body. Originally, the DSB was understood as being purely advisory. Later, the purpose of the DSB came to be viewed as resolving trade disputes and enforcing the Annexes. Jackson believes that the later understanding is most beneficial for the long-term health of the organization because it forces participating members to comply with the rules of the WTO or face punitive compliance or compensation measures. By maintaining an objective, legal approach through the use of an appointed panel, the WTO hopes to promote respect and stability in the international economic system.

The Dispute Settlement Body aims to provide four elements that were previously lacking under GATT. These include: (1) a unified system for settling all international trade disputes; (2) greater consideration for all parts of the Uruguay Round; (3) the right of an aggrieved government to a hearing before the panel; and (4) the right to an appellate body review.

Jackson attributes the success of the DSB to the legally binding effect that the rulings have on the signatory nations. However, while members of the WTO must comply with the organization's rulings, the body of law does not become part of each member's domestic laws. Despite this, Jackson believes that the rulings of the DSB will eventually effect the domestic jurisprudence of the signatory nations.

The book concludes in Chapter Five with a summary of the WTO's significance in international law. In his opinion, Jackson believes that the success of the WTO could have sown the seeds of its own demise. As the success of the WTO grows and the signatory nations agree to expand the scope of the WTO, there is some question as to whether the system will be able to process the increased number of complaints. In addition, some nations have already expressed an interest in developing rules for new areas of law including laws which affect antitrust, environmental, and investment. Finally, the WTO will also continue to face the difficulty

of encouraging nations to cede some sovereignty to an international organization. This act of faith carries with it a level of trust which many nations are unwilling to bestow upon any organization, foreign or domestic.

Overall, Jackson's *The World Trade Organization: Constitution and Jurisprudence* is effective in illuminating the theoretical differences between the old system under GATT and the new system under the WTO. It also provides a thorough and lucid inspection of the structure of the WTO. While the institutional structure of the system is well understood, the practical effects of the WTO are yet to be fully realized. As time passes, foreign crises will surely test the resolve of this member-based organization. If conflicting nations respect the rulings of the WTO, its legal authority will guide the future of international trade. Only then will we fully comprehend the true benefits or harms of the world's first constitutional deliberative body of trade.

Stephen Reichert

Cartels of the Mind: Japan's Intellectual Closed Shop. By Ivan P. Hall. New York: W.W. Norton & Company Press, 1998. 198 pages.

In the post-Cold War era, the United States has adopted globalization as a guiding force in its struggle to redefine its political and business relationship with other countries of the world.

The term has been infused into many levels of American discourse, and today it radiates with connotations of opportunity, success and fortune. Ostensibly, the idea of the world as a vast, open market for investment, education, and democratic development seems like the perfect way to rebuild alliances with countries once perceived as Cold War "villains." In practice, however, the concept has proven to have inherent stumbling blocks. In *Cartels of the Mind: Japan's Intellectual Closed Shop*, author Ivan P. Hall explores these stumbling blocks as he provides an in depth look at different American business sectors and their relationship with Japan.[1] Through his factual accounts of American legal professionals, journalists, academics, and research students in Japan, Hall examines the institutional and legal blockades that have historically faced foreigners in that country. As Hall demonstrates, these blockades, com-

1. IVAN P. HALL, CARTELS OF THE MIND (1998) [hereinafter *Cartels*].

monly dismissed or ignored by outsiders, are really symptomatic of the deep-seated biases and beliefs of this closed culture. Such beliefs, he rightly concludes, ultimately raise the barriers to a truly global interchange of ideas and commerce.

Hall readily admits that *Cartels* bypasses the normal "tip-toeing-on-eggshells" approach that so many American commentators have taken when analyzing the US-Japanese relationship. Instead, *Cartels* critically examines the self-protectionist policies of a country struggling to keep its own identity. He does so by probing into the laws that Japanese legislatures, shaped by a unique Japanese culture, have produced. Such an approach results in an insightful, intelligent and thought-provoking framework from which to think about the assumptions and consequences underlying any international trade or business issue.

Cartels is divided into five chapters. In Chapters One through Four, Hall examines the experiences of each American professional group attempting to engage in a professional relationship in Japan. In recounting these experiences, he probes into what he terms the Japanese intellectual "cartel".[2] Hall argues that this Japanese set of "perceptions, assumptions, motivations, ideological constraints, and institutional arrangements" perpetuates a narrow exclusionary mindset among the Japanese with whom American professionals come in contact.[3] For each profession, he cites examples of Japanese laws which provide barriers to American professionals looking to become a participant in the Japanese culture.[4] Furthermore, Hall criticizes Japan's continual failure to provide reciprocal opportunities. Because the themes are consistent throughout each profession, only the legal issues and conclusions will be examined here.

In Chapter One, "Legal Landing," Hall recounts the history of Japan's discriminatory employment laws and its consequences for American lawyers attempting to practice law in the Japanese legal community. In 1949, during the American occupation of Japan, seventy-three foreign lawyers, mostly American, were licensed to practice in Japan. Both the Japanese and American governments thought the arrangement would prove symbiotic. The Japanese government believed that the presence of American attorneys in Japan would bring more business into the country. The American government believed that its presence in Japan would be

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2. *Id.* at 20.

3. *See id.* at 12.

4. The laws affecting the legal profession make up the focus of this review. However, it is important to note that *Cartels* does discuss exclusionary laws affecting other professions. These include the strict government control and influence over the foreign press, and visa requirements that make it nearly impossible for foreign professors to gain tenure at a Japanese university. *See id.* at 65-75, 97-100, respectively.

the first step towards developing strong business and democratic ties to that country. Unfortunately, these dreams never reached fruition.

By 1955, Japan's new independence proved discouraging to each government's expectation of a beneficial symbiotic relationship. From 1955 to 1986 Japan's legal climate changed and Japan's pursuit of a new identity successfully closed the door on any ambitious American lawyer seeking a long-term legal career in Japan. American lawyers could not establish any type of legal practice that would create significant competition to the Japanese firms. The reality of such a discriminatory law hit home for Americans in 1977 when a New York lawyer attempted to open a foreign law office.[5] Backed by the heavy influence of diplomats from the Federation of Economic Organizations, Isaac Shapiro faced threats of jail by the Japanese government as he was found in violation of the most fundamental Japanese precept, namely, "no foreign law practices allowed here."

In 1986, the foreign push for some sort of Japanese "internationalization" under the 1974 Trade Act resulted in Prime Minister Yasuhiro Nakasone's adoption of a Japanese version of "lawyer friendly" laws. The Foreign Lawyers Special Act of 1986 allowed American firms to consult with Japanese firms who were breaking into American markets. Under that agreement, Americans could provide business advice or litigation representation to the Japanese firms penetrating the American culture. However, the Japanese legislature failed to reciprocate. No American law firms could hire Japanese lawyers as consultants on Japanese law. Thus, American firms were legally limited access to the resources and talents that would make their service in Japan competitive.

Yet another example of the historical rejection of American attorneys in Japan is found in a Japanese law requiring foreign law firms in Japan to be designated by a pejorative title. Under the 1986 law, US firms had to identify their offices by the term "*gaikokuho jimu bengoshi.*" Literally translated, this Japanese phrase means "foreign law attorney business." As Hall notes, however, *jimu* in Japanese connotes

5. In 1977, Isaac Shapiro, an attorney from the New York firm Milbank Tweed, Hadley & McCloy went to Tokyo to open Japan's first foreign law firm. He gained the support of the Japanese Foreign Ministry and the Federation of Economic Organizations. Each organization expressed an honest concern with Japan's perception in the developing international business and trade scene. However, such sentiment was not widely accepted, and Shapiro met with threats of incarceration from the Japanese Federation of Bar Associations ("JFBA") (The JFBA acts as the gate-keeper for the Japanese legal environment. Historically, the JFBA has been quite hostile towards foreign attorneys.) Due to the JFBA's persuasive complaints, the Japanese government did not approve any of the visa applications that foreign firms had sent, dashing hopes that Shapiro would provide the market breakthrough that much of the world anxiously awaited. *Id.* at 25.

simplistic, clerical office work. The symbolism of this title, as required by Japanese law, is significant. As Hall notes, these small cultural discriminations illustrate the dramatic double standard that so many American professionals face in Japan.

Some may say that the modern situation shows improvement. The 1994 Amendments, in addition to repealing the name requirement, granted the right for American and Japanese law firms to form "joint enterprises." This law allows American firms to utilize Japanese lawyers. However, the Japanese lawyers working for such firms may have no "connection" with the American firm.[6] With such limited communication, many American firms feared a conflict with their ethical and professional duty to avoid conflicts of interest and protect attorney-client privilege, each of which would require thorough communication among the firms. To date, only two out of forty five foreign law firms in Tokyo have taken advantage of the business "opportunity" created by the new law.

Perhaps Japan has a point. Maybe America's aggressive legal practice will deteriorate Japan's justice-seeking legal community. In such case, Japan's barriers on legal access by foreigners could well be justified because Japan was not acting solely for the purpose of discriminating against foreigners, but rather to secure the safety and future of its legal community. But, as Hall's experience shows, this rhetoric is not supported by reality. On the surface the Japanese may claim that their society is not litigious and serves human rights over corporate desire. However, despite these lofty ideals, the Japanese legal culture clearly suffers from the same capitalist drives that define America's legal practice. A Japanese lawyer whom Hall hired to handle litigation over an employment contract sums up his own reality. When asked about the sacrosanct "rights, justice, fairness, reciprocity and principle" purported to be the foundation upon which the Japanese based their legal culture, the Japanese lawyer concluded, "[T]he only legal scholars and practicing attorneys in Japan who use terms like that have been driven off to the left, into the arenas of the socialist and communist parties, labor unions and consumer groups."[7] Although Americans might argue that this situation is strikingly similar to our own, such rhetoric is routinely used to support the discriminating laws hindering the American legal practice in Japan.

Some may argue that Hall's criticisms of Japan's closed legal market are nothing more than an insensitive attack on the roots of cultural difference. Yet, Hall is well aware of these shortcomings. By focusing on the

6. *Id.* at 28-29.
7. *Id.* at 35.

discriminatory effects of Japan's closed legal market, however, Hall hopes that the world will open its eyes to the double standard which operates in Japan. Moreover, Hall hopes that these double standards will provide a framework from which to view the assumptions and realities of a country struggling to keep its doors closed to outsiders while the world clamors for open markets. Through the author's very strong evidence, *Cartels* demands that the reader comprehend the very real biases that the Japanese have against Americans, and understand the Japanese laws against lawyers and other professionals as a consequence of these biases.

Kelly L. Shubic