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REPORT ON THE REGIONAL MEETING AT THE VANDERBILT UNIVERSITY SCHOOL OF LAW, MARCH 10-11, 1972

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A Regional Meeting of the American Society of International Law at the Vanderbilt University School of Law on Friday and Saturday, March 10-11, 1972, dealt with the topic: "Foreign Investment and Currency Flow: The Effect of Changing Circumstances on International Business." Five principal speakers delivered papers at the conference, which closed with a panel discussion among the participants. Joint sponsors were The American Society of International Law, the Law Student Division of the American Bar Association, the International Department of the Commerce Union Bank of Nashville and the Vanderbilt International Law Society, with the cooperation of the Vanderbilt Law School. Mr. J. Thomas Smith, Jr. served as student chairman for the conference, with this writer as regional conference chairman.

The first session was opened by Dean Robert L. Knauss of Vanderbilt Law School, reporter for the Society's Panel on Capital Formation, who welcomed the guests and the principal speakers. The opening speaker, Mr. Michael Bradfield, Assistant General Counsel for International Affairs, United States Department of the Treasury, discussed new developments under the International Monetary Fund and the role of the United States in proposed changes in the Fund's structure. Mr. Bradfield also serves as reporter for the Society's Panel on International Monetary Policy. The next speaker, Mr. Henry Harfield, a partner in the law firm of Shearman and Sterling, New York City, considered private international legal problems raised by currency difficulties, with emphasis on the usefulness of uniform

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customs and practices for commercial documentary credits in international commercial affairs, to close the morning session.

At the afternoon session, the late Professor Wolfgang Friedmann, Columbia University Law School, discussed the use of joint ventures as a noncash means of foreign investment, with particular emphasis on the needs of developing countries. Finally, Mr. Jerre Haskew, Vice President and Manager of the International Department of Commerce Union Bank, Nashville, Tennessee, dealt with the problems and possibilities facing the small to medium-sized firm desiring to engage in East-West trading activity.

At the closing session of the conference on Saturday morning, Mr. Sheldon Cohen, partner in Cohen and Uretz, Washington, D.C., and former United States Commissioner of Internal Revenue, explained the problems and policies underlying United States income taxation of foreign currency fluctuations. Mr. Cohen illustrated his discussion with several specific hypothetical situations and outlined some suggestions for minimizing the tax consequences of currency fluctuation. The conference closed with a panel discussion among all the speakers, moderated by this writer.

This issue of the *Vanderbilt Journal of Transnational Law* includes two articles that are based on papers presented at the Regional Meeting by Henry Harfield and Sheldon Cohen. Both articles deal with current and timely questions in the international commercial field.

As an introduction to those papers it may be useful to comment briefly on several of the more important questions that were raised during the panel discussion of the papers which closed the conference. This may be particularly helpful in view of the fact that Professor Friedmann's untimely death prevented him from completing the revision of his remarks for publication. The panel discussion centered at the outset on the growing possibilities of the world trading community splitting into several large and relatively closed trading blocs, each going its own way. This is one potentially harmful response to the present world difficulties in international finance and the growing insularity of world view on the part of some members of the international trading community, particularly the Common Market and the United States.

Professor Friedmann, commenting on this question, made the following points. He suggested that one could not isolate commercial and economic developments from political ones in attempting to determine a trend. He said:

> I think it is one of the great tragedies of our time that when the world is shrinking in every respect—in terms of interdependence, in available resources, in the needs of ecology, and in communications—that there should be this division represented by the growth of more and more

> national states, an almost belated flowering of an ideology which was appropriate from the time of Napoleon and, perhaps, through the 19th Century, but which is inappropriate today.

He saw an increased emphasis on trading bloc formation, intensified by monetary and currency developments, together with an increase of confrontation politics in the trade area between the Common Market, Japan, the United States and Eastern Europe. In this context, he did not view the developing countries as a bloc in any real sense. They have no community of mission, yet they are, in a sense, a negative bloc in that they share common deprivations.

Mr. Harfield, commenting on this discussion, pointed out that regardless whether a group of trading blocs did develop, the necessity of getting goods from one place to another would remain and that the mechanical needs of old-fashioned merchandise trade deserved careful attention. A combination of the problems raised by the formation of blocs and the basic needs of the trading community is pointed up by attempts to form international securities markets. He pointed out that while it is important to conceptualize problems at the summit levels, attention should not be diverted from making whatever progress can be made on the day to day mechanical commercial level at which goods and services move.

Mr. Cohen stated that the taxing authorities of various countries, working at the day to day level, have focused their attention on the nuts and bolts of international tax relationships. Groups within the OECD, the regional banks and development banks—particularly the Interamerican Development Bank and the Asian Development Bank—were attempting to develop common bodies of rules relating to national taxing policies.

Professor Friedmann suggested that, on the operative level, legal differences between capitalist and socialist economies or between developing and developed countries were less absolute than they once were. The principal differences were political and social factors, rather than legal ones. In the operative world of commerce and investment these deeper sociological and political differences have less significance. One illustration is the growth of joint ventures between capitalist and sociolist states. Differences in legal assumptions and legal systems present problems at this level but are hardly insuperable obstacles.

This writer pointed out that the law is often engaged in a process of catching up to operations already being carried on at the commercial level for which no established legal regime had been created. One illustration is the formation of a European securities market by the efforts of bankers and investors while lawyers were pointing out the tremendous difficulties which would prevent such an occurrence.

The problems of international finance and particularly those of international currency flow are perhaps more sharply drawn for us today than at any time since before World War II. Political insularity may be having far too great an influence on the needed solutions for the practical problems of moving goods and services from one nation to another. It is this movement that international monetary controls and the organizations dealing with them must seek to facilitate. The kinds of practical problems with which lawyers must deal and some suggested solutions to them are illustrated in the two articles by Mr. Harfield and Mr. Cohen. Often the practical needs of the world trading community are given second place to considerations of high politics and economic nationalism, which seem at times to move international institutional efforts to restructure the world currency system. To the extent that the practical considerations are subordinated to these latter forces, any restructuring that may take place will provide inadequate solutions.