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ADDRESS

BY

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It is a great honor and privilege again to address the annual meeting of the American Bar Association. This Association is the largest and most influential group in the legal profession. What you think and do has a significant impact on the administration of justice and on public affairs.

We in the Department of Justice have a common objective with you in seeking constantly to improve our system of justice so that it may better serve the people of our nation. In pursuit of this objective there may be, on occasion, an action taken or a statement made by this Association, or one of its numerous committees, with which we are not in full accord. But I want you to know that I am well aware, particularly from reading some of my mail from you, that this occasional lack of togetherness is mutual.

Notwithstanding any infrequent minor differences, we in the Department know that the American Bar Association is earnestly and effectively striving to improve our profession and has made significant and important contributions to that end. The support you have given to the Department of Justice, especially in certain difficult and sensitive areas, has been of the highest order and I want you to know that I, and all of us in the Department, sincerely appreciate it. May I also commend the Association for its splendid record of achievement this year under the outstanding leadership of your President, Ross Malone.

What is the responsibility of our profession in today's world? As I see it there are two broad areas to be considered.

First, the administration of justice in the United States is on display in every part of the world. When we talk about competing with international communism in the realm of ideas, we are talking in large measure about the ideas which are the basis of our legal system.

Second, in the long view the main hope for peace is that nations will be wise enough not to rely on sheer strength in dealing with each other but will move toward establishing systems based on considerations of law and justice in the resolution of international disputes. Nations have readily paid lip-service to the soundness of this proposition but progress in this area has been tragically slow.

Dramatic events in the past few weeks and those indicated in weeks to come suggest that we are at a point in our international relations at which our profession will have new opportunities to serve our nation in these two areas.

As to the first, although Soviet leaders are still firmly committed to the policy of world domination there is hope today that they may be willing to permit a freer flow of ideas between our two countries than they have in the past. For this reason I believe the time has come when we should act and speak more vigorously and effectively for those ideals and ideas which have given this country its strength. People throughout the world, even to some extent in the areas controlled by

the Soviet Union, may have an opportunity to get a more accurate picture of America and the meaning of justice and freedom here as contrasted with the Soviet Union.

In this international competition we must not fall into the trap of emphasizing material considerations to the exclusion of all else. To some of the uncommitted nations of the world the Soviet system of state controls and planning may seem attractive. The Russians point to the fact that their economic system has been applied in a country which was initially very backward in technology, with a low standard of living compared to the West. Because a similar situation exists to some degree in several of the new nations of the world, they see a parallel that has some surface attraction.

But the situation is different when it comes to the appeal of ideas. Freedom under law is one of the most powerful ideas ever conceived by the mind of man. Its appeal will continue to grow in the uncommitted nations of the world. It has not been too long since many of these nations completed their successful struggle for independence. With national freedom there has arisen a great awareness of and interest in the concept of individual freedom. Thus the free world has an unusual opportunity in the years ahead to place in bold relief the weaknesses of the Soviet system compared with the strength of ours.

Why does the legal profession have a responsibility for this?

Because we are daily involved in the processes of justice and its administration is our business. We are officers of the courts of the United States and should be the leading spokesmen for presenting the case of freedom to the world. The merits of the case have to be articulated more effectively than has been done in the past. In the world in which we live it is not enough to be convinced that our system holds forth the greatest promise of individual liberty for people all over the world. We should present the true picture of a system of liberty under law to those who do not fully understand it or who may have been misled by Soviet propaganda. This must be done so that people will realize the importance of maintaining free governments and not succumb to the Soviet scheme for world domination.

These are a few of the truths which need to be dramatized:

1. We cannot rest our case on the size and productivity of our farms, factories and mines, nor even on the excellent wages and working conditions of the American people. These are important, but they are the by-product of freedom -- not its source. The source of strength in a democracy is the freedom of the individual to think, speak, and do the things he decides to do as long as he does not transgress the rights of others. We must point out, too, that these freedoms are not a matter of grace but are guaranteed and protected by our legal system.

2. The land and the tools of production in our nation are owned

by the people, not by the government as in Russia. It should be emphasized that our legal system protects this ownership against intrusion by any other individual or by the government itself. Under this system in which the free initiative of the individual plays the major role the United States has achieved the greatest distribution of wealth among its people and has come closest to the ideal of prosperity for all.

3. We are a government of law, not of men. Regardless of wealth, power or station, no one is above the law in the United States. For this reason our people need never fear that they may become the victims of ruthless political leaders. Thus the fact, now generally conceded by everyone, that under Stalin thousands of innocent victims were killed and tortured in the Soviet Union, seems almost beyond belief to a free people. Yet, because the law in the Soviet Union is what the Communist Party says it is, many of those who acted in concert with Stalin in perpetrating these atrocities apparently have not been prosecuted nor has retribution been made for the wrongs committed.

4. We must constantly emphasize that the will of the people is controlling in the United States. Under our legal system public officials are responsive to the will of the people. Our nation will never start a war because our people fervently want peace. Anyone who believes that our nation might act in a manner inconsistent with the will of the people in maintaining peace is ignorant about how our system works.

These are merely a few ideas which can be emphasized. There are a great many others, of course, with which we are all familiar and with which you and this Association will be concerned in the future. For the past several years this Association has done an excellent job in awakening the public to the significance of the rule of law. I commend you particularly for the vigor and imagination with which you are planning to cooperate in the future with the legal professions of many other nations to intensify interest and support for the rule of law in resolving international disputes.

President Eisenhower expressed the thought well in his letter to Mr. Malone when he said:

> "Peace cannot prevail until men and nations recognize that their conduct must be governed by respect for and observance of the law. The American Bar Association by seeking to promote this principle is helping to advance the cause of enduring peace in the world.

In this connection we should keep in mind that there is a good likelihood that the exchange programs between East and West will continue, and may even be expanded in the future. As you know, the exchange programs now in effect include representatives from industry, agriculture, medicine, student groups, the arts and sciences, athletics, and many other fields, but there has been little exchange between members of the legal profession.

It is my opinion that the legal profession should give its support to a carefully planned exchange program of lawyers and judges in order that the Soviets may study our constitutional system and the operation of our courts and that we be given an opportunity to study the system in effect in the Soviet Union. Because of fundamental differences the systems are in no sense similar but exchanges would provide a method for our profession to increase its knowledge of their system. At the same time there may be some value in having the Russians who come to our country judge for themselves the comparative merits of the two systems. In any event the exchanges would provide a means to dramatize more effectively to the rest of the world the contrast between a free system of government and a regimented system under Communist control.

Turning now to the second area, I believe we have a responsibility to work for the establishment of systems of law and justice to deal with international disputes.

In his State of the Union message this year, President Eisenhower said:

> "It is my purpose to intensify efforts during the coming two years in seeking ways to supplement the procedures of the United Nations and other bodies with similar objectives, to the end that the rule of law may replace the rule of force in the affairs of nations, ***"

The attainment of this high goal will not be achieved by any single stroke or by any single government. In fact, because the Soviet Union seems intent on world domination which is the antithesis of the

rule of law, the concept is apt to seem illusory and of no practical importance in today's world.

The point to bear in mind is that there is no other way to travel which provides hope for peace. Despite the discouragements which may arise the United States must take the lead in an effort to make progress along this road. Certainly, in the foreseeable future, if it is necessary to live in a world in which the settlement of international disputes will depend principally on factors of terror rather than on justice, then we should make it clear that such an uncivilized stalemate is not of our choosing.

Following the State of the Union message, and as part of the intensification of effort referred to by the President, both Secretary of State Dulles and Secretary of State Herter supported a proposal in the Senate of the United States to strengthen the International Court of Justice by repealing the so called Connally Amendment.

This Court, as you know, was created by the United Nations in 1945 to decide legal disputes between nations. It sits at The Hague and is composed of fifteen judges elected by the General Assembly and the Security Council of the United Nations.

When established, the Court appeared to hold great promise, but through no fault of its own it has played a minor role in the settlement of international legal disputes. In its thirteen years of existence it has decided only seventeen contentious cases.

The Court has suffered because some nations have refused to accept the Court's jurisdiction at all and as to many disputes it has no jurisdiction unless the nations agree that it has in the particular case. The blame -- some might prefer to use the word responsibility -- for this latter condition rests in some degree, at least, on the United States.

The United States accepted the jurisdiction of the International Court in 1946. The history of our declaration of acceptance is significant.

The resolution introduced in the Senate with bi-partisan support contained a reservation excluding from the Court's jurisdiction "Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States."

Public hearings were conducted on the resolution in this form, and it was unanimously endorsed by the Senate Committee on Foreign Relations. Its report stated:

> "The question of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since, if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction."

Nevertheless, on the floor of the Senate the Connally Amendment was adopted adding to our reservation the clause "as determined by the United States of America."

Thus, in the declaration of acceptance by the United States our reservation is that the Court shall not have jurisdiction of:

"Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

We were the first nation to provide that the jurisdiction of the Court should be determined not by the Court but by us. Following our example seven other nations made similar reservations.

Furthermore, the rule of reciprocity applies so that any nation may invoke the terms of the reservations of any nation with which it is involved in a dispute.

It is plain to see why the existence of this type of reservation has had an impact on the effectiveness of the Court. Imagine the impairment which would result to the court system in the United States if the defendant in a law suit had the right to determine for himself whether his case was within the court's jurisdiction.

The Court's statute explicitly limits its jurisdiction to international legal disputes. By the plain terms of the grant, it has no jurisdiction over domestic matters. So the "as determined by the United States of America" clause adds up, in the eyes of other nations at least, to a vote of no confidence that the Court will limit the cases it hears to those within its jurisdiction.

There are those who are concerned that the Court might exceed its jurisdiction. It is argued that our sovereignty might thus be impaired. As a practical matter the argument as to possible loss of sovereignty is not persuasive.

The International Court of Justice, in the final analysis, depends largely on world opinion for the enforcement of its decisions -- in fact for the participation of the nations. It has carefully stayed within the limits of its jurisdiction as provided by its basic statute. There is no reason to believe that the Court would invade areas properly reserved to domestic jurisdiction.

In July of this year, France, surely as sensitive as we are in matters of sovereignty, withdrew her reservation containing the equivalent of the Connally Amendment.

Thus, today, six NATO nations have not even deemed it necessary to make any express reservation with respect to domestic disputes. Three others -- Canada, Great Britain, and now France -- have done nothing more than make explicit the exclusion of domestic questions from the Court's jurisdiction. Hence, of the ten NATO nations which have accepted the Court's jurisdiction, the United States is the only one which denies to the Court the right to determine its own jurisdiction.

For more than fifty years our statesmen have advocated an impartial international court to decide disputes between nations. In 1907, Secretary of State Elihu Root, in his instructions to our delegates at the Second Peace Conference at The Hague, said we should develop a permanent tribunal composed of judges who will devote their entire time to the trial and decision of international causes by judicial methods.

In 1925, President Coolidge, in his inaugural address, advocated the "establishment of a tribunal for the administration of even-handed justice between nation and nation." As he put it, "The weight of our enormous influence must be cast upon the side of a reign not of force, but of law and trial, not by battle, but by reason."

Every President since World War I has advocated the submission of international legal disputes to a judicial tribunal.

A half century of debate has resulted in little progress. It must be obvious to everyone that action in this field is long overdue. That is why our profession should urge the Senate of the United States to act at the earliest possible time on this important matter of the jurisdiction of the International Court of Justice.

Finally, let me turn for a moment to the question of international agreements. The nations of the world today are in almost constant discussion and negotiation at the conference table. The purpose of the meetings is to arrive at agreements for the settlement of critical world problems.

From the standpoint of a lawyer it is discouraging to see how often in important international agreements no provision is made for settling disputes which may arise about the interpretation of the agreement.

And an agreement -- as every lawyer knows -- may solve a lot of problems or may cause a lot of problems. It depends on how well the agreement is drafted and on the frame of mind of the parties to it.

Lawyers know, too, that it is not possible to draft an agreement to eliminate all possible future differences as to its meaning which might arise.

For that reason, even after exercising all possible care in drafting agreements, we know there must be a court -- or at least some method agreed upon by the parties -- to resolve disputes which may arise as to the interpretation of agreements.

The same principle, of course, applies to nations. For when two or more nations make an agreement, notwithstanding every effort to make the agreement as clear as possible, they know that disputes about the interpretation of it may arise. If no provision is made for disposition of these disputes, each nation will naturally insist on interpreting the agreement for itself. Thus, rather than resolving differences, the agreement may give rise to new tensions and recriminations.

Last April the Vice President in a significant address urged that the United States take the initiative in future agreements to secure the inclusion of provisions to the effect "(1) that disputes which may arise as to the interpretation of the agreement should be submitted to the International Court of Justice at The Hague; and (2) that the nations signing the agreement should be bound by the decision of the Court in such cases."

Certainly this basic idea deserves our support. A well understood policy among nations to refer disputes with respect to the interpretation of treaties and other international agreements to the International Court of Justice, or some other impartial tribunal, would be a great step forward on the road to a rule of law among nations.

Knowing that an impartial tribunal would resolve any dispute as to meaning would strengthen the force of the agreement and cause less controversy about it.

The fact that we may not be successful in securing agreement to such a clause in all cases does not mean that we should fail to try. The fact that the Soviets, for example, might not agree to such a policy is no ground for not advocating it. The more often the Soviets oppose reasonable methods to solve world tensions the more the nations of the world will come to recognize the significance of the Soviet policy of world domination.

For the reasons I have indicated I hope that the American Bar Association will continue to give its vigorous support to the rule of law in the resolution of international disputes.

No one need point out that because of the present Soviet policy this seems less like a goal than a mirage. Nevertheless, we must believe in it and we must believe it is possible to attain. More than that we must make some progress along this road.

Our nation has no goal of world conquest, no intention of infringing the liberties of any people, and no desire other than to deal justly with the other nations of the earth. But there are persons in the world who are skeptical about this. Thus I believe that the members of our profession should make clear beyond any doubt that the United States has but this single goal -- that the family of nations may live together in peace under law.