CORRESPONDENCE

[Letters should normally be limited to 750 words and may be cut unless otherwise specified. They should not be accompanied by footnotes.

Longer statements will be considered for publication as notes.

The Board of Editors reserves the right to select letters to be printed and is not responsible for the contents of those selected for publication. R.R.B.]

To The Editor-in-Chief:

Re "The Arab Oil Weapon": A Skeptic's View

A skeptical, but objective, political "realist" would scarcely find his doubts about cooperative action lessened by the interpretations of the Arab oil boycott of 1973–74 presented by Jordan J. Paust and Albert P. Blaustein in a recent issue of the AJIL.[1] The authors assert that this "Arab oil weapon" [2] constitutes a violation of international law.

Paust and Blaustein make their case through an essential process of presumptive rationalization. They concede that the coercion of which they hold the Arabs guilty does not constitute war in any accepted sense; indeed they agree "a great deal of coercion is 'normal'." To differentiate between "permissible" and "impermissible" coercion, then, requires a contextual interpretation which considers concurrent Arab policies of a military and political nature. Producing the incriminating summation demands, finally, a moral appeal to "goal-values" [3]: in short, a highly speculative inquiry into Arab motivations across an entire foreign policy spectrum.

The international law that Paust and Blaustein feel has been violated is laid down, ostensibly, in the UN Charter and other documents supplementary to the Charter. The authors interpret Article 2(4) of the Charter to mean that the imposition of the Arab oil boycott constitutes a "use of force" against the "territorial integrity" and "political independence" of a state or, at least, is "in any other manner inconsistent with the Purposes of the United Nations."

This is painting with a rather broad brush. Surely some forms of "coercion" may be encompassed within the meaning of "force." But can any but a strained interpretation regard the Arab oil boycott as a *forceful* violation of the "territorial integrity" or political independence" of states? Obviously it is incumbent on Paust and Blaustein to move on to the "in any other manner inconsistent" phrase. This, in turn, necessitates invoking numerous corollary instruments [4] to establish, by a multiplicity of adduced

[1] *See* 68 AJIL 410 (1974).

[2] The authors employ numerous terms to describe the Arab action, and finally maintain at 412 that no existing legal concept is adequate in light of the "coercive process" under consideration.

[3] *See supra* note 1, at 413.

[4] *See supra* note 1, at 417–18.

evidence, that "a broad range of coercive conduct is impermissible." [5] The chief authority here is the General Assembly's Declaration on Friendly Relations, which condemns "any . . . form of coercion against the political independence or territorial integrity of any state" and urges every state to avoid "all . . . forms of interference . . . against the personality of the state or against its political, economic, and cultural elements . . ." [6] What the declaration adds in definitive terms to Article 2(4) is uncertain. That it and its fellow declarations, individually or collectively, constitute a legal indictment of the Arab boycott *per se*, is not apparent.

Whatever else the Arabs may have done does not make the oil boycott, as a discrete act of foreign policy, a violation of international law. The speciousness of such an assertion is well illustrated by the authors' insistence that the "oil weapon" need not be identified with any existing legal concept. To the contrary, whether the action constituted a boycott or an embargo may be of decisive importance, at least insofar as the law is presently interpreted in practice.

A concurrent resort to arms by the Arabs does not make the oil boycott a violation of international law. Whether or not the Arabs were guilty of armed aggression in the Yom Kippur conflict, the boycott stands on its own as a tool of foreign policy. The "oil weapon" was, undeniably, an attempt at economic coercion. To suggest, as the authors do,[7] that it was equivalent to "an armed attack" is to ignore the reality of international power relationships.

Paust and Blaustein are at great pains at every point to establish a contextual environment in which what cannot be established directly and in specificity may be contrived by a lawyerly logic spun entirely too thin.

Set in isolation, there is much virtue in what the authors attempt. Particularly is this so in the light of a broadening awareness of the urgent need for coordinated earth resource control and usage, a point the study emphasizes.[8] Further I have little doubt that the day will come when an action such as the oil boycott will be held, by the judgment of the world community, to constitute a violation of law in the strictest sense of the word. In this way Paust and Blaustein may be prophets or, perhaps more appropriately, visionaries.

Here is precisely the point, however; that time has not yet come. There is no rule laid down by any body, legislative or judicial, national or international, which gives sanction to the authors' interpretations. Prevailing legal doctrine in issues bearing directly on national sovereignty such as this is still embodied in cases like *Sabbatino* (essentially unaltered by subsequent *Banco Nacional* decisions), and *Sei Fujii v. State of California.*[9] Moreover the interpretations which the authors urge are so far removed from the current practice of nation-states that any attempt by the General Assembly to implement them would further stress the thread of tolerance which links national policymakers to the international organization.

[5] *See supra* note 1, at 419.

[6] *See* UN GA Res. 2625, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 25 UN GAOR, SUPP. 18, at 122–24, UN Doc. A/8028 (1970).

[7] *See supra,* note 1, at 417.

[8] *See supra* note 1, at 421.

[9] Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964); Sei Fujii v. The State of California, 217 P.R. 2d 481 (1950).

What is wanted here is a little restraint, a little patience, a greater measure of pragmatic discretion. Paust and Blaustein speak of the Charter goals of the establishment and maintenance of territorial integrity, political independence, self-determination, and protection of the "personality of the state . . . [in] its political, economic, and cultural elements. . ." [10] The irony is that the preponderant view of those with responsibility in the most important nation-states of the world is that it is precisely these considerations which provide the ultimate legal, not to mention political, defense of the Arab action.

The lines of communication between advocates of a broadened and strengthened international law and constituted political authority are fragile enough as is. If Paust and Blaustein are content to play the futurist's role, well and good. If theirs is a call to action, however, they ought not to expect to be taken too seriously. At best "The Arab Oil Weapon" is an example of the type of creative speculation that must precede substantive rearrangements in the patterns of political intercourse. At the worst it may constitute a sophisticated effort at establishing certain highly subjective political outcomes.

STEPHEN N. SMITH
Stephen F. Austin State University

TO THE EDITOR-IN-CHIEF

Some observations on the letter of Professor Murphy concerning the Comments made by Professor Gross on International Terrorism and International Criminal Jurisdiction *

In a letter published in the April 1974 issue of the *Journal*, Professor John Murphy called in question the advisability of adopting, at the present time, the approach suggested by Professor Gross for coping with international terrorism. As I understand it, the essentials of that approach are the following: (a) the establishment of a comprehensive system for the prevention and punishment of terrorist activities; and (b) setting up an international tribunal with a view to giving a degree of coherence and consistency to the several international instruments composing the system. It seems to me that the suggestions made by Professor Gross have been prompted by his firm conviction that the present piecemeal consideration of the matter in various quarters, as well as the lack of an international machinery for the enforcement of legal rules in a uniform, certain, and impartial manner, considerably reduces the effects of the efforts which have been made by nations to fight international terrorism. Professor Gross appears to have given a timely warning that the course of action that has apparently been adopted by representatives of states in international organizations would actually amount to fooling ourselves. I would take the liberty and go even further by saying with some exaggeration that the present trend may, in the end, prove to be a premium for international terrorism. Such an overstatement could, to some extent, be supported by several considerations.

[10] *See supra* note 1, at 418.

* *Correspondence on this matter is now closed.* R.R.B.