

EDITORIAL COMMENTS

CRITICAL DEFENSE ZONES AND INTERNATIONAL LAW: THE REAGAN CODICIL

Conflicts may erupt from mistakes and misperceptions. Because of the increasing speed, total destructiveness, and irrevocability of the contemporary instruments of violence, minimum world order requires that states communicate to their adversaries, clearly and in advance, exactly which parts of the planet they deem indispensable to their own security and, hence, which expansive political or military changes initiated by or enuring to the benefit of an adversary will be unacceptable and likely to lead to war. These processes of communication are complex. Not all that is demanded is deemed reasonable. Not all that is demanded wins acceptance. The areas referred to in such communications may be reciprocally accepted as critical defense zones or CDZ's. In the past, failure to indicate such zones unequivocally may have contributed to the eruption of conflict.

Since World War II, explicit as well as tacit communication of critical defense zones has been fairly routine. The Soviet Union has insisted on Eastern Europe as a defense zone. Without explicitly conceding the propriety of the claim, the Western states have, in effect, complied with the demand. Even at moments of opportunity, such as the Hungarian uprising of 1956 and the Czech "spring" of 1968, the West exploited the events for propaganda value, but refrained from adventures or overt support. This part of the so-called Brezhnev doctrine¹ has been accepted in practice. Conversely, the Monroe Doctrine² and corollaries such as the Selden Resolution³ may be viewed as the clearest communication to adversaries that expansions of power and changes in alliance pattern in the designated zones will be opposed by force.⁴ Smaller states have also communicated critical zone messages to their adversaries with deterrent effect.

CDZ's are not tantamount to proprietorship. Unlike spheres of influence in some earlier periods, they do not import an option *erga omnes* to annex territory in the zone at some future time. Yet unquestionably, they attenuate the political discretion of elites in the states within the zone and limit the self-determination

¹ Kovalev, *Sovereignty and the Internationalist Obligations of Socialist Countries*, Pravda, Sept. 26, 1968, trans. in 20 CURRENT DIG. SOVIET PRESS [hereinafter cited as CDSP], No. 39, Sept. 26, 1968, at 10-12, and in N.Y. Times, Sept. 17, 1968. The document is now popularly attributed to Brezhnev. See also B. MEISSNER, THE BREZHNEV DOCTRINE (East Europe Monographs, No. 2, 1970).

² Monroe Doctrine, Annual Message to Congress of Dec. 2, 1823 (Seventh Annual Message) from the President, in 2 J. D. RICHARDSON, A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, sec. 787.

³ Selden Resolution: Sense of the House of Representatives Relative to International Communism in the Western Hemisphere, H.R. Res. 560, 89th Cong., 1st Sess., 111 CONG. REC. 24,347 (1965).

⁴ For a regional equivalent, see Organization of American States, Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, documents reprinted in 56 AJIL 601, 604-08 (1962).

options of the rank and file there. In this respect, they are offensive to such basic policies of contemporary international law as self-determination and political independence of states, even though they resonate positively with urgent demands for the maintenance of global minimum order.

Indignant protests of CDZ's can achieve little more than a self-stimulated exhilaration of righteousness. A more realistic approach can temper their rigor by acknowledging their potential contribution to minimum order, while insisting that a state averring a CDZ claim no more than necessary for its own minimum security. From the standpoint of the state declaring a CDZ, *complete* control of both internal public order and external alignments would promise the greatest efficiency. Such a regime also poses the gravest violation of other international constitutive norms. The critical point in a viable system is that CDZ's should operate with as much fidelity as possible to other basic international norms. Unlawful behavior by a major power in a critical zone would involve substantial interventions in the internal public order of states there. In particular, attempts to suppress genuinely indigenous efforts at self-government, change of government, or amelioration of public order systems with greater conformity to international norms would appear to be doubtful extensions of the CDZ doctrine.

Appraised in terms of these standards, current demands by the Soviet Union to change aspects of public order *within* Poland must be deemed unlawful.⁵

The so-called Carter doctrine of January 1980 would appear to be a lawful exercise of the critical zone practice. Following Soviet aggression in Afghanistan, President Carter declared: "An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force."⁶ The lawfulness of the Carter doctrine derives from its promised defense of governments from *external* aggression as well as its CDZ communication. It is not a disguised technique of intervention in the internal affairs of states within the zone.

On October 1, 1981, President Reagan issued statements that the White House promptly characterized as "The Reagan Codicil to the Carter Doctrine." In response to a question, the President said, ". . . Saudi Arabia we will not permit to be an Iran." In clarification, the President added that "in Iran I think the United States has to take some responsibility for what happened."⁷ Immediately afterwards, a White House aide explained to the *New York Times* that "the President was now pledging to support the Saudi monarchy against

⁵ See 33 CDSP, No. 41, Nov. 11, 1981, at 8; 33 CDSP, No. 40, Nov. 4, 1981, at 6; *id.* at 8; 33 CDSP, No. 39, Oct. 28, 1981, at 13; 33 CDSP, No. 38, Oct. 21, 1981, at 8; 33 CDSP, No. 37, Oct. 14, 1981, at 1; 33 CDSP, No. 34, Sept. 23, 1981, at 8; *id.* at 22; 33 CDSP, No. 31, Sept. 2, 1981, at 19; 33 CDSP, No. 30, Aug. 26, 1981, at 14; 33 CDSP, No. 25, July 22, 1981, at 7; 33 CDSP, No. 22, July 1, 1981, at 1; 33 CDSP, No. 21, June 24, 1981, at 15; *id.* at 16; 33 CDSP, No. 20, June 17, 1981, at 10; 33 CDSP, No. 17, May 27, 1981, at 1; 33 CDSP, No. 12, April 22, 1981, at 19; 33 CDSP, No. 11, April 15, 1981, at 19; 33 CDSP, No. 10, April 8, 1981, at 19; 33 CDSP, No. 5, March 4, 1981, at 5; 33 CDSP, No. 1, Feb. 4, 1981, at 11.

⁶ 16 WEEKLY COMP. OF PRES. DOC. 197 (Jan. 23, 1980).

⁷ Transcript of President's News Conference on Foreign and Domestic Matters, *N.Y. Times*, Oct. 2, 1981, at A26.

internal as well as external threats.”⁸ That sense was confirmed some 2 weeks later in remarks made by the President to a luncheon meeting of media editors.⁹

The Reagan codicil, thus, is qualitatively different from the Carter doctrine and other lawful applications of CDZ; it purports to extend the conception of CDZ from one of concern with external alignments and alliances of states in regions critical to national defense to a prerogative of active intervention and suppression of popularly demanded internal change in favor of a particular local elite. Legally, it is a most dubious expansion of CDZ. Politically, it is in the melancholy tradition of King Canute.

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A TURNABOUT IN EXTRATERRITORIALITY

The standard pattern in international maneuvers over extraterritoriality has been for the United States to step off by taking action that seems to project its legislative or investigative powers beyond its borders. One or more European states respond with protests, now fairly standardized, that the United States has gone too far; sometimes they go further and pass legislation designed to thwart the original move. Various further sidesteps and glides follow until the relationship comes to rest at some sort of halfway point.¹ Two recent episodes find the roles rather neatly reversed. In each the Commission of the European Communities led off with proposals, voices in the United States spoke up to say that the action was extraterritorial and improper, and the consequent maneuvers are now in progress. Partly because the sources for these two affairs are scattered, it seems useful to present a summary version at this time, though no resolution has been achieved and no lessons can yet be drawn about their effect on the field of jurisdiction in international law.

The first episode was touched off by the European Commission's proposal of rules that, if adopted, would impose compulsory disclosure of data on American-based concerns with subsidiaries in Europe. The centerpiece is the "Vredeling Proposal," named after the Commissioner from the Netherlands

⁸ Smith, *Reagan and the Saudis*, *id.* at 1, 4-5.

⁹ Remarks by Reagan to Editors, *id.*, Oct. 18, 1981, at 38, col. 1.

¹ For collections of materials on these U.S. challenges and foreign responses on extraterritoriality, see L. EBB, *INTERNATIONAL BUSINESS: REGULATION AND PROTECTION* 583-612 (1964); H. STEINER & D. VAGTS, *TRANSNATIONAL LEGAL PROBLEMS* 1014-47 (2d ed. 1976). This is not to assert that the United States has never before been in the position of opposing extraterritorial measures by foreign states. See Steiner, *International Boycotts and Domestic Order: American Involvement in the Arab-Israeli Conflict*, 54 *TEX. L. REV.* 1355, 1395-1402 (1976) (discussion of extraterritoriality aspect of Arab boycott of Israel and its role in the U.S. response); J. B. MOORE, *REPORT ON EXTRATERRITORIAL CRIME AND THE CUTTING CASE* (U.S. Dep't of State 1887) (protest over Mexican libel conviction of El Paso editor). For an attempt to restate international law rules on extraterritoriality, see *RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED)*, Tent. Draft No. 2, §§402-04, 415-18 (1981); see also Maier, *Extraterritorial Jurisdiction at a Crossroads: An Intersection Between Public and Private International Law*, 76 *AJIL* 280 (1982).