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HOW NATIONS BEHAVE.* 2d ed. By *Louis Henkin*. New York: Published for the Council on Foreign Relations by Columbia University Press. 1979. Pp. xv, 400. \$25.

In the first edition of *How Nations Behave* (1968), Professor Louis Henkin sought to provide a realistic analysis of the importance of international law. No mere restatement of "existing usage,"¹ it probed how and why nations at different times have obeyed, violated, and sought to modify international legal norms. In the second edition of *How Nations Behave*, Professor Henkin incorporates the teachings of world politics during the momentous decade from 1968 to 1978. After analyzing the modern changes in the character and observance of international law, he reaffirms his thesis that the foundations of international law have survived and that they continue to influence national conduct.

Both editions of *How Nations Behave* respond to a classic criticism of international law — that it fails to influence the behavior of nations because it lacks effective central legislative or enforcement mechanism, and thus it cannot be called "law" at all. Some of these arguments, Professor Henkin points out, derive from superficial comparison of international law to domestic law. As H.L.A. Hart has observed, "[t]he rules for states resemble that simple form of social structure, consisting only of primary rules of obligation, which, when we find it among societies of individuals, we are accustomed to contrast with a developed legal system."² Both Hart and Henkin warn of the dangers of such comparisons. For example, it might be tempting to say that observance of international law is "voluntary," while compliance with domestic law is "mandatory." Yet Henkin shows that the decision to observe domestic law can also be seen as voluntary. Thus, we may choose to breach a contract and risk liability for damages; we may even commit criminal acts if the possible benefits outweigh the expected cost (punishment) (p. 97).

One might try to refine the generalization; one might assert that observance of international law is especially voluntary because the absence of any effective enforcement mechanism eliminates all costs of breach. But this argument assumes that the threat of punishment is a prerequisite to law observance. Henkin rejects that fallacy. Most people eschew crime not so much because they fear punishment as because they are deterred by the moral force of the law — the opprobrium attached to violation. And our experience with pro-

* This book review was prepared by an Editor of the *Michigan Law Review* — Ed.

1. H. HART, THE CONCEPT OF LAW 209 (1961).
2. *Id.*

hibition gives complementary evidence that respect for law is determined only in small part by the existence of an enforcement mechanism. Professor Henkin believes that nations observe law not primarily because of the threat of sanctions, but because of other forces: a common interest in orderly friendly relations; a desire for reciprocal treatment; a dislike of criticism; and a fear of the victim's response (pp. 50-53). Domestic forces — the extent to which a nation's institutions accept international law, or the importance of international lawyers in a state department — may also influence a nation's tendency to observe the law (pp. 60-68). Nations violate law because policy-making is irrational or uninformed (p. 68), or because rational analysis indicates that the benefits of a particular violation outweigh the expected cost (pp. 69-74). But this calculus of cost and benefit encompasses costs to the integrity of the law itself, and to the stability, order, and climate of reciprocity it provides. Thus we gauge the true cost inaccurately if we focus simply on the formal sanctions the law may provide:

What matters is not whether the international system has legislative, judicial, or executive branches, corresponding to those we have become accustomed to seek in domestic society; what matters is whether international law is reflected in the policies of nations and in relations between nations. The question is not whether there is an effective legislature; it is whether there is law that responds and corresponds to the changing needs of a changing society. The question is not whether there is an effective judiciary, but whether disputes are resolved in an orderly fashion in accordance with international law. Most important, the question is not whether law is enforceable or even effectively enforced; rather, whether law is observed, whether it governs or influences behavior, whether international behavior reflects stability and order. [P. 26.]

Two new sections in the second edition study how the new prominence of emerging Third World nations has affected international "stability and order." Henkin notes that, as part of their quest to establish a "new international economic order" (p. 199), the emerging nations have worked to change many traditionally accepted international norms. As part of their effort to "narrow the gulf between rich and poor states" (p. 199), they have developed their own agenda for new law. They seek to establish the principle of economic self-determination, which requires national control over the exploitation of natural resources. As a corollary, they reject traditional norms requiring compensation for nationalized property, norms they believe confer unjust advantages on capital-exporting states (p. 198). They would also like to formulate international conventions barring racial discrimination and economic exploitation (pp. 197-98). As part of their drive for an international economic order based on welfare principles rather than on market forces, they also propose to limit the vast powers of multinational corporations

by creating international regulatory agencies, international antitrust laws, and international chartering mechanisms (pp. 203-04).

Henkin contrasts this agenda with what he sees as the agenda of the developed nations. Because they are "reasonably content" with the status quo (p. 194), they reject the norms proposed by the developing nations. They would prefer to preserve the traditional economic norms and to build a new consensus on the control of nuclear proliferation, international terrorism, population growth, and pollution.

To illustrate the clash between these agendas, Professor Henkin includes a new chapter discussing the attempts to remake the Law of the Sea. He traces the progress of the United Nations Law of the Sea Conferences and concludes that however the new law is finally formulated, it will "reflect less the narrow wishes of superpowers than the growing influences and solidarity of the Third World" (p. 226). He also believes that because the United Nations General Assembly has declared the seabed beyond national jurisdiction to be the "common heritage of mankind" (p. 215), Third World nations will continue trying to develop "new institutions which they might control and thereby extend their authority and preclude that of developed states in the large oceans . . ." (pp. 226-27).

In yet another new chapter, Professor Henkin discusses the role of the new agendas in the developing international law of human rights. He charts the evolution of these norms from early diplomatic immunity to the modern guarantees of the United Nations Charter, the Universal Declaration, and the Conventions on Civil and Political Rights, Economic and Social Rights, Genocide, and Elimination of All Forms of Racial Discrimination (pp. 229-35). Henkin notes trends toward acknowledgement of a right to economic self-determination (p. 232), and toward linking other political and economic agreements with human rights demands, as in the Helsinki Accords (p. 237).

Finally, Professor Henkin expands his section on "The Law in Operation" beyond its original discussion of the Suez Crisis, the Eichmann case, and the Cuban Quarantine, to include an analysis of the Vietnam War. In this chapter he lays out three conceptual models of the Vietnam conflict: (1) a civil war in South Vietnam, with aid to the opposing sides from North Vietnam and the United States; (2) a civil war in Vietnam, between North and South, with U.S. intervention on the side of the South; or (3) an invasion of South Vietnam by North Vietnam with U.S. assistance to South Vietnam (pp. 306-08). The United Nations Charter, in Article 2(4), prohibits the use of force against the territorial integrity or political independence of any state; as Professor Henkin explains, each model of the Vietnam War yields a different set of violations. In domestic systems, a

superior authority determines facts and applies norms, but in the international arena we cannot determine whether a violation has occurred unless there is a consensus among nations on the interpretation of events.

Nations are likely to continue justifying their actions by "interpretation"; the Iranian government's characterization of the American Embassy hostages as "spies," and the Soviet Union's claim that it was "invited" into Afghanistan are convenient examples. Still, some current events give hope for an international consensus on the interpretation of such conduct: although outside intervention in an internal war is one of the hardest cases for rules of international law (p. 311), the United Nations General Assembly was able to reach a consensus when it voted overwhelmingly to condemn the Soviet invasion of Afghanistan.

The second edition of *How Nations Behave* has something for everyone interested in international law and foreign policy. For the novice, it summarizes and responds to classic arguments against the existence and importance of international law, illustrating with historical and contemporary examples the ways in which law influences the foreign policy of nations. For the scholar, it is another valuable addition to the Henkin collection. Its new sections, like the foundation they join, display a breadth of experience and thoughtfulness; its nearly fifty pages of notes provide a rich resource for further study.