

1965

The Institute for International and
Foreign Trade Law
Program and Objectives

The Institute for International and Foreign Trade Law is an independent entity within the Georgetown University community. Closely connected with the Law Center, the Institute occupies a somewhat unique position within the family of legal-economic institutions. Its program can be roughly divided into five categories:

- (1) research concerning American and European law and institutions affecting national and international trade;
- (2) writing, as a result of such research;
- (3) education in law, politics, and economics as they relate to international trade;
- (4) presentation of prepared positions on problems in American and American-European trade policy to leading lawyers, economists and statesmen; and
- (5) organization of international conferences in the field of international trade.

The Institute's activity in these five fields will be outlined following a note on the structure of the Institute.

The Structure of the Institute

The Institute is patterned after the European university institutes with regard to organization and financial arrangements. A long standing problem in both American and European universities has been to give

institutes sufficient independence to develop their own scholarly and political means to carry out their aims without sacrificing their connection with the university and its ideals. The Institute's charter, granted by Georgetown University in 1965, expresses a workable solution to this problem.

The Institute's regular working staff in Washington consists of its founder and director, Dr. Heinrich Kronstein; two professors from the Law Center; six young lawyers doing graduate study (two American, three German and one Swiss); three law students who work part-time; a part-time economist, an administrative assistant and a secretary.

The policies and budget of the Institute are under the control of an Executive Board composed of both University and non-University personnel. The Institute supplies its own funds.

The Georgetown Institute benefits immeasurably from its very close relationship with an established institute in Frankfurt, Germany, the Institut fuer auslaendisches und internationales Wirtschaftsrecht. Through this relationship, it has been possible to combine the European idea of a scholarly institute (which until recently was relatively unknown to United States legal education) with American experiences in teaching law by use of the case method and sociological analysis of the facts. The integration of these two institutes, supplemented by excellent relations with the universities in Berne, Bochum, Geneva, Muenster and Tuebingen, has opened the channels for a successful exchange program. The cooperation of the institutes has also made possible programs (such as the joint research and the international conferences) described below. The Institute intends to maintain and expand these relationships.

Research

The Institute's research is generally undertaken in cooperation with the Frankfurt Institute and with American and European scholars from other institutions. The way in which legal institutions in different countries are utilized to regulate international trade, has been the dominant theme in this research. The Institute has long contended that freer international trade is a desirable goal, that undesirable as well as tolerable impediments to international trade exist, and that a total view of these impediments can be attained only by considering the effects of both public and private regulation. From this point of departure, one branch of the Institute's research extended to problems of national and international public law, while another branch considered restrictive agreements among businessmen and the utilization of purposefully structured business entities to regulate international trade.

The Institute has undertaken and completed research on American, European, and American-European private trade regulation with special emphasis on the existing interrelation of corporations; and on the role of public regulation in this field. In conjunction with this work, significant research has also been undertaken in the fields of methodology and economic history. These diverse excursions followed necessarily from the premise that the analysis of legal and economic organizations cannot be separated from one another.

It is well recognized today that legal institutions can best be understood on a "functional" basis, that is, as they are actually used. As a leader in the application of the functional approach to comparative law, the Institute has not been satisfied with simply studying such phenomena as the rules of arbitration tribunals, or the rules on enforcement of contracts, or the rules regarding the establishment and organization of corporations. An attempt has been made to find how these institutions are being used, or can be used by private interests to organize international trade. It is felt that the young scholar who examines the extent to which particular rules of law can be used for a particular purpose in international trade will gain the clearest understanding of the legal institutions in each country and how they function in relation to those of other countries. And understanding

the utilization of particular legal institutions in different countries also leads to a clearer comprehension of the purposes of national and international public regulation of international trade.

In this work, the Institute has been very fortunate to have the vast resources of Washington at its disposal. The Institute makes the fullest use of the hundreds of libraries and information centers in the District of Columbia, and maintains contact with the many specialized experts who deal with every facet of international trade.

Writing

Research is most valuable when its fruits can be made available to the public. Some of the more important publications growing out of the Institute's work are mentioned here; others may be found in the Ten Year Report and in the 1966-67 annual report. One side of the Institute's writing program has produced basic works for teaching and informing practitioners. (Kronstein & Miller, Regulation of Trade, New York 1953; Kronstein, Miller & Schwartz, Modern American Antitrust Law, New York 1958; Kronstein, Miller & Dommer, Major American Antitrust Law, New York 1965.)

Another important strain in the Institute's writing program has been the interpretation of American experience in economic regulation for the benefit of European policy makers. The Institute reported on the experience of the United States in the field of trade regulation to the Department of Commerce of the Federal Republic of Germany and expert groups preparing policy on international and national trade within the Common Market. The Institute also presented a study to the German legislature on the American experience with corporate and security laws which require businesses to disclose certain information. (Kronstein & Claussen, Publicity and Distribution of Profits in the New Corporation Law, Frankfurt 1960.) A study of United States experience with stock having no par value was also published in Germany (Coing & Kronstein, The No Par Value Share as a Legal Problem, Frankfurt 1959.)

Another branch of the writing program represents the work of Institute fellows inspired by conferences which the Institute co-sponsored in 1960 and 1962. The discussions of the 1960 conference concerning restraints on competition in international trade produced a two volume work (Cartel and Monopoly in Modern Law, Karlsruhe 1961), and the 1962 conference on the extraterritorial effects of antitrust laws produced two books (Ivo E. Schwartz, German International Cartel Law, Berlin 1962; Eckard Rehbindler, Extraterritorial Effects of the German Antitrust Law, Baden Baden 1965).

Following these conferences, the Institute concentrated on documenting the means which are being used by private businessmen to regulate international trade. These means, it was found, not only include direct agreements but also involve the subjecting of public rules and institutions to private interests. The result of this work has been presented in Dr. Kronstein's book, The Law of International Cartels (Berlin, 1967). First published in Germany, it will soon be published in the United States by the Cornell University Press.

A particularly important finding of these studies revealed the role of conflict of laws doctrines in the private regulation of trade; these doctrines, in combination with the current arbitration rules, can be used to free businesses from the impact of disagreeable national laws. It was also found that the increasing use of subsidiaries and other corporate affiliations is making public regulation more and more difficult.

Partially on the basis of the experience the Institute gained in preparing Dr. Kronstein's latest book, the Organization for Economic Cooperation and Development (OECD) requested in 1964 that the Frankfurt Institute prepare a study on the adverse effects of private restrictive business practices in international trade, in cooperation with the Washington Institute. Pursuant to the contract that resulted, fifteen reports on specific industries and a final report of the Institute's general findings regarding existing restrictive business practices were compiled and presented. This report was favorably adopted by the OECD's Committee of Experts on Restrictive Business Practices. The final draft will be submitted in Paris on February 1, 1968.

The Institute hopes to be able to extend and expand this work by doing a comprehensive study of the energy supply industries, and a study of the problems of subsidiaries of American corporations in Europe. A symposium on the new European corporation statutes for the American Journal of Comparative Law is being prepared.

Education

A valuable asset to the Institute's research and writing program has been the presence of international research teams on both sides of the Atlantic. Much insight has been gained from the merger of the ideology of young European scholars who plan to devote their lives to research and teaching with the practical approach of young Americans who bring into the partnership the anxiety for an open confrontation with the legal and economic facts. The exchange of students and professors, however, has a purpose collateral to the research program: education. American law schools and the bar are now recognizing that the valuable service of European scholars and practitioners who came to the United States as a result of the Hitler expulsion is coming to an end because of their age. The Institute believes that these scholars have made a particularly effective contribution; European lawyers learned American ideas and carried them to Europe, and Americans have been enriched by learning about European law. The strong economic and cultural links between Europe and the United States today are partially a result of this exchange. The Institute seeks to replace the personal service these men rendered by exchanging young European and American lawyers and introducing them to new systems of law.

The Institute's exchange program has been benefitted by the dual professorship held by the Institute's founder and director, Dr. Heinrich Kronstein. Serving on the law faculties of both Georgetown and the Johann Wolfgang Goethe-Universitaet in Frankfurt, Professor Kronstein has been particularly effective in recruiting the most able students both from the United States and from Europe. Since 1956, 19 European professors, supported

by Institute funds, worked and lectured in the Institute and, through the Institute, in the Georgetown University Law Center. During the same period, 39 graduate students from the United States and from Europe have been exchanged. In addition, a number of German fellows supported by funds from other sources have used the facilities of the Washington Institute to carry on their own research. While they have not generally been directly engaged in Institute projects, they have significantly enriched the intellectual life of the Institute, taking part in many fruitful exchanges of ideas.

The Institute takes pride in its educational program for visiting professors, both here and in Europe. Experience has indicated that it is not in the best interest of European scholars if, upon arrival, he is immediately included in a teaching program, especially of European subjects. It appears best to leave the guest sufficiently unencumbered on his first visit to allow him to develop an understanding of American law without the burden of continually being referred to European law for the purpose of class preparation. After the visiting professor has gained this foundation, it is then mutually rewarding to invite him back a second or third time for teaching purposes.

Normally, before a student from Europe or America travels abroad, he spends a year of preparation in the Washington or Frankfurt Institute. On traveling to the counterpart institute, he finds that it offers him advantages seldom provided by an exchange program. Too often students are brought to a foreign country and are left "on their own" to such an extent that most of their time is consumed in making trivial arrangements and developing the secure emotional basis necessary for concentrated work. The physical facilities offered by the Institute as well as the personal advice and guidance provided by new friends enable the visiting fellows to derive the optimal benefits from their time in the United States.

For a number of years, the Institute has undertaken regular meetings of the American and European members conducted by Professor Kronstein to compare American and

European ideas of law, government and economic policy. These discussions examine the law in sufficient detail to make the American and European participants aware of the actual points of contrast, and the historical, philosophical and economic reasons for the differences. The Institute feels that these seminars, combined with an ongoing research program in which the visitor participates as part of an existing team, and classroom study, guarantees a firm grounding in the foreign law.

Dissemination of Ideas

The Institute's location in Washington, besides permitting access to an invaluable reservoir of information, offers opportunities to arrange fruitful exchanges of ideas on a regular basis. The Institute itself became an important meeting place for leading government officials, members of the bar, and economists, whether in government, the Congress, or in private endeavors. In addition, the Institute has undertaken to present informed speakers at a series of lectures and luncheon meetings. Such meetings serve a dual purpose of allowing the Institute to present its findings and ideas while, at the same time, giving the Institute new leads and helpful criticism.

Problems discussed during the past year included the plans for the solution of international monetary problems (Dr. Otto R. Donner, Executive Director of the World Bank), the drafts of the rules prepared by the World Bank for the protection of international investment (Aaron Broches, Esquire, General Counsel of the World Bank), the development of European cartel law (Dr. Eberhard Guenther, President of the German Federal Cartel Office), and a critical view on the new GATT policy from the Swiss point of view (Dr. Hans Ulrich Bachmann, Director of the Swiss Institute for International Trade). Additional lectures are listed in the 1966-67 annual report. This past fall, the impact of the German domestic policy in American foreign policy was discussed by Dr. Kurt H. Biedenkopf, President of the Ruhr-Universitaet; and Gerald Pollack, the Deputy Assistant Secretary for Economic Affairs in the Department of Commerce, spoke on American investments abroad and the balance of payments deficit.

The Institute has become aware of the fact that, by bringing together people who might not otherwise meet, these meetings have an impact beyond their immediate scope.

Conferences

International conferences in which the Institute has participated serve much the same purposes as do the lectures and luncheon meetings although on a broader scale. The Institute has been instrumental in presenting four conferences on the regulation of international trade. In 1960, the Institute organized a conference concerning restraints on competition in international trade in close cooperation with the Frankfurt Institute. Held in Frankfurt, the 1960 conference prepared the way for the solution of many problems in the practice of government agencies in different countries, especially within the Common Market.

In spring 1962, the Institute sponsored a conference in Washington on the extraterritorial effects of trade regulation. This conference focused on conflicts arising from different and often contradictory laws and practices regarding trade regulation in Europe and in the United States.

In fall 1962, the Conference on the Proposed European Trademark Convention was sponsored by the Institute, and in 1963 a Briefing Conference on Industrial Property Protection, Antitrust Laws and the European Community was held in cooperation with the Federal Bar Association, Villanova University and Georgetown University and the Bureau of National Affairs, Inc. In the fall of the same year, another Briefing Conference on Tariffs and other Barriers to European-American Trade was co-sponsored by the Institute.

These conferences were carefully prepared by a long exchange of information and notes. In the 1962 conference, the participants were supplied with actual facts around which controversies arose, and officials from various governments were asked to present their positions at the conference where they acted as judges or mediators. Bringing together experts in international law and practitioners

actually engaged in these trade problems led to a clarification of the content of the international law positions free from many of the emotional statements which had resulted from actual conflicts.

In these conferences, it became increasingly clear that the problem of conflicts between the rules of international "law" and the extraterritorial effects of national law had been discussed too much at the expense of what was perhaps a more important problem: the increasing effects of international cooperation among private enterprises (sometimes amounting to "cartels") on the application and enforcement of public national and international laws and policies.

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All of these operations of the Institute should be understood as different expressions of a single program. Each aspect described has depended on and enriched the others. The intimate association of older and younger students seeking to determine the public interest has offered a rare opportunity to all concerned. The continued participation in the Institute's program by alumni of the Institute from both sides of the Atlantic attests to the fact that the Institute has been successful in its search for connecting links and common ground among nations.

Future Plans

During the last ten years, the Institute passed a period of organization finding its place in the academic world. In carrying out the activities described, the Institute has become a permanent organization. The next ten years should be years of extension and utilization of its unique position.

The existing relationship with Georgetown University and its Law Center will continue. "The Institute could also be an instrument of coordination in its field among the different universities in and around Washington. And

by utilizing the Executive Board of the Institute, it would be possible to include institutions outside Washington within the Institute's program. Just as the Washington Institute developed into an important bridge between American and European universities, it could also become a bridge between American institutions serving to provide them with access to the boundless resources of Washington.

In the educational area of the Institute's work, the exchange program should be expanded substantially. The Institute has approached the American Association of Law Schools and the American Association of Comparative Law with the thought of integrating some of their exchange programs into the Institute's work. It should also be possible to provide a number of positions in Washington in the research program for students of law and economics who would like to be introduced to active research work in the international field. With the exception of the law reviews and the few assistantships with professors, the law schools are not adequately equipped to provide students with supervised research and writing jobs. The Institute is ideally suited to expand opportunities for students in this respect.

In Washington, the Institute should expand its program of discussions and speeches in the University and at luncheon meetings. The present development of law and politics in the field of international trade is so rapid and far-reaching as to make it desirable to hold these luncheons once a month during the academic year. The Institute's relations with people in the field in Washington and with visitors to Washington are such that competent people would be available for these meetings.

Building on the OECD study, the Institute plans to direct its research program into two areas: (1) the energy industries, and (2) the impact of American subsidiaries in Europe.

(1) A study of the organization and regulation (public and private) of the sources of energy should receive high priority. The growing maturity of the Common Market in Europe makes it desirable that a common, coordinated program for energy supply be developed. Such a program

could be expected to have somewhat contradictory aims: While the market should be opened as soon as possible for all new sources of energy and for new methods of utilizing modern technology, traditional sources of energy such as coal must be phased out with as little social revolution as possible.

This study will be undertaken in close cooperation with the Institute's European counterparts, particularly the Institute in Frankfurt. The United States, as a substantial exporter of coal to the Common Market and as a result of the significant involvement of its corporations as suppliers of oil for Europe, has a direct interest in such a program. On the other hand, European governments and businesses are keenly interested in American experiences in these industries and seek to find bases for negotiations leading to assistance and mutual understanding.

(2) The study of restrictive business practices in international trade undertaken for the OECD should be deepened and extended. In preparation of the sector reports and the final reports over the years a detailed and unique collection of material has been amassed. It would be unfortunate if this material were not further evaluated. The proposed energy study offers one good opportunity for this. Another project, the analysis of the legal, social, economic and political impact of American subsidiaries in Europe, can also be based on the existing resources of the Institute. The urgency of an uninterested appraisal of this controversial and highly important factor in the Atlantic Community becomes increasingly evident.

Both research programs would require new arrangements with the Frankfurt Institute. The Institute plans to increase its cooperation with Bochum University, the president of which is a member of the Institute's Board (Dr. Kurt H. Biedenkopf). Scholars from similar institutes and universities in other countries are in continuous exchange of ideas with the Institute and would participate in a joint effort if called upon.

There are other important matters which deserve more research. For some years, Professor Otto R. Donner, Executive Director of the World Bank, has been a member

of the Executive Board of the Institute. Together with Dr. Hans Aufricht, formerly counsel of the International Monetary Fund, the Institute has projected interesting studies of the economic and legal development of the international monetary system. This developing field is ripe for an examination of the present status of the existing national and international rules and regulations. It is becoming increasingly evident that monetary policies and market regulation are closely related, and that these two factors which contribute to trade policy have been dealt with much too independently in practice. If the Institute developed a close working relationship with lawyers and economists in the monetary field, the study of the regulation of international trade could be helpfully illuminated by an examination from the monetary side. Furthermore, our study of the regulation of new fields, such as energy, could take into account problems of balance of payments and of monetary rules. Accordingly, the Institute is considering the establishment of a special division for the legal and economic analysis of the international monetary system.

Budget

For the past several years, the Institute has operated on a very tight budget. The charter of the Institute requires that there be one principal director and two executive directors. Under previous financial conditions, it has not been possible to establish research positions to be held for a number of years by the same people as is frequently the practice with European institutes. Directors have all served on a part-time basis while employed in law firms or teaching at the Law Center. In the future it would be desirable for the Institute to have a more permanent staff. Staff members should receive a salary which by itself, or when combined with their teaching income, would give them a secure economic basis somewhat competitive with other research positions.

The Institute is presently housed just opposite the Law Center. The Institute could rent more rooms since there is space available in the building. This increased space would be necessary to do a satisfactory job on an enlarged program.

To carry out these plans to enlarge the staff and facilities and the other plans outlined above, it will be necessary to increase the budget. In addition to the ongoing contributions presently received from corporations and individuals, it is necessary for the Institute to gain the support of foundations, especially to adequately fund the research projects described.