CORRESPONDENCE

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To THE EDITOR-IN-CHIEF

In Defense of Lawyers
April 21, 1978

William D. Rogers' generally excellent article on investment disputes in the Americas[1] begins by quoting Sir Harold Nicolson on the undesirability of entrusting diplomacy to "missionaries, fanatics and lawyers." The phrase is apparently meant to equate the three categories. I leave the missionaries and fanatics to their own defenders, but rise to challenge the blanket denigration of lawyers and the credentials of Harold Nicolson as an arbiter of competence in the conduct of diplomatic endeavor.

As to lawyers as diplomats (or, in British usage, diplomatists):

The Nicolson canard has been echoed by others, among them George Kennan, who has condemned what he calls the "rigid legal norms" which he considers characteristic of American diplomacy. The thesis is apparently that lawyers are inclined to believe overmuch in the application in the international world of those standards of conduct which govern domestic affairs. This inclination (plus allegedly excessive deference to popular views) has led, Walter Lippmann has charged, to the kind of mistakes said to have been committed by Wilson at Versailles. Nicolson thus condemns what he has called the "American method" in diplomacy, contrasting its amateurism and failure with the glories achieved by the "French method," which would leave diplomacy to the "experts," *i.e.*, the professional foreign service elite.

The equating of lawyers with "missionaries and fanatics" (as well as with amateurism) is based upon a highly stylized and uninformed concept of lawyers. Nicolson (as well as such critics as Lippmann and Kennan) seem to have taken their ideas about lawyers straight out of *Bleak House*. There are of course good and bad lawyers, pettifoggers and broadminded and competent individuals. A good many of the lawyers who have been responsible for American diplomacy have clearly been as competent as the most professional of career foreign service officers. Mr. Rogers himself is, of course, an example. The well-trained lawyer resembles little the caricature suggested by Nicolson. He (or she as well) is first and foremost an analyst, able to separate the important from the trivial, and able to use language as an instrument of conciliation. As has been demonstrated in the recent Panama Canal negotiations, these are not skills irrelevant to successful diplomacy. And many have had much more expertise, both in the substance of the issues and in the tactics of negotiation, than most foreign service professionals. Nicolson, who has little idea of what a lawyer really does, sets up a straw man, contrasts it with an idealized calm, cool, competent diplomatist, and draws the obvious—but wrong—conclusion.

[1] Rogers, *Of Missionaries, Fanatics, and Lawyers: Some Thoughts on Investment Disputes in the Americas*, 72 AJIL 1 (1978).

One may thus be pardoned for inquiring into Nicolson's own qualifications, as measured by his attainments. An elegant style and ability to use words he certainly possessed, plus membership in an elite segment of British society which has not always covered itself with glory. According to his son, he accepted an assignment to Berlin in 1927 only gloomily. By 1929 he had opted out of the British Foreign Service, and said, as his train left Berlin: "I am presented with a cactus. It symbolizes the end of my diplomatic career." Questions existed as to his "soundness" and about his "too clever" despatches among his colleagues and superiors. He was apparently above many of the occupations which might have pleased a less elegant person; his son reveals that, though he left diplomacy for a staff position on the *Evening Standard,* he thought journalism "sordid." Nonetheless, he was neither above nor possessed of sufficient sense to refrain from association with some of the worst elements of British society: in 1931 he became closely associated with Sir Oswald Mosely's Fascist New Party. Nor did his distaste for the "sordid" pursuit of journalism deter him from editing its newspaper, *Action.* He stood for Parliament as a New Party candidate, was rejected by the electorate, and gained a seat in Parliament in 1935 as a member of the National Labour party, which he lost in 1945. He rose no higher than Parliamentary Secretary to the Ministry of Interior and was generally regarded as a lightweight with a flair for phraseology. He did perform one useful task—speaking against the Munich settlement in 1938. Commendable though this action was, especially against his earlier background, it must raise some questions, as indeed does his entire career, about that steadiness of purpose which he always considered to be the hallmark of effective diplomacy.

One need not be starry-eyed about lawyers and their competence either in the courts or in the international fora to believe that their being coupled with fanatics (whatever one may say about missionaries, who have their purposes) is a distortion. And his own record raises doubt that Nicolson had a very good sense of to whom diplomacy should be entrusted.[2]

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Delimitation of the Aegean Continental Shelf

TO THE EDITOR-IN-CHIEF:

At least insofar as the Aegean example is concerned, the article by Mr. Donald E. Karl, "Islands and the Delimitation of the Continental Shelf" (71 AJIL 642 (1977)), adopts an inconsistent approach and advances untenable positions:

1. The primary function of the proposed model is to provide a framework for the resolution of continental shelf delimitation controversies affecting

[2] Sources for the factual statements made in these paragraphs are to be found in: H. NICOLSON, THE EVOLUTION OF DIPLOMATIC METHOD (1953); W. LIPPMANN, THE PUBLIC PHILOSOPHY (1956); S. J. Rubin, *American Diplomacy: The Case for "Amateurism,"* 45 YALE REV. 321 (1956); N. NICOLSON, PORTRAIT OF A MARRIAGE (1973).

islands according to "equitable principles." However this model is simply built on the basis of an island's relative location and size in relation to the delimiting states and the more cogent historic criteria, which to quote Mr. Karl "must be preserved under any scheme of delimitation which purports to be based on equitable principles," are ignored. In the case of the Aegean, this results in the rejection of four millennia of Greek patrimony without comment.

2. The Aegean continental shelf is divided "in a ratio of approximately 2:1 in favor of Greece" on the theory that this is "comparable to the ratio of Greek and Turkish coastlines bordering the Aegean and as such, would seem to be representative of a delimitation according to such equitable principles." In order to reach this tortured result, the Aegean is arbitrarily divided into three sectors and every island in the Aegean, with the exception of Crete, is denied a continental shelf even though it is recognized that "[i]t is undisputed that islands have continental shelves." Moreover, to reduce the Greek coastline bordering on the Aegean further, the Greek insular coastline, excepting that of Crete, is excluded. Admittedly, Mr. Karl concedes that Lesbos, Rhodes, and Karpathos might be included but it is argued that this would not make that much of a difference. That is not the case, however, when the discussion is extended to cover all of the approximately 3,000 Greek islands in the Aegean.

3. The justification for these subjective computations is "substantiality" but factors such as the substantial international economic activity generated by tourism and shipping are overlooked even though they both have become legendary and associated with the Greek islands. What is more, the determination of "substantiality" is made with respect to each island individually and not to the group as a whole—a concept that Mr. Karl also recognizes—thereby avoiding the limitation of the Turkish claims to areas east of the Greek islands.

4. Finally, Mr. Karl proposes to position Turkey in the middle of the Cyclades and the Dodecanese. It would make more sense to consider whether the Aegean is a Greek archipelagic body of water from which Turkey is excluded altogether.

It is submitted that such proposals do not serve objective legal analysis and international justice. It remains that the Aegean has been woven with the fate of the Greek people since the dawn of history on a continuous and exclusive basis barring periodic infringements. Indeed, there are not many examples of such well-established customary rights as those that the Greeks have in this archipelago. Unless might is right, definition of these sovereign rights is not required at this point in time, under any formula, let alone the one proposed in this article. It goes without saying that the establishment of a binational resource zone in the Aegean, which may be equitable in other cases, would abrogate the exclusive Greek rights. Moreover, a true balancing of the equities would necessitate the consideration of other factors such as Cyprus, drug controls on Turkey, and the protection of the remaining Greek minority and Orthodox Patriarchate in Constantinople with which the Greco-Turkish controversy is inextricably linked, and, of course, waiver by Turkey and laches with respect to its newly asserted claims to the Aegean.

SERGE B. HADJI-MIHALOGLOU
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Mr. Karl replies:

Mr. Hadji-Mihaloglou misinterprets the substance and purpose of my article and particularly Section III thereof. First, the article explicitly recognizes the importance of historic rights in the proposed model governing the delimitation of the continental shelf. However, the examples of the model's application contained in Section III involve only the primary and secondary phases of the model, and it is expressly stated that historic rights—the subjective "third" phase of the model—will not be discussed in connection with those examples (see note 93). Further, the application of the model to the Aegean controversy results in one "possible" and "representative" delimitation which was certainly not meant to be, nor was it characterized in any way as, final or definitive. Rather, the application of the model produces the basic features of a delimitation to which the effects of historic rights and perhaps other factors must yet be added, although I must admit that I did not, and do not, envision the consideration of some of the factors mentioned in Mr. Hadji-Mihaloglou's letter.

Second, Mr. Hadji-Mihaloglou attacks my use of the "proportionality of coastline" criterion and the related "substantiality" test for insular coastlines. However, he advances no concrete rationale as to why maritime resource zones should *not* be delimited according to criteria based on proportionality or why my formulation of such criteria is inappropriate or incorrect. His dissatisfaction with the model appears to stem solely from the model's "failure" to produce the result which Mr. Hadji-Mihaloglou would desire in a particular situation and, as such, is certainly not characteristic of the "objective legal analysis" that he so fervently espouses.