N.Y. Banks Legalize Financial Entebbe Raids Against Third World

SPECIAL REPORT

The "Entebbe Doctrine" of limited sovereignty which NATO has sought to impose on Third World nations has already been made into law in the USA as it applies to those nations' financial assets.

In his last days as U.S. President, Gerald Ford, subject to the undue influence of Cyrus Vance, then President of the Rockefeller Foundation and of the New York Bar Association, signed into law a bill sharply limiting the sovereignty of foreign nations insofar as their debts to David Rockefeller are concerned. The Foreign Sovereign Immunities Act of 1976 (PL 94-583) became effective the day before James Earl Carter's inauguration, and provides the Carter Administration with a mechanism to seize assets held in the United States by a foreign country or a foreign company which fails to service its debts to Chase Manhattan, Citibank, Morgan and the rest.

In the advent of debt moratoria, the Rockefeller-puppet U.S. Administration has been secretly empowered since Jan. 19, 1977 to commit international piracy.

Under PL 94-583, the political act represented by a declaration of debt moratorium by a Third World nation, or for that matter, Italy, Great Britain, etc., is subject to a U.S. court's ruling (the Southern District of New York!) if it has "direct effect on the United States," construed to mean the Rockefeller et al. commercial banks' Euromarket bubble and associated manipulations. Any nation which refuses to subject its own population to pillage and (in Cyrus Vance's preferred usage) "triage," any nation which would nationalize its raw materials or lawfully divert related income from IMF debt overhang to the cause of national development, faces U.S. government

the United States to preserve — not the economy of the United States — but the dwindling appearance of integrity of the Lower Manhattan monetarist institutions.

"It's a very useful piece of legislation against Third World countries and the Europeans as well," says a gleeful senior partner in a major Wall Street law firm. "Now we can go to those countries and say, 'OK, so you don't want to waive your sovereign immunity? Fine.' Then you get them with a left hook to the ribs. You say, 'OK, let's just sign this loan in New York and agree that payment is to be in New York.' Then you've got them by the..."

Foreign nations' bank accounts, real estate, and other holdings have traditionally been considered to be an extension of the sovereignty of a foreign state wherever they are located — similar to embassy grounds — and no more subject to seizure than the nation's territory itself. Traditionally, the procedure of appropriating the assets of a corporate or other private entity to satisfy a claim has been held in applicable in cases where a sovereign foreign power is involved, unless the sovereign agreed to waive such immunity.

Appropriately, therefore, it was Cyrus Vance, whose State Department secretaryship has been largely

Public Law 94-583

The following is taken from the Foreign Sovereign Immunities Act, Public Law 94-583, passed Oct. 21, 1976, by the 94th Congress.

28 USC 1605 — *"§ 1605. General exceptions to the jurisdictional immunity of a foreign state*

"(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case —

"(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

"(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

"(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;..."

devoted to destroying political sovereignty in the developing sector, who just prior to assuming his current post took the main responsibility among Rockefeller circles for effecting the "financial Entebbe doctrine" represented by PL 94-583. His New York Bar Association, operating through Wall Street law firms and the Rockefeller controlled State and Justice Departments of the Ford Administration, hoodwinked congressional opposition with hearings featuring their own testimony (and that of Aramco, etc.) to push the bill through both houses in near total secrecy.

Admittedly, Cyrus Vance can boast germane legal "precedents" in this century among *attempted* and similar Wall Street policy impositions on the world community.

Since 1917 and the subsequent development of state trading companies in many nations following the Soviet example, the positive impulse to identify "national interest" with the rational development of a national economy as a whole provoked countervailing demands from Anglo-American monetarist quarters for a degradation of international law to permit state-held companies to be treated under the same laws applicable to private enterprise. The result was the controversial "restrictive" theory of sovereign immunity, where the immunity of the sovereign was recognized with regard to "public acts" (*jure imperii*) but not with regards to private or "commercial acts" (*jure gestionis*). (The lawyers then fought out in court whether the defendent state had been involved in public or commercial acts, generating countless learned law review articles and hefty legal fees.) Under traditional criteria the purchase of grain for an army was "public," tractors for agriculture was "commercial"...unless perhaps intended for an army-run farm...

Up until the height of the Cold War in 1952, the United States recognized the rights of foreign sovereigns and adhered to the "absolute theory." On May 19, 1952, the Acting Legal Advisor of John Foster Dulles's State Department, Jack Tate, drafted the "Tate Letter" to the Justice Department stating that "...it will hereafter be the (State) Department's policy to follow the restrictive theory of sovereign immunity in the consideration of requests of foreign governments for a grant of sovereign immunity" (from the State Department, directed to the court where the sovereign state was being sued).

Nevertheless, until the passage of the current Foreign Sovereign Immunities Act (FSIA), several critical sovereign rights were respected: (1) money debts incurred by foreign sovereigns were immune from suit; (2) foreign governments still had the right to appeal to the Executive branch for political recognition of their sovereignty in the face of a hostile judge; (3) "long arm" foreign jurisdiction and "implied" waivers of immunity were given extremely limited credibility.

But the Foreign Sovereign Immunities Act of 1976, passed by Congress on the last day of the 1976 Session, and signed by President Ford on October 21, 1976, radically changes these three policies and raises a number of very disturbing likely scenarios.

The political context of initial versions of the law reflected the growing fears by the Wall Street bankers of the financial crisis which confronted their dollar empire under its burgeoning debt overhang; a first draft of the FSIA was introduced in 1973, just prior to the Rockefellers' oil embargo hoax — which temporarily strengthened the position of the Rockefeller banks but ultimately enhanced the debt crisis.

According to a former legal adviser to Secretary of State Dean Acheson in the early 1950s, the present law represents the lobbying activities of certain "private interests tied to raw materials exports and international loans." Those testifying for the legislation included the legal adviser to Aramco and representatives of law firms allied to the largest international banks. Above all their concern was to ensure protection of the $800 billion external debt.

As late as 1964, in the *Victory Transport* case (336 F 2d 354, cert. den 381 US 934, 1965), the U.S. Federal Court for the Second Circuit had held that loans to governments were not a commercial activity, and thus, in case of default or moratorium, the debtor government would remain immune from suit.

Significantly, even the initial draft of the FSIA included a provision (the original Sec. 1606) which preserved such well-established precedent regarding foreign government debt, stating that, "...a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States in any case relating to debt obligations incurred for general governmental purposes..."

Anticipating that these lawful precedents would be upheld, New York Bar Association President Cyrus Vance appointed Robert B. von Mehren of the Rockefeller law firm, Debevoise, Plimpton to chair the Bar Association's prestigious Committee on International Law, which launched an attack against this section and, according to sources within the State Department, successfully mobilized the banks' Justice, State Department, and congressional agents to have it stricken.

The old Sec. 1606 was replaced with what had formerly been Sec. 1605 (c) providing that "...the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances...." The State Department has admitted that this section will be used to facilitate subpoenas of foreign government officials and documents under penalty of default judgments, and seizures and sales of the foreign state's property.

Von Mehren claimed in a recent interview that "It was significant that Congress dropped the initial 1606," which he relates to a statement conveniently included in the House Committee Report on the legislation: "Activities such as a foreign government's sale of services or property, leases of property...(and) borrowing of money should be included within the definition of (commercial activity)." This statement, he indicated, will be relied on by the Wall Street vultures to contend that their bill has a "legislative history" which supports the piratical rejection of all legal precedent. "This act," gloated Von Mehren, "definitely supersedes *Victory Transport*."

The Wall Street attorney quoted earlier who specializes in "left hooks to the ribs" concurred with von Mehren's estimates. "Before the Act came through there were grave doubts about getting jurisdiction over a borrower. Now there is good legislative history that borrowing by a foreign government is a commercial activity and the act gives us the jurisdictional basis we need to get satisfaction. Previously, if a foreign government refused to waive sovereign immunity, most Wall Street lawyers doubted whether a U.S. court would exercise jurisdiction."

The law notably abolishes the right of foreign states to seek executive intervention on their behalf against hostile judges, thereby clearing the way for staged "break-away judge" scenarios. The Chase Manhattan Bank, for example, tries to seize the assets of Mexico because of failure to meet debt payments on time; the judge rules for Chase; Secretary of State Cyrus Vance "honestly" reports himself "legally barred" from intervening on Mexico's behalf...not reporting who authored the bill.

Another provision in the Act, Sec. 1606(a)(1), provides that a foreign state can "implicitly" waive its immunity to suit, and that once this is done, this non-existent waiver can not be withdrawn.

According to sources at various Wall Street law firms this provision covers two particular circumstances. The first is where a country issues securities on the U.S. money markets and complies with the 1933 Securities Act in the issuance. In the papers required to be filed for the issuance of those securities, there is no requirement that the issuer waive immunity...and indeed few countries would intentionally do so. Bank attorneys are prepared to argue in court that the mere issuance of securities under such circumstances constitutes an implicit waiver of the sovereign immunity of the government's assets in the U.S. and that, furthermore, contrary to well established British precedent, that waiver can never be revoked.

Secondly, there is unanimity of opinion among lower Manhattan lawyers that this implicit waiver also applies to a case where a provision for arbitration exists — whether written into contract loan agreement or otherwise. Under this theory, the mere willingness to settle disputes by arbitration brings witting or unwitting "implicit waiver" of the prerequisites of sovereignty. Beyond these examples, of course, "implicitly" will come to mean whatever Wall Street's attorneys "establish" in Wall Street's courts.

Two final provisions of the "Financial Entebbe Act" deserve mention: Subsection (2) of Sec. 1606(a) is the so-called "contact" or "long-arm" provision. The pugilistic Wall Street attorney was referring to this provision as key to the trick of getting countries to sign external loan agreements in New York. Even if the agreement does not state that it is to be governed by U.S. law, the fact that certain "commercial activity" was performed in the U.S. would bring the foreign state within U.S. jurisdiction under the FSIA. Attorneys at the State Department and Wall Street suggest that clause three of the law might even bring a foreign government within the Act if it defaulted on a Eurodollar loan and it could "reasonably forsee that 'that act causes a direct effect in the United States.' "

Finally, subsection (3) regarding "property taken in violation of international law" poses problems reminiscent of the Cuban nationalization cases and Kennecott's seizure of Allende's copper shipments to Europe. According to Wall Street sources and confirmed by government attorneys, this provision could be applied to cases like one in which copper nationalized in, say, Zambia, is shipped to Europe and turned into copper fixtures, and then sent to the U.S. — where the fixtures are subject to seizure; or to provocative situations involving likely attempts of Exxon to seize shipments of oil nationalized by Saudi Arabia. Here, too, the question of whether the property had in fact been taken "in violation of international law" will be decided by the courts on Manhattan Island.

(It should be noted that under Sec. 1603(d), "The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." This changes the traditional distinction between "public" and "commercial" acts, so that non-immune commercial acts would include the cited purchase of grain for use by the army of a foreign country, since the nature of the act is commercial, i.e. a grain purchase, although the purpose, use by the sovereign army, is public.)

What A Top International Law Firm Is Telling Its Clients

Reliable sources close to Citibank's law firm of Shearman and Sterling have revealed plans by that firm's attorneys to use the Foreign Sovereign Immunities Act to deceive client governments and set up rival banks for insecure loans.

It is not coincidental that this same firm, specialists in international litigation, is attempting to sue the U.S. Labor Party on behalf of the Bank of Nova Scotia on trumped-up charges relating to an account with the bank. They are demanding unprecedented full disclosure of the party's financial records — a financial Entebbe against the USLP.

It is believed that attorney Reade Ryan, the principal coordinator of Shearman and Sterling's international litigation, is the coordinator of both operations. The following suspected manipulations are presently under investigation:

1. Attempts through the Venezuela counsel of a client bank of Shearman and Sterling to have the Venezuelan Superintendency of Foreign Investment overlook a policy requiring foreign currency loans into Venezuela with a maturity of greater than 180 days be governed by Venezuelan law. Shearman and Sterling's client was preparing to make a Eurodollar loan to a private Venezuelan through a Caribbean "shell" branch bank. Avoiding this troublesome policy would permit the client bank to set a precedent for future Citibank loans to the Venezuelan government exempt from the cited policy, thereby bringing Venezuela under FSIA provisions. (A $1 billion loan to Venezuela in October 1976 became ensnarled in this policy, causing Citibank considerable embarrassment.)

2. The Constitution of the Republic of Venezuela in Article 127 prohibits the Government from waiving its sovereign immunity and agreeing to be subject to the jurisdiction of foreign law. Reliable sources indicate that Shearman and Sterling attorneys and their colleagues are actively seeking to get Venezuela and other nations

including Malaysia, to amend their constitutions in relevant respects without informing them of FSIA's existence.

3. In recent negotiations arranging a large loan to Iran, Shearman and Sterling attorneys discussed the question of the "fuzzy"-ness of the language in the loan agreement which indicates that the loan is of a "commercial nature" (thereby subject to the FSIA). Shearman and Sterling attorneys, according to reliable sources, know that the loan is to be arranged through the Chase Manhattan Bank and may intend not to inform Chase that there is a possibility that Chase might not be able to seize Iranian assets in case of default...thereby crippling Chase to the comparative advantage of Citibank. The problem that confronts Shearman and Sterling, however, is that favorable immunity for Iran in this case might set a precedent unfavorable for Citibank in future loans to other nations, particularly Venezuela (upsetting manipulations 1. and 2.).

4. Sources also indicate that Shearman and Sterling has been involved in internal debate on the problem of whether the FSIA is sufficiently reliable to omit *explicit waivers* of immunity in loan agreements with other nations while at the same time not exposing Citibank Directors to liability to stockholders if the bank is unable to seize property under the FSIA as collateral. Two related problems apparently have been whether the debtor nation need be informed of the effects of the FSIA, particularly the "implicit" waiver provisions — i.e. "ignorance of the law is no excuse..." — and secondly whether demanding explicit waiver would, under the present political climate, result in a termination of the loan agreement because of the increasing nationalism of most Third World nations, and growing European resentment of Wall Street's attempt to impose an IMF austerity dictatorship.

5. Among these other intrigues, Shearman and Sterling attorneys have been in discussions with the Government of Zaire to encourage that nation to set up an "account" either in England or with the Bank for International Settlements for payment of the large debts owed to Citibank and other Wall Street banks. According to reliable sources, Shearman and Sterling is studying possible forms for the Zairean account that would not be subject to sovereign immunity, without informing the government that the account will be vulnerable. The sources indicate that Shearman and Sterling was in close contact with the British firm of Linklaters and Paines regarding British law on the matter, and the firm of Niederer, Kraft, and Frey, regarding immunity of foreign accounts at the Bank of International Settlements.

Europeans Take Control To Stabilize Their Currencies

FOREIGN EXCHANGE

In the wake of the Scandinavian devaluations within the European currency snake last weekend, foreign exchange markets looked notably stable and quiet this week, and are expected to remain so for some time. This reflects the firm control of the markets exercised by Western European central banks and finance ministries, who are keeping the situation stabilized until the fundamental questions of their relationship to the dollar and the Carter Administration, on the one hand, and gold and the transfer ruble on the other, have been resolved.

Defense of the Snake

On Friday, April 1, following a secret meeting of the monetary authorities of the "snake" countries, the Swedish krona was devalued 6 percent, while Denmark and Norway devalued 3 percent. Finland followed April 4 with a 6 percent devaluation. Swedish exports have weakened, labor negotiations had broken down, and the government was under attack for its heavy borrowing abroad; a top-level government official said privately that the devaluation was worked out as an alternative to formal acceptance of International Monetary Fund conditions demanded by some Swedish groups.

The devaluation was part of a general Swedish deflationary package including a 15 percent tax on non-housing construction and a 3 percent increase in the value-added tax. On April 3, at a speech in Oslo, West German Chancellor Helmut Schmidt expressed disapproval of devaluation and austerity as tools of economic policy; however, the dominant process is close collaboration — not without disputes — among the snake countries and other Western European nations on short-term stabilization measures.

The success of this approach was shown in the absence of a post-devaluation rush into the "strong" currencies, the deutschemark and the Swiss franc, which would have been unwelcome to West Germany and Switzerland for reasons of export pricing and inflation control. Such a rush had been expected when in early February Chase Manhattan planned a scenario for Scandinavian devaluations that would push up the mark through hot-money pressures and thus jeopardize the viable "width" of intra-snake parities. The weak would get weaker, the strong would be forced to meet the Carter Administration's demand that they revalue upward, and further chaos could then be fomented.

Instead, the dollar itself weakened somewhat across the board and, as the *Journal of Commerce* underscored at week's end, funds have been flowing into Britain and Italy. The paper's Zurich correspondent attributes Swiss moves in this direction to a desire to get "highest yields." It is true that the deliberate decreases in Euromark and EuroSwiss interest rates are designed to accentuate this motivation. However, there is also significant politically motivated petrodollar switching away from Eurodollar deposits into the United Kingdom and Italy.