Hazard's writings on public international law were largely concerned with developments in the Soviet Union and other Communist countries. From 1941 on, he was a prolific contributor to this *Journal* and the *Proceedings* of the ASIL. (This may be the place to point out that the *Index* of the Society's publications for 1961–1970 lists his numerous contributions under "Hayton," a gross error never subsequently corrected.) Hazard's articles, book reviews and Editorial Comments in the *Journal* tell the story of Soviet legal ideology applied to international relations: the mingling of Marxist theory and the practical politics of imperial nationalism. As one might expect, he was sensitive to the twists and turns of Soviet doctrine and especially to the fate of individual international lawyers who could be suddenly denounced and vanish and, in some cases, be unexpectedly brought back into favor. His many notes and reviews depict the human drama in Communist international law, along with its theories and power struggles.[9] We can also find much in Hazard's *AJIL* writings and in the *Proceedings* about the practical side of Soviet international legal relations such as its state trading contracts and commercial arbitration with Western enterprises. Hazard was often consulted by parties in disputes involving Soviet trade; he occasionally took part as counsel or arbitrator, and he often wrote about the issues in this *Journal* and elsewhere.

When the dramatic breakup of the Soviet Union began its course, it had a "dialectical" impact on Hazard. On the one hand, it meant the practical obsolescence of his major work on socialist law; on the other hand, the opening to foreign capital and trade led American and European lawyers to call on Hazard for his knowledge of Russia and of the other former Soviet states. His Columbia courses in Russian law (given jointly with Vratislav Pechota) were popular. He became the co-editor in chief of a new publication, the *Parker School Journal of East European Law,* and he was in demand for talks on Russia.

John Hazard sometimes said that his only hobby was attending meetings of professional and learned bodies. He thoroughly enjoyed the meetings and the people, feelings that were clearly reciprocated. He must hold the world's record for presidencies of international legal associations. He was an Honorary President of the ASIL, President of the International Association of Legal Sciences, President of the International Academy of Comparative Law, President of the American Branch of the International Law Association, Co-Chairman of the World Association of Law Professors and President of the American Foreign Law Association. We could go on. He also received several honorary degrees from foreign universities and served on many editorial boards. One could not go to any law school or legal gathering without meeting his friends and admirers. His wife, Susan, always accompanied him, sharing his popularity and his enthusiasm for people and ideas.[10] He was truly a man for all seasons.

OSCAR SCHACHTER*

CORRESPONDENCE

TO THE EDITORS IN CHIEF:

Two contributions to the January 1995 issue raise serious questions about the authority of the President of the United States, as Commander in Chief, to order American forces into action. The first is by Louis Fisher (*The Korean War: On What Legal Basis Did Truman*

[9] See also his MANAGING CHANGE IN THE USSR: THE POLITICO-LEGAL ROLE OF THE SOVIET JURIST (The Goodhart Lectures, 1982).

[10] The *Recollections, supra* note 1, include delightful sketches of John's courtship of Susan (at 63–66) and of her own activities in various good causes (at 130–33).

* Of the Board of Editors.

Act?); the second is Lori Fisler Damrosch's *Agora* article analyzing the U.S. intervention in Haiti in light of an official executive branch position (the "Dellinger" letter) and the counterarguments presented by ten professors.

In neither is there a discussion of the possibility that the Constitution's reference to the power of Congress to "declare war" rested on the assumption that "war" was in 1787 and still is a legal status to be created by "declaration" of the legislative branch; a status that then authorizes the executive branch to sequester "enemy" property, expel or intern "enemy aliens," seize "enemy" vessels, and stop and search "neutral" vessels for contraband (subject to judicial oversight in prize), etc. Instead, in both the power of Congress to "declare war" seems to have been assumed to relate to recognition—the assignment of words to facts.

Now, I wonder if there is any basis for this view. While some words taken out of jurisprudential context might support the "recognition" interpretation, I know of no evidence to negative the more likely interpretation that the power of Congress to "declare war" was conceived until recently as primarily a power to create a legal status. But I have suggested all this elsewhere and see no point to repeating the argument here.[1] Have I been missing something? Any enlightenment from the authors or signers of the professors' letter would be welcome.

There is a further point. As I understand the Constitution, it is filled with overlaps and underlaps; areas of dispute that the Supreme Court has termed "political" because relegated to the eternal struggle for authority among those whose ambitions run in that direction. Thus, when President Truman acted in an area that by some interpretations might seem to be reserved to Congress, Congress had, but failed to use, the tools the Constitution gave it to restrict the President's activities, and the President, by taking the case to his constituents (the whole country), had the tools to fight back. Indeed, Congress did not limit the President during the Korean War, but the country did, by electing General Eisenhower, who had promised to bring the troops home. Do I read Dr. Fisher now as arguing that the Constitution clearly allocates authority to avoid those struggles? Or that somebody other than Congress should have stepped in to limit the authority of the President? Or is it merely that the precedent of Truman's action was not definitive; that the struggle goes on and that other Presidents might have (even) more difficulty than Truman had in holding to a policy that the general public had learned to oppose, even if the legislature had chosen not to use the tools the Constitution made available to it to oppose that policy? If the latter, I probably agree with him. But it is hard to read his contribution that way and it would help to have his explanation.

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Dr. Fisher replies:

The letter from Professor Rubin suggests that Congress, under the Constitution, is confined to actions "declaring" war and that "war" is limited to certain legal facts as understood in 1787. However, Congress was at liberty both to *authorize* and to *declare* war, and it chose to authorize military actions against Indian tribes, against France in the Quasi-War of 1798–1800, and against the Barbary pirates. The fact that the Framers gave the power of issuing letters of marque and reprisal to Congress and not to the Executive (the British practice) further underscores the broad role expected of Congress in matters of military activity. Instead of restricting Congress to certain actions, narrowly conceived in accordance with legal analysis, the legislative role is a broad one of using offensive action of any nature. I develop that point with greater specificity in my book

[1] Alfred P. Rubin, *War Powers and the Constitution*, FOREIGN SERVICE J., Feb. 1991, at 20, *reprinted in Relations in a Multipolar World: Hearings Before the Senate Comm. on Foreign Relations*, 101st Cong., 2d Sess. 235 (1990).