

Dean Rusk Oral History Collection
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Dean Rusk interviewed by Richard Rusk and Thomas J. Schoenbaum
1985 August

RICHARD RUSK: --International law and Tom Schoenbaum and Rich Rusk are doing the Interviewing. This Is August 1985. There's other sections on international law in the U.N. [United Nations] transcripts.

DEAN RUSK: Let me begin with my personal involvement In International law. I remember greatly enjoying a course that I had at Davidson College in international law taught by Professor Archibald Currie, one of our most popular professors at that time. And I got a great deal out of that course and it sort of lighted my fuse. Then when I went to Oxford, you had there people like Professor [James Leslie] Brierly, one of the great figures in international law; and I attended his lectures and an occasional seminar with him. And as a matter of fact during one of the Oxford vacations, I think it was in 1933, I went over to Germany to attend a seminar in international law given by Professor [Viktor] Bruns at the Hochschule fur Politik.

RICHARD RUSK: What was Bruns' first name?

DEAN RUSK: In Berlin. Oh, you'll have to look that up. Well I remember when I went to that seminar there were about twenty people who gathered there for the first session. About six of them were Nazis in uniform. And Professor Bruns began by opening up the question as to what we should study in that seminar: how we'd use our time. And one of these Nazis stood up and said, "There's only one answer to that question. We must concentrate this entire seminar on the illegalities of the Treaty of Versailles." And the other brown shirt people joined then and said, "Yes. Yes." And that was the end of that. Well not too long after that the Nazi party took over the Hochschule fur Politik as a leadership training institution for Nazi leaders. So I moved across the street to the University of Berlin and attended lectures over there. But also I became involved with international law because of events. I said on an earlier tape that when the Japanese seized Manchuria I spent an enormous amount of time looking into that question and following the consideration of that issue by the League of Nations and international law issues were very much involved in that. Then when I came back here and studied law at the University of California at Berkeley, the Dean of the Law School there was Edwin [DeWitt] Dickinson, who was also one of the great figures of international law in his time. So I had a chance to know him and I attended a good many meetings where he spoke. As a matter of fact I did not take his actual class because I was saving that as the cream to be taken at the very end of my law studies, but then I was called to active duty in the Army and missed taking his class. But I got to know him very well and heard him speak a great deal and I attended occasional meetings at which he was present.

RICHARD RUSK: He's dead now?

DEAN RUSK: Yeah. But it was during that period of law studies at Berkeley that I realized that what I really wanted to do with my life was to be a college or university professor of international law. And after--

RICHARD RUSK: College teaching is a high calling, isn't it Tom?

DEAN RUSK: And after a thirty-year detour I finally made it because in 1970 I was invited to come down here to the School of Law at the University of Georgia to teach international law. But as I look at international law I am fully aware of the fact that when you mention the term international law that many citizens and many lawyers put tongue in cheek. They are very skeptical about whether there is any such thing. Now one can understand some of the reasons why you get that reaction. One of them is that it is obvious that the governments of the world have not yet been able or willing to use international law to control the use of force across international frontiers. So at one of its most important points it is clear that international law is not fully effective. But some of this influence I am sure, this attitude, is due to the influence of [John] Austin's Jurisprudence: to oversimplify the notion that law proceeds from the sovereign and if there is no sovereign there can be no law. Well it is clear that we do not have a plenary international legislature; we do not have an effective international executive to enforce the law; and we have a rather weak international court of justice to interpret and apply the law. But I'll come back to that as we go along. But in any event, that's one of the reasons for this skepticism. But part of it just comes through sheer ignorance. Lewis Henkin has written a fine little book called *How Nations Behave*, in which he sets for the reasons why most governments most of the time act in accordance with international law. There are all sorts of reasons for that. The United States alone has more than seven thousand treaties and agreements with other nations. And in the course of any single year [now underline any single year] less than one percent of those agreements will come up for any discussion between us and another government as to whether we or they are faithfully carrying out those agreements.

The State Department, as I have indicated before, sends out about three thousand cables a day on every working day to our posts and to countries all over the world. Well]spot checks would show that at least twenty percent of those cables are dealing with important points of international law. International law is indeed a very pervasive element in relations among governments. And so I have never underestimated the reality of international law because I have lived with it. I suppose that in a sense--and this may sound peculiar--that I myself have practiced more public international law than any living American because I was dealing with these issues every day when I was Secretary of State. Also there are important sanctions behind international law. Law gives you a tool for predicting how other governments are likely to react or behave in a given situation. We know that there is a general pressure, political pressure, in support of international law, internationally as well as in our own country, because we have a bias toward what is lawful. Anyone who does not have a reasonable legal case for his action is in trouble. Indeed I would say that if you went back over this postwar period and you picked out a few points where you thought the United States might be in a difficult position from a legal point of view, I could almost guarantee that those would be Presidential decisions. And in one sense only the President can violate international law because he is not going to let anyone junior to him put him or this country in the position of being in violation of international law. Now it's true that the Congress can violate international law, because from a constitutional point of view an act of Congress is

valid in this country if it is in conformance with the Constitution. It does not have to be in compliance with international law. And there have been times when the Congress has violated international law by, say, withholding contributions to international organizations or in various other acts which are not consonant with our obligations under international law. I mean, we had a very powerful position in international law when Joseph [Iosif Vissarionovich Dzhughashvili] Stalin blockaded Berlin, or supported the guerrillas going after Greece, or demanded the two eastern provinces of Turkey, or when the North Koreans attacked South Korea. And we were very careful at the time of the Cuban Missile Crisis to give ourselves as strong a position in international law as possible. The Justice Department lawyers wanted us to use the Doctrine of Self Defense. But we in the State Department did not think that would swim, and in any event, we did not want to broaden the concept of self-defense to apply to a situation like the Cuban missiles where no shooting had taken place. And so we in the State Department used the Charter of the Organization of American States and the real treaty, the Mutual Security Treaty in the Western Hemisphere, to deal with the Cuban missiles as a threat to the peace to the Western Hemisphere rather than an exercise of the law of self- defense. And I think that was a very important element in persuading our own people as well as many, many other governments that they could support us with regard to the Cuban missiles because we had a pretty good international law case. Going back to the so-called Suez Affair of the mid-fifties: One of the problems that the Israelis, the British, and the French faced when they put forces into the Suez was that they did not present the world with a reasonable theory of the case. They did not give the rest of the world anything to support. Now that's only a part of the story of that affair, but--

RICHARD RUSK: Did you advise [John] Foster Dulles on Suez?

DEAN RUSK: No. No. But actually London and Washington lost contact with each other at a critical point in that situation. And I mean had the British and the French, instead of acting the way they did by cutting off communications with us, had they come to us and said, "Now look, we have decided that we must put our forces into the Suez. We're not consulting you with respect to that issue, but we would like to talk to you about how we can present this case to the best advantage." And it might have been that then the United States could have helped Britain and France prepare a better theory of the case. But we didn't have that chance. But I'm convinced that international law is of extraordinary importance. I am among those who believe that more international law has come into being since 1945 than had been generated throughout the entire history of the human race before that time.

SCHOENBAUM: This is fascinating. If I could interrupt here. This is fascinating because--and I want to ask this question because I think anyone listening to the tape would ask it. I think that this goes against some cynical views of the decision-making process at the highest levels of any government, our government included. And would you comment about this, Mr. Rusk: Did you, when you were in office as Secretary of State, reach for international law as a tool even when you were making decisions, while you were making decisions? In your view, international law is not really a kind of an after-the-fact justification that you think about; that you make the decisions and then later on you reminisce about international law. Does it come into play in a very process of decision-making in your view? And did it, in your view?

DEAN RUSK: Yes. I gave the legal adviser of the State Department a roving commission to inject himself into any question that was before the Department, whether he was invited in or not by those who were handling the question, in order that we could get the international law considerations taken into account at the early stages of decision-making. You see, to me international law is not just a set of vague moral principles as some people seem to think. It's a very practical part of the workings of relationships among the governments of the world. Now when people like George [Frost] Kennan or even Dean [Gooderham] Acheson or Hans [Joachim] Morgenthau would tend to pooh pooh international law, I think they were being naive. Because when you think about how not only governments but peoples are going to react, you've got to take international law into account. Dean Acheson went before a meeting of the American Society of International Law after the Cuban Missile Crisis, and he rather brushed aside the notion of law as applied to that crisis. And he said, "The survival of nations is not a matter of law." Well, when I came down here to Georgia I took that quote from him and then put under my own quote: "In a nuclear world the survival of nations may depend upon law." And I put those two quotes together and I asked the students to comment in an essay question on those two statements. But now no one worked harder, in fact, to build some international law than Dean Acheson. But it's a kind of a fad and the fashion for some of these people to spoof it, to treat it with contempt. It's rather interesting and ironic that before his death Hans Morgenthau came full circle and became a strong supporter of world government, which was just the opposite of the opinions he had held for so much of his life.

RICHARD RUSK: Pop, who was your roving commissioner for your international council?

DEAN RUSK: Oh, I first had Abe [Abram] Chayes, who is now a professor of international law at the Harvard Law School. Then I had Leonard [Carpenter] Meeker. He was a professional in the legal adviser's office and I elevated him to be the legal adviser.

RICHARD RUSK: Where is he right now?

DEAN RUSK: He's practicing law in Washington in a public service law firm.

RICHARD RUSK: And Abe Chayes is on the faculty where?

DEAN RUSK: At Harvard Law School. But they were both very good lawyers. Now bear in mind that the legal adviser's office, or the legal adviser of the State Department takes care of a lot more things than international law. He has to be up on all the statutory law that is applicable to the State Department; he has to be up on all the regulations that are applicable to the State Department; he has to see to the legal relationships of the Department and contracts and employment situations and all the rest of it. A few years ago a professor of international law at, I think maybe it was at the Fletcher School of Law and Diplomacy, tried to involve the American Society of International Law in the choosing of a legal adviser. I objected to that because the legal adviser practices law generally, not just international law. And I thought that the State Department ought not to turn to simply an academic international lawyer, but to be sure that they had a competent lawyer. He might be an academic, but to be sure that you had a competent general-purpose lawyer. And both Abe Chayes and Leonard Meeker were that kind of people.

RICHARD RUSK: Competency and academia don't necessarily go hand in hand. Is that what you said?

DEAN RUSK: I said you might find them in academia. We found Abe Chayes in academia. But I might just note in passing--maybe I've said this somewhere else--that the world of thought in academia, in any kind of world of opinion, and the world of decision are two different worlds. I used to make a rough judgment. I don't know that I expressed it. But it usually takes about a year to convert a professor into a decision-maker [Rich and Tom laugh hysterically] because he finds it very hard to train himself to come to a conclusion and a decision. When you have to make these decisions there's no time to go off and write a Ph.D. thesis about it. And you've got to decide. Well I've known 1 professors who found that transition a very difficult transition.

SCHOENBAUM: How often would you meet with Abe Chayes or--

DEAN RUSK: Well, the legal adviser--

SCHOENBAUM: --regular channels?

DEAN RUSK: Well every morning I would have a meeting in my office around nine o'clock of about five or six of the top officers of the Department. I would have the Undersecretary and I would have Ben [Benjamin H.] Read in the--my own secretariat. I would have two or three others. But the legal adviser was always there at that little small meeting. Then we would go across the hall around 9:30 for a general senior staff meeting where there would be fifteen or twenty of the top people in the Department present. And we'd go over various things. The legal adviser was always there. So I tried to keep him very much involved. Now I did mention on tape the other day the one instance where I directly and clearly overruled my own legal adviser, and that was in that extradition case with Canada. But I thought that it was very important for us to know where the problems might be as far as international law was concerned. I remember one little matter we took up where the legal adviser had some real concern. The Vietcong and North Vietnamese did a lot of hiding away in caves in underground positions, so we began to use tear gas to flush them out. Well, our legal adviser had no problem with that; but he had some concern that if we used tear gas to flush them out, that that just might be an invasion of international law principles against the use of gas. You see? So we had that kind discussion.

SCHOENBAUM: How was that resolved? Do you remember?

DEAN RUSK: Ummm. I think it was resolved that we would let our armed forces go ahead with that. And no one, so far as I know, outside of this country even ever raised a question on that point. But we were continually questioning our positions, even in detail, from the point of view of international law. And then also we were actively involved in giving appropriate assistance to millions of Americans who were traveling abroad every year. And just from the point of view of statistical probabilities, a good many of those Americans were going to get themselves in trouble in a foreign legal system. Well a good many international law principles and practices came into play in giving that kind of assistance. But in my teaching of international law I tried to combine the textbook kind of principles with how these things actually work in the real world. And I would use a great many anecdotes in my teaching to give them cases not to be found in the

casebooks about how these things actually happened. And I think students found that interesting and I enjoyed it. We had a pretty good time.

RICHARD RUSK: Pop, did you have any handicapped students that might have tape-recorded the lectures or class?

DEAN RUSK: Yeah, but I couldn't identify them now. There probably were two or three along the way. Blind students, for example.

RICHARD RUSK: Gee I wish those people held onto those things. It would be beyond our scope to pick through--

DEAN RUSK: Well I don't know whether I want you to because, you see, if you conduct an informal class as I tried to do it you pause, you would gesture, and on occasion you would say outrageous things just to get a student reaction to them, you see. So I'm not sure that I would want anybody to see a verbatim transcript of what I said during class. Of course some of the students put together rather careful notes in my course and then sold those notes to the next class. And I was aware of that and I was aware that some of my funny stories had already been flagged to them in these notes before I got to them--

[break in recording]

DEAN RUSK: I would warn my class that they should not rely too heavily upon these canned notes they had bought from somebody who had taken a class before because international law is in a constant status of change, and that what might have been all right last year might not be all right this year. But I had large classes ranging from one hundred fifty to one hundred eighty and that created a few problems. I didn't get to know individual students in such a class as well as I should have liked. But I tried to be available for any who wanted to see me. I started out using the Socratic method fairly early. But your chance of calling on a student who's really prepared in a class of one hundred eighty is rather slim because they figure their chances of getting called on are going to be rather slim. And if they wanted to postpone preparation to another time, they were likely to do it. And a group of students came to me one day and told me that they hoped I would not do that, that they wanted to get as much out of me during that time as possible and to not waste time calling on unprepared students. So one thing I would do would be to tell the student a class in advance that I was going to ask him or her a question on such and such a point. Then they'd go back and get prepared for it, and then we could have a reasonable discussion on it the next class. And that worked out pretty well.

SCHOENBAUM: The first year that you taught here, the first quarter, would have been when? Do you remember? 1970?

DEAN RUSK: Spring of '71. I think during the fall of '70 I was just getting shaken down and getting established and making preparations for teaching and things of that sort--

[break in recording]

SCHOENBAUM: I was going to say, we've talked about the transition from academic to decision maker. How about the transition from decision maker to academic?

DEAN RUSK: That was sort of amusing. They brought me here as a full professor of international law even though I had not finished my law degree and did not have a Ph.D. After I spent a few years watching the processes by which we appoint professors, appoint faculty here, I felt someday I would get three or four of my senior colleagues off with some highballs and have them explain to me how it was that I was ever named a full professor of international law.

RICHARD RUSK: [James] Ralph Beard sat in this chair and told you for the first time that your appointment went through with unanimous consent.

DEAN RUSK: Of the faculty. Yeah. Well, as a matter of fact, many years ago Robert Gordon Spry, president of the University of California, asked if I would come out there to be a full professor. And while he was talking to me he said, "I'll have to bring you in as a full professor because if I didn't, since you don't have a Ph.D., you would never get to be one." (laughter) But anyhow, I came here as a full professor and from the very beginning was named a member of the graduate faculty. And although I didn't technically have tenure, tenure was certain when the time came. But anyhow, since I had wanted to teach international law when I was a young man, I found this combination of that opportunity plus a return to Georgia where I have a lot of kinfolk and friends very attractive.

SCHOENBAUM: We have the outline of your course: at least the course as it was taught in 1981. And it starts out with an introduction and the sources of international law, international law as national law, and then the U.N. Charter, International Court of Justice, law of treaties, national jurisdiction, nationality, Law of the Sea, outer space, use of forests, limitation on armaments, the environment and human rights.

DEAN RUSK: Right.

SCHOENBAUM: Would it be useful to kind of run down those topics and see what you

DEAN RUSK: Well remember, I gave that course in a full quarter! [tape interruption] During the seventies and eighties we have developed here at Georgia a rather rich program of courses and seminars in international law subjects. But when I advise individual students, I advise an individual not to take too many of those courses if it means that they neglect other major fields of the law such as corporations, taxation, constitutional law, Uniform Commercial Code, things of that sort; because to be in international law you have to start by being a lawyer. International law is usually a law about something. And that something is usually involved in some other major field of law. But then I suggest to students that if they want really to specialize in international law, they might want to think of an additional year beyond the basic three-year law course. And some of them have gone to the Free University of Brussels where they give an excellent year's program, either in English or in French, on the law and operations of the Common Market. Or they can go to London or they can go to Harvard or Columbia or wherever. Because unless you plan to teach international law you can make a mistake by spending so much time in

international law in your first three-year law program that you don't become a well- rounded lawyer. And I think it's important to be a well-rounded lawyer.

RICHARD RUSK: I have one follow-up question regarding your teaching techniques here. Professor [Walter] Berns up at Cornell had a habit of calling on his students. And he would have classes of two or three hundred students, and by golly you got ready for those because when he called on you he didn't give you the option of not responding. Did you ever consider taking that approach?

DEAN RUSK: Well that was the approach that was used at Berkeley when I studied law out there. And typically a professor would start somewhere in the class and then go down alphabetically, beginning with that particular person.

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BEGINNING OF SIDE 2

DEAN RUSK: --class and your neighbor was being called on, you'd scurry around and get your notes in shape and sort of see what you needed to think about more. But no. What I would usually do in a class would be to stay behind at the end of the class because usually there would be several students coming up to ask questions which they were a little nervous about asking in front of one hundred eighty students. Well I would sometimes, then, the next day pick up the questions that they had brought to me that way in order to get into them with the entire class, and that worked pretty well. But I suppose that my courses turned out to be more lecture than discussion, partly because of pressure from the students themselves. But I would not try to lecture in any kind of formal, systematic way in the sense that I would read a lecture or anything like that. I never read a lecture in class. But would develop the points that I wanted to make and use anecdotal material to illustrate the points. I have often told law students that when they go to a class they should concentrate on trying to identify the points which the professor was trying to make during that class. Because a professor usually has some points in mind that he is trying to get across. And so if a student is constantly searching for those points, then he would be in pretty good shape. Now professors, like everybody else, sometimes they have good days and sometimes they have bad days. And even the best of your professors will occasionally run across a day when he's sort of floundering around a bit. And I suppose I have done that on occasion, but not very often. But then I spent a lot of time with students outside the classroom, here in the office chewing the fat, not only about international law but their own plans and hopes for the future or whatever might be in their minds. And I suppose that kind of one-on-one relationship has been perhaps as valuable in the long run as what happened in the classroom.

RICHARD RUSK: What was the most satisfying thing to you about teaching international law?

DEAN RUSK: Well, when you ask that question, Rich, of a teacher or a professor, you have to bear in mind that the harvest which comes from teaching is long delayed. What is really

satisfying is to have a former student write you sometime later to tell you about what his experience with me had meant to him and what he had gained from it and that sort of thing, or to see these young people go off and do an excellent job in places like the International Trade Commission, or the State Department, or the Commerce Department, or law firms in Washington, or Atlanta, or wherever it might be. I think the real harvest is a long delayed harvest and a teacher or professor has to be prepared for that.

SCHOENBAUM: If we can get back to the first year you were teaching and your approach to the subject the first spring. Do you remember how you organized it in your mind? It's kind of a transition that a decision maker in international law, of course, is making decisions, grabbing a piece here and grabbing a piece here as things arise. Problems arise, must be confronted, and must be decided. But--

DEAN RUSK: When I came to Georgia and was faced with the prospect of teaching a basic course in international law in one quarter, if I had gone off at that point and asked twenty professors of international law how you best give a course in international law in one quarter, nineteen of them would have said it can't be done, because you have such limited time in one quarter for a field that is as vast as the entire reach of domestic law. So I was faced immediately with the problem of what to include and what to leave out. And that's always an agonizing set of questions. But I did put together a quarter's worth of work, as represented in those study outlines I issued each year, and tried to pick out the most important things which might have a bearing upon their lives and their future. You see, a simpler concern of mine since I left the government has been a situation that these younger people find themselves in ten, twenty, thirty, forty years down the road. And I tried to open up their minds to a good many of those things in the way I presented international law. But I always reminded them specifically at the beginning of the course of this agonizing problem as to what to include and what to leave out, because some of these subjects, like the Law of the Sea, could have occupied a full quarter on their own, you see? Well I started out using [William Warren] Bishop's Casebook in International Law. Now Bishop was in the legal adviser's office in the State Department during the Truman administration and I got to know him there. I liked and admired him very much. He went on to become professor of international law at Michigan, and he published this casebook. But he was, if anything, almost a generation before me, which is pretty old. And I found after a couple of years' experience that his casebook was simply not up to date. It was not grappling with the issues that these younger people would be grappling with and so I moved to other casebooks. They were somewhat more up to date and had documentary supplements that were helpful. And I always distributed to my classes recent materials which were not to be found in the casebooks, and I think they found that very helpful. Bear in mind that I gave open book exams. And I explained to the class that I did that because I did not want them to think that if they ever had a problem that they could rely upon what they had learned in law school, that when they have a problem as a lawyer they've got to dig into the law as though they had never been to law school. They've got to dig into it and be sure that they get it right by working out that particular case. So I would let them bring their textbook, their documentary supplements, the materials that I had distributed in class, and their own classroom notes to the exam. Now, of course, I adjusted my exam to the fact that it was an open book exam, and so my exams weren't all that easy even on an open book basis. I always urged them to prepare for the exam before they come to the exam and not rely upon its open

book character to give them time to run through a bunch of material and look it up because they simply wouldn't have time during the exam itself.

SCHOENBAUM: From the outline it looks as if many of the readings assigned were in fact treaties and documents of international law rather than law review articles or cases. Did you have a philosophy about reading treaties, reading the official documents?

DEAN RUSK: Well the actual materials assigned in the textbook, casebook, or other materials, as I explained to the class, would be materials that we would all take for granted, that I would hold them responsible for even though I did not go over all of those in class. I would use the classroom time for further exposition, for anecdotal material, and illustrative purposes, things of that sort so that I would feel free to use any of that assigned reading on the exam even though we might not have actually discussed it in class. And I think that gave a pretty broad coverage. And of course a good deal of that casebook material was prose, was commentary, thought pieces, law review article material, that kind of thing. And I would occasionally call their attention to a particular law review article or some recent publication of some sort: International Legal Materials, The American Journal of International Law, sometimes even The Georgia Journal of International Law I would use in class.

SCHOENBAUM: I know we can't repeat all these lectures, a quarter's worth of lectures, but could we perhaps proceed by hitting the high spots of these? Anything in particular? Any anecdotes for instance that you remember that you would cover? For instance on the sources of international law? There, of course, we have custom and we have decisions of the International Court of Justice. What would be your approach, if you remember, what kind of approach would you take to that? And do you remember any anecdotes you were particularly fond of?

DEAN RUSK: Well, I would give some brief historical references to the role of the law merchant, actually to Roman law, to canon law, some of the more traditional sources of international law. I would talk about perhaps different schools of law and would--But then, I always put a heavy emphasis upon treaties, general conventions, because they represented the consent of the international community or the parties to the treaty, to the rules set forth in those treaties. And among sovereign states this notion of consent is fairly fundamental. Matter of fact, the Russians take a very strong view that they are not bound by any rules of international law to which they themselves have not consented. And although in theory it's not quite the same with the United States, as a practical fact it usually is because it's pretty hard to get our government, particularly the Congress, to restrain itself because of international law to which they think they have not consented along the way. We will have that arising from time to time now with regard to the Law of the Sea Treaty, which we have not joined and which we have not ratified. So there would be a considerable argument about the general nature of the rules from the Law of the Sea as contained in that treaty. But as far as the actual practicing lawyer is concerned, he's got to be aware of sources of a national character with regard to such things, such as U.S. statutes, decisions of the Supreme Court, other typical sources of American law. You see at an early stage the Supreme Court announced that international law is a part of our law and will operate as such unless there are executive and legislative provisions that cut across it. We probably inherited international law as a part of our law through the common law because British courts had long since held that international law was a part of the common law. So there was that to be taken into

account. But I was also interested in law that is coming into being, not just the law as it is today, but also law as it is coming into being, with such things as outer space and the environment and matters of that sort. [tape interruption] When I joined the Rockefeller Foundation in 1952--I think it was early '53--but we inquired of three or four of our top universities whether it would not be a good idea to give a few people some time, through foundation money, to begin giving some thought to the law and politics of man's entry into outer space. Well we ran into almost colossal indifference. Indeed, my good friend Philip Jessup--he was at Columbia at that time--surprisingly said that "The future is not the business of the university," even though at that very moment the laboratories of his own university were hurling us into the future with a breathtaking pace. All right. Then the Russians put up their Sputnik; and all of a sudden there was great interest in the law and politics of outer space. We had a good many applications descending upon us at that point. Well, here was something really quite new as far as international law was concerned. But within five years the United Nations, working through a committee on the peaceful uses of outer space, the United Nations adopted unanimously a far-reaching set of principle about outer space. And then within ten years after Sputnik, that came to be the first of the major outer space treaties. So that given the usual way these things happen, that was acting fairly promptly to establish some principles of international law regarding outer space. And I think that first major treaty was a very good treaty and still is.

The simple notion that outer space was the province of all mankind; that it was free for anyone to travel through, conduct research in; weapons of mass destruction were prohibited from outer space; it was provided that no one could make any claim of sovereignty over any celestial body, such as the moon or Mars or anything else; that astronauts were the envoys of all mankind and would be given assistance by anyone who was in a position to give assistance; that space vehicles belonged to the launching nation; and a good many principles that brought the regime of outer space within a regime of law fairly quickly and I think fairly effectively. What was not decided was the definition of where outer space begins and where national air space leaves off. And all sorts of ideas came along that outer space begins beyond the atmosphere. Well, molecules up there are a heck of a long way away. Or outer space began where aircraft could no longer fly. Well, the changes in the capabilities of aircraft to fly at great heights would make that a very uncertain thing. So it was decided really that, although no final definition would be attempted, that outer space began where vehicles could move in powerless orbit, and for all practical purposes that's around eighty miles. So thus far that has worked pretty well. But you see, to attempt to make outer space simply a projection of national airspace was almost ridiculous. Because if you were to erect some kind of cone or wall conforming to national frontiers reaching into outer space, well those things would be whizzing through space at a tremendous velocity as the earth rotates. And it just makes no sense to think that for a tiny fraction of a second some vast area of outer space was subject to the national control of some country on earth, you see. And so, I think on the whole that has worked out thus far pretty well. Now one has to be careful about launching and reentry processes because those could require you to move through the national air space of some sovereign country. Fortunately, in our own space program we have two coasts from which we can launch without involving us in that question. But anyhow, a lot of law developed in that area and I think very constructively and in a very useful and practical way. [tape interruption] Even back in the Truman administration I had some running discussions with George Kennan about international law, and indeed the role of basic moral principles in relations among nations. He tended to brush those elements aside. He

was a so-called realist in his own mind, like Hans Morgenthau and some others have been. But I had a strong feeling that if one ignores considerations of law and moral principles, that you're looking at only a part of the problem, that you're not taking a complete look at the situation because we're talking about human conduct when we're dealing with relations among nations. And human beings form their views and make their judgments in relation to the things that they feel very deeply about: their own moral principles, their own notions of what is right, and so forth. So unless you take those into account you're leaving out a very important part of the problem. And from a very cynical point of view, if you want to get people to act one way rather than another, you've got to take those things into account because those are among the bases of action among human beings. And so I used to call some of these so-called realists "naive realists" because I thought they were looking at only a part of the problem. Now this translated into a specific difference between George Kennan and myself on one point. He took the view-- And I think I've said this on another tape--that if the Soviets put forward a demand that that demand itself was a part of the real world and had to be dealt with: in effect to be compromised in some way if possible. Well my view was that if a Soviet demand was simply outrageous that it should be rejected out of hand. Otherwise we'd find ourselves being nibbled to death like by ducks as they would put forth one outrageous demand after another and so it would begin to eat away on our situation. Now George and I had a difference on that point.

SCHOENBAUM: And did this come up over and over again?

DEAN RUSK: When the Soviets demanded the two eastern provinces of Turkey: Kars and Ardahan. It's possible that George Kennan might have said, "Well, let's let them have Kars and let the Turks keep Ardahan." Well, my view was that that demand was outrageous from the beginning and therefore just say no, that they shouldn't have either one of these eastern provinces of Turkey.

SCHOENBAUM: Kennan's view, as I understand it, was that we should make decisions or that nations should make these decisions based on power realities.

DEAN RUSK: Well power realities are a very important part of a decision. But on the other hand, so are these more elusive moral and legal considerations. They are also a part of the problem. Now--

SCHOENBAUM: And you would reject Machiavellianism as a principle decision?

DEAN RUSK: No, I would include in Machiavellianism the total picture, including what people thought about life and the origins of their beliefs and things of that sort. You've got to take those into account. Now I must say that in dealing with the Russians for many years, I am inclined to agree with Llewellyn [E.] Thompson [Jr.] that the Russians do pay attention to legal points. For example, during the Berlin Blockade, '61-'62, I made the point very strongly to Mr. [Andrei Andreevich] Gromyko that they could not make an agreement with East Germany that in any way transferred over to the East Germans our rights in Berlin because the Russians did not have the disposition of our rights in Berlin. They couldn't give away those to the East Germans because they themselves did not have it, and we were in West Berlin with access to West Berlin on the same basis on which the Russians were in East Germany, namely that we were one of the

victors In World War II. And I had the impression that that struck home to Gromyko, that that's a point that they had to take seriously.

SCHOENBAUM: Obviously the Russians had the power. So that's an Instance when--

DEAN RUSK: Well they had the power in the immediate vicinity. But they had to face the fact that the United States was in West Berlin by right and that the United States was in West Berlin. And therefore that local power in the immediate area of Berlin had to be read against the background of the presence of the United States and they had to take that into account.

SCHOENBAUM: That's a very similar situation with respect to Potsdam and Yalta, wasn't it? That's a good example of where legal considerations, at least a legal argument, weighs heavily in the balance despite the fact that the power realities are the opposite way.

DEAN RUSK: Now what are the power realities in Berlin? West Berlin is surrounded by a considerable number of East German and Russian divisions. All right, that's as far as Berlin itself is concerned. But the fact that the United States is there engages the total power relationship between the United States and the Soviet Union. And the Soviet intelligence must have discovered that we in NATO [North Atlantic Treaty Organization] had worked out a scenario for West Berlin that went all the way down the road to the probability of nuclear war. And so that was a part of the power equation as far as West Berlin was concerned, you see? I remember once saying to Mr. Gromyko, "Mr. Gromyko, you suggested that West Berlin is vulnerable. Let me remind you that West Berlin is not vulnerable because the United States is there." And he looked at me pretty hard. I looked at him. And we went on from there. So when you talk about power, you've got to think of the total power situation.

SCHOENBAUM: I can't help but think of Yalta and Potsdam. And the world would be much different if we had taken that approach with respect to Yalta from the point of view of not--I think Kennan, in his memoirs, basically looked at it on a base of power realities and that view seems to have prevailed that the Russians were in eastern Europe, they were in--

DEAN RUSK: There's been a good deal of mythology that has grown up around the Yalta Agreements. You ought to read Ambassador Charles [Eustis] Bohlen's book on Yalta, because he goes into the Yalta matter in some detail and points out that the Yalta Agreements were good agreements, it's what some people have interpreted them to have meant that has caused some problems there. Now the one illustration of the power situation is to be found in central Europe, eastern Europe. We, in the west have never considered that what happens in eastern Europe is an issue of war and peace between the west and the Soviet Union. That applied to Hungary, and Czechoslovakia, and Poland, and so forth. And that sounds a little ignoble to put it that way, but it's simply true. The influence of the Soviet Union in eastern Europe was a result of World War II and the presence of the Red Armies. And we were not prepared to open up a general war over those issues in eastern Europe even though we obviously have had some sympathies with the Hungarians, and the Czechs, and the Poles, and so forth when Soviet armies have imposed their will on them.

SCHOENBAUM: I still want to come back to Yalta and why was it a good agreement? Because of the provisions for free elections in Poland and that kind of thing?

DEAN RUSK: Yeah. I mean, one of the problems with Yalta is that we didn't get performance by the Soviet Union on a number of those agreements.

SCHOENBAUM: Was there any realistic expectation at the time that we would? Wasn't it just a, as George Kennan says, just a political ploy to paper over a hard pill to swallow?

DEAN RUSK: Well, in retrospect it might look that way. I think, however, that the agreements themselves left open the possibility that something could be done along those lines. And we still don't know to what extent the eastern European countries little by little are elbowing for themselves a bit of freedom of action and independence. Rumania has already done that in the foreign policy field, and Hungary has been doing it in recent years in the way they manage their own affairs. So little by little some of those things might become reality.

SCHOENBAUM: Did you think that at the time? In 1945 did it look as if--

DEAN RUSK: I wasn't involved in the Yalta business at the time.

SCHOENBAUM: I know you weren't involved in Yalta or really Potsdam, but do you remember the attitude at the time?

DEAN RUSK: No. Yalta, I was still in CBI [China-Burma-India theatre].

SCHOENBAUM: February of '45.

DEAN RUSK: Yeah. I was still in the China-Burma-India theatre and Yalta was very remote from my mind in those days.

SCHOENBAUM: Coming back to Kennan: Another of Kennan's points is that he is very skeptical of the role of international organizations in the U.N., or he was in the forties at any rate. He was skeptical of the role of international organizations and the U.N. in solving problems between nations. And of course that was diametrically opposed to your view in the 1940s. Can you comment on that?

DEAN RUSK: Yeah. George Kennan was concentrating basically on great power relationships and, slightly behind that, the North Atlantic. Dean Acheson was more or less of the same point of view. I had a more catholic view of the world and thought that where two-thirds of the people of the world lived were important areas. But again, from a practical point of view, bear in mind that the Security Council never takes anything off of its agenda. Each January the Secretary-General publishes a list of items with which the Security Council is seized. And that is a checklist of all the items that have come before the U.N. Security Council beginning with the Azerbaijan case: the first case before the U.N. Security Council. Now if you look at that cumulative list, I think you'll see that where the United States and the Soviet Union have not been diametrically opposed, that in a fumbling and bumbling kind of way the U.N. has been able to--

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