

Dean Rusk Oral History Collection

Rusk VVVV

Dean Rusk interviewed by Richard Rusk and Thomas J. Schoenbaum

circa 1985

RICHARD RUSK: Why do countries often disregard international law? Certainly different interpretations of the law, inadequate law, ideology and political ambition, and human frailty are all factors that relate to countries disregarding international law.

DEAN RUSK: Of course we can expect that there would be differing interpretations of law by different countries from time to time. After all, our courts are filled with cases in this country turning around different interpretations of national law, domestic law, on the part of the litigants before the courts. We should try to arrange institutions--the National Court of Justice, arbitration, negotiations, things of that sort--in order to adjust these differing interpretations of what the law might in fact be. But you'll have differences as to--here the U.N. [United Nations] Charter is the granddaddy of all treaties because any treaty that is in violation of the Charter itself is invalid. And yet you have people asserting that their action is covered by the U.N. Charter. There are a good many differences of view over the years over whether or not that is so. Now there may be circumstances where the law itself has simply not caught up to changing situations. For example, Canada put forth an environmental protection act for the far north--those frozen waters of the far north. They declared that these waters were not an international passageway for shipping. After all the effort of the S.S. Manhattan to plow its way through these foreign waters illustrated that point. No commercial shipping ever moves through there. And the Canadians took the view that the environment of these far northern areas was very fragile, that anything like a major oil spill could be long enduring because nature would not clean it up over time, that if ships tried to go through there they would impose upon Canada unwanted obligations to come to the assistance of those who might get in trouble. And so the Canadians simply declared this an environmental protection zone. Well, the United States objected to this at the time on the grounds of high seas rights. But the Canadians would not let this question go to the International Court of Justice because they said that international law has simply not caught up to that kind of situation. And I had great sympathy for the Canadians on that point. We did not press them very hard on this point. Even though it was a theoretical matter we had to reserve our position, because if other nations in other parts of the world started doing the same kind of thing then we could have a lot of serious problems on our hands. But we did get international law into place very quickly with regard to outer space after the launching of the Sputnik. That, I think was a notable achievement. But you could have situations develop where it will take the law some time to catch up. Now traditionally, international law has said a good deal about customary international law. And indeed before World War II a good deal of international law was customary international law based upon the long established practice of nations which was recognized as binding upon them. For example, in the case of the Paquete Habana, our Supreme Court said that international law is a part of our law and that international law would be applied by our courts if there is no countervailing executive or legislative action here in the United States. That case involved the question as to whether or not coastal fishing vessels that were used only by local fishermen to ply their trade were subject to seizure as prizes of war. Well there the Supreme Court went back

for several centuries of practice on the part of Britain, France, Spain, and the Netherlands, and so forth and established that it had been the established practice of nations not to treat local fishing vessels as prizes of war, and the Supreme Court so decided. Now I have suggested that we should leave the way open for what I have called instant customary law. For example, when the United Nations General Assembly passed--

RICHARD RUSK: You're talking about a common law type of concept?

DEAN RUSK: Well, let me illustrate it. When the United Nations General Assembly passed that very important resolution on the peaceful uses of outer space--I think they did that in 1962--the Legal Adviser of the State Department was up there to represent us in the sixth committee of the U.N. And in his remarks to the General Assembly he stated that we considered this resolution to be international law. Then he sort of scratched his head and said, "I cannot tell you what the source of that legal status is because the U.N. General Assembly has no legislative authority on such a matter." Well had he talked to me ahead of time, I would have suggested that he introduce the concept of instant customary law where the governments of the world by consensus adopt principles governing a new situation that has suddenly arisen, such as man's entry into outer space. You do not have to have centuries of practice in order to get customary international law. You can have customary international law arising immediately, spontaneously, quickly. And that could happen, depending upon what new circumstances evolve.

RICHARD RUSK: You proposed that as Secretary of State?

DEAN RUSK: No. I said if Abe [Abram] Chayes had talked to me about how he was going to handle this in the U.N. General Assembly, I think I would have urged him to move to this possibility of instant customary law.

RICHARD RUSK: Getting back to the question, why nations violate treaties: I'm sure ideology, political ambition, human frailty plays a role. Perhaps you can comment on that, and in addition, comment on the attitudes of both of your Presidents towards international law. Were you a voice in the wilderness back in the sixties arguing these matters or was there real sympathy within both of those administrations to comply with international law?

DEAN RUSK: I think international law was important to both of the Presidents I served during the sixties. They didn't wear it out on their sleeves. But I think the only instance where international law considerations were clearly brushed aside was at the time of [John Fitzgerald] Kennedy's decision about the Bay of Pigs. But I think, generally speaking, we acted during my watch as Secretary of State with very very high record of compliance with international law. Now one other thing that arises: I mentioned before that the law of the matter is important in political debate, and when a political issue arises on which there is great controversy all sides turn to legal arguments. And in the process some legal nonsense appears. There was a good deal of legal nonsense involved in the debate over Vietnam, for example. So that throws some confusion into public understanding of the law of a particular situation.

RICHARD RUSK: I suppose Reagan's beating Jimmy Carter to death over the Panama Canal Treaty was clearly an example that politics and ambition do conflict at times.

DEAN RUSK: Well that was a rather interesting problem because I had that problem on my hands throughout the sixties, but I managed to filibuster the issue throughout the time that I was in office by simply postponing, postponing, postponing. I remember talking to one Panamanian foreign minister who had just made a trip to Spain, and he told me that Panama would like to have the same arrangements with respect to the canal and our bases in Panama as we had in Spain. And I told him that there was one big difference between Spain and Panama. And I said, "If Spain asked us to get out of Spain, we would get out." (laughter) And he looked at me a moment and said, "Well, that's why we're negotiating." We had some major violence in Panama during the [Lyndon Baines] Johnson administration. We had agreed with the Panamanians--well, almost every president since Teddy Roosevelt has made concessions to Panama on the details of our presence in Panama and the symbolism of our presence there. But we agreed with Panama that both the American and the Panamanian flag would be flown on public buildings in the Panama Canal Zone. Well, in one of the high schools there; there was so much controversy that the authorities in the high school decided not to fly any flag, whereupon the American kids--the Zonites--went out and hoisted an American flag, whereupon the Panamanian kids came in there to hoist a Panamanian flag. And that resulted in violence, real violence. And substantial fighting broke out over that issue and we had quite a time in settling that down. But anyhow, President [Gerald Rudolph] Ford [Jr.] and Secretary [Henry Alfred] Kissinger had finally realized that this filibustering tactic would no longer work and they negotiated and agreed with the Panamanians on a set of guidelines for a new treaty with Panama to govern the canal and our presence there. But they didn't complete it. And so it was up to Jimmy Carter to translate those guidelines into an actual treaty and to get the treaty approved by our Senate. Well, of course, that's the controversial stage of any issue. And it was up to Jimmy Carter to make good on that understanding that Ford and Kissinger had with Panama. Well, on one or two points he improved, from our point of view, on those guidelines and got Senate approval. Well now in the campaign of 1980, President Reagan said some very grumpy things about Panama; used that as one of his issues; undoubtedly made some headway in some quarters over it. But then when he became President he did not tinker with these Panama treaties because had he done so that would have left us without any lawful basis for our participation in the operation of the canal and for the stationing of our troops there. And so as President he has left those treaties alone even though he was very critical of them during the campaign.

RICHARD RUSK: Did you get involved in Carter's effort to get Senate ratification for that treaty?

DEAN RUSK: I think I attended a meeting or two in Washington where business and other leaders were briefed on the treaties. And I think I may have attended one meeting where some members of Congress were present. But you see, in the Panama Canal Zone we had some Americans who are roughly akin to the Colonel Blimps of the old British colonial era. You know, even as late as the [Harry S.] Truman administration we had one drinking fountain for Americans, another drinking fountain for Panamanians. We had gold stores, as they were called, for Americans to shop in, silver stores for the Panamanians to shop in. There was rampant discrimination with regard to salaries between Americans and Panamanians doing the same job. So the Americans hired by the Panama Canal Company living in the Panama Canal Zone were colonialists of the old school. And it was simply a situation that could not endure. Well I

remember in the early spring of 1943, a little training period--preparation for overseas duty--I made a trip to Panama Canal. And I remember where the military police took us on a little tour of the city. And they--

RICHARD RUSK: What city?

DEAN RUSK: Panama City. And they would take us out on what was called night patrol. And they would just break into anything they wanted to: Panamanian shops, restaurants, stores. They took us through the red light district opening doors of these Panamanian prostitutes. Well, you know, you just can't get away with that sort of thing.

RICHARD RUSK: That being the case, why did Kennedy and Johnson administrations decide to filibuster that issue in the sixties rather than renegotiate that treaty as happened later in the seventies and the eighties?

DEAN RUSK: I think basically because we had so many other controversies on our hands that we just didn't want to add to them: just too much in the basket already. It was a very sharp political contest to get those treaties approved by the Senate. So I think there's been one--

RICHARD RUSK: That Senate ratification was a very close thing wasn't it?

DEAN RUSK: Fairly close. But it's one of those treaties that had to be, because the--Well, when Carter came to office and found himself with these guidelines negotiated by his predecessor with Panama he had a choice between going ahead with the treaty that those guidelines anticipated or sending a couple of divisions of troops down to Panama to fight it out on the ground.

RICHARD RUSK: That was precisely the issue.

DEAN RUSK: And had he done that we would have found ourselves in a minority of one in the Organization of American States and in a tiny minority if this matter had gone to the United Nations General Assembly. So I fully supported President Carter's effort to conclude these Panama treaties.

RICHARD RUSK: Interesting. That's interesting. Let's try another line of inquiry here. Let's talk about the Congress and international law.

[break in recording]

RICHARD RUSK: What role can an individual congressman play in foreign affairs? Can he play a useful role?

DEAN RUSK: Well, an individual congressman can play the same kind of role that he can play in domestic affairs. Critically important is his membership on committees that have specific responsibility for matters involved in our foreign relations. A lone congressman who is not a member of a key committee can't do much more than make himself a nuisance, because he does not speak for the Congress and is not taken very much into account when the Congress makes its

decisions. But the Congress has a major role to play in our foreign relations. You know, most of the literature talks about the dramatic increase in the powers of the President. You find relatively little literature about the astonishing increase in the powers of Congress. Over the years the extension of the notions involved in the interstate and foreign commerce clause of the Constitution, or involved in giving effect to the Fourteenth Amendment, or in the almost unlimited power of the Congress to tax and spend has brought about an extraordinary increase in the powers of Congress. I mean, for example our founding fathers would be astonished to realize that it was through an act of Congress that we are required to have men and women in the same gym classes at the University of Georgia. You see, the Congress by spending power has bought powers away from the states by telling them that here are some federal funds that will be available to you if you accept our guidelines as to how to use these funds. And the states have fallen for that and have surrendered a good many things that used to belong to the states. But I was never one to underestimate the role that Congress played in foreign affairs. And I spent a lot of time with the Congress and was respectful of the fact that they too had a major role to play in the conduct of our foreign relations. So many things that we do in foreign affairs will require either legislations or appropriations or both. You can't get along without it. When the president and the Congress are acting together in foreign policy matters we are in our strongest position. But when the president and the Congress are in disagreement then we really are handicapped. Things become extraordinarily difficult.

RICHARD RUSK: What about congressional disregard of international law? You mentioned the problem that we have with import tariffs. Can you think of other instances where Congress--

DEAN RUSK: Well there have been times when the Congress has refused money to pay our dues to international organizations. Well now--

RICHARD RUSK: These organizations would include the United Nations and various others?

DEAN RUSK: And associated bodies like UNESCO [United Nations Educational, Scientific, and Cultural Organization] and the International Labor Organization and so forth. Well now, under the charters of these international organizations we have an obligation to pay the agreed portion of the budgets of those organizations. And there have been times when the Congress-- well, they specifically cut off the funds on one occasion for the International Labor Organization because George Meany, head of the AFL-CIO [American Federation of Labor-Congress of Industrial Organization], had gotten mad at some action taken in ILO, for example in appointing a Russian as an Assistant Director General. And George Meany managed to get the members of the two appropriations subcommittees mad about that and they simply cut off the money.

RICHARD RUSK: The fact that the Congress had--go ahead, I didn't mean to interrupt.

DEAN RUSK: Now the point is that that appropriations bill was valid domestic law. On the other hand, it left the United States in violation of an international legal obligation. Well that kind of tension can occur from time to time, depending upon actions taken by the Congress.

RICHARD RUSK: Was it a problem in your time?

DEAN RUSK: Well I spent a lot of time smoothing feathers between George Meany and the then Director General of the International Labor Organization. There was always sort of bad blood. George Meany was a fellow who wanted to run whatever he was involved with. But he had a point. You see, the International Labor Organization is based upon tripartite delegations from its member countries: a group representing labor, a group representing business, and a group representing the government. Well, George Meany took the view that as far as the Soviet Union was concerned that was a sham. Well indeed it is a sham because all three elements in their delegation were governmental. And so it was not easy to argue with him on the merits of his attitude. But we had to argue on the basis of the utility to the United States in remaining in the ILO despite that kind of a problem. Well, when the Congress cut off these funds I raised the constitutional point. The President has the constitutional obligation to see that the laws are faithfully executed. Now, would the President have had the constitutional power to use such contingency funds as he had available to pay those ILO dues, to give effect to our international law obligations despite the fact that the Congress had specifically cut them off? Well, I asked a former Attorney General that question once and he thought about it a moment and said, "Well, I think you can make a case that the President would have that authority, but that if he used it he wouldn't get any more contingency funds." (laughter)

RICHARD RUSK: Who was that former Attorney General?

DEAN RUSK: Ramsey Clark.

RICHARD RUSK: Despite the fact that the Senate would have ratified the treaty which brought these organizations into being, they still felt they had the right to cut off funds?

DEAN RUSK: Yeah. There's some tension within the Congress and has been since the beginning of our republic over the tension between the treaty power, which belongs to the President and the Senate, and the General legislative powers of the Congress as a whole, which involves the House of Representatives. The House of Representatives has generally taken the view that we cannot by treaty compel the House of Representatives to make an appropriation if in its best judgment it thinks we should not. And that is something that has to be handled with some delicacy because the House at times gets quite jealous of the treaty power. It isn't always easy to get this complex constitutional system of ours acting smoothly in support of the international legal obligations of the United States. I ought to add that in the hundreds of occasions in which I have appeared and visited with congressional committees and subcommittees, I have found that on the whole these committees are quite respectful of international law obligations. You very seldom get the cynical approach expressed at committee meetings--

RICHARD RUSK: Over matters of law?

DEAN RUSK: Over matters of international law. They tend to take those seriously. Now sometimes they are surprised by what these international law things require. For example, in the United Nations Charter, by law, by the Charter itself, the General Assembly has the power by a two-thirds vote to adopt the budget of the United Nations. They also have the power by a two-

thirds vote to assess to member governments any fraction of that budget that the General Assembly decides to assess. Now this is a delegation to the General Assembly.

RICHARD RUSK: In theoretical terms they could assess ninety-nine percent of the budget of the United States?

DEAN RUSK: Theoretically yes.

RICHARD RUSK: Okay.

DEAN RUSK: For example, they could have established a trusteeship for Palestine, which was actively discussed at one point. And the budget for such a trusteeship might have run at least a billion dollars a year and they could have, by two-thirds vote, assessed half of that to the United States. Well, I've had senators, during the sixties, express astonishment to me that the Senate of 1945 would have given advice and consent to a treaty with that kind of delegation of power in it. But nevertheless, on the whole the Congress has acted in decent compliance to international law.

RICHARD RUSK: What about human rights that relate to the role of the Congress? You have said that the United States has long represented itself to be a citadel of human rights. A considerable number of these rights are provided in the written Constitution, etc. And despite our shortcomings and a degree of polemical rhetoric in international debates, the world community generally acknowledges the strong commitment to human rights within our own society. Yet the United States has ratified only a few international treaties dealing with human rights. Specifically, we have not ratified the Genocide Convention, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, although the U.S. delegations played a major role in the drafting of these conventions. First question: Why haven't we ratified these things? Secondly: Has Congress, and public opinion perhaps, played a role in our decision not to go ahead and ratify them?

DEAN RUSK: Well, it is ironic that the United States, which considers itself a citadel of human rights in the world, has ratified so few of the international rights conventions. There are several reasons for that, and I spoke of some of them in a book review of Lewis Henkin's book which you can get from Ann [S. Dunn].

RICHARD RUSK: Okay. And this book is *How Nations Behave*?

DEAN RUSK: No, it's another book. Ann will give it to you. I think at the beginning when things like the Genocide Convention first came up, there were many senators who simply didn't think that the federal government should concern itself with civil rights, particularly the southern senators like Senator Richard Russell and others. And they just didn't want to have anything to do with internationalizing civil rights. I think there were some who did not want to inject an international complication into our own civil rights problems here. [They felt] that if foreigners tried to get into these domestic problems it would make those domestic problems much more difficult to resolve. And then there are some legitimate constitutional issues.

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DEAN RUSK: For example, under the Genocide Convention there's a provision which seems to say that propaganda for genocide should be made a crime. Well, that might run squarely into our First Amendment. In the general, human rights legislation in the Convention at the International Covenants and so forth, they intrude themselves into matters which are very much a matter of the states in this country: questions of family law and things of that sort. One of them specifies that we should work toward free higher education in this country. Well we're not going to work toward free higher education, whether at state universities or private universities. In the International Covenant on Civil and Political Rights there seems to be a more qualified statement with regard to freedom of the press and freedom of speech than we would have in our own Constitution. Now, Jimmy Carter, while he was President, sent these two major U.N. civil rights covenants to the Senate recommending almost thirty reservations, understandings, declarations, and so forth, clearly excluding several parts of these civil rights treaties from our ratification. I thought that was much too complicated. I thought that we could send these treaties to the Senate suggesting two reservations: One, that if any provision of these treaties conflicts with the U.S. Constitution, the U.S. Constitution shall prevail. And second, to declare that these treaties are international obligations of the United States, but they would be given effect as law in the United States only through legislation by the Congress or the state legislatures. In effect, that would make these treaties non-self-executing as far as the courts are concerned. And with those two rather simple reservations, it seems to me that we could live with these treaties.

RICHARD RUSK: Would the international community and those countries which are participating in and have ratified these conventions, have gone along with those exceptions?

DEAN RUSK: Well that would be up to them. You see, if you enter a reservation on a multilateral treaty, it would be up to the other signatories to decide for themselves what the effect of those reservations would be. My guess is that in our own American situation we'd have no problem with the other signatories, that they understand our constitutional system and as far as they're concerned most of them would give effect to such treaties only through their own laws anyhow.

RICHARD RUSK: Did you personally advise Carter to do this?

DEAN RUSK: I have advised the State Department, and I made a speech on the subject somewhere. And I also, I think, wrote about it in some little piece some where. I forget now where.

RICHARD RUSK: Did you get any response from the Carter administration?

DEAN RUSK: No. But we still have not yet even gotten Senate advice and consent to the Genocide Convention, which I myself presented to the Senate on behalf of President Truman in

1949. It's been sitting there in the Foreign Relations Committee ever since. On several occasions the Foreign Relations Committee has recommended approval to the full Senate, but when the leadership has counted noses they have not been able to find two-thirds vote to give it approval. And they don't want to bring it up and have it turned down. Every administration, so far as I know, has urged support of the Genocide Convention, but we have not ratified it.

RICHARD RUSK: Did you personally get involved in the sixties, as Secretary, on behalf of ratifying or trying to ratify these various conventions?

DEAN RUSK: Well we were drafting and completing these treaties during the sixties: The International Covenant on Civil, Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Now they might have gone a little further than perhaps a group of senators would have gone had they been sitting there on the U.S. delegation. Now let's go back to the Universal Declaration of Human Rights which was produced by the U.N. during the late forties. That was produced by the Human Rights Commission of which [Anna] Eleanor Roosevelt was chairman. And we gave her a free hand in devising that declaration because it was our view that the Universal Declaration of Human Rights would set goals and aspirations, but would not operate as law. We did not consult with the Senate during that discussion as we would have necessarily done had we thought it was going to become law. And Eleanor Roosevelt, during this final session when this declaration was adopted, made a statement--on my instruction by the way--that this universal declaration would not operate as law. Now I remember there was one occasion when a senator came in to see President Truman and complained to him about how far Eleanor Roosevelt was going in this Universal Declaration of Human Rights. And Truman simply turned to him and said, "Senator, how would you like to give an instruction to Eleanor Roosevelt?" (laughter)

But it's interesting to see that many years later in the [Joel] Filartiga case the court relied upon such things as the Universal Declaration of Human Rights and these U.N. Covenants, and so forth, to make the point that torture of a seventeen-year old boy for the crimes of his father was against our law. And I thought the court reached the right conclusion in that case, but I thought they leaned too heavily on items which were not law in order to build the law. But, as one of my students pointed out, quite rightly I think, that in any event these various documents made up a fund of ideas from which common law lawyers can derive common law. But I hope the Filartiga case will not be taken as converting the Universal Declaration of Human Rights into law. Now there are those--I suspect my good friend Louis [Bruno] Sohn--who think that the Universal Declaration has become a legal instrument over the passage of time. But anyhow--

SCHOENBAUM: I was going to say, the Filartiga case is particularly interesting. And I know you have written about the Filartiga case. What about the jurisdiction in that case? These are events that happened in Argentina. Was the American court right in accepting jurisdiction in a case, admittedly a barbarous case that happened in Argentina?

DEAN RUSK: As I remember, that went back to our original Judiciary Act, way back in the 1790s, which provided that an alien can bring an action in our courts for a tort for violation of international law. So there seemed to be a very little-used, but specific, statutory authority that seemed to deal with the question of jurisdiction. Normally American courts would not have

jurisdiction over such an issue, for acts committed in Argentina. But the court found that we had jurisdiction under this provision of the original Judiciary Act, which is a kind of an accident.

SCHOENBAUM: That's an interesting concept that the American courts can move on, at least in a civil way, on human rights violations that happen anywhere in the world. And also the Act of State, which normally protects the act of a sovereign nation within its own territory, does not apply when it comes to human rights violations.

DEAN RUSK: Yeah. Of course, in cases of torture like may be that other governments would be reluctant to use the Act of State Doctrine because that would accept their own responsibility for the acts committed. But I think in general the United States is not too badly off on these matters internationally. However, I have had some reservations about linking human rights to the rest of the world's business. If you look around the world you will find about thirty constitutional democracies, constitutional systems, where human rights are in reasonably good order. And if you count to thirty, that gives the benefit of the doubt to several of them. The rest of the 130 or more nations have varying degrees of dictatorship. Now, if we go very far down the road of linking human rights to other things--trade and things of that sort--then that could easily become a self-generated path to isolation and we would begin to narrow our international participation to this group of thirty constitutional democracies. Whereas those 130 other nations are out there in the world in which we live and we still have to deal with them. They are part of the scene. And then I've been rather sensitive to any form of sanctimony in our attitude toward civil rights in other places. In the early 1960s during the Kennedy years, a black ambassador coming to this country to represent his country did not know where he could have lunch or dinner in Washington, D.C., our national capital, except at a foreign embassy; he had great difficulty in finding apartment space for his needs and residences for himself and his staff; he would drive his family down to Maryland Beach on a Saturday afternoon and be turned away; his wife would often ask a State Department wife to go the supermarket with her because she was afraid of incidents; if this ambassador wanted to visit another part of the country, we'd usually have to send a State Department person along in advance in order to make all the arrangements to be sure there were no incidents. I had one of these ambassadors sit in my office once and say, "Mr. Secretary, where can I get a haircut?" And I couldn't tell him, except that I did say, "You can have your hair cut where I have mine cut, right there in that next little room. Any time you want to drop by there will be a barber there in sixty seconds." Now we had to get to work on this kind of a thing because our duties to foreign ambassadors made that situation impossible. But we immediately learned that you cannot resolve these questions on the basis of a diplomatic passport. You've got to resolve them for the society as a whole. And so the State Department was very active in the civil rights movements of the sixties and I led off the cabinet testimony for the principal civil rights bill in the mid-sixties. In that testimony I did talk about the importance of this legislation from a foreign policy point of view. But I said that was a secondary consideration that the primary reason why we should pass such legislation was because it was the right thing to do under our constitutional system. The reason I mention this experience is that I think we have to be careful about sanctimony. We should work on these matters with compassion, usually quietly and behind the scenes, and not proclaim our virtues from the housetops, because we haven't earned the right to assume that position. We've still got a good deal of unfinished business here in our own society in these matters.

SCHOENBAUM: Do you think in the Helsinki process we are guilty of too much sanctimonious behavior in our accusations against, particularly, the Russians and east Europeans in eastern Europe? What's your view of the Helsinki Agreement?

DEAN RUSK: The Helsinki Agreements, I think, point in the right direction. They were something that--I don't object to having included the civil rights issues in the Helsinki Agreements. But when we and the Russians debate civil rights, we tend to occupy each other's rear. We address ourselves to basic civil and political rights as we see them: free speech, free press, free vote, that kind of thing. Well they come right back and talk about economic and social rights where their situation is much more far-reaching than ours in much of the care they take of their own citizens: in medical care, education, that sort of thing. So we tend to pass each other in the night and do not really come face to face with the unfinished business in both societies in the field of human rights.

RICHARD RUSK: Pop, President Carter had a very strong human rights emphasis in the conduct of his foreign affairs. Do you think Carter's approach was somewhat sanctimonious, self-defeating, injurious to American foreign policy? I know he was heavily criticized.

DEAN RUSK: I think there were some around him who were guilty of that kind of sanctimony, and maybe Jimmy Carter himself was to a degree. And he was inclined to go further in linking civil rights to other issues than I myself would have gone. She was a very nice gal, but when we sent Patricia [M.] Derian, who was Assistant Secretary of Human Rights during the Carter years, off to other countries to lecture than about civil rights, she was talking to people who remembered what it was like in Washington, D.C. when they were serving there. Some of these people went back home to take up high positions in their own government. I remember during the Truman administration there was a very able ambassador from Indonesia, Ali Sastroanidjojo. Well, he went home and became Prime Minister of Indonesia. And he was rather bitter toward the United States. And we learned that that was because of the personal snubs which he had received when he was serving as ambassador in Washington. So these things do make a difference.

RICHARD RUSK: Anything else about human rights, Pop?

SCHOENBAUM: I've got one question. In Europe, and I think this is unique in the world, there is a human rights commission and a human rights court. And the unique thing about it is, as you know, this commission and the court have the right to bind the nations that are members as to the conduct that they engage in vis a vis their own citizens. And if you're a citizen--some cases out of Ireland, for instance--and your rights are violated allegedly, you can go off and complain to the European Commission on Human Rights outside your own country. And then ultimately you can go to the Court of Human Rights and they will hand down a judgment that is at least legally binding on Ireland.

DEAN RUSK: Yes, and they have had a number of cases before that court. And it seems to operate, on the whole, pretty well. My hunch is that our Senate would never in the world approve a treaty by which an American private citizen could appeal to an international court on civil rights issues.

SCHOENBAUM: I agree. But do you think it's a good thing, perhaps if not for us, for other nations to follow?

DEAN RUSK: Oh, I feel very strongly about these civil rights. Well, it took us over a hundred years after the Emancipation Proclamation to extend the promises of our Declaration of Human Rights in our Constitution to all of our citizens. And that's a shame. It's a blot on our history. So I feel very strongly about them. I just hope that we will proceed on these matters in a way that will produce effective results. There are several countries that I could name, well Brazil for example, where civil rights are in much better position because of the continuing quiet interest behind the scenes expressed by the United States in these civil rights issues. And I think that has paid off. I think the situation both in South Korea and in Taiwan would be even much worse than it is today had it not been for the steady influence of the United States behind the scenes.

SCHOENBAUM: Argentina probably too.

RICHARD RUSK: Yeah. And speaking of Argentina, you know there are countries abroad that apparently definitely benefitted from Carter's more active approach. Jimmy Carter made a visit to Latin America not too long ago and was given a hero's welcome. And there were people who definitely appreciated his forceful stance on human rights.

DEAN RUSK: Well you see, if you press these human rights issues to the end of the trail, then I think you get into pretty severe trouble. For example, if we pressed these issues to the end of the trail of the Soviet Union, that would get in the way of our finding a way to inhabit this speck of dust in the universe at the same time, and would get in the way seriously. Sometimes ambiguity in these matters is better. Henry [Alfred] Kissinger worked out an ambiguous kind of situation with the Soviet Union on the emigration of Jews. In fact, the Soviet Union considerably expanded the numbers of Jews emigrating from the Soviet Union, but Kissinger would not publicly rub their noses in it. Well then along came the Jackson-Vanik Amendment to a trade bill which put this thing on top of the table. And it was predictable that the Soviet Union would sharply reject that as an interference in their internal affairs. And so the emigration of Jews dropped off very fast after the Jackson-Vanik Amendment, you see? So you have to keep your eyes on how to produce the results you want and not just on those things that make you yourself feel warmer inside because you've struck a blow for civil rights. You may remember the great human rights demonstration march, in Washington during the Kennedy administration.

RICHARD RUSK: Are you talking about Martin Luther King[Jr.]?

DEAN RUSK: Where Martin Luther King made his historic address. I was with President Kennedy when he decided, against the advice of some of his people, not to go down to speak to that rally. He felt that the marchers should have their day and that he should not attempt to capture it. He should let them have their day and then we'd build on that for our own civil rights legislation. But some of his advisors wanted him to go down there and short-circuit the demonstration by himself appearing in support of civil rights.

RICHARD RUSK: Was he invited to take part in that?

DEAN RUSK: I think he was. I'm not sure. I'm not sure that he was really invited. But, of course, had he decided to go he would have been welcome.

SCHOENBAUM: Can you put some names to this? Who were the ones who were advising him to go?

DEAN RUSK: Oh, I really forget the individuals.

RICHARD RUSK: Pop, what about this issue of treaties versus executive agreements? To what extent did you rely on executive agreements during the Kennedy and Johnson years? Let me ask a follow-up to that. What are the implications for our own constitutional system when Presidents proceed with these agreements and obligate the U.S. on international matters, yet bypass the advice and consent of the U.S. Senate?

DEAN RUSK: There are, broadly speaking, three kinds of executive agreements. There are those which have been authorized by the Congress in advance. Most typically are the various trade agreements which have a legislative root in them, but where the details have to be left to the executive to work out because they are such a mass of detail. The second category of executive agreements are those which receive later congressional action. For example, we joined certain of the international organizations by executive agreement approved by the Congress: both houses of Congress. Then there's a third category of executive agreements which are based on the President's executive power standing alone. And those are the ones where a constitutional issue might, and occasionally does, arise. I personally feel that those executive agreements should be used sparingly; because if we create an international obligation, it seems to me that, it is in the spirit of our Constitution that at least the Senate, or maybe both houses of Congress, participate. And I can understand some restlessness in the Congress about executive agreements made solely on the President's own authority. But they are not all that many in character. But let's go beyond--intrude here. If you look at the international convention on treaty law, the definition of a treaty under that treaty on treaties refers to an agreement in writing binding both parties. Clearly the international definition of a treaty covers what we call executive agreements. And so this is a distinction that one must keep in mind. Now beyond that, however, there's a large number of agreements with other nations in the common daily transaction of business which are necessary if we are to conduct our relations with other countries, but agreements which do not operate in any effective way as law: for example if we agree with another country that the chief of government of that country will be received on an official visit to Washington, that sort of thing. There are lots of understandings and agreements that are reached simply in the normal conduct of diplomacy that we comply with. But we don't make a big deal out of them because for all practical purposes they don't operate as law and do not impinge upon private citizens. There are other times though when rights of private citizens do become involved. For example when by executive action we work out what some people call a gentlemen's agreement with Japan, or Hong Kong, or Korea, or Taiwan, to limit their export of textiles into the United States. Now if an American importer of such textiles in California is unable to get such textiles, even though the statutory law covering the matter would permit him to do so, then it seems to me that he has some kind of claim in terms of his own personal rights over against that so-called gentlemen's agreement. But thus far that has not been, so far as I know, successfully tested in the courts. But

there are a good many of these executive agreements which do impinge directly upon private rights in this country.

SCHOENBAUM: Do you remember an incident either when you were Secretary or during the Truman years when this became a focused practical problem: when you were really debating, "Well, should we make this a formal treaty and go for advice or consent, or shall we try to go with the executive agreement route? And will we run into any political problems if we do? How is this, in the day-to-day business of government, how is this--

DEAN RUSK: Well, if you pressed me for specific examples I'd have to work at that a bit. But, yes, very often you have a discussion in the executive branch of the government as to whether, in a particular arrangement with another country, you do it by executive agreement or you cut the Senate or the Congress into it. Well one example had to do with our bases in Spain. Now for a good many years throughout the [Dwight David] Eisenhower, Kennedy, and Johnson years these were handled as executive agreements. And they were of some importance because part of the agreement had to do with large amounts of military and other forms of assistance to Spain. We got the Congress to appropriate the funds, but then we did, I think during the seventies, move to putting the Spanish bases agreement into a--I don't think formal treaty form, but rather the kind of executive agreement which required the approval of Congress. They are submitted to Congress now, maybe as treaties I'm not sure. You'd have to check that.

SCHOENBAUM: Of course the difference is that if it's submitted to Congress in the form of getting a resolution or something it would only need majority vote and, of course, a treaty needs two-thirds vote in the Senate.

DEAN RUSK: Yes. There's also discussion from time to time as to whether a particular matter should be handled as a treaty and sent solely to the Senate or whether it should be sent to both houses of Congress for approval. And from the beginning of our republic there's been some tension between the House of Representatives and the Senate on the treaty-making power. If the President and the Senate conclude a treaty which requires legislation and appropriations, then the House is faced with the question as to whether the House of Representatives is bound to follow the President and the Senate or whether the House has any discretion whatever in whether or not it will approve the necessary funds.

SCHOENBAUM: That happened in Panama on the Panama Treaty?

DEAN RUSK: Yeah. Right. And for that reason my practice was to keep in touch with the House Foreign Affairs Committee when important treaties were being negotiated. As a matter of fact, that was almost as a general practice. Every time I would appear before the Senate Foreign Relations Committee I would offer to appear before the House Foreign Affairs Committee and they would usually receive me.

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