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fresh perspectives on
global issues prepared for
The News

THE WORLD PAPER

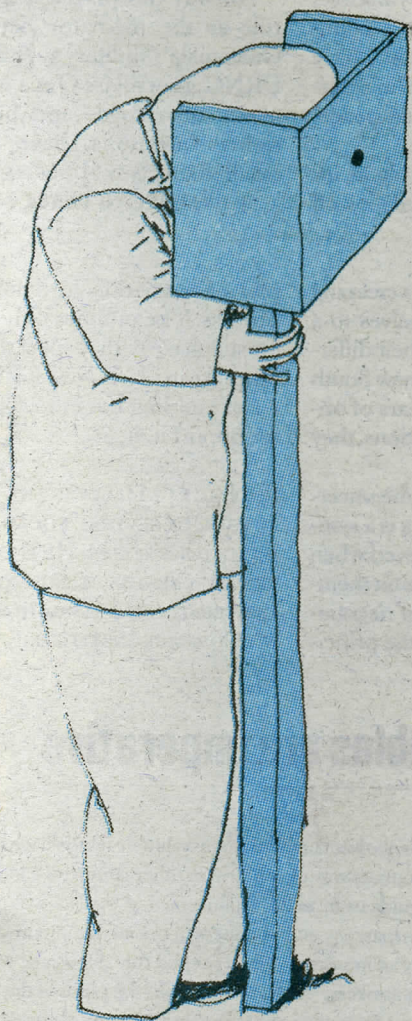
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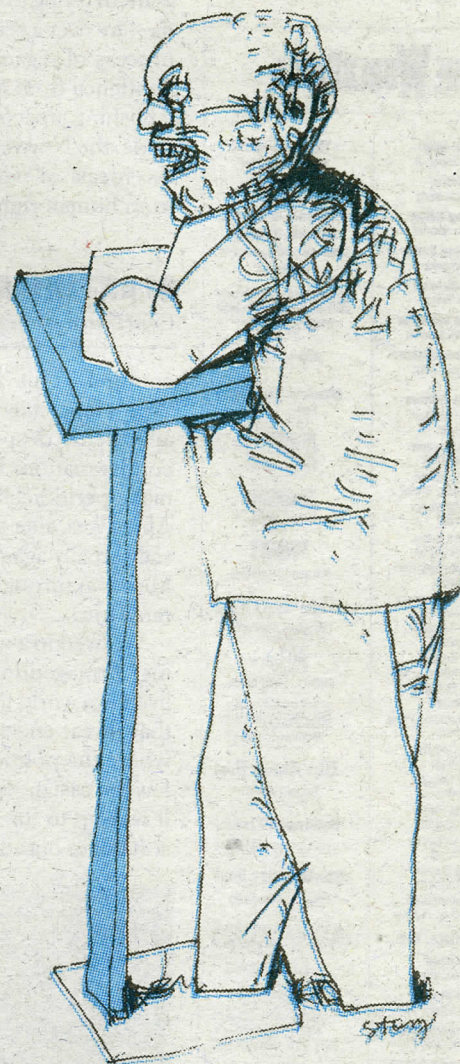
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Without two superpowers, force has lost much of its effectiveness

Blasting a path only a mediator can tread



The full weight of the Soviet army could not cow Afghanistan. Police in US cities cannot quell the gangs that roam them. In a world where David is routinely armed with missiles and AK-47s, Goliath is finding that the best way to keep the peace is to negotiate. Today's relationships—international, social and personal—are increasingly being shaped by mediators and their art



By Padraig O'Malley

AS AMERICAN CRUISE missiles streak across the night skies of Iraq, it is hard to believe that mediation is becoming the dominant form of conflict resolution. But it is, and for one very simple reason—there is no other way.

Exponential advances in military technology, the miniaturization of technology and the innumerable ways we have ingeniously devised to erase ourselves in large numbers have, in a sense, made the evolution of conflict resolution measures almost inevitable. We have bequeathed ourselves with a cruel but ironic equality: we are all at risk from

one another.

The evidence is everywhere. Nomadic, weather-beaten Afghans astride their mountain-mules shooting down Soviet helicopters with shoulder-held surface-to-air missiles. Factions of the hapless Somalis, perhaps numbering in the hundreds, driving the United Nations—and the United States—out of the illusory resemblance of a country. Chechen guerrillas humbling the Russian army. Twilight terrorists blasting 747s out of the sky at 30,000 or 13,000 feet.

There is a growing realization that it is not only nuclear war that leaves no winner. The sheer scale

of the technological developments in the area of so-called conventional weaponry, the globalization of the armaments industry, the ease of availability and the instant neousness of communications are slowly teaching us a new lesson for a new age: violence as a solution to conflict inevitability leads to stalemate.

Negotiations today are not an alternative, but invariably the only alternative. Increasing interdependence, the competing claims of diversity and multi-culturalism on every level has made the idea of "winners" and "losers" irrelevant, especially in the international arena. There, the loser can al-

ways wreak sufficient havoc to make the winner's claim to victory a hollow boast.

This is a relatively new phenomenon. In the "bad" old days, matters were—in a way—much more simple, as well as being a lot less hospitable to the mediator's art. The two superpowers, the United States and the Soviet Union, competed globally selling their respective wares: capitalism and communism. They established their respective hegemonies (market shares, so to speak), and made sure that the governments of the countries in their "spheres of influence" hewed to the appropriate politically correct line. Dispute resolution meant cutting off aid,

sending in the gunboats or applying some other variation of the "big stick" approach.

The two superpowers poured money into their client—or would-be client—states to prop up faltering, often despotic regimes on both the right and the left and crush dissent. Both displayed an equal indifference to what some elements in civil society had the temerity to call human rights. The Soviet Union was especially enamored of the "iron fist"—no doubt conflict resolution techniques such as mediation transgressed some arcane principle of Marxist Leninism.

Interests, not people were what

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REPORTING
FROM
JOHANNESBURG

Silent diplomat of choice

Channel to peace runs through Norway

By Peter Beck

NORWAY HAS come a long way from its Viking days, when the men who set out from its fjords in their longboats were feared and hated throughout Europe and Asia Minor. Today, Norway has become the silent diplomat

of choice, its mediation skills widely recognized by quarreling states and nations wracked by civil war.

The roots of what is now characterized as the "Norwegian model" of international peace negotiations—getting opponents together and talking without trying to dictate the agenda—are over a century old. In the process of regaining their independence from Sweden and establishing an economy based on trade, the Norwegians embraced the ideals of neutrality, respect from human rights and peaceful

cooperation between countries.

The Swede Alfred Nobel, founder of the Nobel Prizes, recognized in 1894 that these ideals had permeated Norwegian culture. For that reason, he gave Norway the responsibility for the Nobel Peace Prize ceremonies instead of his native Sweden. Nobel also hoped that by doing this, it would help Norway regain its independence from Sweden without the two neighboring nations declaring war. His hope was realized in 1905.

Since World War II, when

Norway's neutrality was ignored by Nazi Germany, there has been a consensus among all major Norwegian political parties in regard to foreign policy and security issues. A member of the North Atlantic Treaty Organization, Norway has staunchly supported the United Nations—Norway's Trygve Lie was the UN's first Secretary General—and the country's 4 million inhabitants have been active participants in several of the UN-sponsored peace-keeping forces.

Norway's modern role as international peace-broker took off

in earnest in the early 1990s under a succession of the Labor Party government's foreign ministers; Thorvald Stoltenberg, the late Johan Jorgen Holst and Bjorn Tore Godal.

The best known instance is Norway's role as mediator in the Palestinian-Israeli conflict during 1993—the "Oslo Channel" has become a universal expression. What is not so well known is that Norway played an important role in solving the difficult question of allocating water between the Israelis, Palestinians and Jordanians.

Norway has played a similar role as the mediator between Guatemala's military regime the URNG guerrillas. Once agreements on refugee and human rights questions have been reached, the two opposing sides

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BLASTING A PATH

Continued from page 1

counted. This lay behind the West's long-standing tolerance of apartheid, despite the routine condemnations it felt obliged to make periodically. White South Africa was, after all, a reliable and stalwart ally against the spread of Marxism throughout Sub-Saharan Africa.

We lived in a world of impending Armageddon, but we also lived in a world the simplicities of that threat engendered; a world where the political verities were few but cast in granite. In the end, it was up to the superpowers to sort things out and keep life on the

the resurgence of long suppressed ethnic and nationalist rivalries. What had been constructed as a network of nations, the handiwork of the superpowers, turned out to be a patchwork of ethnic groups. Majorities found themselves transmogrified into newly disenfranchised minorities and vice versa. In the absence of grand, superpower strategies, the management of conflict—rather than the resolution of conflict—became the alternative to rampant disorder and chaos. The small step forward, shepherded by the mediator, took the place of the master plan imposed by the superpower.

Undoubtedly, South Africa is

of the world was taking a creeping toll, committed themselves to a peaceful resolution of their differences and the birth of a new South Africa. After several years of on-again, off-again negotiations, they made their peace.

As we proceed into the uncertain future, South Africa is a symbol of what can be achieved when parties to a conflict commit themselves to the process of negotiation, when they allow the princi-

ples of mediation to define the process. The outlines of how we must behave with respect to each other are in place. Now it is a matter of building the infrastructure to support it. ①

PADRAIG O'MALLEY IS THE AUTHOR OF SEVERAL BOOKS ON DIVIDED SOCIETIES. HE IS CURRENTLY A SENIOR FELLOW AT THE UNIVERSITY OF MASSACHUSETTS' MCCORMACK INSTITUTE.

Timetables are imperative

South Africa's experience has taught us many valuable lessons, which if applied in the appropriate way to conflicts in other countries can provide a compass to guide us in an uncertain world.

- There should be transparency and openness in the mediating process.
- "Outsiders" can play an important, albeit limited role. However, while they may act as "honest brokers," they cannot usurp the place of the mediators—who must come from the parties in conflict—nor can they impose settlements. If they do, they only plant the seeds of further discord.
- Progress will come only when parties to the conflict learn to start trusting each other. Without trust, there can be no compromise. Parties must put themselves in the shoes of their protagonists. In the end, successful negotiations are not so much about bringing your community along with you, as it is helping your protagonists bring their communities along with them.
- At every level, negotiations should involve the inherent risk of compromise. Each compromise—and its attendant concessions—is a building block. As parties grow to trust each other and move from one compromise to the next, each develops a stake in seeing the other succeed. A sum of mutual investments develops, which provides the cushion when it comes to the "crunch" issues.
- The concept of "sufficient consensus" should be defined flexibly as that level of consensus that keeps the process from breaking down and allows it to move on to the next stage.
- Timetables are imperative. They concentrate minds, and forcing participants to meet deadlines encourages compromise—especially when progress has been made on a number of fronts—rather than risking the loss of progress made up to that point.
- All parties must feel an equal ownership in the process, something that is unlikely to happen if governments impose the mediation process.

—By Padraig O'Malley



Conflict resolved: South Africa's F.W. de Klerk and Nelson Mandela, who negotiated a peaceful end to the apartheid system of racial segregation

planet, as we knew it, alive.

All that changed with the collapse of communism in Eastern Europe, the literal and symbolic demolition of the Berlin Wall and upheavals in the Soviet Union leading to the the disintegration of the Soviet empire.

The new freedoms this change unleashed became the catalyst for

the beacon of hope in this regard. After 300 years of colonial rule and almost 50 years of apartheid, blacks and whites, recognizing that neither could win a decisive military victory, that a peoples' revolution would weaken but not destroy the apartheid regime, that repression did not work, that economic and isolation from the rest

NEW MEDIATORS

Internationally recognized Harvard program has a local side

Gangs talk their way out of trouble

By Wilson Wanene

THIS PAST MAY Theodore Johnson conducted a faculty and staff meeting at Boston's Roxbury Community College. During a break, a middle-aged African-American woman came up and, to his surprise, shook his hand and thanked him. He had saved her son's life, she claimed.

"It's not often that someone can say something that instantly puts me to tears," recalls Johnson, a program manager at Conflict Management Group (CMG). To him, the incident was a watershed, one that ranked alongside graduation, getting married, the birth of his first child and winning his first case as a lawyer.

The woman had an 18-year-old son who had attended 38 gang-related funerals in three years. She became convinced that he too would become yet another victim of the deadly violence that is commonplace among young people in inner-city America. According to the

Boston Police Department 40 percent of the murders last year—38 of 96—took place in Roxbury, which is predominately made up of African-Americans and other people of African descent. For Johnson, this sobering moment between him and the mother was proof that his mediation-centered youth community program, the Roxbury Conflict Resolution Project, was making a difference.

"The fundamental similarity between Roxbury and South Africa is that in each case the importance is not a 'solution' but rather that the people become more skillful in dealing with whatever problem comes along," explains Roger Fisher, Samuel Williston Professor of Law emeritus at Harvard Law School and a founder and board member of CMG.

"In this complex world there are always differences of perceptions, values and interests. Our future lies in treating those differ-

ences as a shared problem, to be shared side by side," Fisher observes. Whether a dispute involves two street gangs in an American city or a change from white rule to a multi-racial government in South Africa,

well-publicized conflict cases requiring mediation (or negotiation, as he refers to it) ranging from the Camp David summit between Egyptian president Anwar Sadat, Israeli prime minister Menachem Begin, and US president Jimmy



to Fisher they have one thing in common: a settlement will require getting each side to understand the other's interests.

Fisher's work for the Harvard Negotiation Project, which he also founded and directs, has seen him play various influential roles in

Carter; the Iranian hostage crisis; the first Reagan-Gorbachev summit; and talks between the former South African government and the African National Congress.

The Roxbury project, a three-year pilot program funded mostly by the Hitachi Foundation, is in its second year. It has designed a conflict resolution curriculum for peer leaders who serve as intermediaries between CMG staff members and youngsters in the Roxbury neighborhood. CMG's approach is to work within the community as a whole, collaborating with other programs and groups.

"I spent a lot of time as a prosecutor trying to work for justice from inside the system and there are many decent people inside the system doing the same thing," says Johnson, referring to his 17 years as a state prosecutor in Orange County, California before he joined CMG. "I now think I can do more by empowering people outside the system." His project started off with three peer leaders—one of them was the teenager whose mother thanked Johnson—who worked with 20 young people using rap, film, skits, games, and personal stories to help them change attitudes towards themselves and others.

CMG staffers and the peer leaders try to deal with issues that are central to the youngsters' lives such as their identity, their yearning for safety, their desire to be respected and to reach their poten-

tial. The idea is to help the youngsters realize that they have control over their lives and can deal with—rather than react to—events. These youngsters are then expected to train others. The goal is to have about 15 trainees each of whom, within three years, can in turn conduct workshops for groups of about 25.

Founded in 1984, CMG is a non-profit, non-partisan consulting firm, based in Cambridge, Massachusetts, which aims to improve negotiation, conflict resolution and cooperative decision making techniques—honed at Harvard Law School—and encourage their use.

In doing so, claims Fisher, the idea is not for CMG staffers to act as judges but as facilitators who can nudge disputing parties to listen to and understand each other. CMG also works closely with the Program on Negotiation at Harvard Law School and the Harvard Negotiation Project, tapping into the expertise of specialists—from both inside and outside Harvard—such as Fisher, who is co-author of *Getting to Yes: Negotiating Agreement Without Giving In*, and Middle East expert Landrum Bolling.

Getting to Yes, a seminal work in the negotiation field, has sold about three million copies since it was first published in 1981. In it, Fisher and co-author William Ury urge negotiators to separate the people on either side of a dispute from the problem itself, which enables them to see their "opponents" as human, focus on interests rather than positions, invent options for mutual gain and insist on using objective criteria wherever possible as the basis for negotiating.

Fisher's interest in negotiation is very personal. During World War II, he enlisted and found

himself flying over the Atlantic and Pacific oceans as a weather officer, looking out for clouds, typhoons and wind conditions. He then radioed the information back to help determine bombing missions over Japan and Europe. Though he was lucky and survived, he lost friends in the war, including a college roommate. The whole experience illustrated to him—close up—how costly conflicts can be. He learned a simple but valuable lesson.

"I was convinced," he says, "that people would do better if they dealt with each other and tried to deal jointly with their differences." ☐

WILSON WANENE IS A BOSTON-BASED FREE-LANCE WRITER.

CHANNEL TO PEACE

Continued from page 2

will be coming to Oslo to sign a cease-fire agreement.

Early last year Norway, the Netherlands and Canada were asked by the Tamil guerrillas and the government of Sri Lanka to be observers of their cease-fire (which subsequently broke down). Thorvald Stoltenberg, Norway's ambassador to Denmark, worked as the UN's peace mediator in the former Yugoslavia. Even Colombia, suffering through an growing struggle between the government of narcotics financed guerrillas, has asked Norway to assist it.

"We have been asked to mediate actively or to prepare for peace negotiations on several occasions," says the Norwegian Deputy Foreign Minister Jan Egeland. "Many times when we feel that we cannot play an effective role, we have to say no," he adds.

"I think we are asked to mediate because Norway is regarded as 'non-threatening.' Nations have confidence and faith in us," says Egeland. "Norway is not suspected of

having any of the great powers' ulterior motives or 'big sticks.' We have proved that we can organize smoothly and secretly. We have a well trained organization and active diplomats to work on these matters. And last but not least, we are willing to use money from Norway's foreign aid budget as a "risk capi-

"We are willing to use money from Norway's foreign aid budget as a 'risk capital' to create peace—knowing all too well the enormous costs of healing the wounds of war"

tal" to create peace—knowing all too well the enormous costs of healing the wounds of war compared to the costs of avoiding it in the first place."

Another feature of the "Norwegian model" of peace mediation is the willingness to use and ability to use effectively—non-governmental organizations

such as FAFO (Trade Union Research Center) and Norwegian Church Aid.

A few Norwegians are asking if their country has become too involved in the peace making process, but the Foreign Ministry points out that peace negotiations only take a small portion of their limited resources. Their main task—which consumes 90 percent of their time and money—is looking after the interests of Norway.

Outside observers say this increased role in peace negotiations has strengthened the country's self-awareness and pride. Some people have even come to Norway to learn more about the "Norwegian Model." Norwegians themselves believe this marriage of mediation and foreign policy has given their country's values a role on an international stage usually reserved for bigger nations—even if that role is behind the scenes. ☐

PETER BECK IS A REPORTER FOR THE FOREIGN DESK OF *Aften-posten*, AN OSLO-BASED DAILY NEWSPAPER.

A willingness to share blame and negotiate solutions avoids lawsuits

Car crash culture reveals self-reliant and street smart

Collision in Japan results in amicable settlement

By Crocker Snow Jr.

GETTING IN AN AUTO accident in Japan reveals the country's peculiar efficiency, bureaucracy, social responsibility, sense of grace and preference for negotiation over confrontation. That's what it revealed to me and my family in 1972 following a near tragic accident outside a little shipping port of 40,000, some 150 miles due west of Tokyo.

REPORTING FROM TOKYO The fault—to make it perfectly clear—lay in this corner alone. In this case, on a family sightseeing excursion along the sea of Japan coastline, we missed a hard-to-see stop sign on a back country road at the edge of a village and were creamed broadside by an oncoming dump truck.

The upshot was a wrecked car, three screaming young sons, a rattled farmer whose old house was the final backstop for our careening car, and a distraught but uninjured teenage truck driver.

Within five minutes of the



A negotiation waiting to happen? In the US, a lawsuit is more likely.

collision, police were on the scene, taking pictures, chalking the accident outline, exchanging papers and cleaning up the debris. A minute behind them came an ambulance to whisk

the two worst wounded boys away to the larger Naoetsu hospital for the necessary stitches and repairs.

Fully seven hours of that day were spent at the Naoetsu police station, filling out forms, passing of papers, being interviewed and struggling manfully with the language problem. Finally, Chief Inspector Saito advised that it was time for my wife (since she was the driver) to compose her formal *gomennasai* (I'm sorry) letter to all concerned, which serves as our version of events.

But the good inspector was bothered by one thing in the final draft—my wife Robin's explanation that she ran the stop sign quite simply because she didn't see it.

Ah so, he puzzled, she has driven for 14 years without an accident. She has driven three or four years in Japan and is familiar with our rules and road signs. Then she must have been distracted by the children in the back seat, or the cat, or you? Perhaps she was admiring the scenery?

No in fact she just missed it.

The apparent deadlock was broken only with a sudden news of a second accident, which, it turned out, had occurred in just the same place and in the same way. The same stop sign had been missed and the same farm house had been hit; this time, unfortunately, the driver was badly hurt.

A hasty return to the scene showed what most of us by this time suspected; the stop sign was truly difficult to see. Coming off a freshly paved road at unaccustomed speed, the driver was faced with a triangular red sign almost invisible against the backstop of a larger roof behind it. Inspector Saito opined that perhaps a stop light would be necessary. The shell-shocked farmer, whose old house had been twice hit now in the same day, could only agree.

Still, the most revealing part of the whole episode was yet to occur. Back at the police station estimates had come in on the car, truck and house, as well as the doctor's bills. These costs were to any American ours to bear.

But the Japanese don't see it this way. In their carefully constructed society, full guilt is to be avoided.

"The way I see it, your blame is about this much," said Inspector Saito, motioning to a gallon water bottle in the corner. "The truck driver's blame is about that much," pointing to a Coke bottle.

Protestations notwithstanding, all that remained was the formal negotiations for financing the necessary repairs.

The insurance man first offered to pay 20 percent of all costs "because you are a foreigner and unfamiliar with the road." When we reached an amicable settlement, with me paying for the damage to children, car and farmhouse, and he for his truck, a beaming Inspector Saito reappeared to endorse the "no fault" arrangement.

Bows were exchanged. Personal cards were exchanged. It was Japan's unique brand of blameless accident insurance, all the way around. ☺

CROCKER SNOW JR. IS EDITOR-IN-CHIEF OF *The WorldPaper*.

Egypt's judges, juries and mediators



By Omar Younes

JUST A SHORT TIME ago, dodging in an out of rapidly closing traffic gaps along Cairo's Corniche, I happened to err slightly. The result: a minor black eye to the headlight of my well-scarred tank of a Volvo, a severely damaged Peugeot—and a lesson in mediation.

Ingrained in every Egyptian is the desire to argue and a willingness to be entertained by argument. The heated debate, immediately following my assault on the resplendent Peugeot, was happily mediated by almost every person within the square block. All were united in the belief that the two sides should talk things out and reach an agreement. Mohamed, a buck-toothed boab (doorman), acted as the plaintiff's negotiator. Abdu, an obese man with a booming voice, interrupted a stroll with his fiancée to be lead bargainer for the defense.

The negotiations were not to determine right or wrong, for it

was obvious I was at fault. It was to determine how much I should compensate Mr. Peugeot—on the spot, of course. And for the love of a good verbal joust. No police involved, no insurance claim filled out, no violence, only two arguments and a large interactive jury present to settle the dispute. It ended with a handshake in less than an hour, since we all had to return to our different "businesses."

This form of mediating minor traffic disputes, though imperfect, provides an invaluable service. Cairo is a teeming city of 18 million which has an enormous traffic problem. If every minor traffic accident had to go through the same channels as in other countries, the fabled Egyptian bureaucracy would swell even further—if that's imaginable—and the unfortunate crash victim would have no chance for soap box compensation. ☺

OMAR YOUNES IS ASSISTANT TO *The WorldPaper's* PUBLISHER.

A WorldPaper White Paper

Masters of the Universe?

Private finance—pension funds, portfolio funds and equity investments in privatized enterprises—dominate the day in the world's emerging markets. Money managers with fiduciary concerns and little awareness of social and cultural conditions are making decisions that affect the economic development of these nations.

This WorldPaper White Paper, derives from the World Times International Inquiry *Money Matters: Financing Social Development in the 21st Century*.

In a lively writing style, Hugh Peyman an experienced financial journalist and current head of Kleinwort Benson Research Asia, addresses the street smart influences of private capital on development.

The WhitePaper also includes The WorldPaper's 2nd "Wealth of Nations Triangle Index" ranking 35 emerging nations by a combination of economic, social environment and information exchange factors.

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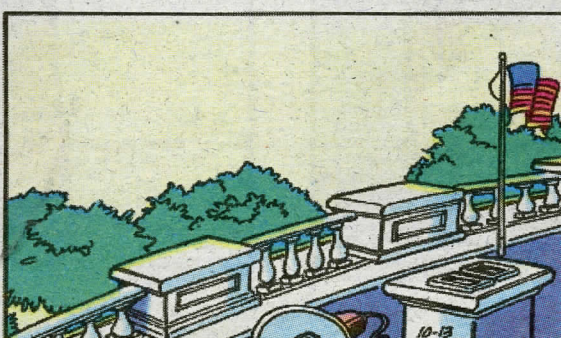
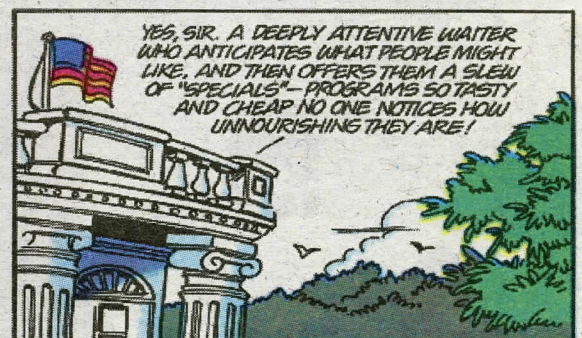
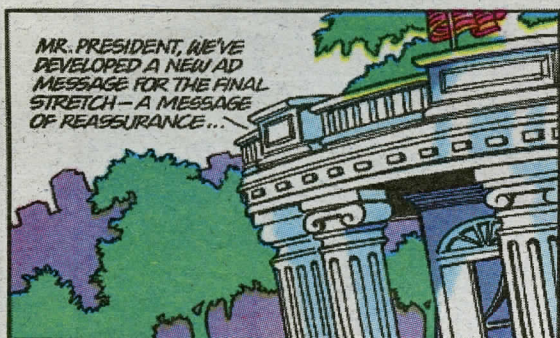
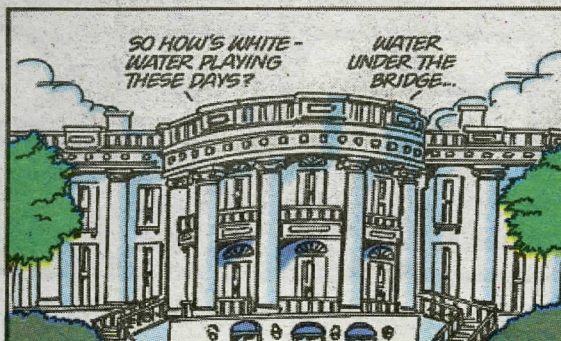
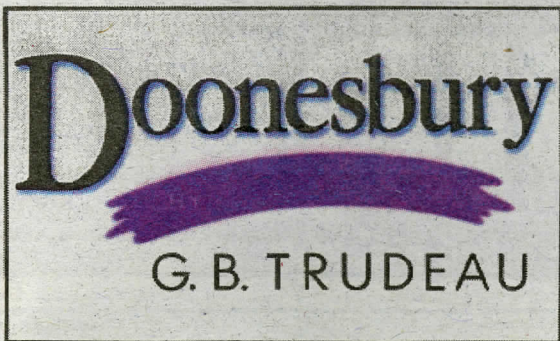
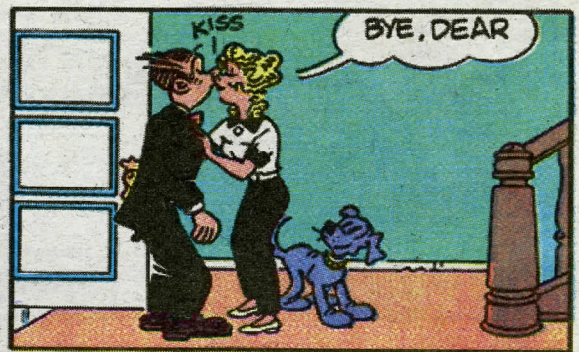
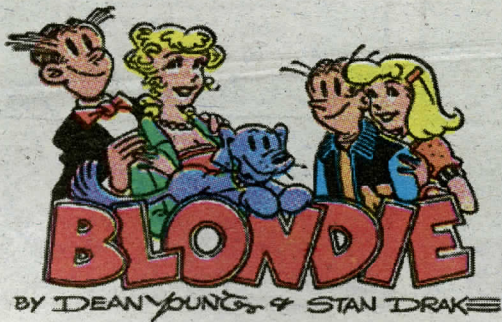
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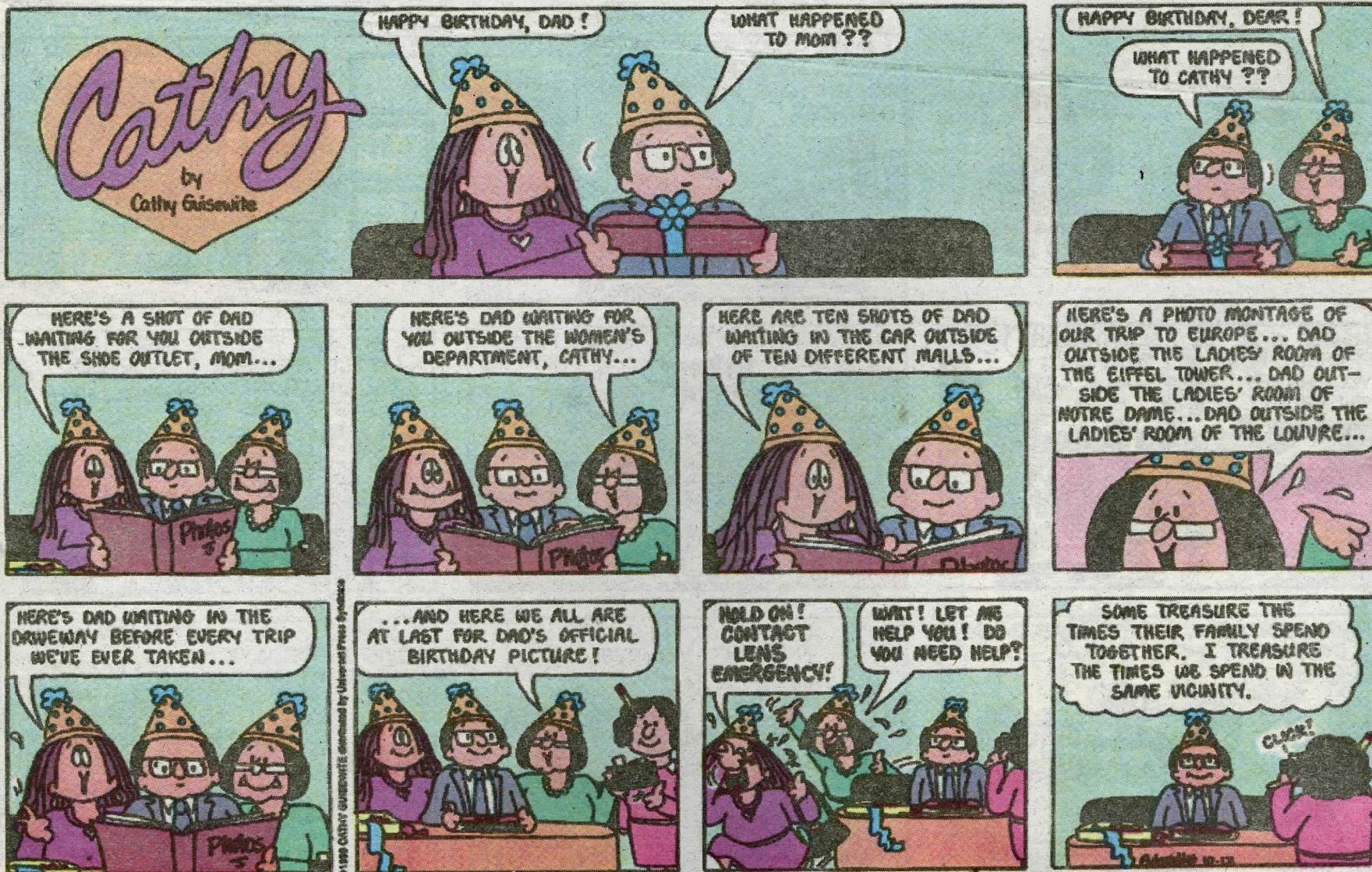
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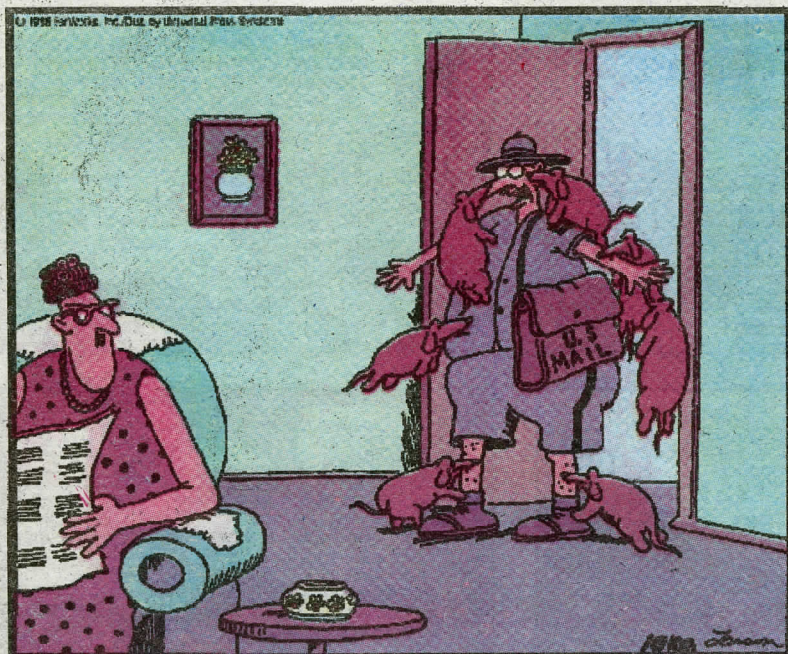


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THE FAR SIDE

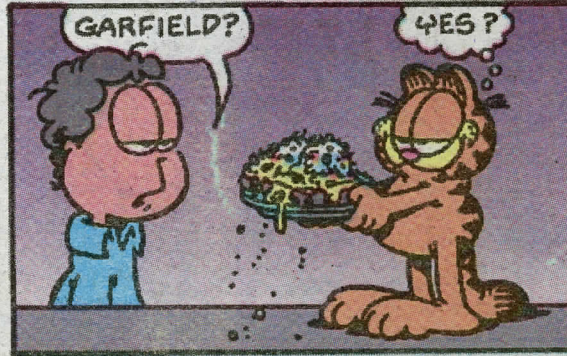
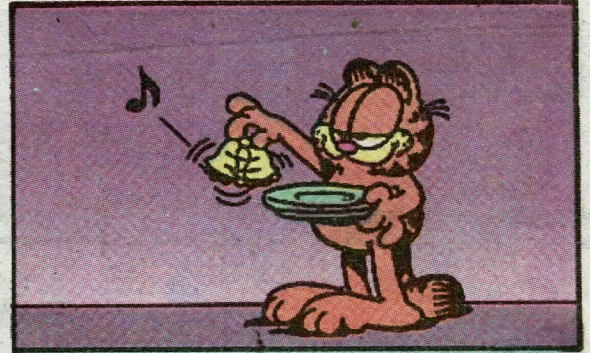
By GARY LARSON



"Give me a hand here, Etta ... I got into a nest of welner dogs over on Fifth and Maple."



Treehouse nightmare

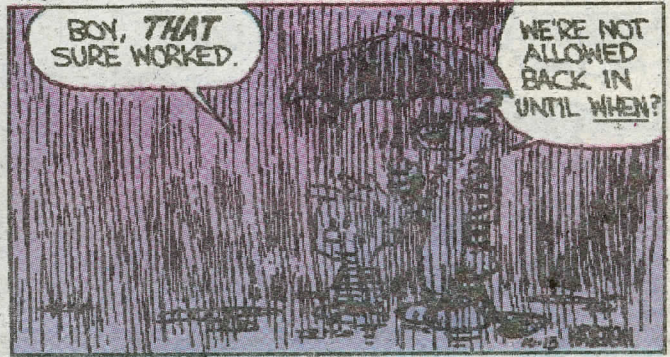


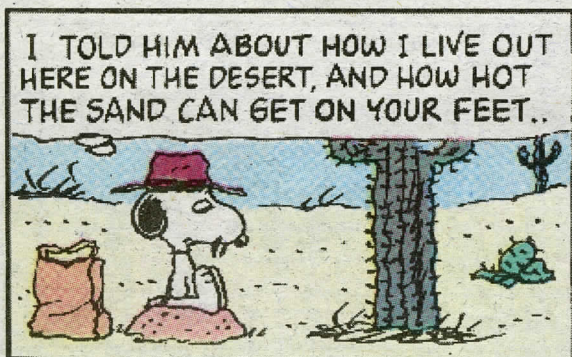
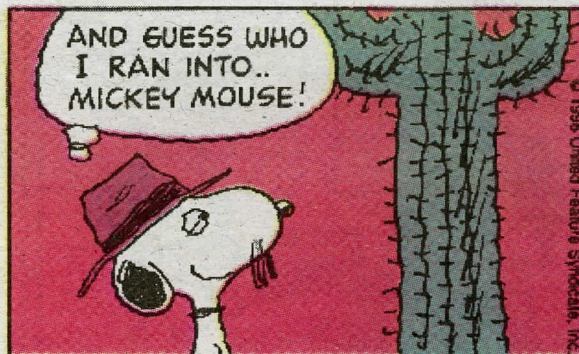
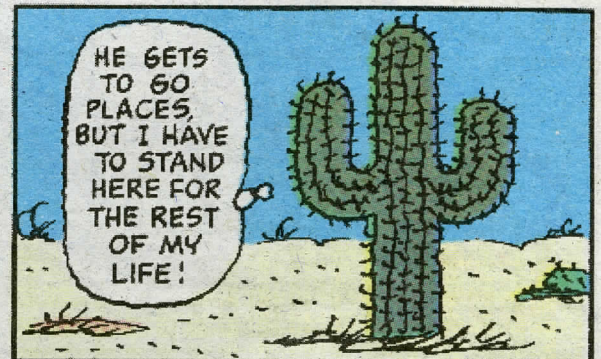
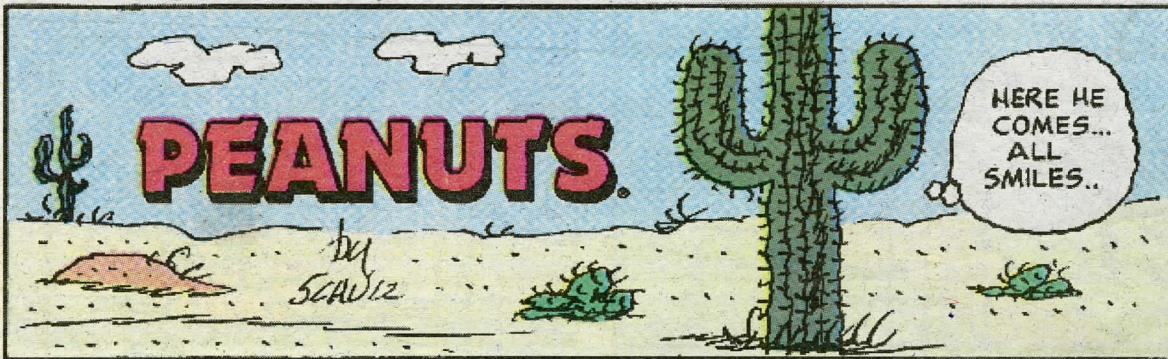
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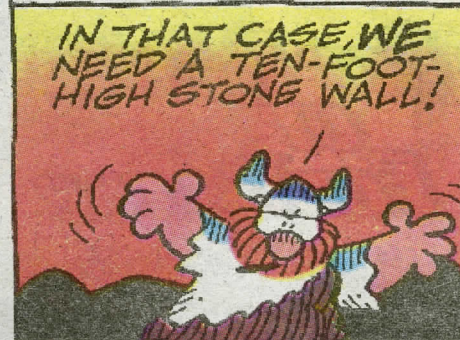
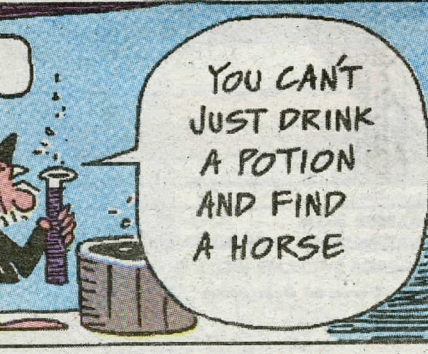
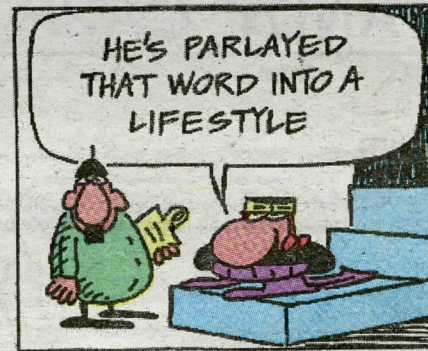
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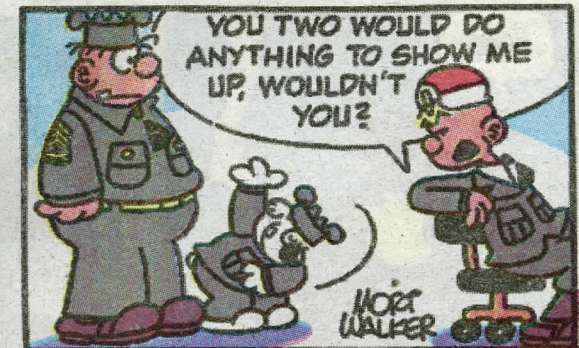
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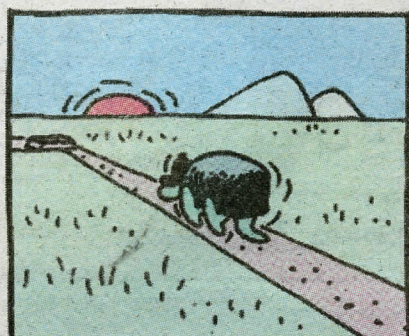
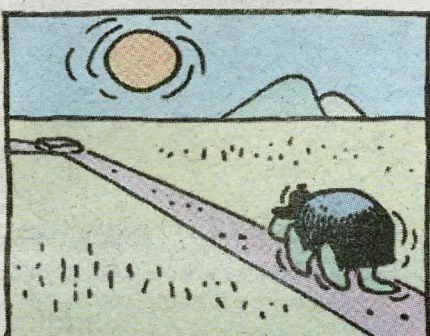
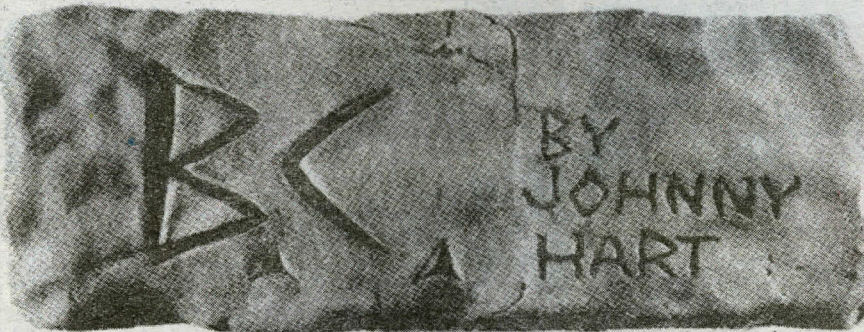
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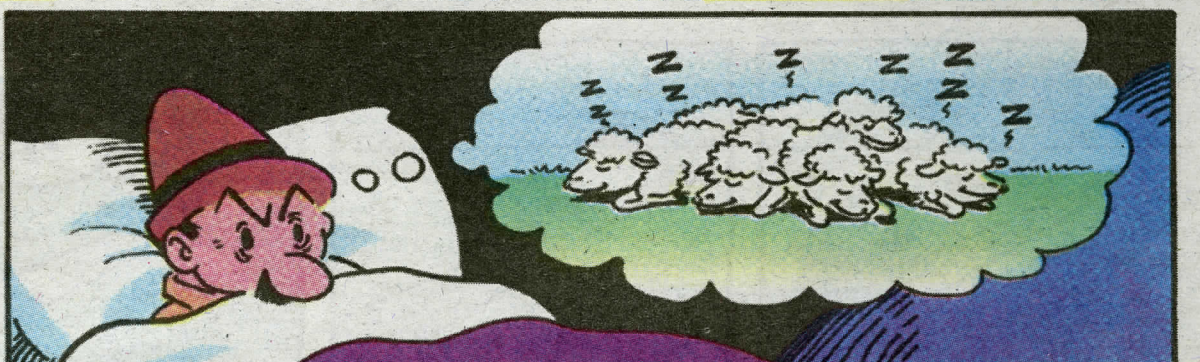
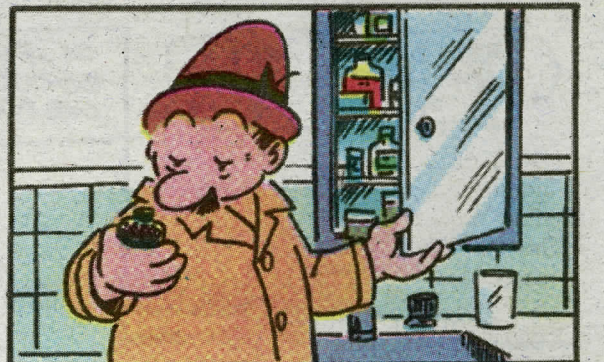
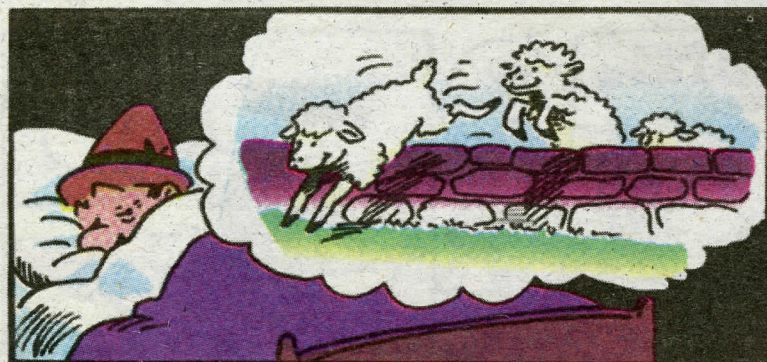
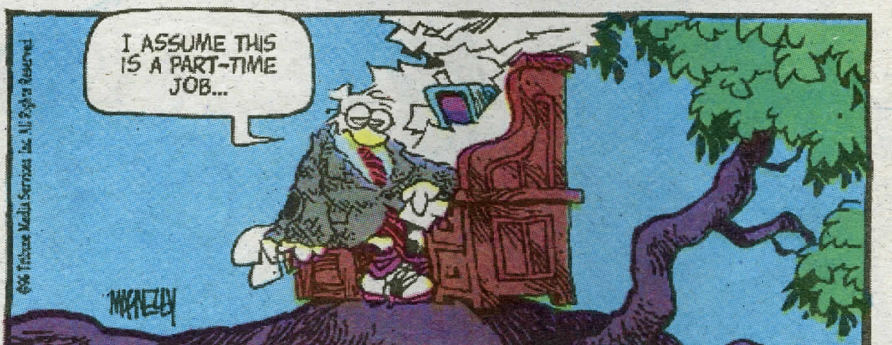
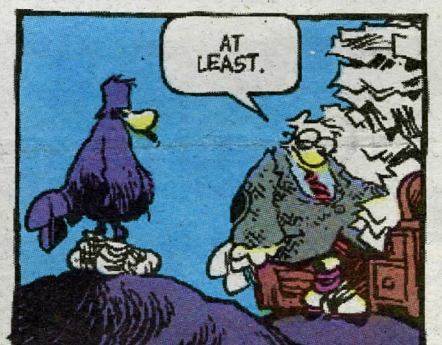
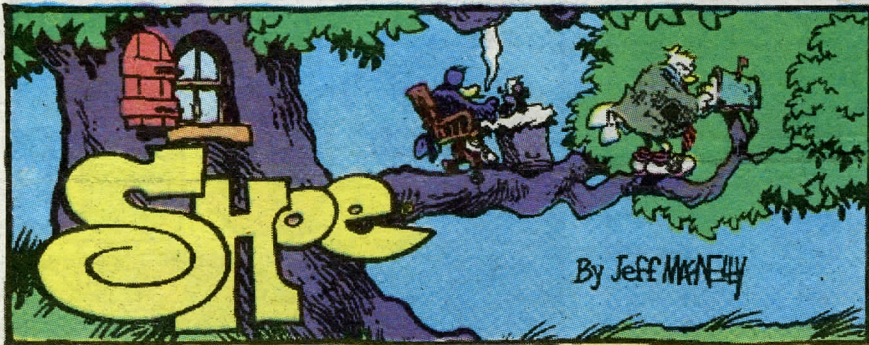


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GOT CALLED ON DARKNESS.



Globalization overtakes the legal profession

Need breaks down the borders around law



Spot the global lawyer: American and British lawyers are extending their practices—and legal codes—far beyond their native countries

By Brad Durham

THE GLOBALIZATION OF business, transportation and information technology has created a cadre of globe-trotting American lawyers, most often spotted in airport terminals tapping away at laptop computers. Once sleepy law firms, which formerly made a good living representing local clients, now are teeming with foreign clients and have opened offices in major world capitals.

While many of the top international law firms now have offices in London, Paris, Tokyo and Hong Kong, the truly global firms have the resources to establish far-flung outposts in emerging markets. From these outposts, they scoop up the early privatization work, work on joint ventures, advise governments on the development of commercial legislation and handle other transaction business for their more adventurous multinational clients. Often, they absorb a loss in order to establish their client lists.

US lawyers and their unique concepts of business law first invaded Europe in the early 1970s, when US corporate lawyers were

responsible for much of the legal work related to the development of oil under the North Sea. While the arrival of the American legal eagles was resented by the home-grown firms, who feared losing local business and their best associates to the US firms, most European lawyers now admit that they have learned much from the US attorneys about business law and serving clients. European firms now handle most of the still profitable North Sea development work.

Nevertheless, a fair amount of grumbling is heard from the UK legal community concerning predatory moves from US law firms, which are poaching the best and the brightest from local firms as they move into London.

The firm hold of US lawyers on the globalization of law is tied to several key advantages, according to John Merow, a partner of Sullivan & Cromwell, a 400-lawyer New York law firm with half of its client base outside the United States. "English, in particular American English, is the global language of business and finance," says Merow. "New York is a popular choice of law for

transnational matters and the American style of legal practice is attractive to many participants in transnational work."

US firms have gone global mainly to meet the commercial needs of their multinational clients, rather than any lust for global conquest. And many of these clients are companies that, through the formation of international partnerships, are becoming free-floating entities whose anchors to home markets have been lifted. There is pressure on law firms to do the same.

Lawyers also report that clients are looking to simplify matters by choosing law firms that offer "one-stop shopping" in the various countries where they are active. Intensifying competition among the global firms to retain major clients has, in at least one instance, caused a law firm to open a foreign office at the request of just one large client.

With such widespread global presence, US firms can't help but make their mark on international legal practices. Aspects of international commercial law that US firms have been instrumental in developing include international arbitration, global tax advice,

privatizations, derivatives, international intellectual property and international banking. US legal practices are also omnipresent in an informal body of international law—ranging from insurance to acquisitions—that is recognized and used in all the world's commercial centers, and enforced by large international arbitration bodies in Stockholm and Paris.

US firms have gone global mainly to meet the commercial needs of their multinational clients

Merow says his firm has built a significant global practice without practicing local law in foreign countries. His firm drums up business in foreign markets by essentially selling the merits of US law to govern certain deals.

It is not a hard sell. "If you look around the world, US law and legal practice has permeated about every aspect of cross-border transactions," said Merow. "Contracts are drafted in the American style, covering matters more ex-

The dramatic spread of trade, travel and cyberspace has fueled demand for global law and its practitioners. Lawyers and businesspeople are rushing to meet the need, cobbling up new bodies of law out of existing US and UK legal codes and aiding governments who 'borrow' from other countries' statute books

PLICITLY than they do on the continent. New York [state] law is commonly chosen for international commercial transactions, along with English law."

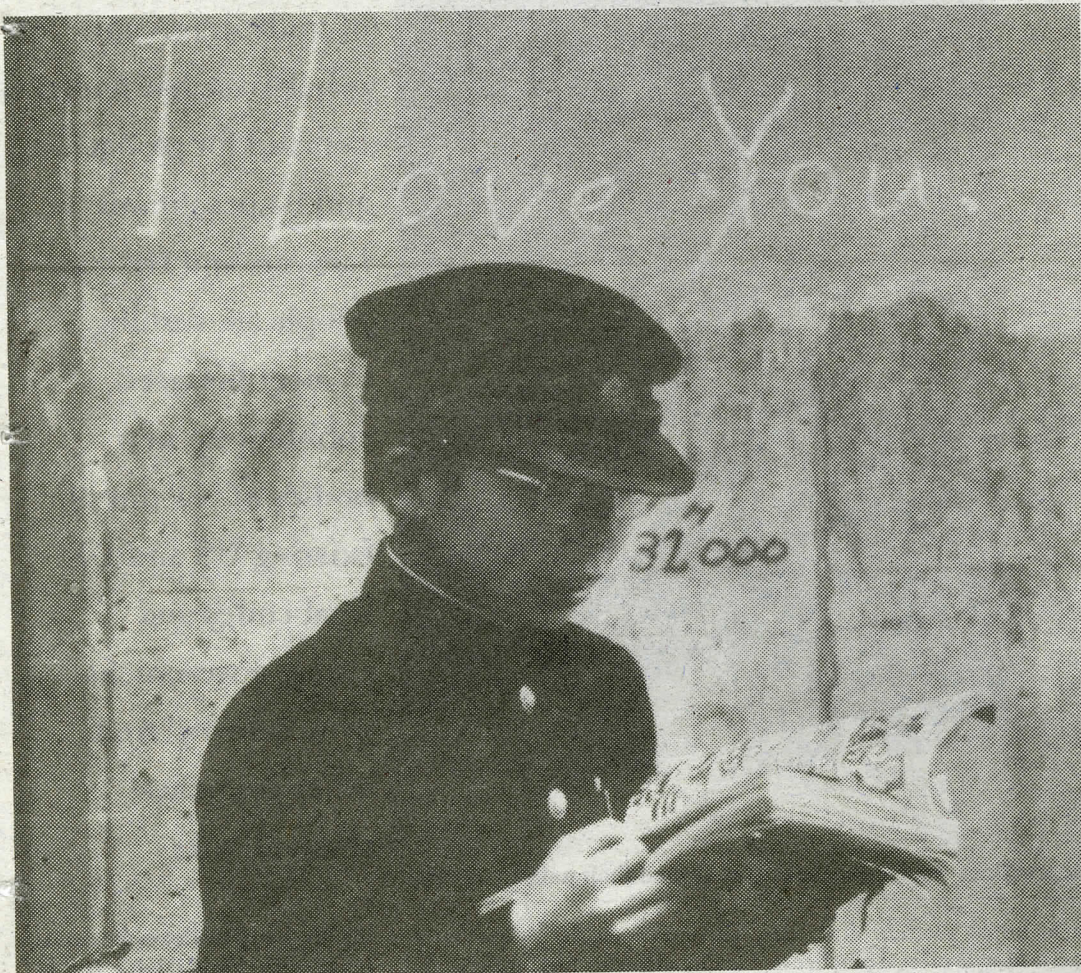
Merow adds that New York law is frequently used even in deals not involving US partners and in particular for capital markets projects. He cited the example of a recent African copper mine financing project involving a group of owners spread around the world—though none US domiciled—which chose New York law to govern the contract. "Of course they didn't want the whole deal riding on what might or might not be in Namibian law," says Merow.

Among the top US firms active abroad, some are high-priced hand-holders for their clients or "glorified travel agents," as one attorney put it. Other firms like to jump into the fray for their clients locally. Bill Holland, a partner in the New York office of Chadbourne & Parke, describes one recent case in which the firm represented a foreign investor in a Russian company. This investor was prevented from attending the annual shareholders' meeting in which a new general director was

► CHANNEL TO PEACE PAGE 6

Drafting and signing treaties has legal consequences

International agreements help rewrite Chinese law



'This doesn't look like Mao's legal thinking...' China's involvement with international law—especially multinational treaties—is beginning to affect its own statute books

By Zhang Dan

THE TIMING WAS PERFECT. On July 29, the last Chinese nuclear explosion thundered beneath the Lop Nor Desert in the country's remote

northwest. Hours later, when the Geneva Conference on Disarmament reopened, the Chinese representative declared that China would indefinitely suspend all nuclear tests and was ready to sign the Comprehensive Test Ban Treaty.

As one of the world's five declared nuclear powers, China made compromises while fighting hard to protect its national interests during more than two years of haggling over the treaty. Of late, it's the kind of situation China has frequently found itself in. As the country takes on a greater international role and becomes more integrated with the world's economy, it is drafting and implementing more and more

international laws and treaties.

According to the Ministry of Foreign Affairs, since China has participated in about 200 international treaties and agreements, and has been a signatory state to almost all

international treaties concluded since 1980. This involvement is beginning to have an effect on China's own legal codes.

"The Chinese government adopts a serious attitude toward all international treaties and laws it has signed or ratified," says Professor Liu Nanlai, a senior researcher of international laws with the Chinese Academy of Social Sciences. When domestic laws contravene international ones ratified by China, the latter prevail, he says.

In the past decades, according to Liu Nanlai, the Chinese government has amended many of its laws to get them in line with international conventions, calling this process "the docking of domestic laws with international practices."

"Acceding to international treaties is absolutely necessary for a nation which has increasing international exchanges," he says, adding that, "joining in the drafting process is also important for protecting our national interests."

China's involvement in global law-making began in 1971 when Beijing won the Chinese seat in the United Nations formerly held by Taiwan. From the very beginning of its participation in the drafting of international laws and treaties, China has always taken a stance in support of developing countries.

Says Counselor Liu Zhenmin in with the Treaty and Law Department of the Ministry of For-

eign Affairs, "Ours is a developing country, and we find that our interests are in common with those of other developing countries." China followed this line of thought when it joined other nations in drafting the United Nations Convention on the Law of the Sea between 1973 and 1982. So far, it is the most influential international treaty that China has been involved with.

China joined other developing countries in advocating the establishment of the 200-nautical-mile exclusive economic zone (EEZ), one of the most important terms of the law.

But on another important issue, management of the international sea-bed and ocean floor exploitation, China has changed its previous stance, helping fashion a body of international law that has more in common with the interests of developed nations. Initially, China strongly backed the concept of a stiff tax on the exploitation of natural resources under the high seas.

By 1991, however, China decided that it would need to mine resources on ocean floors in the future and had secured the mining rights to a 150,000 square kilometer area in the south Pacific. Consequently, China joined those marine powers appealing against the levying of duties on marine mining operations. An agreement was reached in this regard in 1994, 12 years after the convention was passed.

As it grows stronger and richer, China often finds it hard to stick to its traditional stance all the time. "We must look to the future when our country becomes a marine power," says Liu Nanlai.

Counselor Liu Zhenmin of the Foreign Ministry also admits that, "We certainly face the question of adjusting or changing our position and thinking about issues linking China to the rest of the world but, since China is still a developing country, any major change or adjustment won't happen now," he says.

The Chinese government adopts a serious attitude toward all international treaties and laws it has signed or ratified. When domestic laws contravene international ones ratified by China, the latter prevail

This is true of the Chinese stance in the country's nine-year bid to join the World Trade Organization. China has insisted that it joins the WTO with obligations of a developing country, but many WTO members think the Chi-

nese market is not open enough and are pressing for changes in its legal and tax codes.

China asserts that it has done its best in this regard. Liu Zhenmin cites China's tariff reduction of 30 percent early this year, adding that, "As a developing country, we can't fulfill obligations beyond our capacity."

"Every international treaty or law is a result of disputes and compromises," observes Liu Nanlai while discussing the Comprehensive Test Ban Treaty, which was finally derailed by India's refusal to sign it.

"In the process of drafting an international treaty or convention, every country tries to get the most for its own national interests," he says, "China is no exception." □

ZHANG DAN WRITES FOR CHINA FEATURES, A DIVISION OF THE BEIJING-BASED XINHUA NEWS AGENCY.

BRAKE THE BOARDERS

Continued from page 5

elected. The court invalidated the new director's appointment and all his subsequent decisions.

"These are important precedents for the development of a rule of law in a situation where local law wasn't up to speed and the judge had no experience with the subject matter," says Holland.

In many cases US firms are working directly with governments in the emerging markets of Asia, Latin America, and Eastern Europe to draft laws, from constitutions and civil codes to commercial laws. According to a Washington-based attorney who requested anonymity, "You just can't beat the experience of helping to frame a commercial code in getting a foothold in a market that may blossom into an important business center someday."

But while US lawyers have been ahead in many areas of the global game, especially in commercial matters, the competition is stiffening from UK and German firms. "We are always competing with the other large US international firms, but now the beauty contests include major international law firms from many different countries," says William Mateson, a partner with Debevoise & Plimpton in New York. □

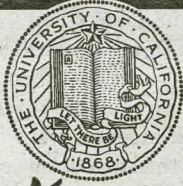
BRAD DURHAM IS THE EDITOR OF *Russia Portfolio*, A WASHINGTON, D.C.-BASED NEWSLETTER ON RUSSIAN SECURITIES.

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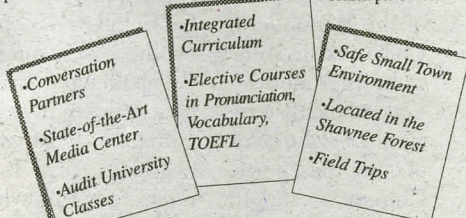
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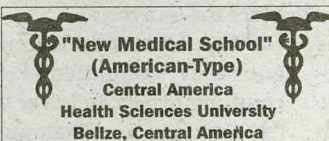
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UK lawyers lead charge

East Europe a market for capitalism's rule book

By Heather Rowe and Alan Black

THE SHINGLE HANGING outside a foreign law firm is often the most tangible evidence people have that law is being globalized. But it is also relatively unimportant. What matters is the adoption of one country's laws and practices into the legal system of another.

The overthrow of Communist governments in Eastern Europe in recent years shows how successfully certain areas of law can be exported. Large swathes of the US securities and anti-trust statutes, for example, were imported by these countries when they decided to turn capitalist.

In Czechoslovakia, the Velvet Revolution and the subsequent separation in 1993 of the Czech and Slovak Republics led to the emergence of a market-based economy and, since then, the Czech Government has implemented an ambitious program of economic reform designed to establish a free market economy through the privatization of state enterprises, deregulation and the modernization of the bank system and money markets. By 1991, US and UK firms were opening offices in Prague to capitalize on their understanding of the legal framework "borrowed" by the Czech reformers.

Several areas of East European law have also been borrowed from other countries. The documentation for international bond issues follows standard international bond market practices; most of the issues so far have been governed by English law and meet the requirements for listing on the London Stock Exchange.

REPORTING FROM LONDON

Company law in the Czech Republic is very similar to that in the UK, whereas the Czech Commercial Code, introduced in 1992, was influenced greatly by the commercial laws of neighboring Austria and Germany. This is a prime example of how an area of law has been almost entirely imported from another country.

Globalization has been achieved not just by the willing-

gal obstacles to conducting business throughout Europe have been greatly reduced by the common principles finding their way into the commercial law codes of most nations.

In East Europe, there is also a more direct reason for the increasing use of UK and US law to govern contracts. Several countries there permit parties to sign contracts governed by external legal codes provided that the relevant transaction has a sufficient "foreign element"—if at least one of the parties to the transaction is a foreign entity, for example. British law is often applied simply because many large commercial contracts involve UK-based companies.

The export of legal codes is not the only interesting development in the globalization of law. In recent years, accounting firms have been expanding their presence in the "legal" market. Many of the large accounting firms in the UK now have their own in-house legal departments—or associated legal firms—which are fully able to deal with the needs of their clients. British law firms, not surprisingly, see this as a threat.

Some critics of this trend argue that combined law/accounting firms can never work. As auditors and accountants there is a disclosure requirement, an obligation to report on wrong-doing by clients that affects the conduct of their business. Lawyers, on the other hand, are duty-bound to protect the client—who is innocent until proven guilty—thus giving rise to a conflict. It may be impossible to audit and at the

same time provide legal advice to the same client.

The advantage that accounting firms have over their purely legal counterparts is threefold. First, their business went "global" earlier than that of lawyers, and their experience serving the tax-needs of multinational corporations gives them an edge in this new field. Secondly, they can offer one-stop shopping. It is an enormous advantage to have a law firm inside a worldwide structure of auditors, accountants, and management consultants. They can offer clients involved in cross-border deals a huge, connected network of professionals.

Another reason for the accountants' success in this area is that they have the money to at-

tract the best lawyers. They can also afford to take early losses to attract and retain clients.

The situation is worse for French lawyers, or *avocats*. In 1992 the French bar decided to amalgamate the legal profession, bringing *avocats* and *conseils juridiques et fiscaux* together under one roof. This conferred the status and privileges of *avocats* onto the *conseils juridiques et fiscaux* in the accounting firms. Now the legal departments of the "Big Six" accounting firms all rank within the top ten legal consultants in France. ☐

HEATHER ROWE AND ALAN BLACK ARE LAWYERS WITH LOVELL WHITE DURRANT IN LONDON.



'I think they must be a delegation from the British legal profession!'

ness of countries to incorporate foreign laws into commercial contracts, but also by the determination of lawyers to extend their practices into foreign countries. US firms were the first to embrace globalization, some say because the US legal market was saturated at the time and did not provide the potential for growth.

The tendency to use UK law as opposed to US law, where this occurs, is due partly to a reluctance to change (the number of English precedents is increasing and local lawyers are gaining experience in UK law) and partly to the advantages gained from a common set of practices. Foreign corporations, for instance, see Europe as having an increasingly accessible legal framework. This encourages even small companies to acquire a base within the EU, since the le-

LETTER TO THE EDITOR

While watching the Olympics this summer, the scene that touched me most deeply was the sight of athletes from the People's Republic of China and athletes from the Republic of China on Taiwan encouraging and congratulating each other. I am a citizen of the Republic of China, yet this scene of brotherhood reminded me that, regardless of the color of our passports, Chinese should help Chinese.

Taiwan is currently the second-largest investor in mainland China, with the majority of that investment funneled through Hong Kong. When Hong Kong reverts to the mainland next year, the P.R.C. and the R.O.C. will have the opportunity to strengthen their existing ties with a successful trade agreement.

Most important to this process is the re-opening of the channels of negotiation between the two sides. Talks between the R.O.C.-based Straits Exchange Foundation and the P.R.C.'s Association for Relations

Across the Taiwan Straits were indefinitely suspended in July of 1995. It

is imperative that communication between these two groups be restored if there is to be any hope of reconciliation.

Every Chinese schoolchild learns the story of the Tsao brothers, who lived in the third century. Upon the death of their father, Tsao Tsao, the elder brother, Tsao Pei, ascended to the throne. However, Tsao Pei's younger brother, Tsao Tse, was more favorably regarded in court, and his older brother plotted to kill him. One day, the two brothers were out walking. Tsao Pei challenged Tsao Tse to compose a poem in seven paces; his failure to do so would result in his death. Tsao Tse accordingly recited the following poem, and his life was spared: Firing the beanstalks to cook the beans, The beans are crying in the pod: We are both sprung from the same root, Why are you in such haste to cook me?

—Eddy Tsai, Director Information Division Taipei Economic and Cultural Office, Boston

