

NOTES AND COMMENTS

WILLIAM D. ROGERS (1927–2007)

*By Charles N. Brower**

Rogers, a devotee of fox hunting, died [September 22, 2007, at age 80] during a hunt after suffering a heart attack while riding his favorite horse, Isaiah [He] was declared dead almost immediately by a doctor participating in the fox hunt. An Episcopal priest was called, the hounds were collected and the hunters gathered for a short service on the spot. “One by one, they rode past him and tipped their hats.”[†]

William D. Rogers, as he readily volunteered to an interviewer in 1999, “had more than a full life,”¹ and his death was suitably poetic. What better end to a life well and usefully lived can one desire than to depart this world in an instant while fully engaged in what one loves most?

Rogers was the quintessential brilliant, high-achieving, and operationally practical international lawyer whose life was devoted, in one way or another, to the achievement of justice and peace, in public and in private, at home and abroad. Like so many such lives, however, his started out on a different track. According to Rogers, his father, a chemist, wanted young Bill to become a chemist, too. “But after I practically flunked freshman chemistry at Princeton, he relieved me of that obligation,”² freeing his son to follow other forebears into the law. First, however, too young to enlist in World War II, Rogers worked summers in a shipyard building warships, and during the school year as a waiter and furniture mover. The law still had to win out over a tempting scholarship for a PhD program in history at the University of Wisconsin, but in the end he proceeded straight from Princeton to Yale Law School. Fortunate and fortuitous events followed.

The first such event, as Rogers liked to relate, was a Harvard-Yale boat race at which one of his Yale Law School teachers was so taken with his student’s new (and lifelong) wife Suki that the very next day he telephoned Chief Judge Charles E. Clark of the United States Court of Appeals for the Second Circuit urging him to hire Rogers as his clerk, which Clark promptly did.³ That, in turn, led to Judge Clark’s recommending him to Associate Justice Stanley F. Reed of the United States Supreme Court, as whose clerk he dealt with the first argument in *Brown v. Board of Education* and the Julius and Ethel Rosenberg espionage case. Justice Reed,

* Of the Board of Editors.

[†] Douglas Martin & Sarah Abruzzese, *William D. Rogers Is Dead at 80; Planned U.S. Policy in Latin America*, N.Y. TIMES, Sept. 30, 2007, §1, at 30, available in LEXIS, News Library (quoting Rogers’s son, William D. Rogers Jr.).

¹ *Legends in the Law: A Conversation with William D. Rogers*, DC BAR REP., Oct./Nov. 1999, available at <http://www.dcbare.org/for_lawyers/resources/legends_in_the_law/rogers.cfm>.

² *Id.*

³ *Id.*

in turn, handed Rogers over to his good friend Thurman Arnold, who made him the ninth lawyer in the firm of Arnold, Fortas & Porter, which in its two or three years of existence had gained note as a defender of victims of Senator Joseph McCarthy's anti-Communist witch hunt. As a result, Rogers was immediately put to work on the ultimately successful defense of Owen Lattimore, one of McCarthy's chief targets.

Rogers's government service grew out of his introduction to Teodoro Moscoso, director of Puerto Rico's Economic Development Administration, a client for whom Rogers had been working in support of Abe Fortas, and who was appointed in 1961 by President Kennedy to be the first coordinator of the newly formed Alliance for Progress, designed to be a key player in American relations with Latin America. The apparently satisfied former client invited Rogers to get in on the ground floor, which he did as special counsel, and later, for two years (1963–1965), as successor to Moscoso as coordinator. Rogers relished telling the story of his very first assignment, which was to meet with the three-man junta ruling the Dominican Republic in the aftermath of the assassination of the former dictator Trujillo and to offer \$10 million in new assistance. According to Rogers, they "laughed nervously and said if they accepted that, they would be strung up from the nearest lamppost, it was \$25 million or nothing."⁴ Apparently, the junta prevailed on the American ambassador to dissuade Rogers from attempting to leave the country until the \$25 million was authorized by Washington, an experience that gave him "my first exposure to the politics of development assistance by the U.S. in Latin America."⁵

Anyone who knew Rogers knew instinctively that he was a man of principle, but perhaps not all were aware of the ways he had in fact stood by his principles. He resigned from the Alliance for Progress in 1965 out of disenchantment with President Johnson's invasion of the Dominican Republic and his Vietnam policy, which, among other things, as Rogers saw it, resulted in concealed robbing of resources from other important policy areas, including assistance to Latin America. Before he could return to Arnold & Porter, as the firm had become with Johnson's appointment of Abe Fortas to the Supreme Court, he was asked by George Ball, then under secretary of state, to head a task force to deal with Ian Smith's unilateral declaration of independence of Southern Rhodesia and a British proposal to invade the rebellious former colony. Rogers and the task force eventually concluded that the United States should not provide intelligence or logistical support for such an operation, and that the president should seek to dissuade the British from that course. In this, too, he was successful.

For the next eight years Rogers practiced law again with Arnold & Porter, devoting a great amount of time, however, to serving as president of the American Society of International Law and, at the request of David Rockefeller, as the first president of the Center for Inter-American Relations, headquartered in New York City. Apparently, Rockefeller also recommended Rogers to Henry Kissinger for the position of legal adviser of the Department of State when Kissinger took over as secretary of state on September 1, 1973, but Rogers, true to his principles, declined on the ground that he simply could not serve in a Nixon administration.⁶ Promptly upon Nixon's resignation on August 9, 1974, however, Kissinger called again, and

⁴ *Id.*

⁵ *Id.*

⁶ Henry Kissinger, *Henry Kissinger Says Goodbye to the Man He Calls "My Conscience,"* FOREIGN POL'Y, Oct. 2007 (Web exclusive), available at <http://www.foreignpolicy.com/story/cms.php?story_id=4018>.

Rogers agreed to serve as assistant secretary of state for inter-American affairs in the Ford administration. In June 1976, he became under secretary of state for economic and agricultural affairs. According to Rogers, Kissinger thought so well of him that Kissinger proposed that Rogers become deputy secretary of state in 1976. But it was not to be, as President Ford's political advisers were fearful, doubtless with justification, that the president, facing a series of tough primary fights with Ronald Reagan for the Republican nomination, would be attacked for having as No. 2 at the State Department a Democrat who, in addition, was devoted to turning the Panama Canal over to Panama.⁷ Shortly afterward, with the election of Jimmy Carter as president of the United States, Rogers's career as a full-time public servant ended.

In the years at Arnold & Porter from 1977 until his death thirty years later, Rogers continued to serve the public as opportunities arose. President Carter sent him to El Salvador to investigate and report on the widely publicized murder of four churchwomen there. Later, in his words, he "backstopped" Kissinger as senior counselor to the Reagan-appointed National Bipartisan Commission on Central America, which Kissinger chaired.⁸ He also took a sabbatical at Cambridge University, teaching international law, particularly as it relates to the use of force. He contributed greatly to the work of the Council on Foreign Relations, the Cordell Hull Institute, the American Academy of Diplomacy, the Cuba Policy Foundation, the Campaign for American Leadership in the Middle East, and the Aspen Institute. His friend Kissinger saw to it that Rogers reigned as vice chairman of Kissinger Associates, and Rogers helped Kissinger with the various volumes of his memoirs.⁹

One thing Rogers himself would wish to be made unmistakably clear relates to Chile. As both he and Kissinger have told it, when asked by Kissinger to become assistant secretary of state for inter-American affairs, he discussed several matters with Kissinger first. In addition to advising Kissinger of his dissenting views regarding Vietnam, Rogers "told him I'd heard rumors that the U.S. Government had destabilized Chile through the CIA [referring to the overthrow of President Salvador Allende on September 11, 1973, followed by the installation of General Augusto Pinochet]. I said if there were any CIA covert operations going on during my watch, I'd resign and denounce the operation."¹⁰ With the publication thirty years later of *The Pinochet File: A Declassified Dossier on Atrocity and Accountability* by Peter Kornbluh and the subsequent review of the book in *Foreign Affairs* by Kenneth Maxwell, then a senior fellow at the Council on Foreign Relations, a rather heated written exchange took place between Rogers and Maxwell in the pages of *Foreign Affairs*; the underlying issue was essentially whether or not the administration in which Rogers served had condoned such operations.¹¹ Adherence

⁷ *Legends in the Law*, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*; see also Kissinger, *supra* note 6.

¹¹ Kenneth Maxwell, *The Other 9/11: The United States and Chile, 1973*, FOREIGN AFF., Nov./Dec. 2003, at 147 (reviewing PETER KORNBLUH, *THE PINOCHET FILE: A DECLASSIFIED DOSSIER ON ATROCITY AND ACCOUNTABILITY* (2003)); William D. Rogers & Kenneth Maxwell, *Response: Fleeing the Chilean Coup: The Debate over U.S. Complicity*, FOREIGN AFF., Jan./Feb. 2004, at 160, 163 (letter to the editor by William D. Rogers, "Mythmaking and Foreign Policy," and "Maxwell replies") [hereinafter Maxwell, Reply]; William D. Rogers, *Crisis Prevention*, FOREIGN AFF., Mar./Apr. 2004, at 179 (letter to the editor); Kenneth Maxwell, *The Case of the Missing Letter in Foreign Affairs: Kissinger, Pinochet and Operation Condor* (David Rockefeller Ctr. for Latin Am. Studies, Working Paper No. 04/05-3, 2004), available at <http://www.drclas.harvard.edu/files/maxwell_working_paper_0.pdf>. When Maxwell, as he wrote in the latter thirty-one-page paper some months later, was

to principle had been the hallmark of Rogers's long life, and Maxwell did not question it, taking pains to point out his "utmost respect" for Rogers.¹²

A final note is in order regarding the signal service of Rogers to the American Society of International Law. In addition to his term as its president from 1972 to 1974, he was a member of the Board of Editors of this *Journal* from 1986 to 1990. More than filling those positions, however, he actively participated in the Society's debates. As is recorded in *The American Society of International Law's First Century: 1906–2006*, written by the long-serving ASIL secretary (and honorary editor of this *Journal*) Frederic Kirgis, Rogers organized nearly forty years ago, with Stephen Schwebel, a Society study panel on the international movement of national art treasures, inspired by a Mexican request to the United States for assistance in preventing the looting and exportation to the United States of valuable Mexican artifacts. The final result was the conclusion by the two countries in 1970 of the ground-breaking Treaty of Cooperation Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties.¹³ That same year Rogers argued against the April 1970 incursion into Cambodia at a Society program entitled "Law and the Cambodian Incursion: International and Domestic Legal Issues."¹⁴ At the Society's 1988 annual meeting, speaking on a panel addressing the fortieth anniversary of the OAS Charter, the erstwhile assistant secretary of state for inter-American affairs minced no words in concluding:

[T]he OAS has lost the esteem of both Latin and North Americans, seen by the one as the slavish instrument of Washington's designs, and by the United States as a bothersome debating society transfixed by abstract principles of maddening irrelevance to the realities of the world.

....

The OAS in its present form, therefore, no longer serves a useful purpose.¹⁵

In 1989 Rogers edited, with Michael Glennon and Louis Henkin, a special issue of this *Journal* marking the bicentennial of the United States Constitution, "The United States Constitution in Its Third Century: Foreign Affairs."¹⁶ His support of the Society's motto, "Inter gentes jus et pax," was constant.

Knowing his genuine interest in and loyalty to the Society, I chose to approach Rogers as my very first "mark" after I undertook to chair the Society's Second Century Campaign. Without hesitation he agreed to contribute a leadership gift to the effort. Before the \$2 million campaign was over, friends and partners at Arnold & Porter made a contribution in his name that effectively doubled the amount of his own substantial gift. It was one of many indications of the esteem and respect of those closest to him. The resulting "Rogers Room" on the second

barred by *Foreign Affairs* from having the last word on what he termed "this nasty imbroglio," he resigned from his position at the Council, and contentiousness over the issue continued elsewhere. *Id.* at 1.

¹² Maxwell, Reply, *supra* note 11, at 164.

¹³ FREDERIC L. KIRGIS, *THE AMERICAN SOCIETY OF INTERNATIONAL LAW'S FIRST CENTURY 1906–2006*, at 345–46 (2006). For the Treaty of Cooperation Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, U.S.-Mex., July 17, 1970, see 22 UST 494, 791 UNTS 313.

¹⁴ KIRGIS, *supra* note 13, at 353, 373.

¹⁵ *The OAS Charter After Forty Years*, 82 ASIL PROC. 101, 105–06 (1988) (remarks by William D. Rogers).

¹⁶ Symposium, *The United States Constitution in Its Third Century: Foreign Affairs*, 83 AJIL 713 (1989); FOREIGN AFFAIRS AND THE U.S. CONSTITUTION (Louis Henkin, Michael J. Glennon, & William D. Rogers eds., 1990); see also KIRGIS, *supra* note 13, at 454–55.

floor of Tillar House will always remind us, if we needed any reminding, of our friend Bill Rogers and what he has meant to the Society.

His last contribution to this *Journal* was the obituary Rogers wrote in his last year commemorating Covey T. Oliver.¹⁷ He began by quoting Eric Sevareid to the effect that there are “three sorts of people: the mowers of lawns, the well poisoners, and the life enhancers.”¹⁸ Rogers was a life enhancer par excellence. Or, as Henry Kissinger spelled it out in his eulogy at Rogers’s funeral: “[A] kind God brought some of us into proximity to a genuinely noble man who devoted his life to bringing about a world where the weak can be secure and the just can be free.”¹⁹

CALL FOR NOMINEES: THE HAGUE PRIZE FOR INTERNATIONAL LAW

On September 18, 2002, The Hague Prize for International Law was launched by The Hague Prize Foundation, The Hague, the Netherlands.

The prize will be awarded at least every two years to individual(s) and/or organizations who have made—through publications or achievements in the practice of law—a special contribution to the development of public international law, private international law, or to the advancement of the rule of law in the world. The prize consists of a special medal and a monetary award of € 50,000.00.

The first two recipients of the Prize were, respectively, Prof. Shabtrai Rosenne, because of his long and illustrious career as an eminent professor and distinguished diplomat (2004) and Prof. M. Cherif Bassiouni, who made an important contribution to the rule of law by his work in the field of international criminal justice and his unswerving dedication to the creation of the International Criminal Court (2007).

The Prize will be awarded for the third time in the summer of 2009. Nominations for the Prize will be accepted until August 1, 2008. The Board of The Hague Prize Foundation hereby kindly invites anyone to nominate candidates (with a preference for individuals), who deserve such recognition for their contribution to international law.

Recommendations for nominations should be sent with their CVs and relevant publications prior to **August 1, 2008**, to Prof. Dr. F.A. Nelissen, Secretary of the Nominating Committee of The Hague Prize Foundation, P.O. Box 30461, 2500 GL The Hague, The Netherlands, or by e-mail: thehagueprize@asser.nl.

Additional information can be found on the website of The Hague Prize at www.thehagueprize.nl, Stichting The Hague Prize for International Law, Postbus 30461, 2500 GL Den Haag, e-mail: thehagueprize@asser.nl.

¹⁷ William D. Rogers, *Covey T. Oliver (1913–2007)*, 101 AJIL 404 (2007).

¹⁸ *Id.*

¹⁹ Kissinger, *supra* note 6.