"Contribution of International Law to Development"

Notes for Remarks

by

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The story is told of the candidate for a public service examination faced with the question "Do you favour the overthrow of the government by force, subversion or the advocacy of violence?" The poor fellow thought it was a multiple choice question. He answered "force."

I find myself in a similar quandary. When the draft program for this conference was sent to me, the title of the topic assigned to me, "Contribution of International Law to Development", contained no punctuation. I have been given the choice, presumably, to add either a period or a question mark to that sentence. Rather than make that choice now, I'd like to claim some scientific credibility by waiting until the end of my presentation, to determine then which way the evidence has led. In proceeding, I wish to assure you that I shall bear in mind the biting criticism offered by Mrs. Henry Adams speaking of Henry James. Said she: "He chews more than he bites off."

Humankind today, for the first time in five millennia of recorded activity, faces circumstances of global dimensions: possible nuclear cataclysm, environmental degradation, economic collapse. These are all

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dangers of a quality that may not permit recovery. The circumstances contain margins of error so narrow as to be almost meaningless. More, the combination of today's technologies and yesterday's politics has produced trends which, unless altered significantly, may well become irreversible. In the nuclear age, the magnitude of consequence of error makes error irremedial. These are unprecedented circumstances, and awesome: seemingly irreversible momentum towards possibly irremedial error.

Common to each of these categories - nuclear, environmental, economic - is the role of the developing countries. Their policies, their attitudes, and their practices are critical to the successful management of the broad challenges to humankind. If the ever-decreasing open forests of developing countries are not to be destroyed in the ceaseless quest for firewood, broadening the deserts, sweeping away topsoil, silting up harbours and power dams; if social and political instability are not to lead increasingly to outside intervention and surrogate conflicts which risk escalating into super-power confrontation; if economic uncertainty, unsupportable debt-burdens, protectionist threats, and the ferment of widespread

unemployment are to be contained before they combine to create a depression of global proportions; if these major factors are to be managed wisely, the cooperative involvement of the developing countries is essential.

The issue central to each of those countries, and dominant in their posture towards the industrialized nations, is development. Ideology may be a flag of convenience for some, fluttering uncertainly from intellectual flag-poles, but development is visceral. For these reasons I have long held that development issues are the most critical of the myriad mix of fibres that form the fabric of international relations. Unless wise policies replace the often short-sighted activities that are now all-too-often evident in countries both North and South, humankind faces an increasingly bleak future. The preferred policy mix, unquestionably, must include the element of law.

To assume, however, as the topic assigned to me seems to do, that international law as now constituted is a prerequisite to development - or is even sympathetic to development - is at least subject to challenge. That

international law can contribute to development, indeed should, is not in question. I simply caution that some of the applications of legal principles, designed as they often were in the industrialized countries, are not always equitable to the interests of the developing countries. It should not be surprising that the goals of the developing countries, newly independent as many of them are, are not identical to those of the industrialized countries, colonial powers as many of them were.

In so stating, I am not challenging the application of international law to the newly independent countries, nor suggesting that those countries do, or should. My argument will be for more attention to international legal principle, not less. The case was well stated in 1966 by a distinguished Sri Lankan scholar, Dr. C.F. Amerasinghe:

> "The new Asian and African States have less developed economies than their Western neighbours, and their populations have, therefore, a lower standard of living than the average for the States of Western Europe and North America. International law in its early

stages was developed by States that had more or less similar standards of economic development, and that accepted the colonial principle. It has, therefore, been natural for some of the new States to challenge some rules of international law, just as much as the Latin-American States challenged some rules of international law at the Hague Conference of 1907, with the consequent contribution that those States had to make to the stability of the international order. There are several areas in which Asian-African discontent has found special expression but on the whole the new States plead their causes by reference to international law, though naturally the reference is to their interpretation of it."[1]

Mark Twain described the nature of some of the "discontent" by resort to somewhat less lofty language. "When the missionaries arrived," he wrote, "they had bibles and the natives had land. A generation later, the natives had the bibles and the missionaries had the land."[2] And, as all of us know, any post facto endeavours to rectify that circumstance are met by the stern admonition of our colleagues in foreign offices: pacta sunt servada.

But I must be careful not to confuse scriptures and treaties. I'll be in jeopardy with church and courts alike. And I'm too much aware of the fate of Sir Thomas More to make that error.

No algebraic formula will solve a problem if a host of variables is found on each side of an equation. If "development" is susceptible of a range of definitions, as it is, and "international law" is so often found in the eye of the beholder - or at least the textbook author - then my topic invites a display of dipsy-doodling that would be the envy of Wayne Gretzky.

Development is a tough concept to discuss with intellectual rigour - not because it is any more complex or elusive of definition than many others, but because everyone has his or her own view of what it is. In the result, discussions about development can quickly take on the characteristics of a dinner party conversation which endeavours to recall the plot of "The Two Gentlemen of Verona".

Development as an integral concept is a recent phenomenon notwithstanding that a good portion of humankind's efforts for millennia has been dedicated to activities which could be described as developmental. Not surprisingly, therefore, development theory has exhibited a wide range of forms and definitions, and is still very fluid. In retrospect, and perhaps even less surprisingly, the development goals of political leaders North and South have proved in the short period since World War II often to be widely divergent.

Development, in the sense that dominates discussions at UNCTAD or the World Bank or OECD, consists of a number of dimensions of which the economic, sadly, has too often, in too many fora, been non-uniformly defined. When that happens, one of two quite distinct processes ensues. Either development efforts endeavour to satisfy an impossibly wide range of goals and constituencies, or they become so narrow and tightly focussed as to diminish greatly any likelihood of their harmonious inter-action with other events.

As unfortunate as any other single factor in the developmental spectrum, however, has been the still-lingering assumption that development in the third world countries of today is essentially similar to development in the now industrialized countries in the 18th and 19th centuries. The circumstances are far from similar, and from the erroneous opposite assumption has flowed a number of errors in the design of development programs, and impatience at the obdurate nature of development obstacles. The widely divergent circumstances of Europe 200 years ago, and so many developing countries today, bear emphasis.

In Britain, for example, the modernization of agriculture was accelerated considerably by enclosure practices culminating with the passage of The General Enclosure Act of 1801.[3] The widespread social consequences of that statute included a great increase in vagrancy as the dispossessed rural dwellers migrated to the cities in search of livelihood. Those not absorbed by the factories and mills of the industrial revolution were in many instances convicted and transported by the tens of thousands to Australia. For their part, the colonies were both the

source of agricultural raw materials for British industry and, often, the closed market for the goods produced. Mahatma Gandhi's spinning wheel was a symbol of protest against circumstances which in his view militated against Indian self-sufficiency and, in particular, the rational employment of Indian labour.[4]

One need scarcely note that developing countries do not have available to them the option of transporting to another continent surplus and troublesome population. Nor are their infant industries given guaranteed market access elsewhere on highly advantageous terms designed to create added value and to stimulate investment and technological improvement.

Still another factor which contributes to the developmental puzzle rather than assisting in its solution is the belief held by so many developing country governments that central planning is the key to success. This, notwithstanding the generally dismal record of Eastern European governments which have made a fetish of central planning. The record of four decades of central planning in

developing countries reveals that success is more likely to attach to the careers of those who advocate planning - almost all of them graduates from European or North American universities - than to the societies or economies so planned. An inevitable result of central planning, apart from the usual rigidity of the bureaucratic structure required to implement the plan, is the widespread inefficiencies which flow out of any design error. Planning is no longer the world's youngest profession - biotechnologists now claim that distinction - but neither is it yet so mature as to include effective self-adjusting mechanisms to compensate for aberrations in design. In the result, negative multiplying factors are all too often produced.

Development is much more than an image projected by planners, analysts and actors. If I may paraphrase Buckminster Fuller, development, like God, is a verb, not a noun. Nevertheless, a definition is of value. Let me offer one in order to focus discussion. Development is a process intended to better socio-economic conditions and to contribute to human dignity. A pre-requisite of development

is investment: of financial capital, human capital, and technology. It follows, then, that development decisions are essentially investment decisions. Because knowledge is a necessary prerequisite of wise decisions, research is often required to source the knowledge.

At IDRC we further refine the definition of development to increase the likelihood of preferred results from the projects we support. Development, we contend, should become self-sustaining. That contention assumes the inclusion of a number of factors - environmental, cultural and ethical - as well as social and economic. Individual development projects or programs should contribute to, and not derogate from, the concept of self-sustainment. Additionally, we quite candidly reveal our bias that the societal element in development should emphasize an equitable distribution of wealth, and that there should be a broad participatory involvement in decision-making. These factors - equity and participation - provide some assurance that development will enhance individual human dignity, and do so on a broad scale.

The goals of development, then, through the reduction of poverty, are to contribute to social, economic and political enrichment within a society and so reduce the likelihood of conflict within or between societies.

The other side of the equation - the law side - is certainly no less complex. In different places in different times it has represented a broad range of assumptions and definitions. Roscoe Pound counted no less than twelve historically separate conceptions of law.[5] Not quoted by Pound is the definition of the nature of law written by Richard Hooker in his 17th century "Laws of Ecclesiastical Polity": "... of law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world, all things in heaven and earth do her homage, both angels and men and creatures of what condition so ever ... all with uniform consent admiring ... the mother of their peace and joy."[6]

It is highly unlikely that Hooker's definition would today appeal to any constituency other than T.V. evangelists. For one thing, few now adhere to the belief

that law is a reflection of divine reasoning, obligated to support the structure and position of a given faith or ecclesiastical structure. (I don't mean to suggest that such a point of view is entirely without support. The school prayer dispute in the United States carries some overtones of that point of view, as does the fact that Elizabeth II, Queen of Canada, is described in her Canadian style and title as, among other things, "Defender of the Faith".) Second, the belief that the law must be an integral part of all human conduct is, at best, of vacillating fashion. Today, it is probably fair to say that the balance of jurisprudential philosophy in the common law jurisdictions would regard law as a social institution with a responsibility to satisfy human wants through the ordering of human conduct within a political community. This social-utilitarian approach to law has for some decades been far more pervasive than the earlier law-of-nature school with its absolute principles.

Whatever the school, law as a concept appeals because of the perceived goods which it sustains and to which it contributes. In this year, 1986, I daresay that

the minimum catalogue of those goods or wants is common to all legal systems as well as to international law. The first of these is the goal of peace. To keep the peace within a society or among societies is surely the most basic of wants demanded of law. A degree of security is a prime purpose of a legal order, and has been since primitive times. A second goal is that of stability or certainty. This goal has been transformed greatly over the centuries from its beginnings in Graeco-Roman times as a device to maintain the social status quo to the more modern idea that the law is a guarantor of individual self-assertion subject only to the constraints of a social continuum. A third, and more recent, goal of law, one that was born in the natural-law period of the 17th and 18th centuries but which then subsided during the heyday of economic activism and laissez-faire absolutism of the 19th century, is that of equity; at a minimum - equality of opportunity, but more ideally a recognition and satisfaction of basic human wants and needs.

The goals, then, of development and of law are remarkably similar: peace, stability, equity. This being

so, it might be presumed that modern international law would in large measure be dedicated to development issues. Indeed at the dawning of the post-colonial period, it gave the promise of doing so. The single most significant treaty of the 20th century, the United Nations Charter, speaks of "the dignity and worth of the human person", of "the equal rights of men and women and of nations large and small", of "social progress and better standards of life in larger freedom".[7] Article I declares that one of the purposes of the United Nations is: "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character."[8] The Charter created an organization with a development mandate. That mandate, I contend, is no less central than that of maintenance of international peace and security. Indeed, it is my contention that the two goals are not simply mutually supportive but are unattainable unless tackled together and with balanced effort. Together, these two streams of activity enhance human dignity. That, surely, in Holmes' language, is the major unstated premise of the United Nations and should surely be equally so for all legal regimes including the international.

It seems to me undeniable that international law should give major emphasis to development and development-related issues. Emphasis not simply in the assertion of sovereignty of the developing countries but in the promotion and the protection of those interests that are essential to the development process. These include a functioning international marketplace that fosters equitable terms of trade; a climate conducive to the sharing of knowledge, with regimes that encourage access to science and technology; a system that stimulates capital flows and minimizes the impact of wild fluctuations in the value of currencies; processes for the resolution of disputes of economic, financial or technological character; incentives for the reduction of commerce in socially-negative goods and commodities such as narcotics, outdated, ineffective and dangerous pharmaceutical products, weapons and weapons systems; the strengthening of techniques to reduce environmental deterioration; the establishment of standards of international conduct for transnational enterprises and for international financial transactions; a recognition of the primacy of human rights. The list is long.

Let me add quickly that I am speaking here of the enhancement of legal rules and processes, not the creation of ever more numerous institutions and bureaucratic structures so many of which now rest upon the international community as an increasingly insupportable burden; structures which quickly take on such a political character that they mask effectively in many instances the purpose for which they were created. In recent years, the reach of international organizational activity has exceeded by far the grasp of substantive international law. If Robert Browning is correct, there may well be some sort of organizational heaven somewhere. From the perspective of an international lawyer, however, the absence of adequate legal underpinnings is more reminiscent of T.S. Eliot.

Sadly, in my judgement, notwithstanding the immense attention given to development issues in recent years, international law literature in the industrialized countries still favours by a wide margin the traditional interests. An examination of the titles of major articles published in the past ten years in the Canadian Yearbook,[9] the American Journal, [10] the British Yearbook,[11] l'Annuaire

Français, [12] the Netherlands Yearbook, [13] and la Révue Générale [14] reveals an overwhelming preponderance of articles dedicated to classical themes. Of a total of 744 articles in those journals in that period, only 17, or 2-1/4 percent, revealed by their titles that they were principally concerned with development themes. I regard that as wholly inadequate.

While development-related issues may well be alluded to within some of the other articles, such as those dealing with international organization, it is clear beyond debate that those international lawyers who are sufficiently dedicated to their discipline to engage in research and to publish their findings are, in almost all instances, wrestling with the same broad topics that have occupied scholars for centuries: statehood, territory, nationality, jurisdiction, treaties, settlement of disputes, use of force and self-defence, diplomatic relations.[15] None of these subjects is without interest today yet no longer, as a group, do they reflect the entire range of activities which now contribute to state responsibility. Nor would anyone claim, I propose, that they reflect 98% of international

activity as the literature would suggest. One result of such imbalance in interest was seen in 1969 when the classical principles were employed as a barrier to resist the enhancement of broad community interests as proposed by Canada. The force with which the legal advisers of the maritime powers opposed Canada's suggestions in 1969 that, in the Arctic, environmental principles were possessed of a superior quality than classical rules respecting freedom of navigation left me breathless then and amazed still today.

Nor, I suppose, should one be surprised by this still preponderance of interest in the classical principles. They remain in many instances as the fundamental structure of inter-state behaviour. In a long period of colonial rule the interests of the major powers were accurately reflected in the body of law that developed. Those countries then independent that are now characterized as developing were preponderantly in Latin America. Characteristically, their own contributions to international law were regarded as of only regional application - the concept of asylum, the Calvo clause, the Drago doctrine, etc. With the single exception of the International Labour Organisation, created as part of

the 1919 Treaty of Versailles, international law until 1945 confined itself to inter-state relations with little recognition of so many of the issues that are now central to the development process, and so of major concern to the newly independent countries and their older Latin brethren.

The dynamic that has been associated with international law in the past 40 years has led to the emergence of a broader range of activity than was evident in the more than three centuries since Grotius.[16] Happily, this expansion has not escaped the attention of Canadian scholars as is evident from the contents of the seminal collection edited by Macdonald, Morris and Johnston.[17] There is now little in the form of human activity that is not subject to some form of international regulation: human rights, trade, communications, transportation, the environment, natural resource exploitation, refugees, and on and on.

Much of this worthwhile endeavour falls under the United Nations umbrella. Yet as we know, and this is my point, a good deal of this credit-worthy jurisprudence and

apparatus is as yet immature or is creaking under the weight of its responsibilities. It does not enjoy the full support and confidence of the industrialized countries. In the result, the goals both of international law and of development are denied.

Developing country governments - as do all governments - face a spectrum of often-competing and sometimes-inconsistent demands on available resources. From supporters and adversaries alike, from international organizations, other governments, financial institutions, the press, the electorate, the bureaucracy, the private sector, NGOs, the advice pours in. And following close behind it, the criticism. Central to this tug of war is the competition arising from the plethora of sectors that appear to be equally in need: the production of food, the delivery of health care, the provision of education, the installation of infrastructure, the maintenance of defence, the stimulus of job creation. Any one of these sectors, or many others, could be used to illustrate my argument that there is a larger role for international law in development. I've chosen food.

Among the considerations that must be weighed by a developing country government committed to increasing food production, are the following:

(1) The process of technology transfer: in addition to acquiring technology in the form of higher-yielding or drought-tolerant or disease-resistant seeds, or genetically-superior bull semen, or more effective cultivation techniques, or improved implements, etc., governments must come to grips with how to understand, promote, and accelerate the use of those technologies, how to communicate farmers' real needs to the researchers addressing the problems surrounding the adaptation of the technology, and then how to disseminate the research results to both policymakers and farmers.

(2) The effects of international trade policies, both their own and those of other governments, and exchange rates. What will be their impact on production incentives, on off-farm employment, on economic growth?

(3) The implications of the commercialization of what was once semi-subsistence agriculture: the effects of self-sustaining growth, the impact of an unfamiliar exchange economy, changing nutritional patterns, consumption habits of the rural poor.

(4) The introduction of exotic foods - often rice or wheat - and the consequential substitution of traditional products: the effect on food prices, on producer incomes, on aggregated production, on marketed surplus, on consumption patterns.

(5) The provision of agricultural infrastructure: irrigation, transportation, storage, access to fertilizer, to marketing facilities, to credit flows, availability of fuel and spares.

I don't pretend that that is a complete catalogue. I don't suggest either that every developing country government addresses itself to all those issues even if they are pertinent. I do submit, however, that few colonial powers in the pre-independence period concerned

themselves with that range of issues, and there lies part of the problem. Whatever the colonial purpose may have been it was emphatically not to develop rationally local economies for local benefit. And so in the period prior to 1945, those who fashioned the norms of international conduct turned their attention almost exclusively to activities and principles that appealed to them as protective of their interests.

When those gentlemen assembled in Berlin in 1884 to draw the political boundaries on the map of Africa,[18] their knowledge of the geography of that continent and their concern for the socio-economic advancement of the peoples living there were not much greater than the similar knowledge and concern of Pope Alexander VI when he brazenly divided the world between Spain and Portugal in 1493.[19]

Our knowledge of geography is incomparably better today, so is our knowledge of agricultural activity - of the results that can be obtained by the introduction of wise policies, of the damage that can follow from the dumping of highly subsidized agricultural produce or the

closing of national markets to protect inefficient industries. So, too, I hope, is our knowledge of the benefits that can flow from the design and function of wise principles that encourage prudent stewardship of non-renewable resources such as soil, that reward efficiency in the production and distribution of agricultural commodities (as in the production or manufacture of any product), that induce job creation as an enhancement of human dignity and a stimulus of demand, that regard equity with the same degree of seriousness - though with a broader geographic base - as did our forefathers in England and the United States in centuries past, that couple development with peace with at least the degree of awareness displayed 200 years ago by Chateaubriand when he stated:

> "Try to convince the poor man, once he has learned to read and ceased to believe, once he has become as well informed as yourself, try to convince him that he must submit to every sort of privation, while his neighbour possesses a thousand times what he needs; in the last result you would have to kill him."[20]

The same sentiments were expressed, though in characteristically more sober fashion, by Chateaubriand's English contemporary Adam Smith. One is tempted to enquire whether those supply-side enthusiasts of "The Wealth of Nations" have turned their attention to the following passage, and considered it in terms of the international economic community:

> "... what improves the circumstances of the greater part can never be regarded as an inconvenience to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable."[21]

It is now incontestable that there is a functioning global economy of which the developing countries form the numerical majority. Wrote Peter Drucker this summer:

> "From now on any country - but also any business, especially a large one - that wants to prosper will have to accept that it is the world economy that leads and

that domestic economic policies will succeed only if they strengthen, or at least do not impair, the country's international competitive position."[22]

That admonition is directed to business and governments North and South. It is as well a considerable challenge for international law. With some notable exceptions such as Tom Franck's pioneering work while at UNITAR, it is often private arrangement, not public law, that is far in the lead in the encouragement of rational and wholesome international commerce. More progress in international air transport emerges from IATA than from ICAO; the standardization of international maritime container traffic was an industry accomplishment; the spectacular spread of the numerical bar-code on consumer goods, with one standard for all of Europe and another for all North America (the two soon to be combined) is entirely a private sector initiative; the non-stop, round-the-clock activity of the major stock markets world-wide is racing far ahead of needed controls; even currency transactions are now predominantly among non-government actors, to the astonishing tune of US$190 billion a day; commerce in the

undesirable goods, principally armaments and narcotics, is a particularly deplorable category because all-too-much of the activity in each involves governments either openly or clandestinely and in circumstances that at least raise the question of good faith and support for Charter principles. Finally, and notwithstanding the efforts of many international legal scholars, dispute resolution of any kind is not a strength of the international system. In the result, bilateral negotiations become a testing ground of brute force, not merit; the spectre of the street bully is glorified, often quite uncharacteristically, by State behaviour.

Where international law has kept pace, as in the allocation of international radio frequencies and positions for geo-stationary orbiting satellites, one must ask whether the long-term interests of the developing countries have been adequately safeguarded. If they are not, an extension of Adam Smith's argument would suggest that the long-term interests of the industrialized countries are as well in jeopardy.

Answers to all of these issues will not be found in the creation of still more regulatory agencies and institutions, nor in the crafting of apologies for self-inflicted economic failure in some developing countries, nor even, necessarily, in the design of new laws. What will contribute, what is needed, I submit, is a willingness to interpret international legal principles with the same objectivity as has permitted domestic law to make an increasingly important contribution to the securing of domestic social interests.

In that respect, I argue that two ingredients of domestic law be illuminated with international attention. One is the principle of common application, the other the concept of transparency.

First, commonage. As lawyers we are all familiar with the adage that in domestic law systems there is one law for the rich and another for the poor, one for the influential and another for the unknown. As lawyers, we bristle at those suggestions and re-dedicate our efforts to ensure that poverty and illiteracy and lack of connections

not be overwhelming barriers to justice. Yet we know that much more is needed than stout protestations of principle. Constant alertness and active effort are required. We know, too, that with heartbreaking frequency some of those for whom these struggles are conducted fail to seize the opportunities gained for them. Yet it is the principle that remains the issue. The wholesomeness of our society is our concern. And it is the wholesomeness of the international community that must be the concern of international lawyers. Lest anyone still awake assume that I am insisting, either within a State or among them, that there be equality in all respects, I am arguing no such thing. In no society of which I am aware is there an absolute denial of what Holmes described as "justifiable self-preference" [23] so as to produce absolute equality. Yet in no society which truly respects the primacy of the individual is the administration of justice so consciously tilted as to deny the equal application of principles which reflect - and increasingly - a lessening of respect for privilege. That same objective, I contend, must be an abiding objective of international lawyers as they toil in their society - the society of nations, but a society of human beings nonetheless.

The second concept - transparency - is in some respects the obverse of commonage and is consistent with my thesis that legal principle must be governed by community standards which are not always consistent with privacy of contract or sanctity of bilateralism. A great strength of the common law has been its dynamism in this respect, its willingness to look behind private arrangements, to insist upon disclosure, to ventilate the interests of the broader public. The whole practice of environmental impact assessments, of zoning hearings, of rules against "insider" trading, of safeguards for the storage and carriage of hazardous substances, of product ingredient disclosure - these have all departed from the 19th century absolute of contractual supremacy. So, too, I argue, must the international community move with increasing vigour in the directions that have been pointed to by such as The Law of the Sea Treaty,[24] The Antarctic Treaty[25] and The Outerspace Treaty[26] with their provisions for disclosure of scientific activities. But the process must be accelerated and the concept extended. If Wharton's century-old argument remains, that "the first requirement of a sound body of law is that it should correspond with the actual feelings and

demands of the community, whether right or wrong",[27] then the members of the international community, stimulated by international lawyers, must shape and make clear their feelings and their demands in a societal context. Not because we are more able or more insightful than others - for no more reason that that it is our professional responsibility. Activity of the nature of "The Arctic Waters Pollution Prevention Act"[28] must be encouraged, ensuring always - as there - that the potential role of international law and the interests of the international community be safeguarded.

These two concepts sound simplistic and, on close examination, unrealistic. Who should expect that a superpower in its international relations will respect equally a micro-state and a major entity? Who should expect that in defence pacts and weapons transfers, the States on either end of the agreement will be willing to disclose the substance of the arrangement? Who indeed? And who in centuries past would have expected that assumpsit and case and trover and detinue and replevin would disappear, that the Star Chamber would dissolve, and trial by battle be

forbidden, that corporate directors would be held criminally responsible for acts of the company, that property acquired in marriage be equally divided upon its termination? The answer, in many instances, and sadly, is that it was not always the lawyers who so expected or who worked for these reforms and so many others. But those reforms did emerge and we are all much the better for them.

We, as international lawyers, must understand the now planetary reach of human activity, and of the now rapid momentum of events. Barbara Ward, former editor of The Economist and one-time member of the Board of Governors of IDRC, described the changes thus:

> "In the last few decades, mankind has been overcome by the most fateful change in its entire history. Modern science and technology have created so close a network of communication, economic interdependence - and potential nuclear destruction - that planet earth, on its journey through infinity, has acquired the intimacy, the fellowship, and the vulnerability of a spaceship.

"In such a close community, there must be rules for survival."[29]

And while not being so presumptuous as to assume that international lawyers are best equipped for this task of rule making, we must not forget that we have been favoured with the opportunity to study, to reflect and to propose the better structure and functioning of an international order. Should we not dedicate our efforts to an order that will accommodate, direct and optimize the cascade of activities to which Barbara Ward refers? Perhaps, in Mrs. Adams words, I am chewing too much. Perhaps. Yet I remember the words of Pollock and Maitland in their great work when describing the scope of accomplishment of an earlier age of lawyers: "Those few men who were gathered at Westminster round Pateshull and Raleigh and Bracton were penning writs that would run in the name of kingless commonwealths on the other shore of the Atlantic Ocean; they were making right and wrong for us and for our children."[30] Is there less need for similar efforts today? Surely not. Is there less opportunity? I submit emphatically 'no'.

1966: "The concept of economic and social development as a public international responsibility is far and away the most important new departure in contemporary international law and organization.... The most basic significance of this new phase is that the human being, singly, in groups, or through the state of his nationality, has become the direct concern of international law."[32]

With much respect, Mr. Chairman, I concur.

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24. United Nations Convention on the Law of the Sea, 1982, U.N. Publications (1983).

25. Antarctic Treaty, 402 UNTS 71.

26. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 610 UNTS 205.

27. Wharton, A Treatise on Criminal Law (8th Ed., 1880) I, 8.

28. Arctic Waters Pollution Prevention Act, 1970 R.S.C. Cap. 2 (1st Supp.).

29. Barbara Ward, preface to the 1965 Pegram Lecture Series of the Brookhaven National Laboratory. Published as "Spaceship Earth" (1966).

30. Pollock and Maitland, The History of English Law (1968) Vol. 2, 674.

31. Op. cit. supra, Yale Univ. Press ed. (1953) 47.

32. A.S.I.L. Proceedings (1966) 8, 10.

An additional sombre comment on Barbara Ward's message of urgency. A generation of post-World War II giants is disappearing, and must be replaced. In one week earlier this year, the world lost three of its most brilliant, sensitive and effective intellectual architects. Norman MacKenzie, Philip Jessup and Alva Myrdal died on January 26, January 31 and February 1 respectively. Many of us were enriched by our association with them; all of us must be inspired to continue their efforts.

A final note. Punctuation. In light of the exhortatory nature of this paper, some of you may be suggesting that the proper sign at the end of the title should be neither a period nor a question mark but an exclamation mark. Rather than choose, I'm prepared to retire as gracefully as you will permit me by borrowing a phrase from Pound, and reciting in their entirety two sentences pronounced by Wolfgang Friedmann in an address to the American Society of International Law exactly 20 years ago. Pound's phrase is descriptive of law but could apply equally as well to the development process: "efficacious social engineering" he called it.[31] Friedmann stated in