THE GLOBAL CHALLENGE TO LEGAL EDUCATION: TRAINING LAWYERS FOR A NEW PARADIGM OF ECONOMIC, POLITICAL AND LEGAL-CULTURAL EXPECTATIONS IN THE 21ST CENTURY

Winston P. Nagan, FRSA* & Danie Visser**

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* Sam T. Dell Research Scholar; Professor of Law; Director, Institute for Human Rights, Peace & Development, University of Florida; Honorary Professor, University of Cape Town, South Africa. I would like to dedicate this piece to the memory of Elizabeth Anna Mikolajczyk, the first pro bono fellow in the University of Florida, Levin College of Law, Institute for Human Rights, Peace and Development. Dr. Mikolajczyk was passionately committed to the promotion of peace and human dignity. This article is a revised reproduction of oral remarks presented at the American and Caribbean Law Initiative conference entitled “Caribbean Market Forces: Emerging Trends in International and Comparative Law,” held at the Norman Manley Law School in Ocho Rios, from July 23 to 24, 2004.

** Editor of the South African Law Journal, Head of Department of Private Law in the University of Cape Town and Honorary Professor, University of Aberdeen, Scotland
I. PROLOGUE

Enormous developments are taking place in the global economy. Initiatives are being taken from the top down, and quite literally, from the bottom up. Changes in economic foundations of the world political economy are already evident. The emergence of China, India, Brazil, and South Africa as major players in the South-South discourse is being complemented by dramatic initiatives on the part of the United States and the European Union to radically expand the structure of global neo-liberal political economy. It may as well be parenthetically noted that while the formula of the neo-liberal political ideology for global economic development is being aggressively promoted, serious problems with the model have emerged within the United States itself, in the light of excessive corporate malfeasance and criminality. In the words of the New York Times, [Sunday, July 18, 2004, Masters of the Universe, Leashed [for Now]: “It has been a humbling summer for the power players of Wall Street, once celebrated as Masters of the Universe.”

In a significant understatement, the Wall Street Guru, Felix Rohatyn stated the following: “There just have been to many aspects of business where people were kind of giving out self-interested advice, or got involved in transactions they shouldn’t have been involved in.” Perhaps the most dramatic of the concerns with the corporate management of the market was the way in which Enron is alleged to have fleeced the State of California of billions of dollars sufficient to create both a fiscal and energy crisis in the state. If corporate power could achieve such dominance over a powerful state like California, one can only imagine the apprehension that must be felt by small states who might easily succumb to the dominance of private, corporate economic power.

2. Id.
The list of corporate stars whose luster now illuminates American prison cells or might soon do so includes former Enron Chairman Kenneth L. Lay who has been indicted on conspiracy and securities crimes as well as wire fraud. Jeffrey K. Skilling, has been indicted on conspiracy, securities fraud, and insider trading. They are awaiting trial. Samuel D. Waksal of Inclone Systems is currently serving 7 years for securities fraud and insider trading. Martin L. Grass of Rite Aid is serving 8 years for conspiracy and obstruction of justice. Scott D. Sullivan of WorldCom has pled guilty to accounting fraud. Andrew S. Fastow of Enron has pled guilty to fraud. Frank Quattrone of Credit Suisse has been convicted of obstruction of justice. The list is depressingly extensive. But the deep implications for the global neo-liberal economy are the problem and ubiquity of crony capitalism and the problem of how capitalist institutions might be controlled and regulated in the global public interest. This is the backdrop within which critical developments are taking place for the marginal economies of global society.

On May 18, 2000, President Clinton appended his signature to the Trade and Development Act of 2000. The Act included two important components: the United States-Caribbean Basin Trade Partnership Act of 2000 (CBPTA), the Africa Growth and Opportunity Act of 2000 (AGOA). The fundamental United States interests, from the United States perspective, are the strengthening of United States security interests and the United States interest in economic development and political reform, especially in the Caribbean Basin and

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8. Greg Farrell, *Enron Figure Pleads Guilty*, USA TODAY, Aug. 2, 2004, at 6B.
Africa. From the point of view of the Caribbean Basin, it is the sixth largest export market for United States goods. It accounts for 2.7% of United States exports in 1999. Hurricanes Mitch and George significantly impacted these figures in 1998. Evidently, the weather provided an incentive for the CBTPA. The CBTPA provides certain countries of the Caribbean with important preferential tariff treatment. Under Presidential Proclamation 7351, Jamaica is among the states included as a beneficiary country. The CBTPA has been an important marker for a still more ambitious initiative, which is including the Caribbean community (CARICON) into a possible integration into a Free Trade Area of the Americas (FTAA). This United States initiative targets the 34 democracies of the Western Hemisphere. The region includes 800 million consumers and has a gross domestic product of some 14 trillion dollars. This is the relevant context including the rapidly changing environment of political economy, trade, and investment and more within which legal educators and legal practitioners will have to work. These are critical challenges for the future of the Caribbean Basin, the Western Hemisphere, and in a larger sense, the legal profession as a global force for providing structure and process for the complex world of tomorrow.

II. INTRODUCTION

We have survived the last millennium. The last century of the last millennium was one of the worst in recorded history from the standpoint of war, human rights and humanitarian deprivations. On the other hand, the last century of the last millennium has also generated the promise of improvement. Indicators include improvements in science, technology, and communications, improved understandings of law, as well as economic social, ecological and political arrangements, which hold the promise of a better future. Nothing is assured. Everything is a challenge and fundamental human values in the most inclusive sense of the terms, are at the heart of the challenge. There is the paradigm of increased development and privilege for the “haves” of the planet.


14. Id.

15. Id.

16. Id.


18. Proclamation 7351, supra note 11.


20. Id.
and there is the prospect of accelerating poverty and exclusion for the "have nots."

There is, as M.K. Gandhi is reported to have said, more than enough to satisfy all global needs. There is simply not enough to satisfy all global greed. The specific challenges generated by perceived threats to cultural and economic dignity, are reflected in such extreme reactions as the apocalyptic version of terrorism associated with Bin Laden and those who sympathize or identify with him. They seem to fear the process of globalism that they see as a threat to their fundamental identity, political autonomy and religious outlook. On the other hand, there are those who see the war on terror as an important opportunity to extend, however articulated, a peculiar version of old style imperialism. Thus the war in Iraq is simultaneously claimed to be a war against terrorism and by its detractors as a war for an imperialistic agenda by others. Whatever the exact truth, one fact is clear, a vast number of complex, vital and challenging legal issues have confronted the international legal community. If lawyers could not stop or contain the current conflicts in the world community, they still have a critical role in seeking to constrain conflict and often to provide a framework in which order might be generated from the chaos of violent conflict and war.

Although this war may seem remote from the central issues confronting the nations and peoples of the Caribbean, we note that the United States base in Cuba serves as a territorial haven in which the United States might safely deposit suspected terrorists and hold them indefinitely without effective recourse to the courts of the United States. In short, a complex legal issue has been generated in the Caribbean about whether territory located in the Caribbean may be used to avoid the rule of law of the United States and the rule of law of the world community. Is Guantanamo a sui generis territory outside of the strictures of any rule of law? Since it is claimed that the treaty that gives the United States occupancy of Guantamano is an occupancy that is indefinite, are there implicit standards of treaty construction and interpretation that may suggest that the treaty is only valid so long as it does not violate explicit rules of international law.\(^{21}\) In short, the principle of pacta sunt servanda is not a construction that is absolute but assumes that the binding force of the treaty continues so long as the treaty performance remains faithful to international legal obligations.\(^{22}\) If those obligations are intentionally breached, does this invoke the principle rebus sic stantibus?\(^{23}\) If there are changed circumstances or conditions and if these factors constitute a violation of international law,


\(^{22}\) Id. art. 26.

would this principle become relevant to the continued viability of the treaty itself? Thus, remote as the Caribbean seems to be from the war on terrorism, its territories are currently used as an important part of the effort to prosecute that war.

Even more importantly, the Guantanamo problem simply raises the larger problem of the status of Cuba within the community and the approach of the United States to both Cuba and the larger Caribbean community. The United States maintains a regime of economic coercion against Cuba. It also seeks aggressive economic development for the Caribbean region. The complexity posed by political decisions of the United States will have practical consequences of significance for the Caribbean region as a whole. To square the circle of United States policy will require enormous legal dexterity working under the shadow of powerful political forces, forces often antagonistic to each other.

The countries of the Caribbean are small and even if they pool their resources they confront a dilemma. The United States is their most important political and economic neighbor. They cannot function effectively without a cooperative relationship with the United States. If they cooperate fully with the United States, they will clearly gain. But what exactly will they gain? If they do not cooperate with the United States, they will be disadvantaged, but what exactly are the disadvantages? It is between these two possibilities that the Caribbean nations will have to develop their strategies for political, economic and social development. But they stand to be mightily disadvantaged if they do not engage in the challenge. If they engage in the challenge, the question is how effectively can they secure their interests? Here the role of the law and lawyers it seems to me is going to be critical. For example, if effective progress is made towards a free trade relationship with the United States, there is no question that the United States will penetrate and dominate the Caribbean. On the other hand, if the fine print is taken care of, perhaps there is the possibility of a form of reverse penetration. This requires knowing how to exploit the United States market. One of the first principles in positioning oneself strategically is to have a significant understanding of the legal foundations of the United States system itself. This does not mean that doing business with the United States under a relatively free trade scheme is simple for the practical businessman in the Caribbean. But the overall benefits can be achieved if sound business practice is accompanied by competent and forceful legal advice and advocacy.

Let me give you a simple illustration, drawn from a practical problem of a state that has taken advantage of trade preferences given it by the United States. A small empowerment corporation in state X (a developing country) determines that an American computer product in the process of moving from concept to application would be extremely useful in terms of its ability to compete in the communications market of X and the larger regional
environment. They send a delegation to Washington, review the product with their experts and are given a fairly summarized version of the timing for the practical application of the product in the market. Everything looks great. They will have an exclusive license in their country and a whole chunk of the continent. However, the contract that is to be drawn up is to be drawn by the lawyers of the United States corporation. The third world corporation is to be pay a quarter of a million dollars up front followed by two further payments in the same amount. The initial amount is paid and the contract is signed. There is great pressure on them to sign the contract and pay the money or they will forfeit a lost opportunity. The CEO of the corporation makes it clear that he is doing a favor to a group of unsophisticated third world bums. It more or less goes like this: I understand your lack of sophistication in the real world, of high finance so I will make it simple. If you want to be rich, pay now and sign the contract. The parties sign the take it or leave it deal. The contract turns out to be a one-sided arrangement. The American lawyers draft the contract selecting the forms of dispute resolution, including choice of venue, choice of jurisdiction, and choice of law; the agreement also includes a provision that seeks to exclude the United Nations Convention on the Sale of Goods.\textsuperscript{24} After the money is paid, communication deteriorates and becomes non-existent.

The third world corporation receives a contact from the chief of technology of the firm indicating that he is leaving and that he can provide them with a different product that would meet their needs if they are interested. He is also willing to sell them all his shares. The third world firm, smelling a rat, declines to have any further conversations with this person. Since they have received no further information from the corporation, they ask for their funds to be refunded. The American firm agrees. They subsequently receive a response from a lawyer in the United States indicating that there is reason to believe they may be implicated in a plot to appropriate the patent of the United States company. Their money will not be returned and they have been reported to the Federal Bureau of Investigation. This is a fairly practical problem and indeed is drawn from real life experience.

The central point for our purpose is that law can be used as an instrument of power. The imperial state does not have to use gunboat diplomacy if it can achieve its objectives by the use of the power appropriated by law. Weak states cannot protect their nationals effectively in a world of gunboat diplomacy. They will have to play the legal game and play it with a lot of skill to develop a relatively level playing field within which constructive developments can happen. Expertise in local and international law is simply not enough. Expertise in narrow legalism is necessary but not sufficient for effective

protection of the range of interests of a small state. The most important asset of a small state will be the extent to which its lawyers are incredibly well trained in local, regional, comparative and international law.

Let me give another illustration of the importance of this matter. A third world country rewrote its Medicines Act to give its Minister more powers with regard to the protection in the context of national health emergencies. The government of the United States challenged the legislation of the country. The basis of the United States claim was to get that country to repeal its legislation on the basis that it violated international intellectual property treaties protecting intellectual property rights to which both states were parties. A significant and escalating conflict developed between the United States and that country with the United States threatening to impose economic sanctions on it. The United States assumed that had an unassailable position on treaty interpretation. Initially no one in that third world country challenged this position. However, the NGOs associated with AIDS issues got into the matter and a careful reading of the treaties and United States practice disclosed that the United States position taken in this context, would in itself make the United States a major violator of the treaties because of its extensive use of compulsory licensing and the acceptance of the principle of parallel imports. This technical reading of Trips and its interpretation in the light of the Vienna Convention on the Law of Treaties,\textsuperscript{25} as well as the understanding of Trips on the light of general international law, including human rights law has significantly changed the fulcrum of power over these matters. In short, one side sought to use law of the legal bulldozer and the other side was sufficiently skilled so as to limit the power of economic hegemony by law. These two illustrations demonstrate that if the trend toward a far greater intense level of integration is to take place, that is to say, if global forces which conspired to erode territorial boundaries in the traditional sense and reproduce the framework of interdependence and inter-determination, lawyers will have the critical role in ensuring that these facts of global social organization do not degenerate into global domination and archaic imperialism.

III. LEGAL EDUCATION AND THE STRUCTURE OF GLOBAL LAW

I have used these two bullets as lead in to the question of how lawyers are trained to meet the new challenges of the international or global environment. As preliminary matter, the first issue that has to be confronted is that behind the practice of law is the brooding omnipresence of the theory of law. And behind both the practice and the theory of law is the theory and practice of legal education as well as continuing legal education of active professionals. It

\textsuperscript{25} Vienna Convention, \textit{supra} note 21.
believe it was Dicey or Holmes who said that jurisprudence stinks in the nostrils of the practitioner. Please forgive me if I provide a modest reference to some critical aspects of theory that impact on legal education and ultimately on the practical orientation of real world lawyers. The central traditional feature of legal education was and remains largely influenced by legal positivism. And legal positivism posits the creation of all law as a product of the sovereign. The precise impact of this on legal education has in effect been to make it parochial—to train lawyers in a system in which there is a sovereign that monopolizes the making, application and enforcement of law. As a model, this is of course a hierarchical model, a model of law coming down from the top to the herd at the bottom.

In Austin’s famous formulation, law is the command of a sovereign imposed by a sanction. The obvious concern with this model would be the status of law made beyond the boundaries of the sovereign, such as international law. According to Holland, international law is the vanishing point of legal theory. And according to Austin, international law is positive morality and not law. The practitioner will at once see that this model is unhelpful as a means of training practitioners under current global conditions. [I note that this reference to theory is deliberately simplified. There are of course much more refined versions of modern positivism]. Any statistical indication of the scope of human problems implicating legal institutions which cut across state and national lines, will immediately disclose that this vertical model of law making has great difficulty in accounting for what we might loosely call a horizontal model of law making.

In short, the legal problems that cut across state and national lines from war and peace, to ordinary business transactions, to concessionary agreements, to marriage, divorce and the management of estates and international trusts and a great deal more suggests that the trajectories of law which confront the contemporary practitioner are not simply vertical or horizontal, but indeed, law making application and enforcement come in a range of bewildering trajectories challenging traditional ways of doing law. So our first problem is the problem of whether we can construct a framework and a model of law that is not confined to a single state but includes clusters of states, and multiple clusters of states constituting the larger universe of states within the international community. More than that, there are other players besides states in the world community whose role must be understood and given appropriate legal

27. JOHN AUSTIN, LECTURES ON JURISPRUDENCE OR THE PHILOSOPHY OF POSITIVE LAW (Scholarly Press 1977).
29. AUSTIN, supra note 26.
relevance: international organizations, international corporations, international criminal syndicates, international political parties and pressure groups, international terrorist groups and, in addition, individuals and groups which constitute the civil society.

Let us explore the implications of modeling global law more fully. The problems of traditional law models manifested themselves in the theory and practice of both international law and constitutional law. In international law positivism influenced the generation of elaborate, alternative or modified structures of international law itself. Two dominant, and indeed elegant, structural models emerged that deeply divided as well as influenced the development of international law. The models were economically styled "monist" and "dualist." The monist model seemed to postulate a "criterion" of validation in a conceptual construct that was "meta-statal." The assumption was that there "existed" a meta-statal "imperative" that determined when, for example, a state was a state, and thus the monist theory had some constitutive properties built into it. The dualist version provided a more anarchic structure for international law by rooting all law making competence in the nation-state (sovereign). Since the sovereign might consent to some limitations, withhold consent or withdraw consent already given, international law could be predicated upon formal and informal agreements and understandings.

How does globalism change these models? How do these models limit the empirical and normative challenges of globalism? If we conceive of legal theory as in part an inquiring system, do these models limit or enhance legal inquiry? It is obvious that the very large and complex social process mosaic of world order includes not only states, but international and regional organizations, private armies of various levels of competence and capacity, vast corporate enterprises and an even vaster complex of non-governmental civil society associations as well as the individuals who constitute the larger global community. These social facts may require that the implicit state-centered view we

30. Theories of "monism" and "dualism" have been a critical part of the evolving "constitutional" discourse of modern international law. In the United Kingdom, the theories of monism and dualism have been loosely identified with the theories of "transformation" or incorporation relationship between domestic law and international law. The "transformation" theory holds that international law transforms domestic law, but they are two separate and distinct systems. On the other hand, the "incorporation" theory holds that international law is part of domestic law without a ratifying procedure. See generally IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (4th ed. 1990); MALCOLM N. SHAW, INTERNATIONAL LAW (3d ed. 1991). See also George Slyz, International Law in National Courts, 28 N.Y.U. J. INT'L L. & POL. 65 (1997); Trendtex Trading Corp. v. Cent. Bank of Nigeria 1 Lloyd's Rep. 581 (1997) (Eng.); Maclaine Watson & Co., Ltd. v. Dep't of Trade & Indus., 3 All E.R. 523 (1989) (Eng.) (accepting the incorporation doctrine). Human rights litigation has added to the force of the incorporation doctrine. See MURRAY HUNT, USING HUMAN RIGHTS LAW IN ENGLISH COURTS 25 (1998).

31. See Slyz, supra note 30.

32. Id.
hold of law be transformed into a global law whose boundaries and structures are still in the unfolding stage.\textsuperscript{33}

Multi-state/transnational law may indeed be structurally more horizontal than vertical. More realistically, there are simply multiple trajectories of law making, law applying and law-enforcing processes. In loose but convenient formulation, we are dealing with the so-called global to local to global nexus. These connections have horizontal, vertical, and other trajectories. This kind of structural complexity will have a critical impact upon conventional methods of both teaching and inquiry about law and law-conditioned processes. In this context, the good news is that the one-dimensional paradigm of top-down, hierarchical law is no longer as professionally interesting as it apparently once was. Law operating in planes of multiple intersecting trajectories does represent an impressive challenge to professional competence in theory and practice. The distinguished legal anthropologist, Leopold Pospisil\textsuperscript{34} who showed that multiple law-generating processes might exist in the same state or body politic, indicates an important insight into the structure of the law. Each of these processes would have distinctive criteria that make them relatively discrete. Simultaneously they have points of important intersection and interaction with each other. What therefore seems to be an ostensibly single legal system upon proper investigation may in fact disclose multiple spheres and levels of legal systematics.

This practical gloss on the relevant context of the global community which now generates problems of global, regional, national and local relevance requires us to do a lot of rethinking about legal education and how it can be relevant to the practical realities lawyers must confront in the new millennium. In short, a central challenge for legal education is to discard parochialism while at the same time recognizing that the outcomes of legal interventions are invariably grounded in some local contexts. On the other hand, the perspective must be broadened to understand the impact of global conditions on regional and local situations as well as the impact and regional situations on global conditions. These are critical challenges in the teaching of law and I now look more specifically at challenges in the structure of the curriculum of a law school sensitive to the new challenges of international environment.

\textsuperscript{33} International law has been the primitive law of an unsocial international society. Itself a by-product of that unsocialization, it has contributed to holding back the development of international society as society. Failing to recognize itself as a society, international society has not known that it has a constitution. Not knowing its own constitution, it has ignored the generic principles of a constitution. See Philip Allott, Eunomia: New Order For A New World 418 (1990).

\textsuperscript{34} See Leopold J. Pospisil, Anthropology of Law: A Comparative Theory (1971).
A. The Curriculum and Globalism

One of the central issues of legal education in the law schools as well as matter of continuing professional obligation is the globalization of the curriculum. W. Michael Reisman states that many of the social arrangements we think of as quintessentially domestic in this country are inextricably interwoven with complex process in other countries and regions of the globe. Consider our security system, our political-economic system to search, fund, and retain external markets for our products, and our dependence on the national resources without which an advanced industrial, science-based civilization cannot survive. Also consider our health system, and our conceptions of fundamental morality. Even “domestic law” courses can no longer be understood adequately, whether for descriptive or practical professional purposes, without an understanding of the organization and dynamics of the international system. There are large-scale implications in this challenge. For example, there is the challenge of “transnational comprehensiveness” in the teaching of the law. Do we need more “international law courses”? Should all our existing courses be subject to revisions that account for the complexities of multi-state law or law on a “horizontal plane”? In other words, must we radically revise, for example, how we teach the law of sales to account for the International Convention on the Sale of Goods, or must we create a new course based on this latter instrument? How much specific international or transnational content should be added to a traditional (state-centered) private international course? The short but precise answer is that almost every course in the curriculum of any law school to a greater or lesser degree has a trans-state multi-state, transnational dimension to it. Globalization may have to be given a critical curriculum presence by the willingness of “domestic” law teachers to revise their domestic law courses with a sensitivity to the law of multi-state problems.

If realism demands that law school curriculum be more global, it must confront powerfully received ideas, often a part of the implicit jurisprudence of both scholars and practitioners that law and the state are essentially identical. The identification of law with the state has always had technical difficulties with the law of multiple states (both public and private international law). Indeed a distinguished jurist once suggested that if international law really were law, it would also be the vanishing point of legal theory. Of course, an emerging paradigm of global law may be unclear and not intuitively as appealing as the Westphalian/Austinian model of law and state. However, literature in World

36. HOLLAND, supra note 28.
Order studies moves significantly in the direction of global law, building on Judge Jessup's idea of "transnational law" as distinct from state centered international law. The author's own work on the interrelations of public and private international law suggests that they are indispensable and complimentary components of world public order or global law. A practical gloss on these ideas is the recognition that in general the sources of state law rest largely on statute and precedent. The sources of international law, as indicated in Article 38 of the Statute of the International Court of Justice, are much broader, and correspondingly subject to controversy.

The sources of international global law, which includes international law and their relative weight in legal discourse or decision-making contexts, may be a fertile source of broadening the "authority" basis for the interpretation of the law in general. It may also be an important challenge to juridical creativity and innovation in the use of extensive sources of authority not always found in conventional state law sources.


38. See Phillip C. Jessup, Transnational Law 1-16 (1956).

B. Globalism: Making Context and Interpretation Relevant to Lawyers

The importance of context to law is both simple and complex. Theories of law in general have sought to make law a discrete discipline. Modern theories have sought to make their discipline more amenable to scientific logical analysis. To do this the trend has been to isolate law from the unruly world of contextual reality. Exclusion comes at a price. That price may sacrifice realism and relevancy. The issue of context is often critical to the practice of law. Context influences interpretation. The less interpretation admits context, the more formulaic the process of a legal decision may be. At the same time, that decision may distance itself from realism and relevancy. On the other hand, formalism may perform an important function in times of crisis of protecting the legal profession from repressive politics. However, it is the case that the exclusion of context also results in the exclusion of the just claims of the marginalized classes. From the perspective of this paper, the exclusion of the global context runs the risk of making the profession itself marginal or irrelevant.

The perspective of "globalism" which implies a new and important context necessarily expands the definition of law. This will influence how law is interpreted. Thus, the methods of construction, interpretation, as well as the authoritative sources of the "law," all conspire to produce challenges to the appropriate boundaries of our discipline. This could inspire us to rethink the very empirical and normative foundations of domestic law from a global perspective. For example, global law could influence a trend that requires "interpretation" in terms of what is usefully knowable about communications theory, which considerably broadens the theory and method of law, based communications. This in turn may influence what is conventionally labeled "interpretation." It may also stress an approach to law that is more horizontal than hierarchal, making more complex the weight to be given to different sources of authority in particular cases. Globalism also broadens the context of law. If that context is socially constructed, it may stress interdisciplinary skills in our efforts to improve, as responsibly as possible, the "narrative" of global law.

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42. Id.
IV. MANAGING THE SOURCES OF GLOBAL LAW: THE RELEVANCE OF COMMUNICATIONS THEORY

International lawyers have long grappled with the problems of so-called "hard" and "soft" sources of law. The phenomenon has in part been triggered by the communications revolution itself. Resolutions, declarations, and directives flow from a vast aggregate of national, regional and global institutions. To some extent they are expectation-creating communications. Some are formulated with the precision of legal precepts and generate authoritative support in preexisting legal precepts or in the weight and seriousness with which they are received in authoritative fora, or more generally in public opinion. These kinds of signs and symbols may gravitate to general acceptance in the relevant professional and specialist discourses. Sometimes these precepts backed by some form of "authority" and "acceptance" may find confirmation in formal institutions of law making or in informal but effective fora. Sometimes the acceptance of such communications that are policy-specific supported by an authority-signal and by some form of controlling animus, has the capacity to create law in a functional sense. This kind of insight suggests that, however useful the typologies of hard and soft law are, or however broad the boundaries of Article 38 of the International Court of Justice Statute are, we could benefit from a more coherent perspective about the relationship of communications theory to the process of global law making and application.

Lawyers in the international law arena have been keenly aware that we are no longer dealing with the sources of international law, but the sources of a (local to global) global law paradigm. This has been expressed as a form of disenchantment even with the "traditional" sources of international law as being perhaps too narrow a basis for marshaling the sources of authority of global or transnational law. However, as has been earlier indicated, a return to the basis of general communications theory might provide a better multi-level, multi-disciplinary framework for meeting this challenge in both theory and practice. The general model of communications theory asks a series of sequential questions:

43. I.C.J. Statute, supra note 40, art. 38.
As applied to global law the model may be graphically illustrated as follows:

Communicators } Prescriptive Content } Target Audience in
From Global Community } Authority Signal } Global Community
 } Controlling Intention

This general model has been applied to the interpretation of agreements and world order, as well as to add insight to the question of how global law is functionally made and applied. In the author’s article, “Law and Post-Apartheid South Africa,” this approach was used to provide some coherence to the flow of communications relating to black expectations of change as found in the Petition of Right, the Freedom Charter, the UDF Declaration, etc. This model provides a good fit for understanding the impact of the modern communications revolution (the internet for example) on global law. This approach, however, implies a greater appreciation of law in context and the interdisciplinary aspect it implies.

This kind of perspective about law as a process of communication has vast implications for how one describes and uses all possible “sources” of law at any level of inquiry. Indeed, the model throws light upon a neglected aspect of human interaction, viz., that interaction is in substantial measure a communicative enterprise. These communications often involve normative or prescriptive elements, they include value-variables and they contain coded signs and symbols of both authority and expectations of coercion. It is perhaps this core


46. See generally Nagan, supra note 44.
insight that has influenced legal anthropologists to explore the empirical foundations of small group law or the “law” of micro social relationships. But the global perspective also is replete with complex communicative processes which have normative or prescriptive force of some sort, designate communications about desired goods, services, honors and indeed basic “values;” and contain coded symbols of authority and control to define expectations of conservation and change. The micro and macro implications, therefore, of a more functional design for a contextualized vision of law-making as a process of communication collaboration and conflict has an immense potential impact on how we reconstruct law in an age of globalism.

V. FROM STRUCTURE TO CONTEXT AND FUNCTION

When we refocus our lens about the future of professional responsibility from structure to function, we encounter several important matters of substance. First, the “pre” structural context of law encounters the unruly world of global fact, and the problems generated by that world, some of which demand legal responses of some sort. The systematic articulation and understanding of the legal problems of global reach, which demand the Practitioner’s attention, will require a refined and sophisticated form of interdisciplinary theory and method. The focus on decision-making and policy in an era of globalism permits a sharper emphasis on such issues as the relevance of context and more specifically the contextual location or mapping of problems that require some sort of legal intervention. The problem of what a legal or potential problem is a major issue for theory and practice and it is also a critical component of the multi disciplinary dimension of the delineation of context and the outcomes of context, which are the problems to which law must respond.

The discipline of focusing on the problems, which demand or require authoritative and controlling decision-making interventions, serves to place important limitations and potentials to enhance both scholarship and professionalism. Probably the most important element that problems provide to legal culture from a theoretical point of view is the principle of realism and relevancy. When the cliché “relevancy” is invoked, it is usually invoked as an anti-intellectual, crude limitation on inquiry. But in fact, when we tie realism to problems we find that we know very little about problems or indeed the problem of how one determines what a problem is. Even more important, the

idea of being able to anticipate or predict problems before they happen could be one of the most important components of thoughtful scholarly inquiry that is informed by high intellectual standards of professionalism. The particular slant that realism and relevancy in terms of orientation give to law in a global sense is that it focuses on the unsettling dynamic aspect of law, that is to say, that law as decision is a response to problems that actually arise or maybe reasonably anticipated will arise out of the relevant community context.

No less important to the task of lawyering may be the focus on the indices of decision-making interventions, in particular the "conditions" of decision-making. This too may expand our focus from legalism's reliance on logical syntactical modes of expression and appraisal, to those that focus cross-culturally on such factors as social and professional class, cultural orientation, personality predispositions and conditions of crises which may require interdisciplinary skills to meaningfully appreciate the conditions that shape lawyer roles and lawyer conditioned interventions. A still further concern or interest that may implicate the role of lawyers in this context is the effort to understand the consequences for public order of lawyer interventions. These understandings, imperfect as they may indeed be, cry out for tools and skills of appraisal that are in part interdisciplinary.

VI. CONTEXT: LAW AND . . .

One of the important problems posed by partial "law-and" models is that by taking in a selective slice of social organization the consequences of legal or policy decision-making interventions may in fact be astigmatic or myopic since these partial, cognitive and methodological procedures are faced with the disciplinary dilemma of too much exclusion, or if they become too inclusive it is because they take in too much and therefore eviscerate the coherence their approach brings to legal analysis or legal inquiry. Managing a legal context for legal inquiry is therefore a complex business.

Those who emphasize a law and economics approach may have to confront this dilemma. One of the key concerns is the issue of how much economic reductionism law can absorb without significant distortion. This issue has emerged in the form of whether a law and economics approach can digest certain non-economic "values." I am uncertain whether at the back of the economic foundations of the law model there is no testable generalized model of social organization. Possibly this model is well expressed somewhere. If it is there, perhaps it might look something like this: "Human beings purposefully seek to maximize wealth through institutions based on material and technological resources." The basic thrust of this model might be that people maximize wealth to make more wealth. It is of course possible that they maximize wealth for other reasons. Perhaps they want power. Perhaps they want to maximize
their "affective" experiences or improve their professional or educational opportunities, health and wellbeing. Maybe they need wealth to promote God.

These and other objectives might deeply influence what wealth they seek to maximize, how to maximize it, and where to draw the line. Of course, it may also be suggested, just to complicate matters, that these other non-economic values may be used to generate wealth. That is to say, we may use power to leverage wealth, or skill or education or social position or even religion. In other words, the conception of "values," i.e., what is desired may be much broader than the scheme of value assumptions implicit in the model of the social process implied in some forms of legal economic inquiry. Thus, values and the processes they include suggest that the foundations of "political/social economy" are immeasurably more complex than implied in this model. This insight hopefully suggests that the very idea of contextuality, its inclusivity, its systematics, its amenability to effective mapping onto legal/policy processes remain both vital and controverted. It is an important challenge to how lawyers are educated and how effectively a sense of social/economic realism may be successfully brought into the processes of legal inquiry and legal intervention.48

VII. GLOBALISM, NEW FORMS OF CONSTITUTIONAL THINKING

Probably the most central impact represented by the concept of globalism has been the development of the legal expectations imbedded in the United Nations Charter as reflective of a constitution of the world community. But this constitution is different from the traditional concept of a constitution, which seeks to separate the law from basic values. The United Nations Charter is not value free or value neutral. As a constitution, it makes an important contribution to a much more challenging concept of the law imbedded in the idea of constitutionalism itself. The Charter as a constitution is an instrument for promoting peace, human rights, social progress and universal respect for the rule of law. Its importance to global constitution law is its profound influence on the development of regional constitutions, or constitutional-like arrangements or compacts in Europe, the Americas and Africa. Its footprint is also deeply

48. This is an issue that has an interesting parallel in human rights law. Article 17(1) of the Universal Declaration of Human Rights holds that, “Everyone has a right to own property.” See G.A. Res. 217 (III), U.N. Doc. A/810, at 71 (1948). Is this an unlimited universal right? Of course not. Article 17(2) holds that “no one should be arbitrarily deprived of his property.” Id. What does this mean? Does the term “arbitrarily” refer to all the other rights in the Declaration in the sense that property can be limited if limitation is to preserve the other rights in the instrument? Can we know what property means without knowing the content and structure of its limitation? Does the same principle apply to “wealth maximization”? There is a great deal of acceptance of interdisciplinary perspectives in law and practice. But I would suggest that the systematic employment of these perspectives in both education and practice is not a goal that is presently realized. The methodological objective here is, of course, to move from “law and” to an inclusive interdisciplinary, “law is” paradigm.
imbedded in new forms of national constitutional development as well as its imprint upon the legal complexity of transitions to democracy. The fact that the United Nations Charter is a peace document, a document that articulates the centrality of human dignity and social progress, means that it does confront forces of reaction in the world community. The United Nations Charter as a constitution is under pressure to secure its destruction as it is equally under pressure to affirm its noble promise. The Charter will continue to be critically relevant when its prescriptions provide explicit normative guidance in domestic fora including domestic courts. The normative foundations of modern constitutional law, which are beginning to take root globally and locally, are included in at least keynote principles rooted in the Charter. These are:

1) The opening of the preamble expresses the first standard—that the Charter’s authority is rooted in the perspectives of all members of the global community, i.e., the peoples. This is indicated by the words, “[w]e the peoples of the United Nations.” Thus, the authority for the international rule of law, and its power to review and supervise the nuclear weapons problem is an authority not rooted in abstractions like “sovereignty,” “elite,” or “ruling class,” but in the actual perspectives of the people of the world community. This means that the peoples’ goals, expressed through appropriate fora, including the United Nations, governments, as well as public opinion, are critical indicators of the “principle of humanity” and the “dictates of public conscience” as they relate to the conditions of war (methods and means).

2) The Charter’s second key concept embraces the high purpose of saving succeeding generations from the scourge of war. The drafters clearly did not envision nuclear war in reference to the concept of war here. Nonetheless, as the passage contemplates the destructiveness of war, an enhanced technological capacity for destructive weapons would enhance the relevance of this provision, not restrict its scope. This reflects a reasonable legal interpretation.

3) The third keynote concept is the reference to the “dignity and worth of the human person.” In blunt terms, the eradication of millions of human beings with a single weapon hardly values the dignity or worth of the person. What is of cardinal legal, political, and moral import is the idea that international law based on the law of the Charter be interpreted to enhance the

49. U.N. CHARTER pmbl.
50. Id.
51. Id.
dignity and worth of all peoples and individuals, rather than be complicit in the destruction of the core values of human dignity.

4) The fourth keynote concept in the preamble is emphatically anti-imperialist. It holds that the equal rights of all nations must be respected.

5) The fifth keynote in the Charter preamble refers to the obligation to respect international law based not only on treaty commitments, but also on "other sources of international law." The fifth keynote is emphatically anti-imperialist.

6) The sixth keynote point in the preamble of the Charter contains a deeply rooted expectation of progress, improved standards of living, and enhanced domains of freedom. In short, to the extent that we see "legalism" as still a vital part of law as a discipline, its influence will be moderated by the recourse to law as "fundamental policy," and the functional idea of law as a process of authoritative and controlling "decision-making;" guided by a complex but articulate normative agenda.

The normative foundations of the international constitutional system have as earlier indicated, influenced the development of modern constitutional and administrative law in both national and hemispheric arenas. One of the important themes that these norms imply is that the creation and maintenance of the institutions of governance must meet certain general normative criteria: responsibility, accountability and transparency. Stated differently, modern forms of governance must essentially be rooted in indicators of authority deriving from the keynote values of the United Nations Charter. But specifically, they should reflect the principles that touch on questions of openness, participatory access, accountability as well as effectiveness and coherence. These principles obviously require progress and participation, improvements in the quality of policy-making and regulation; a commitment to the rule of law and the realization of the principles of justice, as well as a commitment to effectiveness, efficiency, subsidiary and proportionality, etc. Teaching the law of governance now must take into account a must broader framework of transnational governing competence as well as administrative policy and practice which cuts across state and national lines. These practices today are infused with normative sensitivity.

52. Id.

One of the under appreciated components of any kind of rational development paradigm, but particularly one that builds on capitalist principles, is the crucial relevance of the system of private law. It is difficult to imagine how a capitalist system can function with an underdeveloped framework of legal obligations (contract and delict) as well as the institutions which make private relations work reasonably effectively such as agency, partnership, joint ventures, franchises, forms of corporate organization and more. Since enterprise requires a degree of predictability, the reasonable stability of private law institutions provide an important structure of stability for planning and predicting relevant matters of economic enterprise and ordering. In short, private law is the essential deep structure of a working capitalist system. Weak private law means a weak capitalist system. Strong private law institutions will seem to strengthen the capitalist system. Private law largely means private ordering. Private ordering does not mean private license. It means respect for the fundamental rules of give and take, of fairness and equity, which underlie the fundamental policies behind all private law systems. When the private law is strong and effective, we are at the same time giving a genuine meaning to the concept of civil society and civil ordering. Thus the institutions of private law have compelling social functions. It is perhaps for this reason the European theorists today talk in terms of civil society being ineluctably tied to the concept of a private law society. The challenge runs deeper. When we look at economic harmonization of many countries, we are in effect harmonizing critical sectors including the economic sector. It is difficult to imagine effective economic integration without also harmonizing the private law, which must effectively govern and regulate their activities. How do these thoughts apply to the Caribbean and to the development of an integrated regional political economy?

The countries of the Caribbean if they are to buy into a free trade zone with the United States, might be advised to commence if they have already not done so, a process of harmonizing their commercial laws. I have worked on a proposal for the Southern African Development Community (SADC). This proposal envisages the development of a common market and, to secure the expeditious attainment of this objective, it is vital that an effective infrastructure of harmonized commercial law and practices be established. The harmonization of private law will take place on essentially three levels, i.e., 1) domestic law reform; 2) rules facilitating intra-regional commerce and regional economic cooperation or integration, and, 3) rules facilitating worldwide commercial transactions. In the absence of such an initiative, there is no doubt that the development of inter-state trade in goods, services and investment will be retarded. Furthermore, the broad policy objectives of the Caribbean interests could include improved economic performance of the national economies in the
region, and this initiative is also aimed at supporting this aspect of the regional agenda for development. This would be a promising approach to an effective free trade arrangement.

There would have to be discussions with potential multi-party stakeholders and the generation of a consensus that the Caribbean is ready for higher and more sustained levels of co-operation and economic integration. This could create employment, which will enhance the standard of living and provide a broader tax base for the states to create the necessary commercial infrastructure that is an indispensable condition of sustainable development. Modern, rational, and efficient rules for international commercial contracts and financing will contribute to giving all countries in the region equal opportunities to attract both manufacturing and service providing businesses. Moreover, harmonized regulations will promote foreign direct investment, e.g. industry, tourism, etc., that will generate jobs. A free trade regime that enhances joblessness seems to me to be a non-starter.

I have not been privy to the discourse internal to the Caribbean on what areas and what priorities should be given to the harmonization process. As an outsider, I would suggest that consideration be given to the following general principles which might guide a process of harmonization:

1) The body of commercial law that should be the focus of harmonization must be broadly conceived because a commercial law system for the whole region will ultimately only be as strong as its weakest link. Any part of the whole can frustrate the smooth and effective workings of enterprisal freedoms. It is therefore our proposal that commercial law for the purpose of regional economic integration should include not only all these branches of law, the approximation of which would remove obstacles to the free flow of goods, services and investment opportunities, but also those that would positively encourage inter-state trade, and foreign direct investment.

2) It is imperative that the rules and policies codified in this way must not reflect national, parochial or special interest concerns, but be rules and principles grounded in sound principles of contemporary commercial practice.

3) There must be acceptance of cross state and regional lines, and a solid majority of stakeholders interested in regional commercial development must support the initiative. Such stakeholders include not only governmental entities, but the private sector (both domestic and foreign) and civil society (universities, research institutes, and NGOs as well).

4) It is of the utmost importance that participating Governments approach this task on an equal footing and that both the experience of interested commercial circles and the most
advanced scholarly expertise available be involved from the outset. The International Institute for the Unification of Private Law (UNIDROIT), Rome, would appear to be the appropriate vehicle for reaching all three objectives.

IX. VALUE AND PROCESS IN HARMONIZATION

The value of regionally harmonized modernization of commercial law, through the development of both 'hard' and 'soft'-law instruments and the identification of the proper approach on a case-by-case basis permits to limit the cumbersome process of diplomatic negotiations to those areas where binding international treaties are inevitable.

This kind of intergovernmental, but at the same time commercially oriented and scholarly supported/driven initiative will have the flexibility in its process to produce appropriate instruments in a representative but politically neutral manner, stressing the technical and professional aspects of harmonization. In short, the process will be efficacious, cost efficient, cost efficient and its legitimacy will rest on the professionalism of its product and its collaboration throughout the project with multiparty stakeholders.

The program has a further objective: *viz.*, the training of a new generation Caribbean lawyers and academics in the law and practices relating to the commercial and economic integration of the Caribbean.

X. POSSIBLE KEY AREAS OF INVESTIGATION

The key areas for which the regional model codes could be developed as follows:

A. Company Law

The primary objective in regard to company law is to facilitate the mobility of companies in the region by ensuring the mutual recognition of the legal personality of companies throughout member states. For example, a Jamaican company would, in terms of this initiative, enjoy legal personality in another Caribbean country and thus the inconvenience of re-incorporation would be eliminated and so facilitate investment. However, mutual recognition of companies requires the establishment of confidence in companies incorporated in other states, and a crucial aspect of bringing about this confidence is the creation of certain common rules relating to the operation of companies. That, in turn, means harmonization of parts of company law such as reporting, accounting and the rules relating to transparency. In this area, as in many other areas, there are harmonization initiatives in progress and this project will take note of work already done.
B. Insolvency

Inter-state trade can be facilitated in a significant way by reducing legal insecurity as far as possible. One of the most important areas in which legal confidence should be sought, is the law relating to insolvency. The possible insolvency of a debtor in a foreign jurisdiction could clearly be a disincentive to cross-border trade and the harmonization of insolvency laws would provide foreign creditors with a single regime throughout the region in regard to the proof of claims in insolvency as well as the order of their claims in relation to local creditors.

C. Recognition and Enforcement of Foreign Judgments, Transnational Civil Procedure, Arbitration and Alternative Dispute Resolution.

The necessity to sue on a foreign judgment could also be a disincentive to cross-border trade. One of the first harmonization projects which should attempted should therefore concern the mutual recognition and enforcement of civil judgments, which would further reinforce the security of creditors in trans-border transactions. The development of principles of transnational civil procedure based on a common core of shared values may facilitate mutual recognition and enforcement. Moreover, the harmonization of the law relating to alternative forms of dispute resolution such as mediation and arbitration should be pursued in order to create a comprehensive envelope of standardized procedure for resolving disputes in the region.

D. Conflict of Laws

To facilitate trans-border contracts it is vital that there should be clarity as to which country’s law will apply to a transaction. A common system relating to the conflict of laws, especially the conflict of laws in the area of contract, would have the advantage of preventing forum shopping, and it would also avoid time-consuming litigation to determine the applicable law in any given dispute.

E. Industrial Property Rights

If inter-state trade is to be fair and investment facilitated then patents, trademarks and copyright should be protected in a way that corresponds to the norm at international level. It is suggested that the aim of harmonization here should be the elimination of any national and regional peculiarities that would tend to weaken the internationally accepted standards of protection of intellectual property rights.
F. Banking Law

To stimulate cross-border trade in banking services and to promote investment, banks established in a particular country should be able to operate in other countries in the region. Harmonization here would aim at mutual recognition of the status of banks. However, as in the case of companies, further harmonization would be necessary to create confidence in the banks. Aspects of banking law would therefore need to be harmonized, and in this respect the most important areas of concern would be control, capital, liquidity, investment and holdings in subsidiaries. The question of the liability of banks for negligent acts would also need to receive attention.

G. Contracts

Although the harmonization of the substantive rules of contract would not be a priority, because the important thing is to know which system of contract applies to any transaction and harmonization of the conflict of law rules would achieve this it can also be argued that common rules in a few key areas of contract would created familiarity amongst traders and thus facilitate certain transactions such as sale and agency. Work has however been done at the global level here and in later phases of this project the harmonization of the relevant area of contract should be investigated, taking as a basis the models that have been developed in other parts of the world. The important developments of harmonization of contract law are happening in Europe. Although a missed opportunity in these discourses is the model of international treaty law, as a model form of general agreement law in the private sphere.

An area where the right choice of approach (type of instrument) can be illustrated and where useful models of the highest quality are already available. One example is the 1980 United Nations Convention on the International Sale of Goods (CISG).54 This binding treaty is currently in force in sixty states, including six African and two member States of the Southern African Development Community (SADC).55 Another example is the UNIDROIT Principles of International Commercial Contracts (Part 11994, Part II forthcoming).56 This innovative, non-binding international “restatement/ pre-statement” of widely acceptable best solutions is currently used both as a model for domestic law reform and in international commercial arbitration.

54. CISG, supra note 24.
55. Id.
The investigation would focus on the acceptability of these two instruments, including the need, if any, for adaptation, in the region.

H. Consumer Protection

Many of the investigations mentioned above would envisage heightened consumer protection, e.g., harmonization of company law and banking law. However, the harmonization of consumer credit law should also be considered as this would create consumer confidence in the laws governing lenders in the area as a whole and would thus facilitate the opening of the ‘credit’ market.

I. Labor

The purpose of harmonizing labor laws would be to create a level playing field for employers in the different states to create minimum standards for workers. It may be asked whether the time is ripe for such harmonization in the Caribbean. A primary objective should be the stimulation of inter-state investment, particularly in poorer members of the Caribbean community. One of the present advantages that these states may have is a lower labor cost structure. Harmonization of minimum labor conditions could interfere with this advantage and discourage investment.

J. Shipping Law

The same remarks apply here as to “contracts.” It might be advantageous to have common and familiar rules on certain topics to stimulate business, e.g., carriage and insurance.

K. Environmental Law

Strictly, this is public law rather than private law but it is again very relevant in relation to the objectives of promoting inter-state trade and investment. Unduly severe environmental law can discourage investment in the state which has them and impose an unfair burden on operations vis-à-vis their competitors in other states. On the other hand, lax or non-existent environmental standards can unfairly distort not only investment patterns by attracting investment, which might not otherwise be placed, but also competition by placing operators at an advantage because of their minimal or non-existent environmental obligations. It is suggested that harmonization should contribute to solving these problems. The harmonization should aim at a reasonable environmental standard that will level the playing field between operators and at the same time establish a reasonable level of environmental protection. The harmonization should be also aimed at areas where industrial investment involves or may involve substantial pollution problems.
L. Taxation

To create a climate conducive to attracting investors to the region would require that the national tax laws of each country be coaxed in a direction that would facilitate rather than impede business opportunities. The issues that present themselves for resolution in this regard include:

1) Source versus residence basis for taxation;
2) The taxation of controlled foreign entities;
3) The fiscal implications of financing subsidiary companies by means of debt or equity;
4) The taxation of corporations (including tax attributable to dividends declared); and
5) The exempt status of interest income in the hands of non-resident individuals and foreign corporations.

It is probable that these practical suggestions are already part of the evolving legal culture of this region. The central thought that animates this addendum to the paper is that the training and emersion in the legal culture of harmonization is a critical part of what I believe must happen in legal education. An exposure to harmonization, its methods, theories and procedures, must also continue as part of the educational process of those already in practice. The harmonization process could be a critical lever for combating an impulse to legal parochialism. It is also critical as an initial step in coming to grips with the forces and impact of globalism on the practice of law.

XI. GLOBALISM, LEGAL SKILLS: FROM RULES TO DECISION

During the war two American theorists Harold Lasswell and Myres McDougal wrote a famous article titled “Legal Education and Public Policy: Professional Training in the Public Interest [1943].” A central theme of the article was the choice of values included in the terms professional training and public interest. During the fight against racism and Nazi fascism, it was obvious that the choice of values would not be the dream of Nazi herenvolksism. It would be the dream of a free person’s commonwealth of democratic states committed to the rule of law and to the political and economic security of their people.

It was the McDougal/Lasswell view that the challenges to professional training required the use of skills more ambitious than those associated with

58. Id.
what they called arid positivism, with its focus exclusively on rules. To McDougal and Lasswell, professional legal training in the public interest required a broader range of thought skills. These thought skills included goal thinking, trend thinking, scientific thinking, technical analytical thinking as well as predictive and alternative or creative thinking. To give operational effect to these forms of thinking, lawyers need to be more broadly educated in the skills of problem identification and definition as well as the skills of advocacy and decision-making in responding to problems of legal importance.

Today, it is commonplace that lawyers, working in their offices or for economically or politically important organizations, require precisely these skills in order to settle disputes within the framework within which they work. While adjudication is important and critical, lawyers are required to master many techniques other than the judicial settlement of disputes. Article 33 of the United Nations Charter mentions, apart from adjudication, negotiation, arbitration, mediation, conciliation, good offices, and enquiry, a good deal more. These are all forms of decision-making and require many skills in order to make them work effectively. We would submit that this broadened concept of the lawyer as a critical, indeed indispensable decision-maker in the complexity of the new international environment remains the most central challenge and a critical indicator of the success or failure of the international rule of law. The small countries of the Caribbean have a great deal at stake in the integrity of the rule of law. They will confront a great challenge in the near future and I am certain that their lawyers and their talent bank of able professionals will be ready for the challenges they shall confront.

59. U.N. CHARTER art. 33.