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## Keynote Addresses

Louis Henkin

Christopher G. Weeramantry

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# THE UNIVERSAL DECLARATION AT 50 AND THE CHALLENGE OF GLOBAL MARKETS

*Louis Henkin\**

## I. INTRODUCTION

My role is to provide a keynote and an overture. Then you will hear a fuller development by the orchestra.

My overture begins with a familiar theme, "Happy Birthday": we are celebrating the 50th birthday of the Universal Declaration of Human Rights.<sup>1</sup>

As I was thinking about this birthday, I became interested in the conception of the Universal Declaration. I would date the conception of the Universal Declaration as January 6, 1941, the date of what became a famous speech by President Franklin Delano Roosevelt. Speaking when the world was at war, although the United States had not yet joined the war, President Roosevelt declared four freedoms that for him were to be the core of a new world order. In effect, he projected the internationalization of human rights: "In the future days which we seek to make secure, we look forward to a world founded upon [the four freedoms]."

As we start, I will say a word about why we celebrate. I heard Mary Robinson, the United Nations High Commissioner for Human Rights, say she does not celebrate the Declaration because as she looks around the world she sees so many terrible things happening. She is not willing to celebrate the Declaration, but only to mark it.

I think celebration is appropriate. The Universal Declaration of Human Rights was proclaimed on December 10, 1948. This year, 1998, its 50th birthday is celebrated widely. It is being celebrated all year long. It is being celebrated everywhere—in China, in Russia, in South Africa, in the United States. The Universal Declaration has a claim to being perhaps

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\* University Professor Emeritus, Columbia University. This essay was adapted from a transcript of Professor Henkin's Keynote Address, given at Brooklyn Law School on November 5, 1998.

1. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 67th plen. mtg., U.N. Doc. A/810 (1948) [hereinafter Universal Declaration].

the most important instrument of the 20th century, although it has long been commonly unappreciated or erroneously appreciated. So, I celebrate it. And I suggest four reasons for celebration, under four headings: 1) the transformation of human rights from an idea to an ideology; 2) the definition of human rights; 3) the universalization of human rights; and 4) the internationalization of human rights.

## II. WHY WE CELEBRATE

### A. *Human Rights: From Idea to Ideology*

The first reason for celebrating the Declaration is that it transformed an idea into an ideology, a philosophical idea into a political ideology. The Universal Declaration seized on the idea of natural rights, an idea conceived by English and European philosophers in the 17th and 18th centuries and made it an ideology for our time. The idea of natural rights had a temporary life as an ideology at the end of the 18th century in the American Declaration of Independence and the American Constitution, and in the French Declaration of the Rights of Man and the Citizen.<sup>2</sup> But then it disappeared as a universal ideology. In France it died in the Reign of Terror. There was not much said about rights in France between 1793 and 1946—a long time. In the constitutions and draft constitutions of the French Republic in the intervening 150 years, one can hardly find anything about rights. The French had a decent society, but they didn't talk about rights (in many ways the French moved toward British parliamentarianism and away from individual rights).

The United States stuck to its idea of rights. We like to forget, however, that in the United States the idea of rights was tarnished; it suffered from genetic defects. Remember slavery. Remember that there was no vote for women. The word equality was not in the Constitution. It took a long time for us to become the society we became after the Civil War by way of the 14th Amendment. And the true development of human rights in the United States did not have its birth until after the Second World War. Perhaps, even, the Universal

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2. THE DECLARATION OF THE RIGHTS OF MAN AND CITIZEN, *reprinted in*, THE CONSTITUTION AND OTHER DOCUMENTS ILLUSTRATIVE OF THE HISTORY OF FRANCE 1789-1907 15 (2d ed. 1908).

Declaration contributed to that birth.

The Universal Declaration was drafted fifty years ago. The people who produced it, people of different cultures, wise people, practical people, men under the leadership of a wise, practical, inspiring woman, Eleanor Roosevelt, created this document, established an ideology of human rights and made it an ideology for the world. That is the first reason to celebrate the Universal Declaration.

### *B. The Definition of Human Rights*

The second reason for celebration one might put under the heading of "definition." The words "human rights" are pleasant colloquial words: you believe in rights, and believe in humans; you say "human rights." An American, Attorney General Randolph, used the phrase human rights in 1792 in an argument in *Chisholm v. Georgia*,<sup>3</sup> one of the earliest cases in the history of the United States. Chief Justice John Marshall used the term in *Fletcher v. Peck*<sup>4</sup> a few years later. We also find it in the Abolitionist literature before the Civil War.

One hundred years later the phrase "human rights" came into vogue again. The Allied victors used it at Dumbarton Oaks when they began to plan the world order for after the war. Those who met in San Francisco to found the United Nations seized on these words. The U.N. Charter contains the words human rights, but does not define the phrase. There is no doubt that it meant "anti-Hitler" and anti-"crimes against humanity." But that was hardly enough.

The Universal Declaration took those two words, human rights, and developed them into a catalogue of reasonably precise articles. It began with an established basic value, "human dignity", and derived 30 Articles from it. The Declaration has become the definition of human rights which the world lives by, or should live by, or aspires to live by.

I refer to the Universal Declaration as the birth certificate of the Human Rights Movement. It is also a marriage certificate. It established a particular idea of human rights: it took the rights of the liberal state, the rights that we talk about as "freedoms", and married them to the benefits of the welfare

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3. 2 U.S. (2 Dall.) 419 (1793).

4. 10 U.S. (6 Cranch) 87 (1810).

state. Some say that talk about these rights is the mark of socialism. But it was not Marx; it was Bismarck's, the conservative Iron Chancellor of Germany who introduced the welfare state into Europe. Following him, the French and the British developed their own versions. But this essential contribution by the Universal Declaration of Human Rights had its more recent antecedents in Franklin Delano Roosevelt. He spoke of freedoms, not rights, but his freedoms included "freedom from want." The Declaration made F.D.R.'s freedoms into rights.

The Universal Declaration confirmed and consecrated that marriage. It treats them equally. It uses no sub-headings; the terms political-civil rights and economic-social rights are not in the Universal Declaration. The Declaration doesn't suggest any difference between them: it links them together. This definition of human rights is the second reason for celebrating the Universal Declaration.

### C. *The Universalization of Human Rights*

A third reason is in its title: the *Universal* Declaration. The drafters took an idea which Americans used to think of as their own, which the French might have thought of as their own, and universalized it. The rights catalogued are now universal human rights. They are the rights of all human beings. It is the responsibility of all societies, and of international society, to see to it that these rights are realized.

There is a common misconception about the Universal Declaration. People talk about the Declaration as an international instrument, and of international human rights. The Declaration is international in one sense: it came out of an international body, the U.N. General Assembly.

But it is not a treaty among governments, it is a *declaration*; and it is *universal*, not international. It was produced by an international body, but its target was national societies around the globe. Although referred to as a catalogue of international human rights, strictly speaking there are no international human rights. What we have is a system of international law and international institutions that render the rights of human beings subject to national law within national societies, under international supervision.

The Universal Declaration declares that there are national human rights in every society everywhere. And the world has

accepted that. The states that existed at the birth of the Universal Declaration in 1948 accepted it. They were followed by all the states that came into the system thereafter, another 150 of them. All the states in the world have accepted it.

Every new constitution, and many old ones that have been revised, have borrowed, copied, incorporated by reference, and plagiarized the Universal Declaration. I am not suggesting that 190 countries now have fine human rights records as a result, but almost all countries have made a commitment to the human rights ideology which the Universal Declaration represents. For example, look at China. China officially celebrated the 50th anniversary of the Universal Declaration and signed the International Covenant on Civil and Political Rights<sup>5</sup> which derives from the Universal Declaration. This, in effect, brought one billion human beings under the mantle of the human rights ideology. Moreover, we should look beyond China. The Soviet Union, which abstained in 1948, agreed in writing to the Universal Declaration principles in the so-called Helsinki Accords.

The Universal Declaration is a universal document for universal rights for all human beings in all societies. That is another good reason for celebrating it.

#### *D. The Internationalization of Human Rights*

The fourth reason for celebrating is the internationalization of the human rights ideology. Before the end of World War II, how a state treated its own inhabitants was nobody else's business. That was an axiom of the international system and of international law. The Universal Declaration, together with the U.N. Charter, together with Nuremberg Charter, together with all that happened later, put an end to the notion that a state can treat its own inhabitants as it chooses. Since I am in the certificate business, I point out that the Universal Declaration is the death certificate of that axiom of international law. It is also the birth certificate of the *international* human rights movement. Now human rights everywhere are the responsibility of everyone. That's why we celebrate.

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5. The International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966) reprinted in 6 I.L.M. 368 (1967).

### III. HUMAN RIGHTS AND GLOBALIZATION

The second theme of this conference, the challenge of global markets, relates in important ways to the internationalization and universalization of human rights.

The term globalization, though now common, is imprecise. It is a catch-all term that means many things. It means "the market," the Internet, and lots of trade and exchange across state lines. It means considerable control by international financial institutions such as the World Bank and the International Monetary Fund. It means the network of multinational companies, and it means transnational migration. It means social, cultural, political, and certainly economic interaction across national boundaries and around the world.

Globalization is beginning to homogenize culture. Coca-Cola is known around the world; so are cellular telephones and e-mail. More important than the goods and the devices is what comes through them. It is very hard to cut off communication, as the Russians learned during the era of the Soviet Union and as the Chinese are learning today, when people in even remote areas of Asia and Africa are sitting with a cellular telephone or a personal computer. If globalization is moving us towards a less diverse culture, then "cultural diversity" may be a fading concept. One general impact of globalization may be the slow growth of something closer to a universal culture.

The more important question for us is the impact of globalization on human rights in the world we know, a world of nation states: not world government, not nongovernment, but a world where nation states continue to be relevant.

Globalization occurs within and across the state system. Multinational companies and the financial markets operate within one or more states and are subject to international (inter-state) treaties and other laws, the customary law of human rights, and inter-state covenants and conventions on human rights will continue to apply in the age of globalization.

Human rights law will continue to develop. We can only speculate about its contours, but states remain responsible for the activities of global companies. Some states may have trouble exercising that responsibility. They may not wish to exercise that responsibility. But as a matter of law, and as a matter of politics, states continue to be responsible.

Also, the Restatement of U.S. Foreign Relations Law<sup>6</sup> declares that a state violates international law if it practices, encourages or *condones* genocide, slavery, torture, or inhuman or degrading treatment. This raises the question whether a state is condoning them when it permits its companies to commit such acts. Is a state complicitous in such acts if it stands by watching?

The world has been challenging multinational companies on many fronts—the use of coerced labor, of child labor, and challenges to companies for encouraging a government to relocate a few million people so the company can build a pipeline. These challenges require sorting out the relationship between the responsibility of states and the responsibility of companies and what the international system ought to do about it.

Globalization means an increasing responsibility of business with respect to human rights. This will take many forms. When a big company lays off thousands of employees in some country where there is no “safety net”, the company may be asked to supply the safety net. The local government may call on the company to step into the breach.

There is also another angle to accountability by global companies. A case called *Filartiga*<sup>7</sup> concludes that for 200 years the U.S. federal courts have had jurisdiction—although they did not know it—of civil suits by aliens for violations of the law of nations. The *Filartiga* case began right here in Brooklyn, with Judge Nickerson of the Eastern District of New York, who handled the case before and after it went to the Second Circuit. Since then there have been at least twenty similar cases in the courts of the United States.

Recently, a district court in California entertained a suit by Burmese farmers against Unical of California, alleging that the company knew that the Burmese regime was relocating masses of people and using forced labor to build a pipeline to carry the company’s natural gas. The court is entertaining the suit; it did not dismiss it out of hand. If this case stands, we may have companies responsible for actions they take in their global operations litigated in the courts of the United States.

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6. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987).

7. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).



Since foreign governments are immune to suit in U.S. courts and foreign officials are difficult to sue and to recover from, what about suits against U.S. multinationals? Companies created here or operating here may be answerable here under U.S. law, including international law, for their own actions or failures to act. They may also be answerable here for violations by their local subcontractors. They may have to accept some responsibility for any involvement they have in human rights violations in countries where they operate. If the *Unical* case proceeds, it may affect other multinationals and other human rights abuses in other countries.

There is child labor, slave labor, prison labor with which U.S. companies may be involved; they may not be exempt from U.S. law. Even if U.S. laws and institutions do not now reach abroad, the lengthening arm of U.S. consumers, investors, shareholders, and human rights NGO, do.

The companies, especially the big ones, have begun to feel vulnerable. Companies other than Unical, such as British Petroleum, Shell, Heineken, and others have become more sensitive and more vulnerable. This is not necessarily because they are afraid of what foreign governments might do to them, or what the United States government might do to them, or even what a suit in the U.S. federal courts might accomplish. They are worried about their vulnerability to brand tarnishing, to investor resistance, to shareholder resistance. In addition to doing things which in the days of apartheid in South Africa we used to call "voluntary" codes, such as the Sullivan Principles, companies are doing more. Shell has put out a small primer on human rights for all of its managing employees. British Petroleum has taken similar action. There is an organization called Ethic which, as of 1994 or 1995, had 500 participants. This development means that big companies have become sensitive to human rights. As a result, we are seeing "voluntary" codes. The best known are the ones about child labor in the clothing apparel industry.

At this juncture the Universal Declaration may also address multinational companies. This is true even though the companies never heard of the Universal Declaration at the time it was drafted. The Universal Declaration is not addressed only to governments. It is "a common standard for all peoples and all nations." It means that "*every individual and every organ of society shall strive—by progressive measures . . .*

to secure their universal and effective recognition and observance among the people of member states." *Every individual* includes juridical persons. *Every individual and every organ of society* excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all.

So, in the second half-century of the Universal Declaration, the idea-ideology of human rights challenges states to address their responsibility for human rights in the world of the next century. It challenges states to enforce their obligation to respect and ensure rights against violation by the markets and companies which states can curtail. It challenges "private" institutions to recognize their responsibility, whether or not states do.

Let us celebrate the Universal Declaration of Human Rights. Let us also think, and study, *and do*. All of us.



# HUMAN RIGHTS AND THE GLOBAL MARKETPLACE

*Christopher G. Weeramantry\**

## I. INTRODUCTION

May I say that it is always a real pleasure to be at Brooklyn Law School. It is by no means my first visit, and I have enjoyed every visit that I have paid to this law school.

Today's topic of the relationship of human rights to the global marketplace, is a fascinating one, and I have approached this problem partly from the standpoint of contract law, because that, as Professor Murumba has indicated, was one of the first subjects that I looked into in some depth. I will therefore give you some perspectives from that point of view.

## II. THE ECONOMIC SUBSTRATUM OF HUMAN RIGHTS

May I commence by saying that every human right has an economic substratum. There is an economic infrastructure to whatever human right you may name, whether it be the right to life, equality, dignity, even the right to found a family, the right to a pure environment, the right to motherhood, and so on. All of these are integrally linked to an economic substratum, for without that economic substratum, the right cannot possibly exist in practical terms, whatever be the theory surrounding it.

Thus it is not only when we talk of economic rights that we are talking of a concept which has a relationship to economics. The linkage exists through the whole spectrum of human rights, including every species of civil and political rights as well. Seminars such as this are therefore greatly to be welcomed, for they turn the human rights spotlight on the economic infrastructure which sustains the whole edifice of human rights.

The thought that every human right has an economic background which lies behind it prompts the thought that in recent times high commerce, the free marketplace, and free trade seem to have become values in themselves. We have

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\* Vice-President, International Court of Justice, The Hague.

become accustomed to speaking of these as given preconditions to modern life, which stand apart from and independent of their moral basis. By becoming ends in themselves, they have obscured the fact that they are only the means to an end, and that one of those ends is to provide that supporting structure which is a *sine qua non* for the enjoyment of human rights.

Economic interests and ethical concerns seem, moreover, to have become locked up in separate compartments. They are two parallel worlds which exist side by side with no necessary interrelationship between them. The whole economic enterprise of the modern world seems thus to be on the way to escaping from societal control, and sometimes even from the grip of the law. And, worst of all, they are progressively divorcing themselves from the humanistic attitudes which should be the basis of all regulatory systems. This gives much cause for concern, and scholars have indeed been at work upon it,<sup>1</sup> but much still remains to be done.

### III. THE ANALOGY OF TECHNOLOGICAL POWER

This reminds me of a related area where the same phenomenon is evident. I think there are two great juggernauts that are careering almost uncontrolled in the modern world. Apart from economic power which I have already mentioned, the other is the force of technology, whether in association with commerce or not.

Science and technology have grown largely out of social control, out of the control of legal systems, out of the control of human rights. And that is a matter which I have addressed in other forums and in other writings, and especially in a book just released by Kluwers on *Protecting Human Rights in the Age of Technology*.<sup>2</sup>

The first of these juggernauts—economic power—has escaped from the controls of legal systems in many areas where it seems to function as a power entity in its own right. And

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1. See, e.g., INTERNATIONAL ECONOMIC LAW WITH A HUMAN FACE (Friedl Weiss, et al. eds., 1998).

2. See generally CHRISTOPHER G. WEERAMANTRY, 2 JUSTICE WITHOUT FRONTIERS: PROTECTING HUMAN RIGHTS IN THE AGE OF TECHNOLOGY (1998). For an earlier study foreshadowing this problem, see CHRISTOPHER G. WEERAMANTRY, THE SLUMBERING SENTINELS: LAW AND HUMAN RIGHTS IN THE WAKE OF TECHNOLOGY (1983).

this is something that has caused great concern to all of us who are interested in, and concerned with, human rights.

It is useful to devote a few moments to attempting to understand how we have come to the point of a divorce of market mechanisms from their moral base.

#### IV. A COMPARATIVE OVERVIEW

I think all traditional systems have had a great deal to say about the fairness of commercial dealings. Trade and enterprise were indeed proper activities, but only so long as they were kept within the moral framework—the mores—of each society. I could amplify this from various cultures, and I could refer to the attitudes of Hinduism, Buddhism, and Islam towards all economic transactions. Their prohibition of the unconscionable advantage, the unequal bargain, the unjust price and usury, and their emphasis on good faith and fair dealing were woven into their legal systems and societal attitudes. Righteous conduct, as understood in Buddhism and Hinduism, extended through the whole gamut of human conduct, and the trader was not for one moment exempted from the reach of this principle. The strictures of Islamic law in relation to the notion of interest are well known. These moral restraints were legal restraints as well, and there was no notion of freedom of trade which could cut itself adrift from these moral moorings.

##### A. *Early Christian Attitudes*

Let us now look at the Western tradition.

If you look at the initial attitude of Christianity towards commercial enterprise, the early church fathers were strongly of the view that economic activity must always be subject to the principles of morality.

How much can one sell a commodity for? One must sell it for a fair price. What is that fair price? It is a price which you pay to get the raw materials plus a reasonable addition for your labor. Gratian, in his *Decretals*,<sup>3</sup> for example, distinguishes between the craftsman who buys wares and transforms them by his efforts, and is thus entitled to the increase result-

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3. See GRATIAN, *DECRETUM*, Pt. I, dist. XXXVII, art. IV; See R.H. TAWNEY, *RELIGION AND THE RISE OF CAPITALISM: A HISTORICAL STUDY* 35 (1926).

ing from his labors, from "the man who buys it in order that he may gain by selling it again unchanged and as he bought it, that man is of the buyers and sellers who are cast forth from God's temple."

Thus the conduct of those who made profits by buying an article for X and selling it for X plus Y, without having added anything to it, was stigmatized by the earlier writers as un-Christian and immoral. The profits made were described by the church fathers as *turpe lucrum*—disgraceful profit, so to speak. This was reprehensible conduct and fell into the category of the sin of avarice, along with usury. Those were two of the prohibited areas of activity which have a relevance to what we are looking at.

The two doctrines of the just price and the prohibition of usury prevailed right up to the time of Aquinas. Indeed, Aquinas formulated the principle of the just price and refined it in very elaborate terms.

### *B. The Shift to the Notion of the Just Price*

Now, as we travel along from the time of Aquinas and we reach the 14th century, we find a slight shift, and the schoolmen were beginning to say that while there is of course the principle of just price, there was some room for variation when one considered the method by which one fixed the just price.<sup>4</sup> The just price was attainable through freedom of contract, which resulted in a bargain between two people, one of whom is a willing seller, and the other a willing buyer. The fact of the bargain shows that both parties were satisfied and this is an indication that the price is fair. So, you get that slight shift coming into evidence in the 14th century.

### *C. The Personal Relationship between Buyer and Seller*

But trade, of course, was marching ahead and it was moving towards the mass production of goods through mechanization. The idea of a fair price fixed through free bargaining evolved in the context of a very personal relationship between producer and purchaser. At that stage, there wasn't this mass mechanization, and the massive industrialization which sepa-

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4. See TAWNEY, *supra* note 3, at 36.

rate the two parties to the contract to the extent that they do not know each other and are separated from each other by many almost impenetrable barriers. Today you buy something from somebody, a manufacturer you do not know, who has sold it to a trader you do not know, who in turn has sold it to an importer you do not know, who again has sold it to the retailer you may or may not know. The manufacturer is thus very remote, and the product has come through a whole chain of suppliers who eliminate personal relationships. The personal relationship which obtained in the old days was probably a factor that made the early moralists look into this in great detail. With mechanization of production, the importance of this personal relationship receded into the background.

*D. The New Trading Routes and the Discovery of America*

Another important factor in the process of depersonalization was reached with the vast increase of trade over enormous distances which resulted from the discovery of the new trading routes to the East, pursuant to the capture of Constantinople. This was augmented by the discovery of the Americas and the influx of vast amounts of wealth into Europe. Commerce multiplied severalfold in magnitude and, there was an unprecedented expansion of trading contacts. The importance of trade was also elevated to the point where commerce and empire went hand in hand, and the great traders were not second in importance to the princes and the generals. We see the emergence of great financial houses and enormous bourses, as in Antwerp, for example. These great merchants were potentates in their own right, and were theoretically free to do as they pleased, stretching their financial power as far as they could, without regard to the moralities which the Church had attached to commerce. Yet, it is interesting to note that the great merchants of Antwerp, even then, even at the height of their power and influence in the 16th and 17th centuries, would send their confessors or their religious advisors to the learned places of the world to seek an opinion—that is, a theological opinion—as to whether their activity in the field of commerce could be justified in morality and according to the principles of religion. For example, the Antwerp merchants used to send their spiritual advisors all the way to the University of Paris to find out whether the activity they were indulging in was morally



blameworthy, or could pass muster according to the moral principles taught by religion.

As historians of the time point out, the great merchants of the Dutch East India Company would have their spiritual advisors overlooking their activities and breathing down their necks, so to speak, to ensure that their massive commercial operations conformed to the dictates of morality.<sup>5</sup> This was due to the strictness of the moral regime resulting from various facets of the Reformation.

### *E. Lutheran Attitudes*

Let us now look at these developments in the light of Protestant teaching. Let us first observe the influence of Martin Luther. Luther's thought was set against the background of a basically agricultural society. He still adhered to the old values of personal dealing in trade. International trade, banking and credit, and capitalist industry—all these, according to Luther, belonged to the Kingdom of Darkness, and here is a quotation from Luther:

Who is so stupid as not to see that combinations are mere outright monopolies which even heathen civil laws . . . condemn as a plainly harmful thing in all the world?<sup>6</sup>

He was, in other words, emphasizing the Christian virtues and frowning on these enormous extensions of capitalist enterprise which he saw in his day, and which, with his rural perspective, he did not quite get to grips with.

### *F. The Influence of Calvinism*

Then, we encounter the magisterial influence of Calvin. Calvin approached the problem from the standpoint of urban society in which trade and commerce had become established, and he took the view that the economic virtues were to be applauded. This was quite the contrary of some of the views that Luther had expressed. Calvin took the view that here was an activity which had now become part of modern society. The

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5. See SIMON SCHAMA, *THE EMBARRASSMENT OF RICHES: AN INTERPRETATION OF DUTCH CULTURE IN THE GOLDEN AGE* 331-37 (1988).

6. HENRY WACE & CARL BUCHHEIM, *LUTHER'S PRIMARY WORKS* 256-57 (1896), reprinted in TAWNEY, *supra* note 3, at 96.

views of the early church fathers and of those who condemned this sort of activity had been formed against a background that no longer existed. He therefore needed to take another look at this problem in the light of the new situation.

Viewing the problem from this new standpoint, he laid down certain rules. He accepted the justice and the legitimacy of high commerce, but subject to this caveat: commerce should always be conducted with due regard for the high moral standards taught by religion. You legitimately made your profit from your burgeoning commerce, but not with a view to indulging in personal luxury, and not with a view to stepping out of the rigorous moral discipline to which your religion bound you.

There was therefore a personal responsibility to make your profits in a legitimate way, in a moral way and to use those profits also in the same way. In fact, he prescribed a sort of asceticism, even for those who made these enormous profits, and he condemned the life of luxury which might have resulted from this wholesale accumulation of wealth.

This was the reason why, when the Dutch East India Company was making its enormous profits from its colonial ventures, it still had spiritual overseers to look over its transactions and ensure that they were conducted according to the highest principles of morality.

So, that was the view that was taken of business as it emerged from the early spiritual prohibitions which had surrounded it. But what happened thereafter was, paradoxically, that once commerce had been released from the fetters in which it had been kept during the period of church prohibition and disapproval, it raced away from all controls and forgot the moral aspect that people like Calvin had so emphasized.

Calvin saw high commerce and industry as being in alliance with morality. The two were interlocked and the first was not justifiable without the second. But once high commerce had been released from its medieval fetters, it became difficult to control. It went off on a voyage of its own and left morality aside. The moral restraints that Calvin had imposed as a precondition to releasing trade from its spiritual fetters were forgotten as trade expanded, and traders grew more powerful. The influence of Calvin and of the Puritans was only a passing phase in the overall process of the liberation of trade from the fetters imposed on it by the early doctrine of the Church.

### G. *The Treaty of Westphalia*

To this religious background, we need to add an element stemming from the new political configuration of Europe after the Peace of Westphalia. The connection of trade with ethical and religious concerns was total until around the time of the Treaty of Westphalia which liberated States from the traditional hegemony of Papal authority, and launched the completely secular State on a voyage towards its own betterment, free largely of the restraints which had circumscribed its activity in the past. States such as England and Holland were free to pursue their wars of trade, which have been described as wars of economic nationalism,<sup>7</sup> for a State founded on the social contract, and not on religion, owed its allegiance to the advancement of the public interest rather than the codes of morality taught by religion. It needed to pursue its self-interest in order to survive. In the words of Weber's classic study, *The Protestant Ethic and the Spirit of Capitalism*, "[t]he great and chief end of men uniting into commonwealths and putting themselves under government is the preservation of their property."<sup>8</sup> The wars between England and Holland under the Commonwealth and Charles II are cited by economic historians as an example.<sup>9</sup>

### H. *The Resultant Release of High Commerce from Moral Restraints*

The phenomenon we are now encountering of giantism in trade, and of this giant power being wielded free of moral restraints, is best understood against this historical background. Once released from its initial shackles, high finance and trade have proceeded to conquer the world, working out their own code of morality which sees wealth as an end in itself, rather than as a means to an end, and money as a value which is accorded the sacrosanct status that follows when its legitimacy and power cannot be questioned. Commerce thus reaches its present position of virtual freedom from the morals of the society in which it functions. That is the problem we encounter

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7. See TAWNEY, *supra* note 3, at 7.

8. MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 183 (Talcott Parsons, trans. 1991).

9. See TAWNEY, *supra* note 3, at 7.

today and, if we are to address it, we must view it against its historical background, and not regard it as a phenomenon that has always existed and will therefore continue to be with us until the end of time.

## V. THE ANALOGY WITH TECHNOLOGY REVISITED

I see an analogy here with technology, which I referred to earlier. Sophisticated technology was known to many civilizations before it came to the West. Chinese civilization, Indian civilization, and Arab civilization all had fairly sophisticated technology, but this was kept within the mores of those societies.

But when technology came to the West, whether it be in the form of gunpowder or the mariner's compass or even printing, it raced out of control. And when you philosophize on the reason for that, you can trace it back to the path that Francis Bacon charted out for scientific inquiry—that it must be pursued free of all the superstitions of the marketplace, free of the superstitions of religion, free of the inhibitions imposed by society. The scientific inquirer is engaged in the pursuit of truth, and should not permit himself to be deterred from this quest by outmoded restraints and prohibitions. Basically that was the kind of liberation that technology received through the philosophy of Bacon.<sup>10</sup>

In regard to commerce and industry, the liberating philosophy of Calvin was different from the liberating philosophy of Bacon regarding technology, in that Calvin coupled the liberation of commerce with moral restraints. Yet in both cases, the liberation moved away from moral restraints. The legitimization of free inquiry, like the legitimization of commerce, was seen as giving these enterprises a sovereignty of their own. As a result, in commerce as in science, a situation was reached where the mores of the community, as well as the legal system of the community, were almost powerless to control it.

That, I believe, is part of the problem that we are addressing in this seminar today. That historical overview may perhaps be useful in attuning us to the dimensions of the problems we are facing. Because law is not an omnipotent instrument, law can only control matters that lie within the reach of

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10. See WEERAMANTRY, *supra* note 2, ch. 1.

its formalized principles and prohibitions, and of its ability to oversee and punish. But some of these activities, in both technology and high commerce, have reached a stage where they are so powerful and complex that they are racing out of the area of legal accountability.

## VI. AN APPROACH FROM THE STANDPOINT OF CONTRACT LAW

Globalization of commerce is one of the strongest of the factors producing this result. Let me just approach this from the standpoint of contract law, the department of law most intimately concerned with trade and commerce.

If you look at the contract law, in 1900 the belief that was widely prevalent among contract lawyers was that contract is after all the product of two freely consenting minds. There is a bargain that is struck between two people who are willing parties to the agreement. So let not the court interfere, let not the government interfere. That is sacred ground, for it is an area of operation of two freely consenting minds and thus any interference in this area is an interference with the autonomy and freedom of the individual. The area which these two freely consenting wills have carved out for themselves must therefore be left intact unless it violated some specific legal prohibition. That was the accepted thinking of contract lawyers at the beginning of this century.

At the end of this century, that thinking has been virtually turned upon its head. Practically every jurisdiction in the world accepts that, despite the apparent meeting of two freely consenting minds, there can be unfair contracts resulting from inequality of bargaining power. It is accepted therefore that it is the duty of the court, the duty of the government, and the duty of legislators to interfere on the side of the weaker bargaining party, so as to restore some semblance of equality in the bargaining process and overcome the myth of a free contract reached by two freely consenting minds. That is contract law, as it is understood in all jurisdictions in this closing phase of the 20th century.

But an important reservation is this: that this is contract law as it is understood domestically. On the other hand, what is contract law as it is understood internationally? What is the position in the international marketplace? It is the fierce free-for-all, the tooth-and-claw competition of the Hobbesian variety

which prevails in the international marketplace. International contract law remains largely where domestic contract law was at the beginning of the century. It is a hundred years behind.

Though every domestic contract lawyer will affirm that parties of unequal bargaining power need to be protected through some sort of legal protection of the weaker bargaining party, nothing of that sort appears in the international marketplace, where the more important and far reaching contracts are made that govern the entirety of global trade. Contract lawyers have not worked adequately on this, deterred no doubt by the fact that, unlike in the domestic context, there is no international agency with overarching authority that can impose conditions of fairness in the way a domestic legislature or judiciary can. Yet, the counterpart of legislation in the international field is the treaty, and treaties are based upon the parties' inherent sense of fairness. Can we not, in the century that is about to dawn, insert into international treaties the principles of fairness in contract which we accept in all domestic jurisdictions? It is true, self-interest is a dominant force that drives international treaties. Yet we have seen in many areas how considerations of international fairness have overridden considerations of the self-interest of individual States, so that they have been willing subscribing parties to treaties which, viewed from the standpoint of individual State self-interest, may not appear to be in the best interests of those States. The self-interested and powerful forces ranged on the side of slavery were overcome by the power of compassion and reason. Should not the future see a similar humanitarianism overpowering the self-interested forces that insist on the uninhibited bargaining process between unequals that dominates international trade?

In the international marketplace, poor countries trade with rich countries, poor producers with buyers who can buy their produce from half a dozen different places and can lay down their terms, and there is no protective mechanism in place to give corresponding protection to that which all domestic legal systems give to their weaker bargaining parties. This is one of the great problems we are faced with, and many leaders of third world countries have pointed this out. I think the presidents of some African countries have pointed out that, where formerly we wanted say one bag or ten bags of sisal, or whatever, to buy one jeep, today we have to produce twenty

bags or thirty bags to buy that one jeep. The value of those extra bags which represent extra effort from their countries is therefore going into somebody's pockets somewhere. They don't know where exactly, but they are getting an unequal bargain and an increasingly unequal bargain because they are more and more dependent upon countries that have the technology to give them the manufactured goods that they want and cannot produce. They can only sell them their raw materials and they are the weaker bargaining party who are taken advantage of in this fierce free-for-all competition of the international marketplace.

So, that is one perspective from domestic contract law which may be useful when we consider the work of these great traders who straddle national boundaries and operate in terms of billions of dollars, and consequently bargain from a position of overwhelming strength.

## VII. THE DISBANDING OF EMPIRES

I will now give you another analogy that comes to my mind which will demonstrate the immense financial weakness of the developing countries. In the days of the great empires, a number of colonies forming part of these huge empires resembled vast commercial conglomerates. Take the British Empire for example. Each of the countries in the Empire could produce some particular commodity much better than most others. For example, Burma could produce rice, Malaysia could produce tin, Ceylon (Sri Lanka) could produce tea and so forth. So long as the whole organization held together, that was a fine commercial basis on which the entire administration could run. Each of the specialist producers could produce each of the commodities which they could produce better than anybody else. They could concentrate on producing that particular commodity because their basic needs could be supplied through the infrastructure that was available for the whole empire. So, that was fine.

It was like one large department store with a confectionery department and a perfumery department and a camera department and so on. Each of those departments specialized in what they were doing. But all of them were serviced by the basic infrastructure.

Now, if you dismantle that department store, and let each

of those different entities proceed as separate businesses on their own, there will be chaos because they would not have the necessary infrastructure to service their basic needs. The camera department, the confectionery department, and the perfumery department, now shops in their own right but with no infrastructure to keep them going as separate entities, would need time to procure their own independent background services and sources of supply. If called upon to do business straightaway, they would collapse. And that's what seems to have happened in many former colonial countries, because the infrastructure that for many centuries gave the people the food they wanted and the sort of lifestyle they required, was destroyed or permitted to lapse into desuetude over centuries of domination by a regime which was primarily structured to serve the needs of the metropolitan power rather than of the territory in question.

All of a sudden when their territories received independence, they found that they were without the basic infrastructure that had served their people for centuries if not millennia. It is little wonder that they were unable to manage their own affairs, for they needed at least a generation or two to restore the infrastructure that had served them before the advent of the empires. That is an economic problem that is not often perceived—that the great department stores constituting the great empires have been dismantled and the individual departments have been released to sink or swim on their own. International law needs to take note of this aspect which is so often swept under the carpet as if it were no one's responsibility.

#### VIII. THE CHOICE OF TECHNOLOGY

Another aspect which is relevant to this discussion is the choice of technology. Technology is generally produced in the industrialized countries and the developing countries receive the technology thus developed. This technology is often tailored to the needs of the developed countries, but has to be received by the developing countries in the form in which they find it. This raises a great question of the choice of technology, on which much has been written in recent times. Who decides what technology is to be imported into developing countries?

Each developing country has a little elite group of its own. Very often they have been educated in, or have many contacts



with, the industrialized countries. It is these people in positions of authority who determine what particular technology that country would absorb. That group often has more in common with the industrialized producing group than it has in common with its own people. They often have financial contacts with them and with the vast agencies of production. The decision regarding choice of technology therefore tends to be one which is slanted in the direction of some particular country or manufacturer with which that particular elitist group has some alliance.

I once did a study for the United Nations University on this aspect and we found lots of details on this which we put in two volumes which we produced on the question of technology transfer and the way in which elites in third world societies very often are in league with the producers in some of the major industrialized countries. The country receiving the technology therefore does not receive the technology which is most adapted to it, or of which it is in most in need, but one which may be tailored to meet the needs or interests of some other foreign group.<sup>11</sup>

Now, another factor, and here I blame the developing countries, is the fact of corruption. There is a great deal of corruption in many countries which prevents the benefit of commerce, industry or technology from reaching the grass roots. Indeed, this has become so much of a problem that the World Bank, the Asian Development Bank and other lending institutions have now put out documents laying it down as a condition that, before aid is given to any receiving country, there should be a check or some sort of consideration given to this question of corruption, because corruption siphons off from the people a huge amount of the benefit which is intended for them. This is a problem which urgently needs to be looked into.

#### IX. POWER WITHOUT RESPONSIBILITY

The next question which I would like to refer to very briefly is the question of power without responsibility. It is a basic

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11. See Saneh Chamarik, *Technological Self-reliance and Cultural Freedom*, in HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENT 39 (Christopher Weeramantry ed., 1990).

axiom of democracy that if there is power, there must be responsibility.

When developing countries deal with large multinationals, the multinational is often in a position of dominance, whether by reason of its enormous resources or by reason of its monopoly of the desired technology. Its power is very often larger than that of many a nation State of the world. Indeed, the economic power of several individual multinationals is greater than that of more than three-quarters of the nation States of the world. But it is power which they wield in the territory of the developing countries, without any responsibility or accountability. It is therefore contrary to a basic democratic principle which postulates that power without responsibility is anathema to the democratic ideal.

This is a major question which we as international lawyers and human rights lawyers need to address. How can we bring the principle of accountability into this phenomenal exercise of power? And if we do not, well, we are helping onwards the violation of one of the basic tenets of democratic rule and democratic tradition.

So, this is something again which becomes even more difficult to work to its logical conclusion when you see that these organizations are very often quite amorphous, thus rendering the question of accountability even more difficult.

There was some discussion this morning about not being able to see who is behind some particular activity. Very often that applies even to the multinational corporations themselves. There are some enormous corporations that have operations in maybe fifty different countries and with five hundred different corporate registrations. And sometimes it would take years of research to get to the bottom of some particular activity and trace it to its actual source, because there are all these veils of multiple corporate registration which stand between the decision-maker and the visible consequences of his or her action.

So, power without accountability is a very important aspect which we have to address when we are dealing with the proliferation of power that comes with modern business enterprise.

## X. THE ARTIFICIAL CREATION OF WANTS

Another aspect is the artificial creation of wants. It is true multinational corporations have many achievements to their credit and have enormous potential to do good throughout the world. But there is often also the possibility that wants which never existed are often created artificially by them in many countries.

Some years ago I was working on the Nauru Commission of Inquiry. You might be familiar with the Nauru Commission, whose work on phosphate mining in that country led to a claim by Nauru against Australia before the International Court of Justice.<sup>12</sup> As Chairman of that Commission, I had to study in great detail the practices of the trading companies in the Pacific. Some of those early trading companies—the German trading companies were among the earliest—were in the situation where they needed the goods of those Pacific islands, but those countries needed little, because they had an idyllic lifestyle, obtaining all their needs by way of food, housing, and other necessities from the sea and from their land. They did not have many wants. So the problem the traders addressed was how to induce the creation of wants. Two ways in which they did this were by setting up “smoking schools,” and by distributing firearms.

“Smoking schools” were places where the people were exposed to the habit of smoking, as both a source of pleasure and a status symbol. Once young people were “hooked” on the habit by inducements of various sorts including free cigarettes, they were told, “Well, now, if you want tobacco, you will pay for it.” And so the smoking schools created a new want in that society which never existed before.

The other principal means resorted to for creating new wants was the gift of firearms to a few people. Some young men went back to their villages and demonstrated their new found power, and for the one gun that was given free, ten guns were demanded by people who wanted to have this new symbol of status and power.

So new wants were created and then, of course, there was something which the traders could offer in exchange for the

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12. See *Certain Phosphate Lands in Nauru (Nauru v. Austl.)*, 1992 I.C.J. 240 (June 26) (preliminary objections).

produce of those countries which the traders needed. This helped to drain out such wealth as those countries possessed. One may think these are practices of the past, but I recall reading an article in the *Reader's Digest* recently about similar practices today for inducing the cigarette smoking habit in the young people of developing countries.

Many years ago, I spent some months at the University of Papua New Guinea, and I can recount two relevant episodes from my experiences there. One was that I observed one day, when I looked at the newspaper, that there were full-page advertisements of the cigarette companies. You know the usual ads that you see of cigarette companies advertising smoking as conducive to health and symptomatic of an elegant lifestyle. I was wondering why they were advertising so heavily and, upon inquiry, I was told that a law restrictive of tobacco advertisements was about to be enacted, and that the manufacturers were attempting to derive the maximum benefit from the pre-existing state of the law before the proposed restrictions became effective.

The second episode also bears on the way in which artificial wants are created in communities that do not really need them. I was once on a plane travelling from Port Moresby, which is the capital, to Mount Hagen in the interior of the island. That particular area was a very traditional place where people had lived their lifestyle unhindered for generations. It was a small plane we travelled on. There must have been about ten people on it. That evening we all met in the hotel lobby at our destination, and there was a young man there who was recounting with much satisfaction that he had brought a whole consignment of fast foods to the area. He had come there with a view to hiring a plane and dropping them in small packets in the public park and other public areas.

The idea was that when all this confectionery was dropped in little bags, in places where the children would congregate, the children would take some packets, go to their parents and tell them what a nice new food this was, and put pressure on them to acquire more. An artificial want would thus be created and demand could be sponsored and stimulated by further campaigns like this.

This young man didn't seem to think there was anything wrong with what he was doing. It was a story of commercial enterprise and success. But in this traditional place which had

lived its own lifestyle for centuries, if not millennia, a new artificial want was created and after three or four expeditions there would be a demand for these products. That would be a result applauded by directors and shareholders in a distant metropolitan capital. When we deal with the challenge of global markets, we cannot afford to lose sight of human aspects such as those which are typified by this little scenario.

This is an important area which we must watch in relation to the activities of these major centres of economic power, and it is time perhaps to assess the ethics concerning the artificial creation of wants in this fashion. Once the want is created and the demand is there, then, of course, the bargaining position alters to the detriment of the receiving country and the benefit of the foreign commercial organization.

## XI. INTELLECTUAL PROPERTY

The field of intellectual property is another area beset with great problems. It has often struck me that intellectual property gives rise to many ethical problems in international trade.

Let us think of the case of the inventor of something new, who is entitled to a proprietary interest in his product. But what if the product has some social value? For example, what if somebody tomorrow finds an instant cancer cure. This is an extreme and perhaps fanciful example, but suppose ten of those pills would cure the disease. The inventor may have the right to place any price he wants upon his product, but is there not some social interest in the product which must lower the expectancy of the author or the inventor? So long as he has some recompense for what he has put into it, that would be fair, but can a socially useful and indeed vital invention be exploited without regard to the social interest? That is a factor highlighted by the extreme example I have offered you, but it is important to reflect whether such social exploitation does not take place in a dozen spheres—to a lesser degree perhaps than in the example I have given you, but all the same in violation of the principle that the social interest in the invention is an important factor to be taken into account. The disregard of the social interest becomes particularly severe where the people desperately needing the invention are people of the developing world, who do not have the economic muscle to

bargain for a fair recognition of the human dimensions of the problem.

The best examples of this come from the sphere of agricultural products and foodstuffs. These items of merchandise are essential for people, and cannot be overpriced merely because the inventor needs to get his profit. In items of importance to third world agriculture, there is much exploitation that can and does take place in such areas. In the African situation, for example, a pest-resistant kind of chemical may be desired that is the answer to some agricultural problem of the farmers, and the farmers purchase it and find that it keeps the pesticidal fly or bacteria at bay. That's fine for that year and the next year.

But two years later, when the bacterium or fly breeds a resistance to the pesticide, and it is no longer adequate for the purpose, a new version is put out at a higher price. By now the farmer is dependent on it and must purchase the new product at any price. The multinational puts out the new version of this product at an increased price, and the farmer is caught up in an ever escalating spiral of price increases as new products emerge to fight new elements of drug resistance. As the price keeps escalating, depending on the interest of the multinational, the farmer's dependence on the new products is heightened. So, these are some of the aspects that we have to look into, which sometimes are almost beyond the power of nation States to control.

## XII. DUMPING OF GOODS

Dumping of shoddy goods is another example. We know of cases where highly deleterious substances have been surreptitiously dumped in countries. A land owner in some country feels that it would be worth his while receiving a huge fee from a corporation for burying on his land the refuse that the corporation sends him. It is a highly noxious material which may damage that land for generations, but still there may be no controls upon it. The noxious waste arrives disguised as some sort of merchandise and is buried on his land. This problem has in fact occurred in third world countries.

### XIII. THE NEED FOR ETHICAL CODES

Now, what is the answer to all this? Of course, one answer is ethical codes. We must raise the level of awareness of the damage that could be done, and sensitize the conscience of the multinationals who send out this waste, and sensitize their shareholders as well to make them more demanding of a high ethical standard on the part of directors of the companies which, after all, they—the shareholders—own. The idea that the company exists to make profits for its shareholders at all costs has to be mitigated in some way by placing on the shareholders the responsibility for the moral wrongdoings that are very often committed in their name.

I know that in the case of the dismantling of apartheid, it was possible, through sensitizing the conscience of shareholders to produce a sufficient impact on the trade of many companies to make a difference to the South African situation. Shareholder action in disapproving of trade with South Africa in many areas played a significant role in dismantling the structure of apartheid. That may well be one of the parallels which we could invoke for the purpose of the matters we are discussing at this conference. Is there something that we could do by way of a stimulation of the conscience and the sensitivities of the shareholders of the great corporations that indulge in unfair trade practices vis-à-vis the developing countries?

The fact that ethical codes are being propagated and that they are increasing in their range and reach is a most significant factor we must take into account, for the problems we are considering are not merely problems of law but problems of ethics as well. We have seen a proliferation of such ethical codes, and we see that these codes are beginning to encompass a wider area of activity than ever before.

### XIV. NEW MULTINATIONAL ACTORS

We have to realize that these entities that trade across national boundaries have enormous power, and that they are the new non-State actors who have appeared on the international stage, whose power is even so great that they can topple governments. At the last conference that was held at the American Society of International Law, there were a number of instances given of multinationals being powerful enough to topple governments in other countries.

Huge movements of capital may be another way in which developing countries can be destabilized. We witness the new phenomenon here of trade, not in commodities but in currencies themselves, and that is a new development for which our international legal systems are not quite ready as yet. Moreover, it can occur now with lightening rapidity owing to the possibilities of instant electronic transfers of funds which modern technology makes possible.

And, as another factor to which we must give our attention, we must note that information has become a new source of power, and that those who command vast quantities of information command the economic power that goes with it. We need to gear ourselves towards addressing this new problem as well.

There are a number of blind spots in our vision of the world order, especially on the human rights scene, which must be addressed. I myself have written a couple of articles on what I have sometimes described as a blind spot in human rights and international law, namely the armaments industry.<sup>13</sup> Despite all its human rights violations, the armaments industry seems to flourish. Although it deals in ever more sophisticated weapons of destruction, it is permitted to sell death wholesale. It does so in public, in the most prestigious parts of a city, and attracts the most powerful patrons. By contrast, the small drug peddler is hauled before the magistrate and severely dealt with, while the wholesale trade in death flourishes with scarcely a murmur of protest from the law. There is, indeed, an anomaly here, which human rights and international law must address.

## XV. THE POWER OF LOBBY GROUPS

Another blind spot is the way in which different interest groups can influence governments, even to the extent of influencing their presentation of globally important matters before international bodies. At the last American Society of International Law meeting, reference was made to a number of ways

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13. See *Traffic in Armaments: A Blind Spot in Human Rights and International Law*, 2 DEVELOPMENT DIALOGUE, J. DAG HAMMARSKJÖLD FOUNDATION 68 (1987), reprinted in 1 *Justice Without Frontiers: Furthering Human Rights* 228 (1997).



in which the presentations of nation States before some world organizations have been prepared for them by some interest groups. They may be oil or gas interests, for example, which have a point of view to present which runs counter to environmental interests. This is one example which can be cited of such interests being able to speak through the voices of nation States themselves. So great is their power.

#### XVI. SOME CHECKS ON COMMERCIAL POWER

Well, today's conference on the "Challenge of Global Markets" has revealed a number of ways in which new methods are being devised to keep all this surplus of commercial power in check. We have a long way to go before we can meaningfully address all these challenges and devise ways of ensuring equality before the law of these multinational corporations. Increasing shareholders' sensitivity is one method, and brand resistance is another. Focusing on the corporation's image may be another means, for they do take this into account as they fear the tarnishing of their corporate image. A number of NGOs and others have been working in these fields and the large companies have proved sensitive to these pressures.

#### XVII. POSITIVE ACTION BY STATES

Another avenue to be explored is the obligation of States under international law not merely to act as though they have negative obligations in regard to human rights, but to gear themselves towards positive action in the furtherance of human rights.

When there is some corporation functioning within their territory which denigrates human rights, it is not for them to turn a blind eye to the activities of the corporation and say that such action is not the action of the State. States must see it as part of their business to look into the human rights denials that might result from the activities of the corporations which function on their territory. Research needs to be done at both the theoretical and practical level to formulate and develop the necessary principles, and to identify and make particular case studies of specific instances. There is a large field of research here awaiting academic attention.

So, all these are just a few thoughts which I thought I would share with you in relation to the subject matter of your

conference. I found it most stimulating to attend this morning and hear the different ideas that have been put before the participants.

We have to move towards a new legal order. We are dealing with multinational actors who should be brought within the mores of human rights, and the principle of accountability. They are bound by international law which is often not tuned finely enough to reach them, and they must function within the matrix of human rights. Ensuring these is the responsibility of international lawyers, no less than of States and governments.

These results must be achieved not merely *de jure* but also *de facto*, because, very often, mere compliance with the law does not achieve the intended result. The principles you have in the law books are not always the principles that operate in the field. It is our responsibility to see that the principles and mechanisms are so formulated as to ensure that this happens *de facto*. Those vast powers which can be used for the pursuit of private gain need to be used with the sense of responsibility that befits important actors in the field of international law. Multinationals are responsible actors in international law no less than States, and the sooner this is realized, the better it will be for human rights across the globe. We must attune the international law of the future to the concept that a large variety of new actors have appeared on the international scene, with rights and responsibilities which international law will recognize as inhering in them. The great corporations are a very important group of these new international actors whom the law of the future will recognize as accountable to the international legal system. That will be an important contribution which we, as international lawyers studying the challenges of the global marketplace, will be called upon to make. It will be a principal key to the global human rights culture in which we shall all have to operate in the century that is about to dawn.

Thank you.

