FACULTY OF LAW,
UNIVERSITY OF TORONTO

Toronto M5S 1A1, Canada

September 4, 1981

Professor R. St. J. Macdonald, Q.C.
Dalhousie Law School
Halifax, Nova Scotia
B3H 4H9

Dear Ron,

Thank you for your recent letter.

I will reply to the requests therein seriatim:

1. I did teach my course in European Economic Community Law at U. of T. between 1975-1981 (in fact, I have taught it since you asked me to on my return from Paris in 1969);

2. As of 1981 I will be teaching my course on Europeon Economic Community Law, the basic course in Public International Law and a new course which will be offered in International Trade Law. In addition I will be giving a course in the spring term entitled "Droit de la CEE en matière institutionnelle et commerciale (aspects pertinents à la situation canadienne)" at the Université de Montréal.

3. The casebook I have been using in my EEC law course is a casebook which I prepared myself entitled Cases and Materials on Common Market Law in two volumes.

4. In the basic course in Public International Law I intend to use as a basis the second edition of D.J. Harris, Cases and Materials on International Law, supplemented by a two volume collection of relevant Canadian materials which I prepared this summer. This will track the organization of Harris' casebook.

In my International Trade Law course I will be using a book entitled International Business Transactions Law co-authored by Jean Castel, Armand de Mestral and myself. I expect to put together a casebook of materials in french for my course at the Université de Montréal but I have not been able yet to do that.

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5. I enclose my most recent C.V. This is a bit lengthy but it is the one which I forwarded to Frank in connection with our discussions about my coming to the Faculty and so it is probably the most complete. I apologize for its length, please excuse me for not taking the time to prepare a short one.

You are correct that I commenced my appointment here on July 1, 1981.

It was good to hear from you. I look forward to seeing you soon. Could you give me a quick refresher course to your International Law entitled "What it is and how to teach it"?

Best regards,

Bill

William C. Graham

WCG/cv

Encl.

P.S. The student we spoke of on the telephone is remaining here for the year. Thanks for your interest and offer to help.

CURRICULUM VITAE

William C. Graham, Q.C.

PERSONAL INFORMATION

Born in Montreal, March 17, 1939

Married, two children, presently 14 and 16 years of age

Primary and secondary education: Vancouver and Toronto

Church: St. Simon the Apostle (Anglican)

UNIVERSITY

Undergraduate

B.A. (Honours), Modern History 1961, University of Toronto

Extra-Curricular

Head of Arts, Trinity College, 1960 - 1961

President, Trinity College Literary Institute, 1959 - 1960

President, University of Toronto Debating Union, 1959 - 1960

University Naval Training Division (retired as sub-lieutenant R.C.N.(R.))

Law School

LL.B. Toronto 1964

Scholarships & Awards

Langford Rowell Scholarship

Canada Law Book Prize

Carswell Prize in Conflicts of Law

Angus MacMurchy Gold Medal

Scholarships & Awards cont'd

The Butterworth Prize for Combined Academic and Extra-Curricular Achievement

Extra-Curricular Activities

Speaker, University of Toronto Student Administrative Council, 1963 - 1964

Co-Editor, University of Toronto Law Review, 1963 - 1964

University of Toronto Student Key, 1964

Post-Graduate

Doctorat de l'Université de Paris ("Sciences Juridiques") 1967 - 1969

Thesis subject: L'Article 85 du Traité de Rome et l'Article 32 de la Loi canadienne relative aux enquêtes sur les coalitions, étude comparative. Received mention, "très bien".

PROFESSIONAL QUALIFICATIONS

Member of the Law Society of Ontario (1967)

Member of the Law Society of Saskatchewan (1972)

Member of the Law Society of North West Territories (1980) (admitted, formal call upon attendance in North West Territories)

PROFESSIONAL ASSOCIATIONS

Advocates' Society of Ontario

Canadian Bar Association

Union Internationale des Avocats (Vice-President for Canada, 1973 - 1977 -- Canadian Council Member, 1971 - present)

Canadian Council on International Law (Honorary Solicitor)

EXPERIENCE

International

1967 - 1969 - While in Paris preparing doctorate acted as representative of my firm, FASKEN & CALVIN, in Europe which work included advising European clients generally on Canadian legal problems, and specifically two major activites:

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1. The Barcelona Traction case. Advised Spanish government on the preparation of their "Contre-Mémoire" and "Duplique" in respect of questions involving Canadian law (references to which were extensive as Barcelona Traction, a Canadian Company). This involved regular attendances in Barcelona and elsewhere to meet and work with other counsel advising Spain, particularly Sir Humphrey Waldock (presently President ICJ), Prof. Arechega (presently member of the Court), Professors Reuter, Malentoppi, Ago, Gil Robles and others.

In 1969 when the case was argued before the ICJ, I acted as the advisor to counsel for the Spanish government arguing the case before the Court at the Hague and resided there for five months for this purpose.

2. Advising a particular client in respect of legal corporate and tax reorganization problems which required regular attendances in Lausanne, Milan, Copenhagen and London.

The Gut Dam Case

Upon returning to Canada, acted as junior to J.W. Swackhammer, Q.C., counsel to the Canadian government in the Gut Dam Arbitration (the last Canadian international litigation) including preparation of case, arguing same in Washington and Ottawa and advising government on terms of settlement.

Subsequent international commercial experience has involved negotiation of agreements in various countries, specifically:

a) negotiations and preparation of agreements (in the French language) for the purchase of shares of a bank in Lebanon;

b) negotiations and preparation of agreements (in French) for the carrying out of uranium mining activities in Niger (West Africa), including a joint-venture with local state owned agency, long term tax agreement, operator's agreement, etc. and generally advising client on international and local legal structure of its carrying on business in that country. This work required regular meetings with the Head of State, Ministers, Ambassadors and other administrative representatives to deal with political questions resulting from coup d'états and other events as well as legal questions generally;

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c) travel to, and advice on, the laws of the following countries (including negotiations and meetings with Heads of State and various Ministers thereof):

i) Tchad

ii) Upper Volta

iii) Ivory Coast

iv) Mali

d) other international commercial experience has involved work in France, United Kingdom, Italy, United States.

Litigation Experience

General litigation, including four years as junior to W.B. Williston, Q.C. in all forms of advocacy: trials, appeals (both Ontario Court of Appeal and Supreme Court of Canada), appearances before various administrative boards and tribunals, both federal and provincial.

Present litigation practice is of a general civil litigation nature, consisting mainly of commercial civil litigation including the usual preparation for and presentation of cases at trial and appeals, including appearances before the Ontario Municipal Board, the Canadian Transport Commission and various inquiries and Royal Commissions.

Royal Commission Experience

Co-counsel to the Commission of Inquiry into Bilingual Air Traffic Services in Quebec (1977 - 1979) which required assembling all evidence to be placed before the Commissioners (including obtaining same in Brazil, Africa, Italy, France, Netherlands, Germany) and preparing briefs, calling of viva voce evidence in both English and French.

Out of Ontario Court Experience

Foundation Company of Canada -v- Prince Albert Pulp et al., Court of Queen's Bench, Trial Division, Saskatchewan (The reason for which I had to obtain my call to the Saskatchewan Bar).

Imperial Oil -v- Nova Scotia Light and Power, (1977) 2SCR 817; (1975), 62 DLR (3d) 91 (N.S. S.C.)(1976), 16 Apr. 488 (N.S. C.A.). Trial Division and Court of Appeal, Supreme Court of Nova Scotia and Supreme Court of Canada. Acted as one of four counsels for Defendant with special responsibility for calling evidence on Venezuelan Tax Law and cross-examining foreign law experts called by the Plaintiff. (No call to the Nova Scotia Bar necessary, a courtesy call was extended for the trial and the appeal).

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Hamlet of Baker Lake et al. -v- Attorney General for Canada [1980], 1F.C. 518, Acted for three Defendants in this case involving calling of extensive expert testimony, preparation of written and oral argument on constitutional law issues raised in this most recent case involving the aboriginal rights of the Inuit living in the Baker Lake area. Evidence was obtained in Baker Lake and appearances were made before the Federal Court in Baker, Lake, North West Territories.

OTHER PROFESSIONAL ACTIVITIES

Visiting Professor - Faculty of Law - University of Toronto - Course on Common Market Law, 1970 to present.

Member of the Attorney General of Ontario's Committee to study use of French in Courts in Ontario.

Member of the Canadian Bar Association/American Bar Association Special Joint Committee to prepare a draft Treaty for the Settlement of Disputes between Canada and U.S. (report attached).

Member, the Editorial Board - Canadian Bar Review (1978 to present).

Non-Legal Activites:

Director of various Canadian corporations, including Scott's Restaurants Co. Ltd. (now Scott's Hospitality Inc.)

Member of Executive Committee Board. This Company has hotel, food and transportation activites in Canada, the United States, the United Kingdom and the Caribbeans.

Director of Windsor Jewels Ltd., carrying on business in Bermuda, Canada, the United Kingdom, Ireland, the United States and France.

Director and Vice-President of Graymont Ltd., a private investment company with interests in oil and gas exploration and production, transportation (helicopter), food, hotels and mining.

President of the Alliance Française de Toronto (1978 - present)

Patron, Lester B. Pearson College of the Pacific

Member, Executive Committee Board of Governors, National Theatre School

Appointed Queen's Counsel, January 1979.

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PAPERS AND ARTICLES

Published

"John M. Troup Ltd. -v- Royal Bank of Canada, Assignment and Mechanics Lien Act," University of Toronto - Faculty of Law Rev. Vol 21, page 135 (1963)

Book review of J.G. Castel and A.L. deMistral, Legal Problems in Foreign Direct Investment, CBR Vol. 57, No. 1, Mar. 1979, page 174.

Papers delivered before legal societies (and reproduced for their members)

Union International des Avocats

1969 - La protection de l'acheteur et du vendeur dans la Vente Commerciale Internationale, Paris, 1969

1979 - International Legal Aspects of the Distribution of Goods, Report on Canadian Law, Cannes, 1979 (to be published)

1980 - Congrès de Tours, "The Law & Practice relating to the use of Letter of Credit and Performance Bonds in Securing Contractual Performance in Canada and the U.S." published by the Fondation pour l'étude de droit et des usages du commerce international in "Les Garanties Bancaires dans les contrats internationaux" (les travaux du Colloque de Tours)

Canadian Bar Association, Continuing Legal Education Programme

1980 - "Arbitration, Domestic and International" in Commercial Documents: Recurring Problems and Suggested Solutions (October/November, 1980)

1980 - "Problems in International Commercial Contracts" in, New Dimension in International Trade Law, November, 1980

Panels and Lectures

1979 - Canadian Council on International Law "International Uranium Agreements" (to be published in C.C.I.L. annual proceedings.

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Canadian Bar Association

1980 - Annual Conference, Montreal, "Aboriginal Rights after Baker Lake".

1980 - Conference on the relationship between Canadian and E.E.C. anti-trust law, Université de Montréal, October, 1980.

- For Common Market Law Course, Case Books and Materials on Common Market Law, 2 Volumes

FACULTY OF LAW,
UNIVERSITY OF TORONTO

Toronto M5S 1A1, Canada

November 7, 1983

Professor R. St. John MacDonald, Q.C.
Faculty of Law
Dalhousie University
Halifax, Nova Scotia
D3H 4H3

Dear Ron:

It was very kind of you to send me your letter of 24th of October. As one is never sure about how these "side-show" interventions are being received and as I had just come in from Paris and I had had to prepare it under pressured conditions the night before, I am pleased at least that it was not a disaster.

Please do call if you come up at Christmas time, both Cathy and I would enjoy seeing you.

Sincerely,

Bill

William C. Graham
Professor

Toronto

FACULTY OF LAW,
UNIVERSITY OF TORONTO

Toronto M5S 1A1, Canada

May 14, 1980

Professor R.S. MacDonald
Faculty of Law
Dalhousie University
Halifax, Nova Scotia

Dear Professor MacDonald:

Pursuant to our telephone conversation of 12 May, I am pleased to enclose the following for your information as per your request:

1. Courses syllabus for my general course in International Law, labelled "International A and B",

2. Introduction, Course syllabus and Bibliography for my seminar on "International Human Rights",

3. Reading list for my seminar on "International Law and Foreign Policy",

4. Copy of my (unduly long and historical) curriculum vitae,

5. Program Brochure for 1980 Conference on Law and Contemporary Affairs, "Human Rights in the Modern World", for which I served as Faculty advisor.

If I can provide you with any additional information or materials, please let me know. I humbly thank you for your interest.

Yours truly,

J.T. Fried
Visiting Professor

JTF/11
Enc.

Mailed: 23 May 1980.

OFFICE OF THE CHAIRMAN
PUBLIC SERVICE STAFF RELATIONS BOARD

CANADA

BUREAU DU PRÉSIDENT
COMMISSION DES RELATIONS DE TRAVAIL
DANS LA FONCTION PUBLIQUE

Tab 5

Ottawa, April 10, 1972.

Mr. R. St. J. Macdonald, Q.C.
Dean
Faculty of Law
University of Toronto
Toronto 181, Ontario

Dear Dean Macdonald:

I am afraid that I can be of little assistance to you in your project. Larry Mackenzie and Gene LaBrie have covered the situation pretty thoroughly. International Law was not a field in which I had any great interest. I can readily confirm what Gene says about the number of overseas visitors , many in native dress, sitting on the porch to 45 St. Georges early in the morning awaiting Larry's arrival.

I do know that a short course - one term - in International Law was given by H.W.A. Foster, a practising lawyer in Toronto who taught part-time at the University of Toronto. I believe his course was a compulsory course. I took it in 1925-6. I do not know whether Foster continued giving this course until Larry arrived or whether it was taken over by James Forrester Davidson. You have the full story beginning with Larry's coming on the scene.

To the list of people who graduated from the law course at the University in Toronto in the early days who went into internatial affairs, I think you should add a many by the name of Crean. He went to External Affairs immediately after World War II.

I regret that I cannot be of greater assistance to you.

Yours sincerely,

J. Finkelman
Chairman

UNIVERSITY OF TORONTO
FACULTY OF LAW

TIME: 3 1/2 hours

Annual Examinations, 1972

PUBLIC INTERNATIONAL LAW

Examiner -- Professor Morris

NOTE: ANSWER ANY FOUR OF THE FIVE QUESTIONS BELOW. All questions are of equal value. Take time to organize a relatively concise answer that indicates the main problems and the more advanced points in your analysis. If you have time before the examination ends, you can add supplementary comments on secondary matters. You may make any assumptions that are reasonable and necessary.

THIS IS AN OPEN BOOK EXAMINATION. So long as students do not attempt to insert into their examination answers any pages or booklets of previously prepared material, they may bring into the examination and refer to their personal copies of casebooks, notes, summaries, outlines, documentation, periodicals, xerox copies of textual materials and similar pertinent matter. The foregoing is subject to one limitation agreed on in class: because the library has very few copies of many items, students must not bring actual library copies into the examination, although they may utilize photocopied portions of such library materials.

1. James Brown, a Roman Catholic priest from Nigeria (and doctoral candidate in philosophy at this university), attempted to rent an apartment in the west end of Toronto which had been advertised as "self-contained three-room apartment on ground floor of attractive, owner-occupied home in exclusive residential district." To reach the apartment it was necessary to enter the main front door of the house and walk several paces along the main downstairs hall before turning through the locked door of the apartment. The apartment occupied one side of the ground floor and was otherwise entirely sealed off and separate from the rest of the house, in which the owner, Archie White, lived with his wife.

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When White perceived that Brown was black, he allegedly saw red. Reacting like the true-blue Orangeman he was, White declared that he did not want "a papist incense-burner disturbing the house with Gregorian chants and a bongo drum accompaniment, no matter how good your sense of rhythm is!" As an after-thought, White added that he was pretty well committed to rent the apartment to a young law student named Green. "I guess he's a Jew", White commented, "but they're really not so bad; mainly sit around reading self-improvement books and thinking about ways to make money." In fact, it later transpired that Green had indicated clearly that the apartment would not suit him, as it was too small for the grope-ins and other group therapy sessions he hoped to convene regularly.

By this time Brown is purple with near-apoplexy (he would have been white with fury, but the idea somehow offended his current sentiments.) He retains counsel to seek whatever legal redress may be available under the Ontario Human Rights Code or other legal authority. White's lawyer, realizing that the incident is vaguely reminiscent of the recent Bell case in the Supreme Court of Canada, is stressing the common entrance area as taking the case out of the provisions of the provincial code.

Pursuant to the recommendation of a Commission of Enquiry, a charge under the Code is brought against White. Following his conviction, the appeals commence. You are a judge, Blue J., who must consider points of law raised on appeal. You are possessed of high ideals and noble aspirations and see a golden opportunity to strike a judicial blow for justice, brotherhood and rhythmic bongo-drumming. In addition, you are a devout Catholic, but we can assume that this has no relevance.

The Code is ambiguous concerning the precise meaning of self-contained accommodation and there are some factual differences between this situation and the Bell case. Nevertheless, you are apprehensive that a normal reading of the bare words of the Code might require a decision that the provisions of the Ontario legislation do not reach this situation.

(a) In October, 1970, Canada ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention has not been implemented in Canada, because federal and provincial officials believe the law in Canada (including Ontario) to be generally consistent and in harmony with the Convention. Suppose, however, that a clause in the

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Convention appeared to indicate that a slight limitation on the self-contained nature of the premises, as here, did not justify discrimination in the rental of accommodation. Could you devise arguments justifying direct reliance by the Court on the provisions of the Convention, so as to make White subject to judicial sanctions? If so, outline your arguments.

(b) In December, 1948, Canada voted for U.N. General Assembly resolution number 217. "The Universal Declaration of Human Rights," which was adopted without a contrary vote. Suppose that the Declaration was the source in which you found a provision which appeared to call unambiguously for government action to oppose discrimination in a case such as the present one. What is the status of the Declaration in an Ontario court? Why? Does the Declaration have any relevance to judicial proceedings?

2. Mexico has opened a Trade and Tourism Office in Toronto, which occupies a large display area on the ground floor and business offices on the second floor of a commercial building in downtown Toronto. The functions of the office had previously been carried out on a limited scale by a section of the Mexican Consulate, located a few blocks away. The move to larger premises was dictated by the volume of enquiries and a desire to inaugurate a more active programme designed to stimulate Canadian interest in trade and tourism possibilities in Mexico.

Soon after the new offices opened, Sr. Lopez, the Mexican official who directed the office, arranged a "Canada-Mexico Goodwill Exhibit" in the large display area. It included Mexican manufactured products, the work of artisans, such as jewellery and handicrafts, scenic Mexican vistas on illuminated screens, and four Mexican soldiers on "guard duty" in ceremonial uniforms. To perform the ritual of mounting guard, eight Mexican soldiers were flown to Canada. With Canada's agreement, they carried Mexican army rifles, from which the firing pins had been removed, for the elaborate drill involved.

On the first day of the exhibit, a dissident Mexican expatriate threw a fire bomb into the display area and caused extensive damage to the exhibit and smoke damage to the offices upstairs. Investigating police officers quickly pushed their

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way into the Mexican offices despite vigorous objections from the Mexican officials, who had stacked official files on the floor during the fire, in case they had to evacuate part of their office area.

One of the Mexican soldiers, under the influence of physical shock, clubbed a Mexican civilian clerk running through the display area, in the mistaken belief that the clerk was involved in the bombing. Another soldier brandished his rifle at a police officer in an effort to deter entry of the latter into the upstairs offices. Both soldiers were arrested and face charges. Neither had a diplomatic passport and they were not covered by any Status of Visiting Forces Agreement.

In view of the disaster which overtook the exhibit, Sr. Lopez is refusing to pay the $5,000 account rendered by Creative Decorators, the Toronto firm with whom he signed an official contract to design and execute the display layout for the exhibit. Creative wants to sue on its contract.

(a) Do you think Creative will succeed in an action against Sr. Lopez and the Mexican government? If you were counsel for Creative, how would you argue, with respect to your right to sue? Might you persuade the court to attach weight to the "Tate letter"? To U.S. decisions following publication of it? Would you seek a statement from the Department of External Affairs on the issues? What sort of response, if any, do you estimate the Department might give?

(b) Would you expect either or both of the Mexican soldiers to be subjected to the full rigour of the Canadian criminal process? Give reasons for your answer.

(c) Do you think the police acted properly in forcibly entering the Mexican offices? On what basis might you argue that they did not?

3. In class meetings this year, the attention of students taking this subject (or, at least, those present who managed to stay awake) was directed on a number of occasions to decisions of United States courts containing statements which defined in broad, powerful terms the scope of the executive power in the field of foreign affairs. The foreign affairs power is seen as exceptional and almost unique. The importance to the nation of a coherent, co-ordinated international policy is accepted. To achieve this, the nation must speak with one voice in foreign

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affairs and the pre-eminent voice must be that of the executive branch. Among the apparent consequences of this judicial attitude of deference to the executive are (a) a readiness by the courts to adopt "executive suggestions" concerning the disposition of various types of action and (b) the evolution of the U.S. "act of state" doctrine seen in the Sabbatino case.

(a) To the extent that your knowledge permits, briefly compare the Anglo-Canadian judicial attitude on the role of the executive branch in foreign affairs and the relationship between judiciary and executive in such matters.

(b) Do you approve of a judicial system which expands the bases for subordinating the individual's right of action to the policy needs of the executive? In other words, does a nation gain more than it loses by developing a firm "act of state" doctrine à la Sabbatino, as well as other "judicial deference" doctrines? What are your reasons, beyond mere visceral reaction?

(c) A factor in the evolution of the U.S. doctrines has been the existence of a full hierarchy of federal courts. What complications pertinent to international law do you foresee, if Canada (as has been suggested by some commentators) adopts a system of federal courts similar to that of the United States?

4. Two Canadian citizens of Syrian origin, resident in Montreal, visit relatives in Syria, are conscripted into Syrian military service on the basis of birth in Syria, are ordered to participate in a raid into Israel, where they are captured and detained in a prisoner of war camp. Despondent and desperate, they escape from the camp and separate, one hoping to make his way to the Canadian embassy in Tel Aviv, the other hoping to stow away in Haifa on an American freighter bound for North America.

The first man broke into a house en route to Tel Aviv and stole some food, clothing and Israeli currency. The second hid in an inter-city mail truck and stole some chewing gum, cigarettes, and chocolate bars which he found in a package in one of the bags of mail. Both men were recaptured, tried on criminal charges and imprisoned at hard labour.

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Canada wants to make representations to Israel on behalf of its citizens, but will be unable to protest vigorously if the legal situation in Canada would lead to the same result. You are a legal officer in Ottawa assigned to review and assess the case law in Canada and recommend, if necessary, either a reference to the Supreme Court of Canada or amendments to the Criminal Code.

Your attention is drawn to the Krebs case, which acquitted a German escaped prisoner ("no allegiance owed") and the Brosig case, which convicted, citing inter alia the provisions of the Geneva Convention referring to criminal penalties which might be imposed on prisoners of war. The Schindler and Kaehler cases in Alberta also convicted prisoners, following Brosig in emphasizing the provisions of the Geneva Convention, although Canada had not enacted domestic legislation pursuant to the Convention.

Can you set out in reasonably comprehensible fashion the precise legal issues and the conflicting judicial solutions proposed by the Canadian courts? How valid is either of the two main rationales? Can you outline an alternative approach, even if you don't agree with it? Is there any basis for hoping that a Canadian court in 1972, if somehow faced by such an issue, might avoid the conclusion reached by the majority of Canadian decisions?

The foregoing relates, of course, quite directly to discussion in class during the final weeks of the year and is designed to examine your ability to digest and develop the classroom discussion. A point not referred to in class is the following: the Brosig case turned partly on the court's view that cigarettes and chewing gum were not necessities essential to the prisoner's survival during his escape. What do you think of this requirement of necessity? By the way, could you outline a factual argument which might alter the court's view that cigarettes and gum were mere luxuries? (The last request is more for my edification than anything else and can be ignored if you are short of time or can't think why anyone could possibly label them non-luxuries).

/continued . . .

5. A few weeks ago, a former professor of intern tional law in this Faculty (who has for some years been in practice in the tax and corporate law fields in downtown Toronto) wrote the following:

> "I felt that teaching of public international law in law schools was a good deal more honest than the teaching of private law. Since my entry into practice, my suspicions in that regard have been strikingly confirmed. Decision-making in the private areas of law is just as fraught with political considerations as is public international law, only it is masqueraded in a way that enables law teachers to teach the subject in law school as if the matter were governed by laws and not by man. Particularly in the last five or six years, even the stupidest lawyers are beginning to realize that English common law, as administered by our courts, is simply a vocabulary in which the results are expressed for reasons that never appear in print. Public international law is a good vehicle for teaching jurisprudence, for the Canadian courts at least."

Discuss the foregoing quotation fully, giving reasons and illustrations for your reaction. For one thing, is there a justifiable implication that students and practitioners of international law have been conceptually more advanced (or "modern") than those allegedly trapped in an illusory framework of private law rules? Or does it make greater sense to describe international law as an embryonic, incomplete, consensual, quasi-legal system, limited by power realities, more akin to moral philosophy, and thus essentially differing from the fully-developed, preemptory, effective "real law" embodied in domestic private law? To state the question another way, is international law acceptably "law" which can appropriately and meaningfully be taught in a general law faculty programme, or is it actually political science which perhaps should be included only in an Arts curriculum focused on political policy and techniques.

Warning: the answer is more complex than may appear on first reading. If you simply try to pander to my personal bias, your answer will almost certainly be deficient in at least one major respect.

11 July 1984

Dr. Francis Leddy
The Leddy Library
Univerwity of Windsor
Windsor, Ontario
N9B 3P4

Dear Francis:

I am just back from Europe -- how I remember your own fascination for Italy -- and I wish to thank you for your nice letter of June 19, 1984. Your advice proved to be extremely effective and I am of course delighted at the outcome.

I had not known about Ron Ianni to whom I will w rite presently, but I think he is an excellent choice.

Nor had I known of the new book of Robin Ross, which I will read during the summer. Thank you for passing these two items of interest.

It has been much too long since I last had the pleasure of conversation with you and I am hoping that there will be an opportunity to see you during the next few months. There is certainly lots to talk about.

With personal good wishes, I remain,

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

U of T

The Leddy Library,
University of Windsor,
Windsor, Ont. N9B 3P4

June 19, 1984

Dear Ron:

I am delighted with the good news that you are to be admitted to the Order of Canada. I am not surprised, but I am pleased, and relieved that your nomination accepted the advice which I ventured to convey to you, and periodically renewed the proposal prior to each meeting of the selection committee.

I shall watch for the formal announcement due, I would suppose, at the end of this month, with investiture to take place in October, if the usual pattern is followed.

Deans of Law seem upward bound these days, with Harry Arthurs to be the next President of York, and Ron Manni to take over Windsor.

With reference to academic memoirs I note that Robin Ross has just published his, entitled "The Short Road Down", dealing with the decline of the U of T as he sees it.

Yours sincerely,

Francis

Faculty of Education
University of Toronto

July 17 1/84

Dear Ron:

I hope from Toronto and will be at the end of August rather than the beginning. On Aug 31 I am off to Amsterdam Madrid & Lisbon returning August 23 or 24. I'll be solidly at home thereafter. - 225 4706.

Yours ever
R Stri

371 Bloor Street West Toronto, Ontario M5S 2R7

THE JOINT CENTRE ON MODERN EAST ASIA

The Next Decade

UNIVERSITY OF TORONTO
YORK UNIVERSITY

We invite you to join with us in the coming years as we seek to meet these goals and continue the work begun with your help.

THE JOINT CENTRE ON MODERN EAST ASIA

University of Toronto–York University

FOUNDERS COLLEGE
YORK UNIVERSITY
DOWNSVIEW ONTARIO

The First Decade

THE JOINT CENTRE on Modern East Asia of the University of Toronto and York University was established in 1974 with a generous grant from the Donner Canadian Foundation to promote teaching and research on modern East Asia in the Toronto region. Founded in recognition of the growing importance of Canada's Pacific economic and cultural ties, the Joint Centre stressed from the outset the need to pool scarce resources through collaborative inter-university development. Over the past decade we have grown into a major regional centre, drawing support from a dozen universities and many community organizations across Ontario. With additional financial support from the Department of External Affairs, the Government of Japan, the Max Bell Foundation, the Donner Canadian Foundation, the Canadian International Development Agency and the two host universities, in the past decade the Joint Centre diversified its activities to embrace virtually every country in the Asia Pacific region. Our interests have rapidly expanded to include not only trade and cultural relations, but also immigration, defense and strategic issues, and training programs for Asian Pacific managers and technical specialists. With over 100 full time researchers and scholars attached to its programs, and a business and government membership of over 200, the Joint Centre has made major strides towards achieving the objectives set down in its charter a decade ago.

Major Programs

Joint Centre

THE CORE ACTIVITIES of the Joint Centre feature a wide-ranging series of conferences, public seminars, research projects and publications. The Centre has, in addition, strengthened the region's basic resources through new faculty and staff appointments, by supporting graduate research and training, and in promoting library and research materials development. Among the more recent and innovative special programs are:

Fudo
A seminar series on the concepts of man and place in Japanese culture which brings together planners, architects, and urban development specialists to examine Japanese concepts of space and design.

Canadian Missionaries in East Asia
A series of conferences and research projects which probe the roots of early Canadian involvement in East Asia and the effects of this experience on our aid and trade programs.

Pacific Trade Seminar
A series of seminars on Canada-Pacific trade, involving leading businessmen, policy makers and academic researchers. Themes include countertrade, Pacific banking, the impact of cultural factors on trade, political risk analysis, and the role of governments in promoting trade.

The Canada Pacific Program

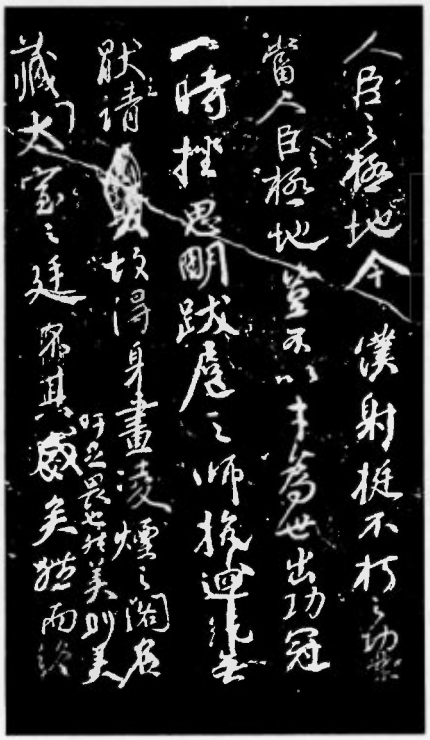
SET UP IN 1981 with a grant from the Donner Canadian Foundation, the Canada Pacific Program has sponsored policy-related research and seminars focusing on Canada's growing commercial and diplomatic interests in the Pacific region. A major emphasis has been to unite individuals and organisations from government, the private sector and the universities jointly to confront these issues. Seminars and research projects on Pacific energy and resource utilization, on political risk in the Asia Pacific region, on Asian immigration and resettlement, as well as several core research projects on Canada–China trade and on Canadian–Japanese commercial relations exemplify the policy focus of this program.

Canada–Southeast Asia/ASEAN Project

INAUGURATED IN 1983 with a grant from the Max Bell Foundation, the Canada–Southeast Asia/ASEAN project involves the cooperative efforts of scholars and researchers at 10 Ontario universities to strengthen basic research and teaching on Southeast Asia by concentrating Ontario's resources on this rapidly developing region of the Pacific. Emphasizing staff and library development, research support and seminars, the Southeast Asia/ASEAN project stresses the importance of private sector and government involvement in strengthening Canadian ties with this important region. Recent activities have included seminars and conferences on foreign investment in ASEAN, on energy development in Malaysia and on Thailand's foreign relations.

Ontario Regional CIDA–China Centre

ESTABLISHED JOINTLY IN 1984 by the Canadian International Development Agency and the Joint Centre, the Ontario Regional CIDA–China Centre will play a key role in facilitating the placement of the several hundred Chinese scholars, graduate students, government officials and specialists to be trained in government offices, universities and businesses across Ontario in the next five years. The CIDA–China Centre will also be responsible for briefing Canadians prior to their stay in China. The Joint Centre's assumption of formal responsibility for helping to manage and oversee this program follows years of informal involvement in the growing Canada–China exchange in such areas as language training, briefings, placement, and acculturation.



Partnership

A DISTINCTIVE THRUST of our programs has been the effort to bridge the gap between the private sector, government and academics, bringing the strengths of each of these sectors to the common task of understanding and developing Canada's ties with the Asia Pacific region. A continuing program of seminars devoted to such current issues as Canada–Korea relations, the federal–provincial dimensions of Pacific trade, and the relationship between aid and trade, has generated active business and government participation. The Joint Centre has, in addition, worked closely over the years with the Department of External Affairs, with the Department of Industry, Trade and Commerce, with other federal and provincial Departments & Ministries, with the various bilateral trade councils, as well as with the Canadian Committee of the Pacific Basin Economic Council. Centre members have participated regularly in the successive Pacific Rim Opportunities conferences. In 1982, the Joint Centre with private sector support and financial assistance from the Department of Industry, Trade and Commerce co-sponsored a delegation of senior Chinese economists in a month long visit to Canada. The Joint Centre has also played a role in helping shape the Social Science Research Council Exchange program with China, most recently sponsoring a national

conference to evaluate the first phase of the program. A Centre-sponsored conference on the 50th Anniversary of the establishment of diplomatic relations with Japan led to the publication of a volume analysing Canadian–Japanese commercial and cultural ties. In 1981 the Centre mounted the first conference devoted to exploring the concept of the recently established Canadian Foundation for Asia and the Pacific.

Awareness

FROM THE OUTSET, the Centre has devoted significant attention and resources to enhancing public awareness and knowledge of the Asia Pacific region. The Education Liaison Program has since 1975 published a regular newsletter, *Understanding*, aimed at providing secondary school teachers with new materials for inclusion in course units on East Asia. Working together with the provincial Ministry of Education and various teachers' organizations, the Centre's outreach effort has included school visits, training programs, and guided high school tours of the ROM collection and Toronto's Chinese community. In addition, in cooperation with Continuing Studies Programs, our researchers have sought to develop programs in Asian culture and language to assist business and government leaders seeking specialized knowledge in the area. Centre scholars have gone to many Ontario universities under our Visiting Scholar Programs to promote interest in Pacific studies. In the area of the arts, the Centre has sponsored performing troupes, such as the Okinawan Dance Troupe, Chinese Puppet Theatre and Peking Opera. Finally, the *Canada Pacific Review*, a quarterly publication of the Canada Pacific Program, has been an important vehicle for disseminating the findings of Centre Conferences and research projects, as well as informing the wider community about significant developments in Canadian–Asia/Pacific relations.

Community

ONE OF OUR STRENGTHS is our continuing close relationship with local communities and groups. The support of the Japanese community and Japanese businesses has contributed immeasurably to the success of the Centre's many Japan programs. The Chinese community's involvement has notably enhanced our research and cultural programs as well as the success of our outreach and acculturation activities. The financial and organizational support of the Korean community and the Korean Businessmen's Association has stimulated the development of Korean studies.

Responding to the interests and needs of these communities, the Joint Centre sponsors research on immigration and resettlement, on cultural stereotypes, and on the history of Asian communities in Canada. Equally, the history of Canadian involvement in East Asia and the Pacific has been a major focus on Centre work. Two recent conferences on the Canadian Missionary Experience in East Asia laid the foundation for a major project to preserve this irreplaceable legacy, through oral histories and archival work.

Knowledge

OUR GROWING RELATIONSHIP with the vast Asia–Pacific region begins with understanding rooted in knowledge. The Centre consistently supports East Asian programs at both host universities by the funding of staff appointments and initiatives through curricular development. With its Doctoral Research Grants and Graduate Language Bursary programs, the Centre has invested heavily in the next generation of researchers and teachers. Our faculty research grants, totalling over a quarter of a million dollars in the past decade, have resulted in significant new research on the history, society and economy of the countries of the Asia/Pacific region, as well as on Canada's historical interaction with them. Publication of the results of this research in our Working Paper Series, Monograph Series, and Policy Study Series, totalling over forty titles to date, helps build a solid foundation for future studies.

The Challenge

CANADA'S TIES to the Asia/Pacific region are multiplying rapidly. Now that the region has become Canada's second trading partner, we must move to maximize our opportunities. The challenge before us in the next decade is to build on our strength while moving in new and innovative directions, to consolidate our resources while expanding our knowledge of this with the Asia/Pacific region.

Infrastructure

We must continue to develop teaching, graduate training and research as the foundation of future work. Without trained personnel we cannot improve our knowledge of Asia/Pacific; without information we cannot meet the challenge of moving in new directions. Our research libraries and museum collections must keep pace with the needs of scholarship and also of the needs of business and government and the general public. We must, therefore protect the funding of the Joint Centre's core program and of the physical and staff facilities which sustain them.

Developing Strengths

Current programs must be consolidated and expanded. For example, our expertise on Japan can be strengthened through additional teaching and library resources, and through the development of closer Canada–Japan linkages. Our Southeast Asia/ASEAN project is rationalizing Ontario's library resources on Southeast Asia and ASEAN. Other existing programs must be expanded to meet Canadian needs, for example, our publications series; linkages with Asian/Pacific universities; training programs; research seminars and projects; and our various community outreach, public information and education projects.

New Programs

Korean–Canadian Relations Project
The rapid expansion of Korean–Canadian relations makes it imperative for the Joint Centre to enlarge the collection of research material and research in this area. We are planning to hold a series of special workshops and seminars and to publish study papers in preparation for the next stage of work, such as putting forward policy suggestions and mounting university courses.

Hong Kong–Canada Project
The future of Hong Kong is of significant concern to Canadians, especially as it affects the growing influx of capital, immigration and acculturation, and student training in Canada. These new phenomena, socially and economically important in themselves, must be carefully analysed, so that the problems arising from them can be appropriately solved.

Asian Immigration and Resettlement
The Asian communities in Canada, especially in Ontario, are rapidly growing in size. Their interaction with Canadian society, acculturation, and effect on Canada/Pacific relations have become issues of deep concern.

Islam in Asia
The rising importance of Islam in Asian–Pacific affairs inevitably affects Canada's role in and her political, cultural, and trade relations with that region. In Canada herself, the Islamic community has been increasing in size and importance.

Japan Trade Seminars
They are designed to deal with the major issues in Canadian–Japan trade as well as Japan's economic relations in the Asian/Pacific region. The respective roles of the private sectors and the governments will be a central theme in these seminars.

Humanities and Arts of Modern and Contemporary East Asia
This is for the expansion of our research and teaching in contemporary history since the end of WWII; in East Asian religions in the 20th century and their branches in Canada; the art and performing arts of China, Japan, and Korea. This new venture will require the collecting of published materials and artifacts, initiation of new research projects, organization of workshops and seminars, exchange of field trips, etc. in preparation for the training of a new generation of humanists in these areas.

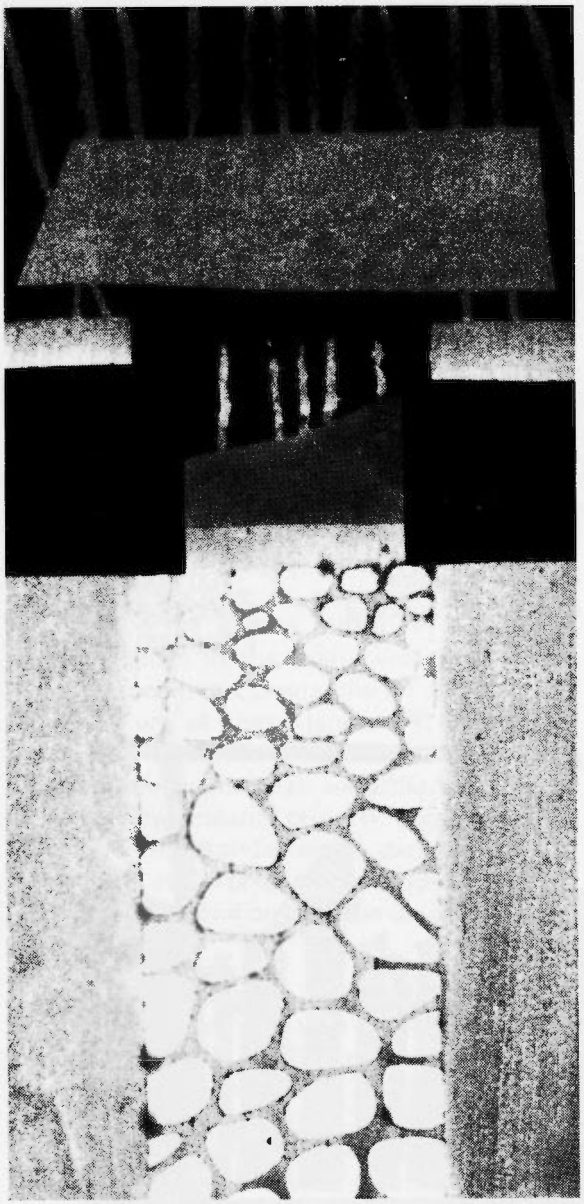
Strategic Issues in Asia/Pacific
In cooperation with general strategic studies, the Joint Centre will develop research on the major political and strategic issues concerning Canada's relations in the Asian/Pacific region as well as on how these issues will influence her trade and cultural relations with that region.

Meeting the Challenge

To SUSTAIN our current program, and to move in these new directions poses not just an intellectual challenge but also a financial challenge. The challenge is not merely to the members of the Joint Centre but to the communities and constituencies which have sustained us by their interest and involvement in the past, as well as those who have more recently come to see Asia and the Pacific as Canada's newest frontier.

Goals: 1984-1989

Program Funding	700,000.00
Endowment Funding	1,000,000.00
Total	1,700,000.00



Office of the President

YORK UNIVERSITY

4700 KEELE ST., DOWNSVIEW, TORONTO, CANADA M3J 1P3

July 20, 1984

Professor R. St. J. Macdonald, Q.C.
Dalhousie Law School
Halifax, Nova Scotia
B3H 4H9

Dear Professor Macdonald,

Thank you for your letter of July 12 to President Macdonald requesting a brochure on the work of the Joint Centre on Modern East Asia. In the President's absence I am pleased to send you a copy of the brochure and to give you the name and address of the director as follows:

Professor Jerome Ch'en
Director
Joint Centre on Modern East Asia
Room 225 - Founders College
York University
Downsview, Ontario M3J 1P3

With very best wishes,

Yours sincerely,

Alice Richard

Alice Richard

RECENT DEVELOPMENTS IN LEGAL EDUCATION AT THE UNIVERSITY OF TORONTO *

Introduction

As has been the case in other Canadian law schools, the period of the 1970's and early 1980's has seen a number of significant changes in legal education at the Faculty of Law at the University of Toronto. These changes reflect several underlying themes. The first is that the Law School should remain committed to its strengths in the common law and traditional legal subjects. The second is that we in law schools have much to gain from other disciplines in the teaching and studying of law especially in times when new areas of law, particularly those spawned by technological change, are rapidly emerging. And the third is that the curriculum should attempt to incorporate courses and programmes that reflect more of an emphasis on lawyers' skills such as research and writing, problem solving, and advocacy. Although these themes can conflict, I believe they have been effectively integrated into the curriculum by the changes that have been made at the University of Toronto. This comment will briefly examine some of the major changes that have occurred which illustrate these themes.

The changes to be discussed will include alterations in the first year programme as well as curriculum changes in the second and third year that have provided interdisciplinary and perspective courses which in turn have encouraged breadth and depth in research.

* I am grateful to my colleagues, Marie Huxter, Assistant Dean and Director of Admissions, Professor Stanley M. Makuch, Associate Dean, Professor J.B. Dunlop, and Professor M.L. Friedland, my predecessor as Dean of the Faculty, for their comments and assistance in the preparation of this commentary.

These reforms have aided in expanding the scope of legal education and research in the law school while strengthening traditional subjects. Finally, a new proposed programme at the graduate level, a Masters of Studies in Law, designed to facilitate links with other disciplines, will be briefly reviewed.

First Year

Because of the importance of legal knowledge, analysis and reasoning and an introduction to lawyering skills, first year in most law schools has emphasized the traditional common law legal subjects. The University of Toronto Law School has not altered that pattern although it has made some changes that have had a beneficial effect on the first year curriculum.

In 1972-73, the Faculty introduced the small group programme by which each first year student is assigned to one of his or her first year courses in a small group of 15-20 students. In each group, instruction is given in the techniques of legal writing and research as well as in the substantive law of the course. The legal writing component is based on the substantive law of the subject area of the course. Evaluation for the course is based substantially on the legal writing exercises along with an examination. Thus legal writing and research has been integrated with a substantive law subject.

The small group programme has been very successful. Instruction in a small group of both legal writing and research and substantive law has strengthened legal skills, knowledge and analysis because of a very favourable student-teacher ratio. The informality of the small group has provided a significant pedagogical variety to

our first year offerings. The small group enables students from differing academic backgrounds to use the knowledge and experience of those backgrounds within a legal framework. A further consequence has been the spirit that is engendered by having a small group of students who are able to know each other very well. This also helps to foster the development of legal analysis and the understanding of traditional legal values and methods. In fact, it is quite common for small group members to form study groups that have continued in senior years. In addition, the intimacy of the small group instruction has done much to break down the impersonal nature of law school and thereby has greatly improved the atmosphere for students fresh to a new subject and institution. On the Faculty's side, it has provided an opportunity for members to know a small number of students well and that knowledge has been useful in helping students deal with problems and in encouraging the interest of students in particular areas of legal scholarship throughout their careers in law school and beyond.

The Faculty has further strengthened and broadened the teaching of common law subjects and traditional legal approaches with the introduction of a course in public law. This course has undergone a number of changes and developments that reflect the difficulty of successfully providing such a course in first year. In 1970-71, the course was entitled "Introduction to the Legislative and Administrative Process". The course was taught over both terms, two hours per week. In 1973-74, the course was called "Development of Canadian Law and Legal Institutions" and met for three hours per week in the second term. In 1975-76, the course was reconstituted as "An Introduction to Statutes

and Administrative Law" and was taught for the 1975-76 and 1976-77 academic years. It was not taught in 1977-78 and 1978-79. In 1979-80, the course was called "Introduction to Legal Institutions and Legal Reasoning", and finally in 1980-81, the course was called "Public Law".

In its present form, the course is an attempt to analyse the legislative and administrative processes including the constitutional framework within which these processes exist. Particular attention is given to statutes and subordinate legislation and a general introduction to administrative law. Also studied are government agencies, courts, and specific areas of law relating to government tort liability and freedom of information. It has been taught by a team of colleagues who have been able to contribute special expertise to the various topics that form the course. Throughout the changes in the course there has been a concern to maintain the integrity of the basic common law subjects of first year and to balance them with the wider perspective on law and legal institutions that this course provides. There has not, however, been any attempt to bring any interdisciplinary focus to the course. It has, therefore, resulted in more of a broadening of the traditional legal perspective by focusing on differing aspects of law and legal institutions than would otherwise be found in first year and it has resulted, we believe, in the strengthening of the traditional approach to legal education.

Another change, but of an extra-curricular nature, is the Practitioners' Programme which was also initiated in the 70's for first year students. Under this Programme, linked with the course in Civil Procedure, first year students are assigned to practising lawyers who arrange meetings with the students to discuss current cases or matters

their offices have handled. The Programme thereby provides an opportunity for first year students to be exposed to practical considerations that can provide a helpful illumination of subjects that they study in the academic setting of the Law School. No academic credit is given for student participation in the Programme.

It is important to note that the Public Law course and the small group programme have had an important catalytic effect on the first year curriculum. The Practitioners' Programme has also added a further dimension to the formal courses. The small group programme provides more time for discussion of legal issues and the Public Law course has helped provide additional bases for that discussion. Together, therefore, they have strengthened our first year programme and this impact has spilled over into the other first year courses as well.

Second and Third Year (cont.)

While first year reforms have resulted in improvements in the teaching of basic legal subjects, curricula changes in second and third year have focused more on expanding the scope of legal education. Changes were implemented, as in other law schools, that have resulted in the courses in second and third year becoming optional. In the 1969-70 academic year, second year students had to take approximately half of their academic course load in required courses. In third year, students had to take two required courses and took the rest of their hours from 18 optional subjects. It was in 1970-71 that our second year students were allowed to choose from some 19 courses which were open to them. Third year students could take any course not already taken, of which there were an additional 35 courses from which to choose. In 1975-76, second and third year students were able to choose from the same group of courses. Also, the number of courses that were available increased quite dramatically over the last decade reflecting the growth in many legal subjects and the emergence of new ones. A fully optional system in second and third year was thus put in place.

In spite of these changes, however, the traditional focus of legal education has remained important. The vast majority of students take most of the so-called core or professionally oriented courses. But the movement to a fully optional system in second and third year has had a profound effect on the development of the Law School's curriculum. It has facilitated the development of interdisciplinary courses and research to complement and build upon traditional legal research and scholarship. It has, as well, provided an opportunity to broaden the focus of traditional

legal studies. As a result, courses in law and economics; public policy formation; international trade; legal history; legal institutions and processes in planning; law, ethics and social policy; and medical jurisprudence, all of which are interdisciplinary in nature, are now offered.

This development of broadening the scope of legal education can be seen most clearly in a number of discrete subject areas: law and economics, social welfare law, business law, and clinical legal education and related courses.

In the mid-seventies, the Law and Economics Programme was first funded by the University's Connaught Fund. It began in 1976 with two courses: one entitled, "Applications of Economic Principles to Law", the other, "Economics for Non-Economists". This programme now offers students special study and research opportunities in a broad range of subject areas having a significant law and economics interface. It is taught by faculty from the Law School, the Department of Political Economy and the Faculty of Management Studies. Students can take subjects which include competition policy, public utility and related regulation, economic analysis of traditional legal doctrines, communications regulation, environmental control, personal income security, tax policy, land use planning and international trade regulation. The preliminary course in basic economics mentioned above is still available to students without a background in economics.

The course offerings in Law and Economics have been further supported by a Law and Economics workshop series which has stimulated research and writing in law and economics, not only at the University of Toronto but also at numerous universities in North America and in the United Kingdom. On a regular basis scholars present papers to both our faculty and students for discussion and criticism. Another important

dimension to the Programme has been the number of distinguished visiting professors to the Law School who have taught and engaged in their research as part of the overall activities of the Programme. In short, the Programme has been successful as an interdisciplinary venture as well as a model for blending research and teaching initiatives to the benefit of both students and faculty.

The move to expand the interdisciplinary approach to law has not remained solely with economics. In 1976 as well, the Connaught Fund also funded a programme in Family Law and Social Welfare for two years in order to encourage research and study in this area. Once again, the focus was interdisciplinary and seminars and workshops were held on the Child and the Courts, Social Welfare as a Planning Objective and New Developments in Family Law. During 1982, building on this base, a series of workshops in Family Law and Social Policy were held, bringing together leading academics, judges, practitioners and social workers. For the past several years a series of workshops on Legal Theory that emphasized topics involving jurisprudence and legal philosophy have been held and they have also attracted contributions from leading scholars from Canada and abroad.

Another extremely important ~~expansion~~ development in legal education has been the Business Planning Cluster which was introduced in 1974-75. Building on the strong base of the Law School in the business law area, this course was introduced to provide an opportunity for a thorough study of the operation of the legal process as it functions in the business area. The course also reflects the increased emphasis on lawyers' skills that was mentioned at the outset of this commentary as the third theme of curriculum changes that have been made. The goals of the course include the following: placing legal

problems in the broader perspective of business problems generally in addition to developing substantive legal knowledge; integrating various law school courses by focusing on legal problems that cut across various areas of business law; and developing skills such as fact and problem analysis, effective communication, negotiation and advocacy. The course has also enabled students to develop a realistic understanding of the operation of certain legal institutions and the ethical and policy issues that arise in the business law area.

Although the primary focus of the course is not clearly on interdisciplinary work as such, it is on broadening the perspective of the students by exposing them to accounting, economic policy and other issues, and in this respect outside professionals - underwriters, venture-capitalists, evaluators, accountants, economists and representatives of regulatory agencies are brought into the classroom to discuss specific problems. The purpose is not to develop trained specialists in business law as such but to provide a depth and breadth of study not found in most business law courses. The course concentrates on four stages of the life cycle of a corporation from incorporation to reorganization, and classroom sessions are on problem-solving through participation in simulated exercises where drafting and negotiation skills are tested. Evaluation is based on written assignments and a research paper has been required in the past.

The Faculty has also introduced a number of other courses that emphasize lawyering skills through clinical legal education again reflecting the third theme of curriculum changes made during this period. In 1973-74 a course entitled Problems Encountered in Community Law Clinics first appeared. In 1976-77 a Clinic Programme for 7 hours credit was introduced

which was offered for several years. The purpose of the Programme was to provide, in a clinical setting, a study of the practice and function of the legal system and how it applies to low income persons and groups. Special emphasis was given to a consideration and evaluation of the applicability of traditional legal and ethical values in this context. In this Programme, students were expected to interview and advise clients under the supervision of the Director of the Programme on problems relating to immigration, consumer, welfare, unemployment insurance, workmen's compensation, and other public assistance matters. The students were assessed on their casework, including their ability to: analyse the issues involved; carry out acceptable research; prepare a case for presentation in court or before tribunals; successfully negotiate the case, draft documents and advise and assist clients. They were also evaluated on their participation in seminars and on assignments.

In 1981-82 a new Clinical Research Programme was introduced that builds and expands on the Clinic Programme and traditional legal courses as well. The new programme is designed to permit second and third year students who are working in a clinical setting to prepare a research paper relevant to their work or experiences on topics similar to those studied under the Clinic Programme mentioned above. Papers may take the form of a traditional academic writing assignment, or indeed, any other approved form including memoranda or cases personally handled by students, handbooks or other educational instruments, and briefs for presentation to private or public agencies.

In connection with the clinical education courses, it is also worth noting the array of procedure or advocacy courses that have been developed at the Law School. Advanced Evidence Problems, Advanced Civil Procedure, Advanced Criminal Law, Criminal Procedure, The Practice of Criminal Law, and Trial Advocacy have contributed much breadth and depth to the study of litigation-oriented problems. These courses are also worth

mentioning because they illustrate the invaluable help that the Law School derives from a great number of distinguished practitioners who add a very special dimension to the curriculum in a wide variety of subjects.

These developments in substantive courses have built on the traditional basis of legal education and have broadened and strengthened that basis in different ways, in some cases by adding the new perspective of another discipline such as economics or philosophy, in others by re-evaluating basic legal values and emphasizing different legal skills. This attempt to broaden and strengthen the teaching and study of law has been mirrored in the regulations that govern research and course selection in the Faculty. In order to facilitate in-depth and interdisciplinary research, in 1976 the Faculty approved a programme in Directed Research. The calendar describes the programme as follows:

> To encourage original (including inter-disciplinary) doctrinal or empirical research, third year students only may gain credit hours by participating in the Directed Research Programme. The selected topic must make conceptual sense, have sufficient academic content and be pursued by feasible research methods. The project should preferably aim at publishable conclusions, in whole or part or by adaptation, for instance in a journal article, in written submissions to a ministry, law reform agency or other governmental or professional committee, or for presentation by special-interest groups, such as consumers' groups ...
>
> Students wishing to conduct research are encouraged to approach a suitably interested faculty member to act as supervisor. Supervision may be divided, and in an interdisciplinary project may include a supervisor from outside the faculty. The Committee will determine approval of topic, plan of supervision and hours credit. Credit hours may be confined to either term, or be spread over both terms.

This programme is also used as a model for supervision in the clinical research programme discussed earlier.

Other regulations govern student research in the Faculty. In order to ensure that research was of a high quality and to ensure that students could be selective in their approach if they so desired, beginning in 1969-70 each third year student was required to take one subject which involved a substantial writing requirement. In 1973-74 all students were required to satisfy at least one course by research and writing in either second or third year. In 1975-76 no second or third year student could take more than five essay courses in total in an academic year and no more than three single term essay courses in a term.

One final provision respecting course selection should be mentioned. It has already been noted that traditional core courses form the nucleus of most students' studies even though there have been substantial changes in the curriculum to broaden the perspective of a law student's education at Toronto. To encourage the development of that broader view, students are required to take at least one course that has a jurisprudential or overview approach that is separate and distinct from a doctrinal subject. Courses such as Legal History, Legal Process, Economic Analysis of Law, Public Policy Formation, Law Reform, and Jurisprudence are classified as perspective courses because they deal with the nature, source or purpose of legal regulation in general rather than with the study of legal doctrine in a particular area.

Master of Studies in Law

The undergraduate programme, it has been seen, has undergone many changes that have been designed to strengthen traditional approaches to legal education. The changes have also attempted to broaden that education and to bring its professional dimensions into the mainstream of liberal scholarship. While an emphasis has been placed on moving law students and legal studies towards other disciplines, the Faculty is now proposing a Master in Legal Studies Programme to assist those in other disciplines to develop a sophisticated appreciation and understanding of legal analysis, reasoning and research. While there are, of course, a number of scholars across Canada undertaking research and writing in fields interacting with law who have been able to develop their skills without the assistance of formal training and study, we believe that the potential for high quality interdisciplinary work will be increased if a formal programme were available. We have, therefore, proposed a one-year degree in law based on similar programmes at Yale and Stanford designed to provide a formal introduction to legal analysis, reasoning and research for scholars who do not wish to practise law but whose work would be enhanced by a greater understanding of law and legal institutions. We expect only a small number of scholars, certainly not more than five, to be enrolled in the programme each year. They would normally be drawn from academic positions although we have not excluded the possibility of accepting applicants from appropriate non-university settings. The rationale for making the study of law available to persons whose primary interests

lie outside law is to enhance the potential which we have been developing for rigorous interdisciplinary scholarship and policy analysis. Such work should contribute to a superior understanding of law as a central social institution and this understanding will be of benefit to both legal and non-legal scholars alike.

Conclusion (ital.)

The changes in legal education at Toronto over the past twelve years have reflected legal education's dual roles - one of preparing students for a professional calling and the other of encouraging research, scholarship and learning as one of the Humanities and Social Sciences in the University. Reform reflects a commitment to both those tasks. There has been a maintenance and strengthening of the teaching of common law and traditional legal subjects and a broadening of that education to encourage interdisciplinary work and new perspectives in law. Although in this latter respect the Law School may be best known for its Law and Economics Programme, interdisciplinary work has not in any way been restricted only to economics as the Family Law and Social Welfare Programme, the Family Law and Social Policy Workshops, and the Legal Theory Workshops and the many other courses taught on an interdisciplinary basis confirm.

This attempt to broaden and strengthen the programme is continuing as illustrated by three new courses for the 1982-83 academic year. In the coming year we have added a course entitled Social Science Methods. The course is designed to introduce and develop social science research techniques for the study of law. The course has five parts. The first involves a consideration of several landmark

studies exemplifying the use of social science methods in legal research. The second part develops principles of theory testing, measurement and causality. Applications of these principles then are explored in terms of various research strategies, including the use of survey, experimental, observational, historical and archival methods. The use of statistical packages in computer-based research of various kinds is explored in some detail. Finally, attention is given to ethical issues involved in social science research methods. The course is being taught by a sociologist who has been cross-appointed to the Law School.

Another research course is being introduced entitled "Law Review Seminar". This course is designed to attract highly motivated students with research and writing skills who are interested in producing an integrated series of research papers on a topic of current interest for publication in the Faculty of Law Review. For the 1982-83 academic year, the topic will be "The Canadian Judicial System" and will most likely concentrate on the role of judges.

Finally, a course entitled "Law, Ethics and Social Policy" is to be introduced. It will explore in a systematic way the major ethical theories that fall within our legal tradition and help clarify the various issues of social policy which now confront our legislatures and courts. The course will begin with an examination of the major ethical theories (e.g. utilitarianism, libertarianism, natural rights, etc.). Then, using these ethical theories as tools, a number of specific social policy issues will be studied. The aim of the course is to show that the ethical theories under consideration have different specific and practical implications for how and why the law should respond to particular problems. While the selection of substantive

issues will vary to reflect contemporary debate, in general the focus will be on: issues of personal obligation (e.g. abortion, euthanasia, obscenity); issues arising between individuals in particular social relationships (e.g. in the workplace, such as affirmative action, industrial democracy, occupational health); and issues which raise questions about our responsibilities in the widest possible setting (e.g. foreign aid, immigration, and environmental obligation to future generations). Throughout the course consideration will also be given to the appropriate use to which adjudicators may put the normative principles which underlie the various ethical theories in their resolutions of policy disputes.

This last course further emphasizes the broad interdisciplinary approach at the Faculty and the Faculty's determination to develop further in the area of philosophy and jurisprudence. Moreover, all these new courses are well within the approach to change that has developed over the past decade in Toronto. They build on an excellent basis of traditional legal study and analysis and they broaden that study and analysis through the examination of law from different perspectives.

Frank Iacobucci,
Professor and Dean,
Faculty of Law,
University of Toronto.

OVER

DALHOUSIE UNIVERSITY
FACULTY OF LAW
HALIFAX, NOVA SCOTIA

U. of T Hockey

DATE Oct. 26, 1981

N.B

TO: ALL FACULTY MEMBERS

FROM: Innis Christie

SUBJECT: Faculty Seminar: Friday, November 6, (NOT Friday, Oct. 30).

Professor Rob Prichard of the University of Toronto Faculty of Law will be with us on Friday, November 6, not Friday, October 30 as indicated in my previous memorandum. While I am only to be faulted, not credited, for the change, it does relieve a strenuous schedule for this week.

I attach Professor Prichard's memo. addressed to "The Faculty". Copies of the materials to which he refers are available from Mrs. Moriarty for those who plan to attend the seminar.

Innis Christie

VAT

(1) Description of [illegible] Abolition of R.A. loan (see p. 28)

Resolution on Foreign Policy (p. 36)

Multilaterals (40)

Resolution A: (47)

[illegible] Exchange (p. 52)

Rec'd March 11 1982

UNIVERSITY OF TORONTO

Faculty of Law

Ron

Thanks for your

With compliments

kind words

very

today. Hope the

enclosed do the

trick. Rob.

FACULTY OF LAW,
UNIVERSITY OF TORONTO

Toronto M5S 1A1, Canada

GRADUATE PROGRAMME

YEAR	PROGRAMME	IN RESIDENCE	OUT OF RESIDENCE
1980 - 1981	LL.M.	14	9
	D.Jur.	1	8
1981 - 1982*	LL.M.	16	3
	D.Jur.	3	7

* as of March 9, 1982

Toronto

July 8, 1974

1. Jerry's list of writings: fairly big job.
2. where to deal with Jerry Johnston?? (N.B) → a very imp. point

v. imp. →

3. send it to Jerry Moores.
4. Brown's letter to WPM – 13 [illegible] 73 ?
5. check [illegible] citations.
6. a [illegible] to Toronto.

November 3, 1979

1. An up date on Jerry's C.V: as detailed as possible.
2.

FACULTY OF LAW
UNIVERSITY OF TORONTO
TORONTO M5S 1A1

ASSISTANT DEAN AND
DIRECTOR OF ADMISSIONS

April 28th, 1980

TO: SECOND AND THIRD YEAR STUDENTS (1980-81)

With this letter, you will receive a set of course descriptions for the courses to be offered next year, option selection forms, instruction sheets, regulations and tentative timetables. We urge you to read this letter and the material carefully since a lot of time could be saved by your doing so.

We request that you complete your choice of option form and submit it to Ms. Louise Maty, Registration & Records Officer (please mark your envelope "Option Form") as soon as possible.

You will not commit yourself irrevocably by submitting your form early. There will be a period at the beginning of each term to permit "shopping" and switching of options. We will also process any changes of which you notify us during the summer.

Remember that many courses will be restricted in their enrolment. This pertains particularly to seminar courses, which cannot serve their desired function if enrolment is too high. It does not necessarily follow that the early bird will get the worm, but the exigencies of administration will load the odds in his or her favour.

There is still a possibility of changes in courses offered, either as between terms, or as to new subjects. We shall try to keep you informed throughout the summer.

Some of the requirements differ from those which will be listed in the 1980-81 calendar. Since the enclosed material is more up-to-date, it is important that you follow the instructions contained in these pages.

Unfortunately, it is unlikely that you will get all of your first choices. The realities of timetabling make it necessary to conflict certain courses. Ms. Reva Landau, a member of our student body, will assist us in completing individual student programmes. She will be available at the Law Faculty, from Monday, June 9 to aid you in selecting courses. Her telephone number will be 978-6514. Please feel free to call her with your questions or to make an appointment. Her office hours will be:

9:00 a.m. to 4:30 p.m.

Please realize that she will not be able to tell you whether you got into all the courses you requested until all the option forms received by the first deadline can be processed. This will take considerable time.

/ continued . . .

We hope to be able to send your individual timetable to you in August. This way, if there are any problems, we should be able to sort them out before registration day.

If you are in doubt as to your choices, members of the Faculty are ready to discuss the questions with you. You may want to talk to me, Dean Iacobucci, Associate Dean Alexander or your First Year small group instructor. We will try to help you in any way we can.

Third year students who have not taken Constitutional Law in second year are reminded that they must take that subject in their final year. You are also reminded that in either second or third year you must take one from a group of "perspective" courses. Information concerning perspective courses is set out at page xiii.

Registration for the 1980-81 session is on Tuesday, September 2, 1980. Second and Third Year students register in Classroom C. The first day of classes is Wednesday, September 3.

Marie Huxter
Assistant Dean

Regulations

General Regulations

1. All students are given the freedom to choose their own programme, but it will be appreciated that a balanced programme of studies is in the student's best interest. Each student's programme must, therefore, be approved by the Council of the Faculty and all students are encouraged to seek the advice of faculty members before making their choices.

2. Some courses require prerequisite or corequisite courses and students should note these requirements. The responsibility of meeting them rests solely upon the student. The administrative staff of the faculty will endeavour to bring any omissions to the attention of the students but assumes no responsibility for failure to do so. IT IS PARTICULARLY IMPORTANT FOR SECOND YEAR STUDENTS TO BEAR IN MIND THEIR LIKELY THIRD YEAR CHOICES WHEN PLANNING THEIR PROGRAMMES.

3. In certain courses enrolment is restricted. Every effort will be made to meet the students' wishes but absolute freedom of choice cannot be guaranteed and the Faculty reserves the final right to assign students to courses. Owing to limitations of space and hours certain timetable clashes are unavoidable.

4. Some courses are offered in two or more independent sections in the same term or terms. Please indicate the section you want when filling out your option form. If you do not get into the section you want, we will place you in the other section if there is no conflict with your other choices. If you do not make the cut-off for the section you want and there is a conflict with the second section, we will not be able to offer you the course.

Adding and Dropping Courses

The following regulations concerning student withdrawal from courses were approved by Faculty Council on March 13, 1974:

"1. Two Week Period. The deadline for student withdrawal from:
(a) courses for which there is a waiting list
(b) courses for which, in the opinion of the instructor, student participation is of such a nature that loss of a student would significantly affect the teaching of the course
-- shall be a date approximately 2 weeks after the beginning of the term in which the teaching of the course commences.

2. Seven Week Period.
(a) the deadline for student withdrawal from any course not referred to in #1, shall be a date approximately seven weeks after the beginning of the term in which the teaching of the course commences;
(b) if reading week is earlier than the seventh week of the second term, the deadline for withdrawal from courses referred to in #2(a) will be the Friday before reading week.

3. Variation or exemption from the operation of these rules shall be by petition to the Course Approvals Committee, and the Assistant Dean and Director of Admissions shall publicize the availability of the petitioning process.

4. The examination timetable for each term shall be posted before the expiry of the period referred to in #2.

5. A student may, with the instructor's consent and subject to the usual power of the Course Approvals Committee to monitor student programmes, add a course at any time during the school year.

6. These rules are subject to the minima and maxima course hours currently in force."

The deadline for student withdrawal from courses falling within #1 ("Two Week Period") will be Wednesday, September 17, 1980 for full year and first term courses and Monday, January 19, 1981 for second term courses.

The deadline for student withdrawal from courses falling within #2 ("Seven Week Period") will be Wednesday, October 22, 1980 for full year and first term courses and Monday, February 23, 1981 for second term courses.

The deadline for adding a full year or first term course will be Wednesday, September 17, 1980. The deadline for adding a second term course will be Monday, January 19, 1981. After these deadlines, #3 and #5 (above) will apply.

Course Approvals Committee

After registration (Sept. 2, 1980), students wishing to make any changes in their timetables are required to complete a Change of Option Form. These forms will be available in the Registration and Records Office. (Room 110, Falconer Hall). Requests to add or drop a course that fall within the allowed time periods need only indicate the desired change. It is not necessary to state your reason for the change. Requests falling outside the operation of the above regulations will be considered petitions and must indicate the reason for the change. In all cases the Change of Option Forms are submitted to the Course Approvals Committee.

Satisfaction of Courses by Means Other Than Examinations:

(a) Each candidate for a degree must satisfy at least one of his or her courses by a mode of evaluation requiring research and writing, rather than an examination.

(b) The nature of the research and writing required (e.g. the length and number of papers) is to be determined by the course instructor.

(c) The requirement may be satisfied in either Second or Third Year.

(d) No student in Second or Third Year shall take (i) more than five paper courses in total in the academic year, (ii) more than three single term paper courses in either term. A course extending over two terms shall be treated as a second-term course, unless, with the approval of the instructor, the student undertakes to submit the paper as a first term paper, according to the appropriate deadline for such papers. Where the means of evaluation is a choice of a paper or an examination and the student chooses to write a paper, the course will be considered a paper course. Some adjustment may be involved where a student has chosen to do a course pursuant to the Directed Research Programme.

(e) Papers written in fulfilment of the requirements of first term paper courses are to be handed in no later than January 31st of the term following (save with the approval of the Course Approvals Committee to be given in exceptional circumstances).

(f) The attention of all students is drawn to the "Statement of Policy with Respect to Essays and Papers", previously adopted by Council, and found in the current calendar of the Faculty. The statement reads as follows:

"Because there may be areas of overlap in the material covered in different courses, the Council of the Faculty of Law has passed the following resolution for the guidance of students submitting essays or term papers in compliance with course requirements:

> 'The Council has observed the potential for overlapping of the areas of study in certain of the second and third year optional courses. It is desirable to record as a policy statement for the guidance of students and faculty in these courses that, subject to the approval of both instructors, there is no objection to a student preparing and submitting to two instructors papers on aspects of the same topic provided that he or she makes a full disclosure of the fact to both instructors and is able to satisfy each instructor that the additional work differentiating each paper from the other represents, when taken with the common elements, a satisfactory fulfilment of the writing and research requirement for his or her course.'"

Alternative Methods of Evaluation

On April 3, 1974 Faculty Council approved regulations concerning alternative methods of evaluation. The result is that changes from the published modes of evaluation will be permitted on an ad hoc basis in very limited circumstances. In such cases, the following regulation applies:

> "Notwithstanding that a course lists only an examination method of evaluation, an instructor may permit a student who has an existing background of experience or knowledge in the substantive area covered by the course, sufficient, in the instructor's opinion, to justify concentration by that student in particular parts of the substantive area, to satisfy the course evaluation requirements by a paper or papers. In all cases, such approval by the instructor will be subject to the further approval of the Course Approvals Committee, with respect to the individual student's

total research and writing obligations. In each case, the instructor shall advise the Course Approvals Committee of the grounds upon which he or she is granting permission.

In all other cases, students shall be evaluated according to the method or methods prescribed in the approved course description."

Those instructors with non-paper courses who are willing to supervise a limited number of papers are required to indicate this in their course descriptions. The regulations which apply in such cases are as follows:

"An instructor may provide in his or her course description that a limited number of students may choose to be evaluated by a method of evaluation other than that generally established for the course. In such cases the following rules shall apply:

1. The instructor shall announce the number of students who may be permitted to select this option, within the first week of classes in that course.

2. If more students wish to elect the option than the permitted number, the students who will be permitted to select the option will be chosen by lot.

3. The course instructor will report the names of the students electing such option to the Course Approvals Committee."

Procedures Relating to Marks and Marks Meetings

The Faculty of Law assigns pseudonyms to every student who will be writing an examination. Only essay courses are assigned marks without the pseudonyms. With examinations, each instructor will mark the paper submitted and assign the mark to the given pseudonym and submit these to the Records Office. Under no circumstances do instructors obtain the name of the student prior to registering the mark.

Courses are given a weighting of 3 for a 90 hour course, 2 for a 60 hour course, 1 1/2 for a 45 hour course and 1 for a 30 hour course. The student's average is computed by combining the weighted marks in all the courses he or she has taken in the year. After the marks of every student are registered and averaged, the Records Office then prepares a list of the students in each year based on their arithmetic average. These standings are presented by pseudonym so that no one is able to know the names of the individuals with a particular ranking or standing. The lists are compiled in such a way that one can tell at a glance the marks a student has obtained in each course he or she has chosen.

In addition to the class standings and individual student performances, statistical information is prepared for each course indicating the number of A's, B's, C's, D's, and failures in the course as well as the overall average mark in the course. Where two or more sections of a course are offered these are shown comparatively.

Marks Meetings of the Faculty Council are held for each year in May and June. The meetings establish the number of students coming within the Faculty grading classes: A(Honours), B, C, students writing supplemental examinations and failures. (The law school also assigns course grades of A, B+, B, C+, C, D, and F, as mentioned below). The marks' meeting also chooses those students who will be awarded prizes. The information given to Faculty at the meeting, in particular the class standings, is on sheets which are marked and returned at the end of the meeting. In addition, no instructor is permitted to keep his or her own list of the standings in the class since these, apart from the Honours students, are to be kept confidential.

It is a general rule that all cases are discussed without the Faculty knowing the identity of the student concerned. The Faculty will look at the overall performances of the class to establish the point where the A's, B's, and so on will be drawn and will also look at overall performances to establish failures and supplemental results.

There are some general operating rules with respect to marks. Some of these are found in the calendar and are reproduced here:

EXAMINATIONS

> Examinations for all years are held after the close of classes in the first and second terms. A candidate may not present himself or herself at any examination before having completed the examinations of and been granted standing in the previous year; and no candidate will be allowed to write the examinations of two years within the same calendar year.

> The following marking scheme is used in individual subjects: A: 80 or over; high B (B+): 75-79; B: 70-74; high C (C+): 65-69; C: 60-64; D: 50-59; F: below 50. Grade "A" (Honours) is awarded to a student who obtains standing with an average of 80% or better; "B" to a student who obtains pass standing with an overall average of 70-79%; "C" to a student who obtains pass standing with an overall average of 60-69%. Students receive only a letter grade for each subject and an overall standing of "A" (Honours), "B" or "C".

> In order to be granted standing in any year, a student must obtain at least 50% in each subject and a weighted average of at least 60%. A student who has a mark of less than 50% but not less than 40% in one subject and a weighted average of 62%, shall be considered to have passed the year. A student who has a failing mark in any subject may, at the discretion of the Faculty, have his or her mark raised or be required to pass a supplemental examination in order to pass the year. A student who has no mark less than 50% but a weighted average of less than 60%, will normally be deemed to have failed the year but may, at the discretion of the Faculty, be required to write up to three supplemental examinations in order to raise his or her average to 60%.

The foregoing rules are subject to an overriding discretion which the Faculty Council exercises to pass a student clear or to allow supplemental examinations to students who would, by the strict application of the rules, otherwise fail.

Petitions

Quite often a student feels he or she has written the examinations under some impediment and wishes to notify the Faculty of such circumstances. The following applies to students requesting special consideration:

> "In special circumstances, such as illness or other severe strain, the Faculty may grant aegrotat standing or permission to write one or more supplemental examinations. Normally a request for aegrotat standing should be supported by a medical certificate. Requests based on special circumstances should be presented as early as possible and not later than two weeks after the end of the examinations. If possible, the student should consult with the Dean's Office prior to filing the request to discuss the nature of the information which should be supplied to assist the Faculty in reaching a decision."

Appeals Procedure

The following policy was approved by Faculty Council on April 2, 1980. We are currently in the process of seeking Governing Council approval:

Regulations for Academic Appeals

1. An academic appeal is an appeal by a student in the Faculty of Law against a decision
   (a) As to his or her success or failure in meeting an academic standard or other academic requirement, or
   (b) As to the applicability to his or her case of any academic regulation.

2. An academic appeal shall be determined by an Appeal Committee appointed by the Dean to determine that appeal, which committee shall be composed of two students and three teaching members of Faculty Council not participating in the decision appealed from.

3. Written notice stating the nature and grounds of the appeal shall be given by the student to the Dean. As soon as he reasonably can after receipt thereof, the Dean shall appoint an Appeal Committee and shall refer the matter to it. The Dean shall supply a copy of these rules to the student appealing.

4. A student may appeal of right by giving to the Dean's Office notice of appeal, stating the grounds for such appeal, within fourteen days of receiving notice of the decision appealed from. A student may apply for leave to appeal at any time by giving written notice to the Dean's Office stating the grounds of such application. As soon as he reasonably can after receipt thereof, the Dean shall refer the matter to an Appeal Committee who may refuse or grant the application. If the application is granted, the appeal shall proceed according to these Regulations.

5. An Appeal Committee shall, upon receipt of the notice of an appeal or an application for leave to appeal, proceed to fix a date, time and place of the hearing and shall notify the student and the Dean thereof.

6. The student shall have the right to appear before an Appeal Committee in person, with or without counsel or other advisor, and may call evidence and present argument.

7. An Appeal Committee shall also receive such evidence and argument as may be presented by the Dean or the Dean's representative.

8. The Committee may also consider any other evidence relevant to the matter including material presented to the original decision-making body and any report of its deliberations.

9. Subject to Paragraphs 10 and 11, the student shall have access to all documents relevant to the appeal or application for leave to appeal, and shall be provided with copies of documents intended to be relied upon by the Dean or his representative. The student shall supply to the Dean or his representative copies of documents to be relied upon by the student.

10. When a document, or extract therefrom, contains information which is or may be relevant to the issues raised on the appeal, but contains information which, according to the Policy on Access to Student Records of the Faculty of Law, the student is not entitled to see, the Appeal Committee may inspect the document or extract therefrom. If the Appeal Committee is of the opinion that the disclosure of the information is reasonably necessary to the just prosecution of the appeal, and that the information, if revealed, may be of significant weight in determining an issue under appeal, it may direct that the information be communicated orally to the student for the purposes of the appeal.

11. An Appeal Committee may determine the admissibility of evidence tendered in the course of an appeal. In any case where objection is taken to the production of any document or extract therefrom on the basis that it was submitted in confidence, or on some other occasion of privilege, the Appeal Committee may examine the document and determine, in accordance with the law of evidence of Ontario as applied to proceedings in the courts thereof, whether it should be produced.

12. Where it appears that objection may be taken to the production of any document or extract therefrom on the basis that it was submitted in confidence, the Appeal Committee may direct that notice be given to the person who submitted the document that its production may be sought for the purposes of the appeal, any may grant such person status to appear and object to the production.

13. The Appeal Committee may

    (a) Dismiss the appeal or
    (b) Allow the appeal and
        (i) render the decision which, in its opinion, should have been made or
        (ii) remit the matter back to the decision-making body for reconsideration.

14. The student shall be notified of the decision of the Appeal Committee, with reasons for the decision.

15. In the case of an appeal against the grade assigned or the credit given to any essay, test, examination or other written work of any student, there shall be no appeal under the Regulations unless the student first applies for such essay, test, examination or other written work to be re-read by the instructor assigning the mark. Such application shall be accompanied by a deposit in the amount of $10.00, which, if the grade or credit be altered to the benefit of the student, shall be refunded.

16. A student may appeal a decision of the Appeal Committee to the Sub-Committee on Academic Appeals of the Governing Council in accordance with the Rules of Governing Council.

Marks for First Term Courses

For second and third years, final examinations written at the end of the Fall Term and all papers written as part of a Fall Term course requirement that are submitted to the instructor before the end of the Fall Term examination period are to be marked and the marks submitted to the Records Office no later than three weeks after the commencement of the Spring Term.

Students may, upon application to the Records Office, be informed of the letter grade assigned by the instructor to Fall examinations and papers.

Final examinations are to be retained and students are to be permitted to see them or, if they wish, to obtain a xerox copy of them (at the student's expense) within a reasonable time after the marks are available.

Whether the instructor makes written comments on an examination paper shall be within his or her discretion, but he or she should be available to discuss with the students the examination or paper within a reasonable time after the marks are available.

Access to Student Records:

The following policy was approved by Faculty Council on March 12, 1980. We are currently in the process of seeking Governing Council approval:

Resolved that:

In implementation of the policies on access to student academic records established by the University's "Policy on Access to Student Academic Records Maintained by Undergraduate Academic Divisions of the University of Toronto (1979)", and in recognition of the small size, announced policies and particular needs of the Faculty of Law as well as the diversity of and need for flexibility within the University, the Faculty Council adopts the following statement on access to student records for the Faculty of Law:

1. Students may examine their academic records and have copies made at their own expense, with the exception of:

   (i) letters of reference and any other material submitted on a confidential basis in support of a student's application for admission;

   (ii) other information that Faculty Council has or may determine by resolution should not be revealed to students. By virtue of previous resolutions of Faculty Council, it has been determined that students should not have access to their numerical grade in any subject, their numerical average grade in any year, or their ranking within any year.

2. Subject to section 3, members of the academic and administrative staff shall have access to student academic records in the course of their duties, but shall not reveal this information except in the course of their duties or with the permission of the student. In addition, academic and administrative staff members shall not reveal to anyone information that Faculty Council has or may determine by resolution should not be revealed. By virtue of previous resolutions, Faculty Council has determined that numerical grades, numerical averages and student rankings may not be revealed except in support of a student's application for admission to graduate school or for financial support for graduate studies.

3. Members of the academic staff may have access to:

   (i) letters of reference only to participate in the admissions decision or to support a student's application for admission to graduate school or for financial support for graduate studies.

(ii) student's numerical grades, numerical averages and rankings only in order to (a) support a student's application for admission to graduate school or for financial support for graduate studies, or (b) respond to any situation requiring access so long as the Associate Dean's permission is obtained first.

4. For purposes of sections 2 and 3, "graduate studies" includes judicial clerkships.

5. Students may add any written material to their files that is relevant to correcting an inaccurate entry or modifying a misleading statement or impression in their academic records.

6. The Associate Dean is responsible for administering and maintaining this policy.

7. To the extent that this policy expands students' access to their files, it does not apply retroactively.

SECOND AND THIRD YEAR: 1980-81

Students in Second and Third Year are allowed, subject to compliance with prerequisites and corequisites, to choose all their courses, including courses offered by the Centre of Criminology and by the Osgoode - U. of T. Exchange Programme from the same pool of courses. However, the Business Planning Cluster and the Directed Research Programme are available only to Third Year Students.

Each student must take a minimum of twenty-eight hours of courses and a maximum of thirty-two hours so that he or she has a minimum of thirteen hours in each term and a maximum of sixteen hours. These requirements may be varied by the Council of the Faculty for individual students. In addition, each Second Year student must take part in the moot court programme.

In either Second or Third year, each student must take Constitutional Law and at least ONE from a group of "Perspective" courses -- courses primarily concerned with the nature, sources, and purposes of legal regulation in general, rather than with the study of legal doctrine in a particular area. For 1980-81 the courses included in the perspective group are: Canadian Legal History (Risk), Civil Liberties (E. Weinrib), Civil Rights (Morgan), Comparative Legal Studies (Baxter), Economic Analysis of Law (Trebilcock), An Introduction to Comparative Law (Hahlo), Jurisprudence A (Gray), Law Reform (Friedland), The Legal Process (Schiff), Legal Theory: Selected Texts (E. Weinrib), Public Policy Formation (Macdonald and Prichard) and a directed research topic upon the recommendation of the Directed Research Administration Committee and with the approval of the Short-Term Curriculum Committee.

Each student must satisfy at least one of his or her courses by a mode of evaluation requiring research and writing, rather than an examination. This may be done in either Second or Third Year. As a general rule, any course in which there is no examination will meet the requirement. However, certain of the problem-solving courses may not contain a sufficient element of research and writing to meet Faculty Council criteria. The following courses do not satisfy the research and writing requirement:

Advanced Administrative Law (Risk) - may or may not satisfy the writing requirement
Bankruptcy and Receivership Problems (McKinlay)
Canadian Legal History (Risk) - may or may not satisfy the writing requirement
Community Planning (A. Weinrib) - may or may not satisfy the writing requirement
Economic Analysis of Law (Trebilcock)
Economic Regulation (Trebilcock)
Collective Bargaining in the Public Sector (Goudge)
Land Development and Commercial Real Estate Problems (Gross & A. Weinrib)
The Law of Collective Bargaining (Prichard)
The Law of Labour Relations (Beatty)
Law Reform (Friedland)
Native Rights (Goudge)
Public Policy Formation (Macdonald & Prichard)
Products Liability (Waddams) - may or may not satisfy the writing requirement
Selected Problems in Competition Law (Dunlop & Trebilcock)
Social Security Law (Beatty)
Trial Advocacy (Stockwood)

Courses outside the Law School

Students may take, as part of the LL.B. requirements, a maximum of three courses in each of their second and third years from among those offered to law students by the Centre of Criminology. There is no limitation on the number of courses a student may select on the Osgoode Hall - U. of T. Exchange Programme.

The following regulations apply for courses other than those at the Centre of Criminology which are open to law students and those on the Osgoode Hall - U. of T. Exchange Programme:

(i) A student may, subject to (ii), take "outside" courses during the second and third year provided that his/her overall programme includes a minimum total of 52 credit hours taken in the law school during the last two years with a minimum of 26 credit hours in each year.

(ii) The student must petition the Course Approvals Committee.

(iii) The student must demonstrate that:

- (a) The course or a similar course was not taken as part of the student's training prior to law school;
- (b) The course bears a relationship to the rest of the student's proposed LL.B. programme;
- (c) The course is not being taken for credit towards another degree;
- (d) The level of the course (i.e. introductory, advanced, graduate) is reasonable in light of the student's prior training;
- (e) The Dean's office has made the necessary administrative and financial arrangements;
- (f) The student's overall programme meets the requirements set by the Faculty Council.

(iv) If the student is able to demonstrate each of the points in (iii), the petition will be approved.

(v) The Committee shall assign an appropriate number of credit hours to the course.

(vi) The grade earned in the outside course will be included on the usual basis as part of the student's average.

(vii) The course withdrawal requirements of the other department or institution apply except where those requirements are more liberal than those of the Faculty of Law. In the latter case, rules of the Faculty of Law apply.

N O T E

In 1970, the Annual Meeting of the Conference of Governing Bodies of the Legal Profession in Canada expressed the opinion:

> "... that adequate knowledge of at least the following subject areas is of prime importance for the practice of law in Canada:

1. Contracts
2. Criminal Law and Procedure
3. Real Property
4. Personal Property
5. Torts
6. Civil Procedure
7. Constitutional Law
8. Family Law
9. Evidence
10. Wills and Trusts
11. Commercial and Corporation Law."

Apart from Constitutional Law, these subjects are in no way compulsory either at the law school or as prequisites for entrance to the Bar Admission Course in most Canadian provinces. The majority of provincial Law Societies accept the LL.B. degree at face value and hope to be able to continue this policy. However, if significant numbers of students present themselves for admission to the Bar without an adequate background in these basic areas, the Law Societies may be forced to set entrance requirements. Students intending to practice law in one of the common law provinces should therefore take careful note of the above list.

For those considering articling and practising outside the province of Ontario, the addresses for the provincial Law Societies are available from the Assistant Dean.

The following subjects are covered in the teaching term of the Bar Admission Course:

1. Civil Procedure I
2. Civil Procedure II
3. Creditors' and Debtors' Rights
4. Family Law
5. Income Tax
6. Law Office Administration
7. Professional Conduct
8. Accounting in a Law Office
9. Corporate and Commercial Law
10. Real Estate and Landlord and Tenant
11. Estate Planning
12. Administration of Estates
13. Legal Aid
14. Criminal Procedure

INSTRUCTIONS FOR FILLING OUT CHOICE OF OPTION FORMS

1. Remember that the timetable included in these materials is tentative only. Anything and everything in it is subject to change. It is included to aid you in choosing your courses, and we hope there will be as little change as possible, but please keep in mind that it is not final. You should include several alternate choices.

2. You will not be allowed to take a conflict.

3. Some courses are offered in two or more independent sections in the same term or terms. Would you indicate the course name and the professor's name when filling out your option form. You may use your Lucky Chance letters to attempt to get the section you want. If you do not get into the section you want, we will place you in the other section if there is no conflict with your other choices. If you do not make the cut-off for the section you want and there is a conflict with the other section because of the courses you have chosen, we will not be able to offer you the course.

4. Often enrolment in a course must be limited -- either to preserve the seminar nature of the course or to keep class size within the 75-person capacity of a classroom. Forms must be processed throughout the summer as they come in, but it is not entirely fair that the last choice of a student able to send the form back quickly should always take priority over the first choice of a student who may not have such ready access to postal service. To make selections somewhat more equitable, you may weight your chances by using Lucky Chance letters. Each Third Year student will be allowed to indicate one course for the admission to which he or she will, subject to deadline requirements, have priority over Second Year students. Third Year students may use the letters A, B, and C. Second Year students may use B & C. You may use each letter only once. Lucky Chance Deadline #1 is Friday, June 13th, 1980. Forms must be received at the Records Office, Faculty of Law, to meet the deadline. If a course is over-enrolled at that time, students who have marked the course with an A will be admitted first, then students who marked the course with a B, then students who marked the course with a C and finally students who left the course unlettered. When one group -- the A's, the B's, the C's or the unlettereds - exceeds the class-size, the fortunate students from that group will be chosen by drawing names from a hat. Lucky Chance Deadline #2 is Friday, July 18th. The final Lucky Chance Deadline will be Friday, August 15th.

5. Please use the following system in filling out the choice of option form. (We have provided you with a working copy and a copy to be submitted to the Records Office) In the spaces on the form, PRINT the titles of the courses you want to take and the names of the professors. Put the courses you want most at the top of the list,

and the ones you want least at the bottom. If, for example, a course third from the top of your list conflicts with a course fourth from the top, you will be given the one third from the top. Insufficient hours will be made up from the list of alternates. This list should be filled out with the alternates you want most at the top, and the ones you want least at the bottom. You are advised to indicate at least three alternates. Students are asked to include one extra alternate to their choice of perspective courses.

6. It is important to indicate which term or terms you want for each course. A checkmark is sufficient, but you may find it more convenient to write in the number of hours. This will help you make sure you have a satisfactory number of hours in each term. See the sample form. (pageXiv)

7. Except with the approval of the Course Approvals Committee, based on the nature of the student's overall course selections, no student in his or her second and/or third year may enroll in more than one of the Directed Research Programme, Business Cluster Programme and the Clinic Programme.

8. Students applying for the Directed Research Programme, Business Planning Cluster or the Clinic Programme should submit a Choice of Option Form based on the assumption that you will be taking regular courses (unless you have been notified of acceptance into the programme). Otherwise, if you do not get into the programme, you may have difficulty with over-subscribed courses.

9. Students wanting to take courses at Osgoode are reminded to allow for travelling time when they are planning their schedules. At least one hour must be left between classes here and at Osgoode.

10. The courses at the Centre of Criminology are not examination courses. Students will be required to submit a paper or papers.

SAMPLE

CHOICE OF OPTION FORM

NAME: MARY SMITH YEAR II

ADDRESS: _____ TEL. NO. _____

These are the courses I want to take (please PRINT: course names, numbers and Professors' names).

			1st Term	2nd Term	Full Year	Lucky Chance Letter
1.	Administrative Law (Risk)	202F	4			C
2.	Business Organizations (Iacobucci)	212Y			2	
3.	Wills & Trusts (Scane)	289Y			3	B
4.	Constitutional Law (Alexander)	229S		4		
5.	The Legal Process (Schiff)	265F	3			
6.	Family (Green)	244S		3		
7.	Labour (Prichard)	263S		2		
8.	Criminal Procedure (Mewett)	232F	2			
9.						
10.						
11.						
12.						
13.						
14.						
15.						
	TOTALS:		9	9	5	
	BALANCE:		14/14			

These are my ALTERNATE CHOICES (PLEASE PRINT):

1.	Evidence (Mewett)	241Y			2	
2.	Civil Procedure II (Sopinka)	218F	2			
3.	International Law B (Morris)	253F	3			
4.	Medical Jurisprudence (Dickens)	267S		2		
5.						

Courses Offered in First Term Only

Directed Research Programme 1
Administrative Law (Risk) (202F) 4
Banking Law (Baxter) (210F) 4
Business Organizations (Ziegel) (212F) 4
Civil Procedure II (Sopinka) (218F) 5
Civil Rights (E. Weinrib) (225F) 6
Commercial and Consumer Transactions (Trebilcock) (220F) 6
Common Market Law (Graham) (221F) 6
Communications Law I: Control of the Mass Media (Grant & Janisch) (222F) 7
Comparative Law, Introduction to (Hahlo) (255F) 8
Comparative Legal Studies (Baxter) (226F) 8
Conflict of Laws (Green) (227F) 9
Corporate Income Taxation (Couzin) (207F) 9
Criminal Procedure (Mewett) (232F) 9
Criminology (Green) (233F) 10
Current Developments in Commercial Law (Ziegel) (215F) 10
Debtor and Creditor (Laskin) (235F) 11
Economic Analysis of Law (Trebilcock & Prichard) (236F) 11
Economics for Non-Economists (Dewees) (238F) 12
Environmental Control (Dewees) (239F) 12
Estate Planning (Goodman) (240F) 13
Evidence Problems (Schiff) (242F) 13
Family Law (Gathercole) (244F) 14
International Criminal Law (Friedland) (250F) 14
International Law B (Morris) (253F) 14
Land Development (Gross & Weinrib) (243F) 15
The Law of Labour Relations (Beatty) (263F) 15
The Legal Process (Schiff) (265F) 16
Municipal and Planning Law (Makuch) ((271F) 16
Native Rights (Goudge) (268F) 17
Products Liability (Waddams) (273F) 17
Public Policy Formation (Macdonald and Prichard) (297F) 18
Restrictive Trade Practices (Dunlop) (278F) 18
Securities Regulation (Coleman) (279F) 19
Selected Problems in Family and Social Welfare Law (Green) (280F) 19
Selected Problems in the Law of Torts (Dunlop) (298F) 19
Social Security Law (Beatty) (269F) 20
Trade Marks & Unfair Competition (Hayhurst) (285F) 20

Courses Offered in the Second Term Only

Directed Research Programme (301S) 21
Business Planning Cluster (McDonnell, Dey & Iacobucci) (300S) 21
Clinic Programme (Gathercole) (200S) 23
Accounting (Bies) (201S) 25
Administrative Law (Janisch) (202S) 26
Admiralty Law (Jones) (203S) 26
Advanced Administrative Law (Risk) (293S) 27

Advanced International Law (Morris) (208S) 28
Bankruptcy and Receivership Problems (McKinlay) (211S) 28
Canadian Legal History (Risk) (214S) 29
Children (Green & Irving) (216S) 29
Civil Liberties (Morgan) (217S) 30
Collective Bargaining in the Public Sector (Goudge) (219S) 30
Commercial and Consumer Transactions (Ziegel) (220S) 31
Communications Law II (Janisch and Grant) (223S) 31
Community Planning (Weinrib) (224S) 32
Conflict of Laws (Baxter) (227S) 32
Constitutional Law (Alexander) (229S) 33
Constitutional Problems and Constitutional Change (Laskin) (291S) 33
Consumer Law Seminar (Ziegel) (230S) 33
Economic Analysis of Law Research Seminar (Trebilcock & Rea) (245S) 34
Economic Regulation (Trebilcock & Halpern) (237S) 34
Family Law (Green) (244S) 35
Industrial Property (Hayhurst) (246S) 35
International Business & Investment (Instructor to be announced) (249S) 36
International Law & Foreign Policy (Morris) (254S) 36
Jurisprudence A (Gray) (257S) 37
Labour Arbitration (Schiff) (260S) 37
Law of Collective Bargaining (Prichard) (263S) 38
Law Reform (Friedland) (264S) 38
Legal Theory: Selected Texts (E. Weinrib) (295S) 39
Medical Jurisprudence (Dickens) (267S) 39
Seminar on Multinational Corporations (Baxter & Hahlo) (270S) 40
The Practice of Criminal Law (Greenspan & Moldaver) (234S) 41
Problems in Corporate Finance (Glover) (272S) 41
Real Estate Transactions (Bucknall) (275S) 42
Remedies (Sharpe) (276S) 42
Selected Problems in Competition Law (Dunlop & Trebilcock) (281S) 42
Tax Policy (Sherbaniuk, Bird & McQuillan) (283S) 43
Trial Advocacy (Stockwood) (205S) 43

Courses Offered in Both Terms

Business Organizations (Iacobucci) (212Y) 45
Constitutional Law (Laskin) (229Y) 46
Constitutional Law (Swinton) (229Y) 46
Evidence (Mewett) (241Y) 46
Evidence (Schiff) (241Y) 47
International Law A (Morris) (252Y) 47
Taxation (Sherbaniuk) (284Y) 48
Taxation (A. Weinrib) (284Y) 48
Wills & Trusts (Scane) (289Y) 48

COURSE DESCRIPTIONS

1980-81

LAW AND ECONOMICS PROGRAMME

The Law and Economics Programme offers students special study and research opportunities in a broad range of subject areas having a significant law-economics interface. Staff from the Faculty of Law, the Department of Political Economy, and the Faculty of Management Studies participate in the programme. Subject areas available to students as part of the LL.B. curriculum include competition policy, public utility and related regulation, economic analysis of traditional legal doctrines, communications regulation, environmental control, personal income maintenance laws, tax policy, land use planning, and international trade regulation. Any student enrolled in the LL.B. programme is free to take any or all of these courses. A preliminary course in basic economic concepts is available to students without a prior economics background. Limited financial assistance is available to students wishing to pursue post-graduate studies in these areas. Further information can be obtained from Professor Trebilcock, the Director of the Programme.

1. COURSES OFFERED IN THE FIRST TERM ONLY

THE DIRECTED RESEARCH PROGRAMME (301F)

A directed research programme is offered in each term of the third year. The programme will normally receive no less than four and no more than eight hours credit. However, a student may, in an appropriate case, receive approval for an intended research project of less than four hours credit; but a measure of preference will be given to projects intended for four or more credit hours. The selection of students admitted into the programme, the approval of their topics and plan of supervision and the determination of the hours of credit will be made by a faculty committee charged with the responsibility of administering the programme (the Directed Research Administration Committee).

1. Students who have an interest in doing a research project are encouraged to approach a member of the teaching faculty with a coincidental interest to discuss the project and to determine if the teacher would be prepared to supervise in that area of interest.

2. A student should produce for his/her proposed supervisor as early as possible and at the least one week before the first day of the term a reasonably detailed outline of his/her proposed research project which outline should include:

(a) an outline of the idea he/she wishes to pursue,
(b) the research methods he/she proposes to employ,
(c) the research sources he/she intends to tap,
(d) some of the problems he/she expects to encounter along the way, and
(e) the number of hours credit he or she expects the project to merit.

3. If the proposed supervisor is willing to supervise the research project and certifies it as appropriate to the aims of the directed research programme, the outline should then (and in any event not later than 10th August) be submitted to the Directed Research Administration Committee. Responsibility for ensuring that a copy of the outline is in the hands of the Directed Research Administration Committee not later than 10th August rests with the student. The Committee will continue to accept submissions until the first day of the term in which the directed research is to be carried out if there are still places in the programme. But applicants for this programme should bear in mind that no more than 16 students will be permitted to enroll in this programme in a single academic year. The Committee may approve some projects prior to the August 10th deadline if it believes that a request for early approval is justified e.g. the student should be enabled to begin work before term begins. But the majority of places in the programme will be reserved until the August 10th deadline. The Committee may, at its discretion, request the student and/or his/her supervisor to meet the Committee and to amplify or amend the student's proposal prior to deciding whether to approve or reject the proposal. The Committee will determine whether the proposal is acceptable and assign the number of hour credits.

4. Both the supervisor and administration committee will have to be satisfied that the proposed topic has sufficient academic content and the research methods are feasible. In particular they will satisfy themselves that the project makes "conceptual" sense, that it can be done in the time alloted, and that the research material or information are available without any obstacles such as confidentiality to their use. The general test to be used in accepting or rejecting a project is whether the topic is capable of supporting a paper suitable for publication (either the whole or part of or adaptations from it) and whether it will make a new contribution to a problem area. The test of potential publication is not to be a standard for marking. "Publication" will not be interpreted narrowly. For example, the production of several pamphlets which a consumer protection agency could issue to members of the public or the submission of a written brief to a minister or select committee of government or a law reform agency might be eminently suitable in some circumstances. The committee will take account of the student's "non-academic" and "non-legal academic" background such as summer jobs or previous university programmes which give him/her special expertise.

5. The principles which will guide the administration committee in making the course credit allotment are these. Four credit hours would be the basic allotment. However, where a student can demonstrate that the magnitude or complexity of his/her project and the demand on his/her time by contrast with other courses require additional credit hours, the administration committee is free to allot additional credit hours up to a maximum of eight in one term.

6. Team projects and team research projects will be permitted and encouraged, as will empirically-oriented research projects.

7. A student(s) will meet regularly with his/her supervisor and on the average at least once every two weeks, to discuss the progress of the research. The student(s) will be encouraged to produce written outlines and tentative conclusions for discussion at these meetings.

8. Practitioners or teaching members from other departments in the university will be encouraged to undertake joint supervision of law students in the programme. Where this occurs a teaching member of this faculty would also serve as a joint supervisor both to maintain a focus for the research within the law faculty and to ensure a direct link with the administration committee.

9. The student will be expected to submit his/her completed work by the end of the term during which he/she is enrolled in the programme (i.e. on or by the last day of the examinations held in that term). The work will be expected to be of high quality and will be judged according to the thoroughness of the research displayed in the paper, the difficulty of the problem treated in the paper, the degree of originality displayed in the paper, the coherence of the structure and argument of the paper and the suitability of the paper to the goals set by the paper.

10. In particular circumstances where the research work would more sensibly be spread over two terms on the basis, for example, of two or three hours credit in each of the fall and spring terms, the administration committee may grant permission for the student's programme to cover the two terms.

11. A student's final written work will be evaluated by his/her supervisor and one member of the administration committee and that evaluation will normally constitute 75% of the total grade. The remaining 25% of the total grade will be based on the supervisor's evaluation of the quality of the student's work throughout the term, and on the student's performance on an oral examination directed towards his/her research. This oral examination will be conducted by a committee composed of the supervisor, that member of the administration committee who has read the written work, and one other person who might be another member of the administration committee or someone who has a special expertise such as a practitioner specializing in the subject area of the research.

12. Students may take the programme in either the fall or spring term of their third year depending on the availability of the supervisor. They may not take any other course which has a substantial writing component during the term in which they are enrolled in the directed research programme. In special circumstances the administration committee may permit a student enrolled in a seminar with a paper requirement to expand the paper requirement substantially and submit it for approval as a research project carrying additional course credits under the Directed Research Programme. If this is a student's intention, he/she should so indicate on the outline submitted to his/her supervisor.

13. No more than sixteen students will be permitted to enroll in the programme in any one year (including both terms). In view of this limited permissible enrolment, students are strongly advised to seek sufficient credit hours in other courses and programmes as an alternative to this programme.

14. Students enrolled in the Directed Research Programme may not enrol in the Clinic Programme or the Business Planning Cluster without the approval of the Course Approvals Committee.

ADMINISTRATIVE LAW (202F)

A study of the law relating to public authorities, especially sources of authority and the controls imposed by legislatures and courts on procedures, policy formation and the exercise of discretion.

A final examination will be given. A limited number of students will be permitted to do written assignments instead of a final examination.

Four hours per week, first term.

(M, F, 11-1)

Professor Risk

BANKING LAW (210F)

Various legal aspects of domestic and international banking will be examined. The domestic topics will be taken from: bank/customer legal relations; cheques and payment systems, electronic transfers, GIRO systems; bank accounts, mixing of funds, joint accounts; secured loans, promissory notes; guarantees. The international topics will be taken from: export-import transactions, bills of exchange, documents of title, letters of credit; international money and bond markets, euro-currency transactions; regulation of foreign banks.

Evaluation: Students will have a choice of writing a paper or an examination.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students.

Professor Baxter

(T, 10-12)

BUSINESS ORGANIZATIONS (212F)

The main purpose of this course is to examine the most important types of business organization with a major emphasis on the corporation. The course will start with a brief study of the sole proprietorship and forms of partnerships and compare these forms of organization to the corporation. Much emphasis will be placed upon the legislative framework governing corporations and recent attempts to reform the framework so as to reflect the reconciliation of the different interests involved in the regulation of the corporate enterprise. Although the present corporation and related statutes of Ontario and Canada receive the major focus of attention, including recent proposals for change in such jurisdictions, the legislation of other provinces of Canada in addition to the United Kingdom and the American statutes will be studied.

The subject involves necessarily both a pragmatic or functional look at the modern corporation and a theoretical or jurisprudential examination of the corporation and the parties interested in its operation.

This course deals with the following topics: the choice of form of business enterprise; the nature and disregard of corporate personality; the process of incorporation; the corporate constitution; contracts between corporations and outsiders; the control and management of the corporation especially the relationships affecting promoters, directors, executive committees, officers, and shareholders; financing the corporation, including a study of the types of corporate securities and the impact of securities legislation; dividends and the preservation of the corporate capital fund; and an introductory study of organic changes of the corporation such as mergers, amalgamations, sales of assets, take-over bids, and reorganization.

The method of instruction will require considerable pre-class preparation for classroom discussion and will also involve lectures and reading assignments.

Materials required are the Ontario and Canada Corporations Acts and the Ontario Securities Act, and Iacobucci and Johnston, Cases and Materials Relating to Partnerships and Companies (in mimeographed form).

A final examination will be given. There may be voluntary exercises.

Four hours per week, first term.

(M, 9-10; T, 2-3; W, 10-11; Th, 2-3) Professor Ziegel

CIVIL PROCEDURE II (218F)

This course will deal first with selected topics in advanced civil procedure not usually studied in introductory civil procedure courses, such as class action.

The second part of the course is entitled "The Trial of an Action" and will include all aspects of a jury and non-jury trial. Major topics are "Selecting the Mode of Trial", "Dispensing with the Jury", "Presenting Case at Trial", "Non Suit", "Addresses by Counsel". The role of counsel and the trial judge will be examined.

The third part of the course is entitled "Appellate Review" and will cover appeals from interlocutory orders, the jurisdiction and power of the Court of Appeal and the Supreme Court of Canada, perfecting and preparing appeals and appellate advocacy.

Some aspects of the course will be illustrated by practical demonstrations.

A course in Civil Procedure I and a course in Evidence are preferred.

Evaluation will be by means of a final examination.

Two hours per week, first term.

(Th, 5:30 - 7:30) Mr. Sopinka

CIVIL RIGHTS (225F)

An examination of the nature of fundamental rights and liberties and the legal position concerning these rights and liberties. Among the aspects dealt with will be the position of the Canadian Bill of Rights, equality and discrimination, capital punishment, and freedom of speech and religion. Throughout the course an attempt will be made to relate the legal position to the ideals of a liberal society as enunciated in the works of J.S. Mill (on Liberty), Ronald Dworkin (Taking Rights Seriously) and others.

Evaluation: Will be on the basis of class participation and a paper.

Two hours per week, first term.

(T, 11-1)

Professor E. Weinrib

NOTE: Enrolment will be limited to 20 students.

NOTE: Students taking this course may not take "Civil Liberties" (Morgan)

COMMERCIAL AND CONSUMER TRANSACTIONS (220F)

A consideration of the legal elements in, and policy issues raised by, the relationships created by the various commercial transactions by which goods and services are brought to market, including sale of gobds (consumer and commercial), aspects of consumer credit including credit cards, personal property security interests, and bills of exchange, notes, cheques and other forms of payment.

A final examination will be given.

Three hours per week, first term.

Professor Trebilcock

(M, 2-3; T, 3-4; Th, 3-4)

COMMON MARKET LAW (221F)

The purpose of this course is to familiarize students with the legal and institutional framework of the European Economic Community, by reviewing the developing relationship of the member states to the Community and its organs as seen in legislation, the case law of the European Court of Justice and the National Courts of the member states. It also canvasses the type of problems which might be met by a Canadian practitioner in the areas of competition and commercial law of the Community.

Primary emphasis will be focused on: the relationship between laws of the member states and legal norms of the community; competition policy, with extensive comparison between the Community anti-trust provisions and similar developments in the anti-trust law of Canada and the United States (this latter may be said in a limited sense, to be a comparative law of anti-trust); and, the measures being taken whereby it is hoped to create a homogeneous legal structure for commerce and competition within the Common Market.

The course will also make students aware of those areas of "Common Market Law" of concern to a Canadian enterprise intending to do business in the Common Market such that potential pitfalls in the increasingly complex EEC regulations may be avoided and advantage may be taken of the increasing homogenization in areas such as patent, commercial and fiscal law within the Common Market.

It is also hoped that the course will, through analogies to North American law provide a greater insight into Canadian law and practice, particularly in the anti-trust and constitutional fields.

Evaluation: Students will have a choice of writing a paper or an examination.

2 hours per week, first term.

NOTE: Enrolment will be limited to 20 students

Mr. Graham

(Th, 5-7)

COMMUNICATIONS LAW I : CONTROL OF THE MASS MEDIA (222F)

The administrative policies and legal and practical constraints affecting broadcasting and communications in Canada. This course combines an intensive look at the licensing and regulatory policies of one of Canada's most powerful administrative agencies, the Canadian Radio-television and Telecommunications Commission with an opportunity to study in a practical way the structure and operations of the media in Canada. At the same time, the course constitutes a practical examination in depth of how an administrative body really functions. The course is run in conjunction with the Media and Communications Law Section of the Canadian Bar Association, Ontario Branch.

Each year, a different series of research subjects is chosen relating to control of the mass media, and these subjects are studied on a project basis in some depth. At the same time, a general introduction to the current legal and administrative problems of the industry is provided. Among the specific topics that have been examined in the past are the following: restrictions on foreign ownership; multiple ownership and the problem of media concentration in a market; legal and informal controls over programme and advertising content; responsibility and freedom in public affairs programming; the provision of a right of access to the media; aspects of cable television licensing and operation; broadcasting and international law and financing and distribution aspects of the motion picture and publishing industry. In most of the seminars, participants from the industry closely involved with the

matters under discussion will be in attendance, and students will therefore be afforded an opportunity to question broadcasters, cable television operators, representatives of the Canadian Radio-television and Telecommunications Commission, broadcasting lawyers, and ad agency personnel regarding these topics.

Credit will be based on seminar attendance and participation, and subject to the student's option and lecturer's approval, on either (a) a substantial paper, or (b) a smaller seminar paper prepared in conjunction with a research team which will organize and preside over a seminar. Students will be provided access to specialized practical materials, including the briefs and transcripts of the CRTC public hearings. Textbook: Grant, Canadian Communications Regulation (2nd edition 1978).

Two hours per week, first term.

NOTE: Enrolment will be limited to 25 students.

Professor Janisch & Mr. Grant

(T, 6-8)

COMPARATIVE LAW, INTRODUCTION TO (255F)

Civil law and common law: general differences - how the civil law and the common came to part ways - sources of the civil law and the common law. Select institutions: real and personal property, the concept of ownership, the doctrine of consideration, fidei commissum and trust - matrimonial property regimes.

Students may choose to write a paper or an examination.

Two hours per week, first term.

(W, 4-6)

NOTE: Enrolment will be limited to 25 students.

Professor Hahlo

COMPARATIVE LEGAL STUDIES (226F)

This seminar is an introduction to the comparative study of legal problems. The topics to be examined will be taken from: the influence of Roman Law; codification in the Civil Law systems; some aspects of contracts, family law, property; courts and lawyers; commercial transactions and corporations, the law merchant. The emphasis will be on the "parent" systems of the Civil Law world (i.e. the laws of France, West Germany, Italy) and of the Common Law world.

Evaluation: Students will have a choice of writing a paper or an examination.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students.

Professor Baxter

(F, 10-12)

CONFLICT OF LAWS (227F)

A study of legal problems where the relevant facts do not all occur in Ontario. The cases that will be examined will cover issues in family law, torts and contracts.

Evaluation: Students may choose to write an examination or one or more papers with or without an examination.

Two hours per week, first term.

(M, 3-5) Professor Green

CORPORATE INCOME TAXATION (207F)

This course is concerned with the income tax treatment of corporations and their shareholders, and will be divided into two basic segments. The first encompasses the taxation of corporations generally and corporate distributions. In the second, subjects will be chosen from the areas of corporate finance, reorganizations and acquisitions.

While a few of the matters dealt with in this course do lend themselves to the study of case law, the focus will be squarely placed on a detailed textual analysis of specified provisions of the Income Tax Act, in the light of public statements of administrative practice.

The course will follow a lecture-discussion format.

Evaluation: Will be by final examination.

Prerequisite: Taxation

Three hours per week, first term.

(M,W, 5-6:30)

Mr. Couzin

CRIMINAL PROCEDURE (232F)

A basic and critical survey of criminal procedure designed to provide a knowledge of the criminal process and its strengths and weaknesses.

Arrest, search and seizure will be touched upon, but in the main the course will cover remand procedures, bail, recognizance, information and indictments, duplicity, joint trials and severance, classification of offences, magistrates' courts, preliminary hearing, the petit jury, appeals, the extraordinary remedies of habeas corpus, certiorari, mandamus and prohibition, and motions to quash and dismiss.

Prerequisite or corequisite: Criminal Law

A final examination will be given.

Two hours per week, first term.

(W, 3-4; F, 2-3) Professor Mewett

CRIMINOLOGY (233F)

A seminar examination of institutions and problems involved in the criminal law process. Topics will be selected from among the following: the legislature, the police, the prosecution, the defence, the courts, the correctional system including the probation service and the Parole Board; differential treatment of juvenile and adult offenders; the overriding problem of administrative discretion and civil liberties. Visits will be made to agencies and institutions.

A paper will be required.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students. Professor Green

(W, 2-4)

CURRENT DEVELOPMENTS IN COMMERCIAL LAW (215F)

This seminar is designed to supplement the students' exposure in the basic commercial law course to current problems in this area and to explore the chosen topics in greater depth. One or more topics in the sales, chattel security, consumer credit or negotiable instruments fields will be selected each year. The seminar will have a strong comparative law component and, where relevant, developments in the U.S. and other common law jurisdictions will also be studied.

Prerequisite: Commercial and Consumer Transactions.

Evaluation will be by short class assignments and a term paper.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students. Professor Ziegel

(M, 1-3)

DEBTOR AND CREDITOR (235F)

An examination of the economics of debt collection and the credit market, extra-legal methods of collection, the principal methods of enforcing judgment by unsecured creditors, in particular the writ of fieri facias and garnishment, the setting aside of property transfers which prejudice creditors, and the benefits available to both debtor and creditor through bankruptcy proceedings.

Evaluation will be by examination, which may be a take-home examination. A limited number of students may be permitted to write a paper in lieu of an examination.

Three hours per week, first term.

(M, 3-4; W, 2-3; Th, 3-4) Professor Laskin

ECONOMIC ANALYSIS OF LAW (236F)

This seminar will select a number of legal topics and subject them to intensive economic analysis. The course will assume a basic knowledge of price theory. The purpose of the course is to demonstrate the uses of economic analysis in elucidating policy issues in a number of established legal subject areas. It is not the intention of the course to make an exhaustive analysis of these topics in their own right, but rather to treat them as detailed examples of wider applications of economic analysis to law. Topics to be covered will include some of the following: property rights and liability rules (the Coase theorem) e.g. pollution control, no-fault and strict liability regimes, tort and contract damages, rent controls and zoning laws, minimum product safety standards, an economic analysis of criminal sanctions and the role of private law enforcement (e.g. class actions), the regulation of capital markets, economic analysis of political behaviour, the effect of unionism and minimum wage laws, and racial discrimination. The principal text for the course will be Richard Posner, Economic Analysis of Law, which will be supplemented with additional readings.

Students will be expected to prepare regular short written assignments (approximately nine). Assessment for the course will be based on these. There will be no examination. The class will meet for one two-hour session every week.

While there are no formal prerequisites for this course, students will find it an advantage to have previously taken a course in microeconomics or to have taken, or be concurrently taking, Economics for Non-Economists. Students with no prior economics background are strongly urged to work their way through Microeconomics, Lumsden, Attiyeh and Bach, (University Textbook Store) in the first few days of the course.

Two class hours per week, first term (three credit hours).

NOTE: Enrolment will be limited to 30 students.

Professors Trebilcock and Prichard

(W, 2-4)

ECONOMICS FOR NON-ECONOMISTS (238F)

This course covers the fundamentals of microeconomic analysis with some emphasis on resource and environmental problems. The course will deal with the operation of markets, the allocation of resources, and the operation of pricing mechanisms. Reasons for market failure, theories of monopoly and public regulation, and alternative approaches to government intervention are considered. "Public goods" and other externalities will be discussed. Reference will be made to some current micro-economics problems as examples of the operation of the market system, and to examples of the effects of legal and regulatory interventions in the market.

The primary text will be Lipsey, Sparks and Steiner, Economics. The course will be offered both to law students and graduate students in the Institute of Environmental Studies. Entry will be limited to 20 law students. The course is designed for students with no or very limited Economics backgrounds. Students who have already taken a second level or higher course in microeconomics will not normally be eligible for admission to the course.

Assessment for the course will be by way of six problem sets worth 50% of the marks in total and a final examination.

Two hours per week plus one tutorial hour every second week, first term (3 credit hours).

NOTE: Enrolment will be limited to 25 students.

Professor Dewees

(T, 11-1; F, 1-2)

ENVIRONMENTAL CONTROL (239F)

This course will deal with legal and administrative problems relating to pollution of the environment, particularly air and water pollution. Current policies will be compared with recent proposals with respect to their legal, administrative and economic performance. Topics will include private remedies for pollution damages, statutory standards, licensing, effluent charges, fiscal incentives and property rights schemes. The roles of legal and economic analysis will be evaluated. Special consideration will be given to problems including automobile emmissions, sulfer dioxide pollution, water quality management, and the pulp and paper industry.

Assessment for the course will be by way of two short problems and a final examination.

Two hours per week, first term.

NOTE: Enrolment will be limited to 25 students.

Professor Dewees

(T, 2-4)

ESTATE PLANNING (240F)

This course will concentrate on the tax aspect of estate planning including income taxes with particular emphasis on practical problems involved in planning medium-sized estates. Attention will also be given to the use of personal and business life insurance and the operation of buy-sell agreements.

Prerequisite: Taxation

Prerequisite or corequisite: Wills and Trusts

Students may choose to write a paper or an examination.

Forty-five hours credit, throughout both terms.

NOTE: This course will be scheduled in two-hour periods and will be timetabled throughout both terms. Classes will be scheduled until forty-five hours of instruction have been given. For the purposes of hour credit, a student may elect to count this course as three hours in either term.

(T, 4-6)

Mr. Goodman, Q.C. and Mr. Carr

EVIDENCE PROBLEMS (242F)

Examination of selected topics in Evidence law where there are now difficulties in analysis or application. Discussion will also encompass relevant law reform proposals in Canada and elsewhere as well as recent statutes.

Each student will prepare a short paper on one of the topics and will lead the discussion at a seminar meeting. All students will be expected to read the papers in advance of the meeting and to be familiar with the basic materials relevant to particular topics. The grade will be assigned for the paper, leading the discussion, and general participation.

Prerequisite: Evidence

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students.

(W, 4-6)

Professor Schiff

FAMILY LAW (244F)

This course introduces the student to the law relating to the family - the relationships between spouses and between parent and child.

Topics will include: marriage; common-law marriage; divorce; nullity; property allocation during marriage, on separation and on divorce; maintenance and support during and after marriage; custody; child welfare; and adoption.

Evaluation will be by a take-home examination.

Three hours per week, first term.

(M, 11-12; T, 2-3; Th, 2-3)

Professor Gathercole

INTERNATIONAL CRIMINAL LAW (250F)

A study of the national security and international aspects of the criminal law. Subjects to be discussed include: jurisdiction over crime; crimes against the law of nations; controlling terrorism and hijacking; extradition; international judicial assistance; the recognition and enforcement of foreign criminal judgements; treason and sedition; espionage and the Official Secrets Act; police powers relating to national security; emergency powers and the War Measures Act; and the U.N. International Covenant on Civil and Political Rights.

Evaluation: Students will have a choice of writing a paper or an examination.

Two hours per week, first term.

NOTE: Enrolment will be limited to 25 students.

Professor Friedland

(Th, 2-4)

INTERNATIONAL LAW B (253F)

This is a shorter version of the full-year course in International Law. The description of the longer course should be examined. While some material will be deleted from all sections of the longer course, the process of condensation will involve a significant reduction in the attention given to the application of international law rules in Canadian courts and to the position of federal states in the international law system.

A final examination will be given. A limited number of students will be permitted to write a paper instead of an examination.

Prerequisite or corequisite: Constitutional Law.

Three hours per week, first term.
(M, 3-4; W, 2-3; Th, 3-4)

Professor Morris

LAND DEVELOPMENT & COMMERCIAL REAL ESTATE PROBLEMS (245S)

The course deals with a broad range of subject matters within the context of land development and commercial real estate. Its focus is on developing problem-solving techniques to deal with the issues raised by the subject matter. The areas covered by the course include negotiating subdivision and development agreements, drafting of agreements of purchase and sale, development of shopping centres, analysis of investment properties such as existing shopping centres and apartment buildings, discussion of various business entities used in real estate transactions such as limited partnerships, joint ventures and co-tenancies, current problems respecting condominiums, a discussion of institutional and secondary financing and to consideration of ground leasing techniques.

Several short papers will be required to be submitted during the term.

Prerequisite: Real Estate Transactions.

Two hours per week, first term.
(Th, 2-4)

NOTE: Enrolment will be limited to 20 students.

Mr. Gross and
Professor A. Weinrib

THE LAW OF LABOUR RELATIONS (263F)

A study of legal regulation of the collective bargaining process, and relationships among employers, employees and trade unions. Emphasis is on the nature of the economic and social problems, and the roles of labour relations boards, labour arbitrators and courts in dealing with various aspects of the problem, and with each other. The course is divided into four topics: (1) Introduction to the Nature of the Problems; (2) The Theory and Practice of Collective Bargaining; (3) The Collective Agreement and its Administration; (4) Industrial Conflict: Strikes, Picketing, Boycotts and Lockouts.

There will not be a final examination. Instead, evaluation will be based on take-home problems distributed at various stages of the course.

Four hours per week, first term.

Professor Beatty

NOTE: **Students taking this course may not take the Law of Collective Bargaining.**

(W, 2-4; F, 1-3)

THE LEGAL PROCESS (265F)

The course examines the nature and appropriate limits of law-making by the major legal institutions of our society -- private individuals, courts of general jurisdiction, legislatures and administrative tribunals. Each of the institutions is seen as an interworking and interlocking part of one legal system designed to formulate rules of social living and to settle social disputes. In this light the utility and application of traditional jurisprudential concepts in solving concrete problems are also illustrated.

Put shortly, the course seeks answers to these questions: What kinds of law-making problems can courts most effectively and appropriately deal with, and how? legislatures? administrative tribunals? ordering by private individuals? How should the working of each institution dovetail with that of the others?

The book used is H. HART & A. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATON OF LAW (Cambridge, Mass., Tentative Edition, 1958), which will be supplemented by materials to be distributed during the term. The book and supplementary materials set out a series of specific fact-problems concerning various aspects of the law-making function of each institution and follow the statement of each problem with editorial notes, excerpts from articles, case excerpts and numerous questions.

The class meets twice a week for sessions of 1 1/2 hours each. The meetings combine considerable class discussion of the materials with the instructor's comments and questions.

A final examination will be given. In addition, a short paper may be assigned near the end of the course in lieu of one question on the examination. Credit toward the final grade will also be given for the quality of individual class participation.

Evidence, Administrative Law, and Constitutional Law (or an undergraduate course in Canadian Government) will be useful for those students who have taken or are taking them, but they are not prerequisites or corequisites.

Three hours per week, first term.

NOTE: Students taking this course may not take The Canadian Legal System: Institutions, Values and Process (Reiter).

Professor Schiff

(T, Th, 4-5:30)

MUNICIPAL AND PLANNING LAW (271F)

This course will deal with the regulation of land uses in an urban environment by local governments, and the financing, structure and general jurisdiction of those governments. Detailed attention will be paid to official plans, the power to zone, development control, the subdivision approval process, the role of the Ontario Municipal Board and municipal taxation and assessment.

Evaluation will be by examination. A limited number of students will be permitted to write a paper instead of an examination.

Prerequisite or coorequisite: Administrative Law.

Three hours per week, first term.

(M, 3-4; W, 3-4; Th, 2-3). Professor Makuch

NATIVE RIGHTS (268F)

This will be a seminar course dealing with such subjects as the law of aboriginal rights, its origin and development through Calder v. Attorney General; legal issues relating to the extinguishment of aboriginal title, native land claims and the mechanisms available to resolve such claims; the law of Indian treaties; the law of native hunting and fishing rights; an examination of the Indian Act; delivery of legal services to native peoples.

Evaluation will be by means of a short paper and by class performance.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students.

(M, 5-7) Mr. Goudge

PRODUCTS LIABILITY (273F)

A study of civil liability for injuries caused by goods, Negligence, breach of statutory duty, breach of implied warranty, strict liability. Liability for express statements; liability for economic loss. The power to exclude liability. Anglo-Canadian law will be examined particularly in the American jurisdictions.

The course will follow a seminar form and will rely on the interest and work of the participants. Each student will be responsible for a seminar presentation. Students may submit a paper which does or which does not satisfy the writing requirement or may write an examination.

Two hours per week, first term.

NOTE: Enrolment is limited to 20 students.

(T, 4-6) Professor Waddams

PUBLIC POLICY FORMATION (297F)

This seminar will focus on the continuum through which responses to political problems are translated into law or governmental action. The perspective chosen is wider than that of examining final policy outcomes as it will include the context in which decisions are taken, the kinds of competing influences operating on the policy-makers, the manner in which the institutions of government interact and the conformity of the process with the theoretical rationale of our governmental system. The method of analysis will draw on law, economics, political science and public administration.

The course will focus on a number of case studies as illustrations of the process of policy formation. Materials will include background documents on the decisions taken, government statements, executive and legislative instruments by which the policy is set forth and selections from the theoretical literature on the Canadian governmental process.

There will be no examination. Evaluation will be based on a combination of research assignments, short written assignments, oral presentations and class participation.

Two hours per week, first term.

(T, 8:30 - 10:30) Mr. Macdonald and Professors Prichard & Chandler

NOTE: Enrollment will be limited to 25 students.

RESTRICTIVE TRADE PRACTICES (278F)

As to a substantial proportion of the Canadian economy it is assumed that the regulation of trade and commerce in the public interest is most effectively assured where the forces of a competitive market operate. In respect of this proportion of the economy, therefore, the law aims at maintaining competition by restricting mergers, monopolies, conspiracies in restraint of trade and such anti-competitive practices as price discrimination, and resale price maintenance. This course concerns itself with the nature and effectiveness of the legal controls created for the purpose and implemented by Parliament and the courts. The constitutional difficulties in dealing with the problems will be considered as will alternative techniques used in other sectors of the economy.

An introductory course in microeconomics would be helpful, though not essential, background. Evaluation will be by examination.

Two hours per week, first term.

(Th, F, 9-10) Professor Dunlop

SECURITIES REGULATION (279F)

The purpose of the course is to familiarize the student with the structure and coverage of Canadian securities laws and to examine the practical consequences of legislative and judicial responses to the fundamental issues of full disclosure and fairness to investors. Existing and proposed regulation in Canada and, for comparative purposes, in the United States and England will be reviewed in terms of: the regulation of the distribution of, and trading in, securities; the regulation of take-over bids, corporate repurchases and proxy solicitation; and liabilities arising under the securities laws.

Evalulation will be by means of a take-home examination (worth 60 marks) consisting of memoranda to be prepared relating to certain of the legal questions discussed in the course and a final examination (worth 40 marks).

Prerequisite: Business Organizations

Two hours per week, first term.

Mr. Coleman

(F, 9-11)

SELECTED PROBLEMS IN FAMILY AND SOCIAL WELFARE LAW (280F)

An examination of some problems in the field: child abuse, mental retardation and mental illness; visits will be made to agencies and institutions.

Evaluation will be by paper.

Two hours per week, first term.

Professor Green

NOTE: Enrolment will be limited to 20 students.

(Th, 2-4)

SELECTED PROBLEMS IN THE LAW OF TORTS (298F)

This course will consider the objectives of tort law and current theories of liability as means to these ends; options to tort liability for personal injury compensation - worker's compensation, "no-fault" insurance, comprehensive accident and sickness insurance; developing areas of tort law - invasion of privacy and interference with advantageous relations.

Students may choose to write a paper or an examination.

Two hours per week, first term.

Professor Dunlop

(Th, 4-6)

NOTE: Enrolment will be limited to 25 students.

SOCIAL SECURITY LAW (269F)

This seminar examines public programs which are designed to provide income security or redistribute income to the poorest members of society. The emphasis will be on the economic as well as legal implications of public policy in this area. The course will begin with an analysis of the legal, economic and social objectives by which one can judge current programs. This will be followed by an analysis of legal, economic and social aspects of current welfare programs, unemployment insurance, workmen's compensation, the Canada Pension Plan, and legislation regulating private pension plans. In addition, public subsidies of medical care, housing, and child care and public job programs will be examined. Consideration will be given to the design of a more comprehensive income maintenance system such as a negative income tax.

Evaluation will be by way of a series of problem assignments and classroom participation. Some background in economics will be helpful but is not required.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students.

(M, 1-3)

Professor Beatty

TRADE MARKS AND UNFAIR COMPETITION (285F)

A survey of the common law and statutory law relating to the protection of trade marks and trade names, and of related developments in the law of franchising and advertising.

A final examination will be given.

Two hours per week, first term.

(M, 9-10; W, 9-10)

Mr. Hayhurst

2. COURSES OFFERED IN THE SECOND TERM ONLY

DIRECTED RESEARCH PROGRAMME (301S)

See description on page 1.

BUSINESS PLANNING CLUSTER (300S)

This course is intended to integrate and build upon several areas of law relevant to business planning. In particular, attention will be given to forms of business organization, income tax matters, securities regulation and corporate finance problems and advanced income tax questions.

The objective of the course is to provide an opportunity for a thorough study of the operation of the legal process as it operates in the business area. It is hoped that this will assist the student:

(a) To develop his or her substantive legal knowledge;

(b) To integrate what he or she has learned in a variety of law school courses by focusing on legal problems that cut across several areas of business law. The opportunity to go beyond the somewhat artifical barriers resulting from the division of the curriculum into courses will permit him or her to integrate his or her theoretical knowledge by considering solutions to typical business problems;

(c) To place legal problems in the broader perspective of business problems generally and to see the solution of those problems as involving the utilization of the resources of disciplines other than law;

(d) To develop such skills as fact and problem analysis, effective communication, negotiation and advocacy;

(e) Through this process, to develop a realistic understanding of the operation of certain legal institutions and of some of the ethical and policy issues that arise in the evolution and application of legal doctrine in the area of business law.

Most of the class time will involve consideration of specific problems and transactions assigned in advance.

For organizational purposes, the problems are geared to a number of the significant stages in the life cycle of a hypothetical business organization. The problems are part of a set of course materials designed to introduce the student to the particular question to be considered at each stage. As well, the materials provide references to a range of sources which may be consulted by the student for assistance in developing appropriate solutions to the problems. The following is a brief outline of the structure of the course:

(a) Part I: An Introduction to the Lawyer's role in Business Planning. In this Part, the strictly legal aspect of business decisions is considered in the light of related business, accounting and financial questions. The focus is on the role of the lawyer as one of several professional advisers, and questions relating to the relationship of the lawyer to his client, to other professionals, and himself are raised. Depending on the background of the class, some time may also be devoted in an introductory way to problems of reading and understanding financial statements.

(b) Part II: Incorporation. Here the focus is on the choice of form of business enterprise in the context of the decision to incorporate a proprietorship or partnership. Valuation problems and preliminary estate planning questions may be considered, as well as buy-sell agreements and other arrangements for dividing management and control. Students will be required to participate in a negotiation exercise, in which they will act on behalf of one of three possible clients involved in the new corporation.

(c) Part III: Expanding the Enterprise. This section involves the transition from a closely-held, privately financed company to a public corporation, with particular focus on the alternative methods of corporate finance that are in use in Canada. The interaction of the relevant corporate, securities and income tax law implications of the alternatives is considered, as is the role played by the financial community, the Securities Commission and Stock Exchange and the business lawyer. The social responsibility of the public corporation, economic regulation or corporate activity and the rights of minority and dissenting shareholders and related questions will be examined.

(d) Part IV: Corporate Combinations. This part focuses on the traditional methods of effecting a change in the ownership of business assets, that is, the purchase of assets, the purchase of shares and statutory amalgamations. In addition to considering a range of specific corporate, securities and income tax questions, students will consider problems relating to the lawyer's relationship to his client and various governmental agencies.

The course is premised on the assumption that the students are prepared to engage in substantial outside reading and study in preparation for each class. Little or no time will be spent in lecturing; class time is devoted to a discussion of a range of questions raised by the problems assigned in advance for discussion.

A number of the problems will be assigned as part of the evaluation process. They may involve a simulated negotiation of the terms of a proposed incorporation, the drafting of an opinion letter to a client, the analysis of a typical debenture financing and the preparation of a request for an advance income tax ruling. Problems so assigned will be answered in writing and the assignments will be graded and returned to the students during the course of the term. In addition, students will be required to write a paper. No examination will be required.

The course is offered to Third Year students during the second term, and students accepted for the course will be permitted to take no more than ten hours per week in other courses. Prerequisites are Business Organizations, Income Tax, Corporate Income Tax and Securities Regulation. No student who is taking, or has taken, Problems in Corporate Finance will be permitted to take this course. Enrollment is limited to 12; successful applicants will be chosen by lottery in the usual way if more than 12 students apply.

Students taking this course may not enrol in the Directed Research Programme or the Clinic Programme without the approval of the Course Approvals Committee.

Second term, six hours credit.

(M,T,Th, 8:30-10:30)

Mr. McDonnell, Mr. Dey
and Dean Iacobucci

CLINIC PROGRAMME (200S)

This programme is designed to provide, in a clinical setting, a study of the practice and function of the legal system as it applies to the poor.

Students are required to staff one of the Toronto Community Legal Assistance Service clinics for 4-5 hours per week, during which time they will, together with volunteer students, interview clients and provide basic advice and assistance. Each student is expected to carry to completion, under the supervision of the Director of the Clinic Programme, cases accepted during the interview period, including all necessary factual and legal research, drafting of documents is required, negotiation and representation before Boards, Commissions and courts. Students may also be invoived in working with the Director, TCLAS Council, or faculty members associated with the Clinic Programme in cases involving appearances before courts and tribunals where students lack standing to appear alone.

Cases handled by students participating in the programme involve the following areas: immigration, consumer, public assistance (including welfare, unemployment insurance, workmen's compensation and pensions), landlord-tenant and rent review, and summary criminal and quasi-criminal matters. Each student is expected to make at least one appearance in court or before an administrative tribunal for a trial or hearing.

Students attend two weekly seminars totalling 3 hours. One seminar deals with the special problems of the delivery of legal services to the poor. This includes an evaluation of the Ontario Legal Aid Plan in the light of legal aid developments in other provinces, the United States, and the United Kingdom and a consideration of various skills required by a community legal services lawyer including interviewing, negotiation, drafting and advocacy before courts and tribunals. Specific problems areas such as test case litigation, community legal education and preventative law, the role of students and other para-professionals and group representation will be canvassed and special emphasis is given to ethical problems arising in a community legal services practice including the applicability of traditional legal and ethical values in this context. The second seminar stresses the substantive areas of the law in which the student is involved during the programme with special emphasis on those areas not covered in other courses.

Seminars utilize on-going cases as the basis for discussions of the issues wherever possible, and are adapted where necessary to allow for in-depth discussion of important cases and issues that arise during the course of the term.

Students are also expected to undertake, either alone or in conjunction with other students in the programme, a significant writing assignment which may include memoranda on cases handled by the student, including the preparation of memoranda for use in court; the preparation of handbooks, manuals, or other educational materials for use by TCLAS; or the drafting of briefs for presentation to governmental or other agencies.

Students are assessed on casework including the ability to analyze issues, carry out acceptable research and prepare a case for presentation in court or before a tribunal or for successful negotiation, ability in drafting documents and responsibility in advising and assisting clients, and participation in the seminars and on the written assignments.

Students taking the Clinic Programme may not enroll in the Directed Research Programme, or take the Business Planning Cluster without the approval of the Course Approvals Committee.

Enrolment is limited to 15-20 students.

7 Hours Credit, second term.

Professor Gathercole

M, 4-5
Th, 2:00 - 4:00)

ACCOUNTING (201S)

Accounting Techniques

The course commences with an introduction to the techniques of accounting. This consists of an explanation of how transactions between a firm and the various parties with which it deals are recorded, classified and finally presented in the form of financial statements. Students are expected to understand these techniques sufficiently well to be able to construct simple financial statements from basic data.

Accounting Principles

The process of classifying and presenting financial information involves making decisions based on Generally Accepted Accounting Principles. The principles essentially determine the meaning, for accountants, of the word "profit". Accounting profit is not necessarily the same as economic profit or profit as understood by the courts. Although reference will be made to the economic concept of profit, the course will concentrate on the accounting and legal concepts, and particularly on the differences between them. Some of the questions considered are: What are the necessary conditions for recording revenues; how does a business match its costs with the revenues that it records; can an outlay be treated as an asset when it gives rise to no legal rights; what is an inventory and how do the various methods of valuing it affect profit; how does a business reflect expected future obligations arising out of current operations; does an accounting liability of a business imply that legal rights can be exercised against it? The student is expected to obtain a clear understanding of the basic principles of accounting and their application to the specific topics covered and of the extent to which the courts accept or reject the accountant's approach.

Related Courses

The course is for the most part too elementary for graduates of Commerce and Finance or other courses where Accounting has been a major subject. Most of the legal cases considered are U.K. and Canadian tax cases and the course may be a useful adjunct to courses on business taxation.

Materials

Materials for the course consist of:

(1) "Introduction to Bookkeeping", a reproduction of Chapter 1 of Materials on Accounting by Amory and Hardee (a text used for a similar course given at Harvard).

(2) Financial Statements and Annual Report for the current year of a Canadian public company whose financial statements display many of the topics covered in the course.

(3) "Understanding Financial Statements", a reproduction of Chapter 6 of a course on financial accounting prepared for the Investment Dealers Association.

(4) "Accounting Principles and their Legal Implications", a reproduction of various reading materials from accounting and legal sources referring to accounting principles and how they fare in the courts.

Examination

The course leads to a 2 1/2 hour closed-book examination in which approximately 25% of the marks relate to an understanding of accounting techniques and 75% to an understanding of accounting principles and their legal implications.

Two hours per week, second term.

(T, 9-10; F, 9-10) Mr. Bies

ADMINISTRATIVE LAW (202S)

A study of the law relating to public authorities, especially sources of authority and the controls imposed by legislatures and courts on procedures, policy formation and the exercise of discretion.

Evaluation will be by examination.

Four hours per week, second term.

(M, 11-1; W, 10-12) Professor Janisch

ADMIRALTY LAW (203S)

A general introduction to maritime law and mercantile practice. International carriage of goods by sea will be discussed, and the problems of multi-modal transportation of goods by container will be examined, along with related problems of liability. Consideration will be given to the following topics: Federal Court Rules and admiralty jurisdiction and procedures; Canada Shipping Act and related statutes; Carriage of Goods by Water Act; International conventions, such as the Hague Rules and the proposed United Nations Convention on the Carriage of Goods by Sea, 1978 (the Hamburg Rules); marine insurance; liability; maritime pollution; towage and salvage; general average and the York-Antwerp Rules; collisions at sea; chartering and charter parties; the relation between international carriage and export-import transactions, c.i.f. and f.o.b. contracts, letters of credit; conflict of laws.

Evaluation will be by examination. A limited number of students will be allowed to write a paper.

Two hours per week, second term.

(T, 4:40-6:30) Mr. Jones and Professor Baxter

NOTE: Enrollment will be limited to 20 students.

ADVANCED ADMINISTRATIVE LAW (293S)

A study of current topics in administrative law that are either not included in the basic Administrative Law course, or that are included but not considered thoroughly because of limitations on time. During the coming year the principal theme will be procedures, especially

(1) the ethical, political and economic justifications of hearings, participation, and the "independent" agency;

(2) the appropriate procedures for making different kinds of decisions;

(3) public participation;

(4) the uses and limits of different forms of hearings, and modifications and alternatives, and in particular,

  (a) the "fairness" revolution,

  (b) the trial-type hearing,

  (c) rule-making, and

  (d) commissions and public inquiries; and

(5) the ways of designing and supervising procedural requirements.

Specific episodes or issues will be used as examples, and most but not all of these examples will be about energy and the environment.

The classes will be primarily discussions of materials prepared by the instructor, and for evaluation, students may choose to write either a paper (which will include individual research) or a series of short notes (which will be based on the materials).

Pre-requisite or co-requisite: Administrative Law.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor Risk

(M, 1-3)

ADVANCED INTERNATIONAL LAW (208S)

This seminar will emphasize the dynamic, creative nature of modern international law as it responds to novel problems facing the world community. The central role of the international lawyer in determining Canada's attitude to such problems will be examined critically. Attention will be directed to the increasing need to consider the nation's internal and external policies as a necessarily consistent continuum requiring a coherent philosophy of the transnational legal system. As illustrative problem areas, particular attention will be focused on international environmental questions and on international terrorism.

Evaluation: Students may choose to write an examination or a paper. There will also be a mark based on seminar performance.

Prerequisite or corequisite: International Law A or International Law B.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor Morris

(W, 2-4)

BANKRUPTCY AND RECEIVERSHIP PROBLEMS (211S)

The purpose of this seminar is to discuss alternative approaches to the solution of problems in bankruptcies, proposals and receiverships. Some of the areas to be dealt with will be the rights and liabilities of landlord and tenant when the landlord is put into bankruptcy or receivership, and when the tenant is put into bankruptcy or receivership; the rights of various preferred creditors under bankruptcy distributions; what is included in and excluded from "property of the bankrupt"; questions involving expenses (including solicitor's costs) and fees of trustees and receivers; the problem of deemed trusts; fraudulent conveyances and fraudulent preferences and how they can be attacked by trustees or receivers; applications for discharge from bankruptcy, etc.

Students will be assigned problems to research in depth, and each student will be required to lead discussion on an area of the research.

Assessment will be on the basis of class participation, at least two written memoranda to be submitted during the term, and a short final examination which may be a take-home examination.

Prerequisite: Debtor and Creditor

Corequisite or Prerequisite: Commercial Law

Two hours per week, second term.

NOTE: Enrolment will be limited to 15 students.

Mrs. McKinlay

(Th, 4-6)

CANADIAN LEGAL HISTORY (214S)

An introduction to Canadian legal history, and especially three themes: (1) the relation between law, and social, political and economic change; (2) the changing functions of the legal institutions and processes, particularly courts, common law, statutes, administrative agencies, and lawyers, and (3) the distinctively Canadian legal experience, especially as a loyal colony in North America and a neighbour of the United States.

The topics will be taken from the period from the early nineteenth century to the early twentieth century, and will include for example, (1) court structure and procedure in the nineteenth century, (2) the law and the economy in the mid-nineteenth century, (3) the changes in objectives and institutions in the late nineteenth century and early twentieth centuries, (4) the criminal law, and (5) the legal profession and legal education.

No knowledge or previous study of history is required.

The classes will be primarily discussions of materials prepared by the instructor, and for evaluation, students may choose to write either a paper (which will include individual research), or a series of short notes (which will be based on the materials).

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor Risk

(Th, 2-4)

CHILDREN (216S)

This is an interdisciplinary seminar with the Faculty of Social Work on various issues relating to children such as child abuse, legal representation and juvenile delinquency. The students will have an opportunity to study a number of cases in the field: they will be able to follow a case from a social agency into the courts as well as examine the disposition made by the courts. Students will be doing field work and for this reason, although there will be class meetings, they will not be scheduled on a regular weekly basis.

A paper is required; it will be graded by the instructor from the Faculty of Law.

Two hours per week, second term.

NOTE: Enrolment will be limited to 15 law students.

Professor Green (Faculty of Law)
Professor Irving (School of Social Work)

(M, 4-6)

CIVIL LIBERTIES (217S)

This seminar will examine the theoretical and practical aspects of the protection of civil liberties in Canada. Among the topics discussed will be equality before the law (including problems of discrimination on the basis of race, sex, and age), freedom of speech, freedom of the press, freedom of information and individual privacy, freedom of religion, freedom of association and assembly, due process of law, affirmative action and language rights. Consideration will be given to the means by which these rights and freedoms may be protected, in particular to the effect of the Canadian Bill of Rights, federal and provincial human rights legislation, doctrines of constitutional review and techniques of judicial interpretation. The focus will be on the conflict between individual civil liberties and collective or community interests, and the attempts to resolve these conflicts in the Canadian legal system. Comparisons will be made to the protection of civil liberties in other jurisdictions, particularly the United States.

Evaluation will be on the basis of a paper and class participation.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Mr. Morgan

NOTE: Students taking this course may not take Civil Rights (E. Weinrib)

(W, 4-6)

COLLECTIVE BARGAINING IN THE PUBLIC SECTOR (219S)

A seminar dealing with the study of labour relations in the public sector including such matters as the scope of collective bargaining for public sector employees; the negotiation and compulsory arbitration of conditions of employment for public sector employees; permissible political activity for public sector employees; a comparison of federal and provincial approaches to these problems; a comparison of approaches to these problems in such parts of the public sector as hospitals, police, teachers and civil servants.

There will be no final examination. Evaluation will be on the basis of a short paper and on class performance.

Prerequisite: The Law of Labour Relations or The Law of Collective Bargaining.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Mr. Goudge

(Th, 5-7)

COMMERCIAL AND CONSUMER TRANSACTIONS (220S)

This course will focus on commercial and consumer sales, the law of consumer credit, and related aspects of the law of chattel security and negotiable instruments. It is designed to provide the student with a sound understanding of basic concepts and with an appreciation of the increasingly complex interplay between emerging problems and the statutory and judicial responses. Students will be exposed to a substantial number of recently enacted federal and provincial statutes as well as such basic Acts as the Sale of Goods Act, the Personal Property Security Act, the Bills of Exchange Act, and the American Uniform Commercial Code.

A final examination will be given.

Four hours per week, second term.

(M, 1-2; T,W,Th, 2-3) Professor Ziegel

COMMUNICATIONS LAW II: THE REGULATION OF TELECOMMUNICATIONS AND COMPUTERS (223S)

A basic introduction to the legal and economic policies governing regulated industries in Canada, with a particular focus on telecommunications regulation and computer/communications. This course is designed for law students with an economicsbackground who are interested in examining a variety of important current issues touching on the economics of regulation in Canada. Because of the nature of the research materials to be used in this course, the emphasis will be placed on the economic regulation of telecommunications carriage, satellite communication, data processing and cable television, but the principles involved will be found to be of general application to the problems of utility regulation in Canada. The course is run in conjunction with the Media and Communications Law Section of the Canadian Bar Association, Ontario Branch.

Among the subjects that may be examined are the following: rate regulation of telephone service in Canada, including such problems as cost separation and regulatory lag; economic and regulatory questions arising when regulated firms (e.g. the telecommunications carriers) enter unregulated areas (e.g. data processing, cable television, radio paging) and vice versa; issues raised by the report of the Canadian Computer Communications Task Force (the use of carrier-provided facilities for foreign attachments, interconnection, and wholesaling; private line services and the public switched network); the effect of Canadian social and economic policy on the ratemaking process (rate averaging and internal subsidization practices; 'equitable access' vs. 'cream-skimming'; the problem of competitive necessity). In most of the seminars, participants from the industry closely involved with the matters under discussion will be in attendance, and students will therefore be afforded an opportunity to question representatives of the carriers, data processors, cable television operators, the CRTC and the Department of Communications regarding these topics.

Credit will be based on seminar attendance and participation and, subject to the student's option and the lecturer's approval, on either (a) a substantial paper, or (b) a smaller seminar paper prepared in conjunction with a research team which will organize and preside over a seminar. Students will be provided access to specialized practical materials, including the briefs and transcripts of the public hearings of the regulatory agencies concerned. Enrolment in the class will be limited. Some undergraduate background in economics is desirable although not obligatory. Textbook: Janisch, Materials on Telecommunications Regulation in Canada.

Two hours per week, second term.

NOTE: Enrolment will be limited to 25 students.

Professor Janisch and Mr. Grant

(M, 6-8)

COMMUNITY PLANNING (224F)

An examination of selected problems in the area of community planning and land use controls with particular emphasis on the financial and economic aspects of the law. Topics include the rezoning process (examination of a particular rezoning), the compensation-betterment problem, expropriation (procedure and compensation), the financing of local government (assessment and taxation) and urban renewal (housing codes, rehabilitation, public redevelopment and public housing). Other topics may be substituted for the above as the instructor's and students' interests dictate.

Evaluation will be based mostly on the student's written work (either one substantial paper which satisfies the writing requirement or shorter papers or memoranda which do not satisfy the writing requirement) and partly on a seminar which the student must organize.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor A. Weinrib

(T, 2-4)

CONFLICT OF LAWS (227S)

A study of legal problems where the relevant facts do not all occur within Ontario. The emphasis will be on conflict of laws in relation (a) to international business and (b) to family law. Topics examined under (a) will be taken from: enforcement in Ontario of foreign judgments; foreign penal and tax judgments; expropriation and other acts of foreign governments in relation to property; recognition of foreign corporations (amalgamations, liquidations); contracts; torts; property; proof of foreign law. Topics under (b) will be taken from: recognition of foreign divorces; foreign marriages; marital property in international law.

Evaluation: students will have a choice of writing a paper or an examination.

Two hours per week, first term.

NOTE: Enrolment will be limited to 20 students.

Professor Baxter

(Th, 2-4)

CONSTITUTIONAL LAW 229S

A course in Canadian federalism; Crown and legislature in the Canadian federation; constitutional amendment; delegation; distribution of legislative power between Parliament and Provincial Legislatures; problems of federal-provincial relations arising out of distribution of legislative power; federal-provincial financial arrangements; constitutional guarantees.

A final examination will be given. A limited number of students will be permitted to write a paper instead of an examination.

Required text: Laskin: Canadian Constitutional Law (4th ed. rev.).

Four hours per week, second term.

(M, 11-1; F, 10-12) Professor Alexander

CONSTITUTIONAL PROBLEMS AND CONSTITUTIONAL CHANGE (291S)

This course will examine some current problems in Canadian constitutional law and evaluate some of the proposals for change which have been made in response. The problems discussed will relate to the special nature of constitutional adjudication, the structure of Canada's central institutions, including the Supreme Court of Canada, and legislative authority over such matters as natural resources and criminal behaviour. The course will follow a seminar format and will rely in large part on the interests and work of the participants.

Evaluation will be on the basis of a paper, a seminar presentation, and class participation.

Prerequisite: Constitutional Law

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students. Professor Laskin

(W, 2-4)

CONSUMER LAW SEMINAR 230S

An examination of problems facing consumers in operating efficiently in the modern market place and an evaluation of the effectiveness of possible legal responses to these problems with a special emphasis on attempting to define the respective roles of private law remedies, criminal sanctions, administrative regulation and increased information requirements. The inter-play of these considerations will be examined in the context of selected problem areas such as misleading advertising, product quality, delivery of professional services, access to the legal system, the regulatory agencies, consumer

cooperatives, and consumer education. Throughout, a consideration of these various topics emphasis will also be placed on identifying and evaluating the economic and social assumptions underlying the position of the consumer in the market place as envisaged by classical free market economic theory, the assumptions underlying the position assigned to him/her in the modern mixed economy, and those underlying emerging directions in consumerism. Assessment will be by way of a term paper and satisfactory fulfillment of other short assignments. There will be no written examinations.

Pre-requisite or co-requisite: Commercial and Consumer Transactions

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor Ziegel

(Th, 9-11)

ECONOMIC ANALYSIS OF LAW RESEARCH SEMINAR (245S)

This research seminar is offered to students who have taken the course, Economic Analysis of Law, and who wish to pursue personal research interests in this area through the writing of a paper. Students enrolling in the seminar will be expected to participate in the Law and Economics Workshop sessions throughout the year. In consultation with the seminar instructors, students will also be expected to select a research topic early in first term, with a view to developing their work to a point early in second term where review seminars can be held at which students will report on work in progress and expose ideas to comment and criticism. Students who complete first class research papers will be encouraged, through e.g. summer financial assistance, opportunities to present their papers at later Workshop sessions, to develop their work for publication.

Corequisite or prerequisite: Economic Analysis of Law

Two hours per week, second term.

(Th, 6-8)

Professors Trebilcock & Rea

ECONOMIC REGULATION (237S)

This seminar will explore the modes and limits of regulation as a method of achieving government's social and economic goals, as compared to alternative strategies such as anti-trust legislation, selective taxation and other means of creating market incentives for desired types of conduct. The basic approach will be to examine the various economic, administrative and legal problems which arise in the regulatory process and to compare the advantages and disadvantages of currently practised regulation with the benefits and costs of other institutional arrangements. Further, it will explore the role of political and judicial control of the regulatory process and the costs and benefits of applying due process and other judicial concepts to regulatory decision-making.

There will be no examination. Evaluation will be based on assigned memoranda on specific problems and oral and written participation in a simulated regulatory hearing. The course is open to second and third year law students and graduate students in economics and management studies.

Prerequisite: Economics for Non-Economists or Economic Analysis of Law or equivalent undergraduate background.

Corequisite or Prerequisite: Administrative Law

Three hours per week, second term.

NOTE: Enrolment will be limited to 20 law students.

Professors Trebilcock and Halpern

(M, 2-4)

[illegible] 244S

An examination of some problems of the family in conflict and the remedies in law to those problems; annulment and divorce; economic relations between husband and wife and parent and child; custody and adoption.

A final examination will be given.

Three hours per week, second term.

Professor Green

(T, 2:40-4; Th, 2:40-4)

INDUSTRIAL PROPERTY (246S)

A survey of the law of patents, copyright, industrial designs, and trade secrets, with some reference to the law relating to restraint of trade as it affects owners of industrial property rights.

A final examination will be given.

Two hours per week, second term.

Mr. Hayhurst

(M, 9-10; W, 9-10)

INTERNATIONAL BUSINESS AND INVESTMENT (249S)

The three principle topics in the field of International Business and Investment to be examined are: first, international tax planning techniques, emphasizing Canadian, United States and tax saving approaches; second, techniques, abuses and control of the multi-national corporation, emphasizing both Canadian regulation of foreign investment and the legal aspects of international business arrangements; and third, doing business in developing countries. For each topic, the lawyer's role as an advisor to both business and government will be considered.

Evaluation: students may choose to write an examination or a paper.

Prerequisite or corequisite: Taxation

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Instructor to be announced

(Th, 5-7)

INTERNATIONAL LAW AND FOREIGN POLICY (254S)

This seminar is intended to explore the extent to which generally accepted principles of international law have, could have, or should have formed the basis of official Canadian positions with respect to selected current major issues in foreign policy. Particular attention will be focused on the law of the sea and on recent issues arising in southern Africa.

The aim of the seminar is to duplicate, as closely as possible, the type of problem analysis actually done by the federal government's legal advisers. The emphasis will be on clarifying the legal position before comparing it with the action in fact taken by Canada.

Evaluation: Students may choose to write an examination or a paper. There will also be a mark based on seminar performance.

Prerequisite or corequisite: International Law A or International Law B.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor Morris

(M, 3-5)

JURISPRUDENCE A (257S)

The course will deal with such questions as the nature of law, the function of a legal system, the meaning of legal obligation and the relationship between law and morals. The approaches taken by representatives of the major movements in legal theory will be considered. The materials will be selected from the work of natural law theorists; and members of the analytical, historical, sociological, functional and realist schools.

Evaluation will be on the basis of a paper and classroom participation.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

(Th, 6-8)

Ms. Gray

LABOUR ARBITRATION (260S)

This seminar will focus upon the process of dispute settlement under collective agreements by the machinery of grievance and arbitration procedures. The following topics will be covered: the central role of the machinery in the collective bargaining employer-union relationship under Canadian labour relations statutes; pre-arbitration procedures; the arbitration tribunal; the arbitration hearing; the appropriate functions of the arbitrator; selected issues in grievance determination, e.g., discharge and discipline, seniority, sub-contracting; enforcement and judicial review of arbitration awards. Participants in one or two meetings will include outside guests with experience in the field.

Students will be expected to prepare in advance for seminar meetings with the aid of assigned materials on particular topics. Meetings will be devoted to informed discussion of the topics or to mock hearings of specific disputes in which students will act as counsel and members of tribunals.

A final examination will be given, and students will also be graded on the quality of their participation in weekly meetings including performance in mock hearings.

Course prerequisite: The Law of Labour Relations or The Law of Collective Bargaining. Prerequisite or corequisite: Evidence, Administrative Law.

Two hours per week, second term.

NOTE: Enrolment will be limited to 14 students.

Professor Schiff

(T, 4-6)

THE LAW OF COLLECTIVE BARGAINING (263S)

This course focuses almost entirely on the institutions and processes of collective bargaining as a means of regulating the employment relationship. The topics covered include: the scope of collective bargaining statutes; the organizing drive and the regulation of unfair labour practices; the process of certification of a trade union as the exclusive bargaining agent; the duty to bargain in good faith; the content, administration and legal status of the collective agreement; and the tactics and regulation of industrial conflict including strikes, lockouts, picketing and boycotts.

The coverage of this course is more restricted than the course, The Law of Labour Relations. However, it does suffice as a prerequisite for other courses in the labour relations area.

Evaluation for the course will be based on two take-home problems at different stages of the course.

Two hours per week, second term.

Professor Prichard

NOTE: Students taking this course may not take The Law of Labour Relations.

(M, 2-4)

LAW REFORM (264S)

A study of the process of legal change, with particular emphasis on criminal law and procedure. Subjects to be discussed include: codification movements; pressure groups and public opinion; judicial lawmaking; the Bill of Rights; Royal commissions and government committees; the role of the cabinet and civil service; the workings of Parliament in enacting legislation; and administrative lawmaking.

Evaluation will be by means of a number of minor papers.

Two hours per week, second term.

NOTE: Enrolment will be limited to 25 students.

Professor Friedland

(T, 2-4)

LEGAL THEORY: SELECTED TEXTS (295S)

An examination of the relationship between law and the ideas propounded in certain selected texts. The texts are by prominent philosophers of different historical periods who varied radically in their visions of law, society, and man's place in it.

The texts considered will be: Plato, Crito, Gorgias or Laws; Rawls, A Theory of Justice; Godwin, Enquiry Concerning Political Justice or Nozick, Anarchy, State, and Utopia.

Evaluation: Will be on the basis of class participation and a paper. Each student will be required to make a presentation for the purposes of introducing the discussion at one or more of the class sessions and to write a paper. There will be no formal lectures and students will be expected to participate in the sessions with vigour and insight.

Three hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

Professor E. Weinrib

(M, 2-3:30; F, 1:40 - 3)

MEDICAL JURISPRUDENCE (267S)

Medical jurisprudence will be treated as the legal principles and provisions applicable to the practice of medicine and psychiatry in routine and acute instances. The Materials include legal and non-legal articles, selected statutory provisions and regulations, a full bibliography of recent legal articles (in journals available in the library) and a series of questions demonstrating problem areas. Further materials will be assigned for reading in advance of seminar presentations. Materials will have an Ontario and Canadian orientation, but sources from the U.S.A. and the U.K. will also be used.

Initially, the instructor will introduce the scope of the subject and indicate main issues and features. It is expected that at an early stage, students will undertake presentation of themes, which may be related to their papers. The direction of class meetings will therefore be governed by student preference, but in general the subject matter may fall within the following areas:

Standards of care and malpractice, Malpractice litigation, Confidentiality, Informed consent to treatment, Medical treatment of minors, Human medical experimentation, Euthanasia, natural death and the right to die, Legally protected life, Control of tissue, body materials and transplantation, Reproduction control and promotion (including artificial insemination by donor), Asexual ("test tube") fertilization, Genetic prediction and monitoring, Child abuse, Mental health (including involuntary committal and treatment) and retardation.

These areas are not exclusive, and proposals for presentation in associated areas of legal concern, such as, for example, occupational health or liability of nurses, will be welcomed.

Students will have a choice of writing a paper or an examination.

Two hours per week, second term.

NOTE: Enrolment will be limited to 25 students.

Professor Dickens

(W, 2-4)

SEMINAR ON MULTINATIONAL CORPORATIONS (270S)

The purpose of the course is to introduce students to some of the business organizations and transnational operations of multinational corporations in differnet parts of the world. Examples of the topics to be examined are: - different legal structures of multinationals; role of the lawyer in transnational operations; international tax planning; multinationals and competition law; inter-unit pricing within a multinational; special areas such as the European Economic Community, Japan, People's Republic of China.

Some of the class sessions will take the form of a case-study or a panel discussion.

Evaluation: Students will have a choice of writing a paper or an examination.

Two hours per week, second term.

NOTE: Enrolment will be limited to 25 students.

(W, 4-6)

Professors Baxter and Hahlo, Mr. Brown and Mr. Murphy

THE PRACTICE OF CRIMINAL LAW (234S)

The course offers an intensive study into a number of practical aspects of criminal law covering such topics as plea bargaining; jury selection; jury trial tactics; preparation of witnesses; direct and cross-examination of witnesses; sentencing and appellate advocacy. As well, a number of forensic aspects of the practice of criminal law will be dealt with including psychiatry, pharmacology, pathology, ballistics, homicide and arson investigations. The course is designed to give students a realistic view of the nature of a criminal law practice and the role of the criminal lawyer.

Evaluation will be by paper.

Two hours per week, second term.

NOTE: Enrollment will be limited to 25 students.

Mr. Greenspan and Mr. Moldaver

(T, 6:30 - 8:30)

PROBLEMS IN CORPORATE FINANCE (272S)

This course will deal with the interests created and problems involved in the financing of the corporate entity, the legal characteristics of various types of securities and the means of issuing such securities publicly and privately. It will involve a study of examples of actual documents such as share purchase agreements, trust indentures and prospectuses used for the financing of existing corporations. The course will focus on and contrast different types of securities such as common shares, preference shares, share warrants and rights, mutual fund shares, unsecured debentures, floating charge debentures and first mortgage bonds and consider the factors involved in issuing one type as opposed to another. It will also cover the methods of financing such as bank financing, private placement and public financing. Consideration will also be given to share exchanges, take-over bids, statutory amalgamations, acquisitions, recapitalizations and other forms of corporate re-organization and tax consequences of various financing transactions.

Materials will be supplied.

The seminar method used in this course will require considerable pre-class reading of materials which will include documents, cases and text comments and general discussion of them in class by all students.

A final examination will be required. In addition each week one or two students will be expected to be responsible for leading discussion in class.

Prerequisite. Business Organizations. Corequisites or prerequisites: Securities Regulation and Taxation.

Two hours per week, second term.

(Th, 4-6)

Mr. Glover

REAL ESTATE TRANSACTIONS (275S)

This course studies the manner in which interests in land are bought, sold and mortgaged. It considers all aspects of typical sales transactions: agreement of purchase and sale (terms, effects and drafting traps), problems of physical defects, title problems, and the definition of boundaries. The course also covers land registration systems and considers the role of the lawyer. Special attention is given to the use of land as security. The nature and creation of mortgages, transfers of mortgaged property and mortgage remedies are examined.

Evaluation will be by means of one final examination. The examination will be a take-home examination with a word limit imposed.

4 hours per week, second term.

(M, 9-11; Th, 9-11) Mr. Bucknall

REMEDIES (276S)

This course examines the available techniques for the enforcement of rights and the prevention of and relief from wrongs; the methods whereby substantive rights are translated into concrete terms. The course focuses on the middle ground between procedure, on the one hand, and substantive law on the other. Topics examined include injunctions, specific performance, problems in the law of damages and declaratory proceedings.

Evaluation: Students will have a choice of writing a paper or an examination.

Two hours per week, second term.

(M,W, 3-4) Professor Sharpe

SELECTED PROBLEMS IN COMPETITION LAW (281S)

This course will consist of an examination of selected problems in the area of competition law. The various seminar topics will include: (1) vertical integration, telecommunications; (2) competition law in regulated industries: the securities industry; (3) inferred agreements and conscious parallelism; (4) application of the proposed law to marketing boards; (5) reviewable practices: tied sales, exclusive dealing or refusal to sell; (6) specialization and export agreements; (7) price discrimination in Canada and the United States; and (8) monopoly prohibition in Canada and the proposals under Bill C-13.

In order to give students experience in analysing the factual economic situations arising in the course of these problems, evaluation will be on the basis of written answers to selected problems and memoranda. In many cases the classes will be attended by a specialist in the particular subject matter.

Prerequisite - Restrictive Trade Practices or its equivalent.

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

(T, 4-6)

Professors Dunlop and Trebilcock

TAX POLICY (283S)

The purpose of the seminar is to examine intensively selected current issues in tax policy in Canada. Special attention will be paid to the interaction of legal, administrative and economic issues in the formation of solutions to taxation problems. Sample topics may include tax organization (how decisions are made within government on tax questions), depreciation, regional tax incentives, taxation of corporations and shareholders, taxation of small business, taxation of international income, and taxation of land values.

It is expected that the class will be made up of students from various faculties and departments -- law, political economy, management studies and social work.

Emphasis will be placed on presentations on specified topics by members of the seminar working individually (or perhaps in teams, depending on the number of students enrolled). Each participant (or team) will prepare the materials to be handed out to the class the week before the scheduled date for presentation. Some sessions may be conducted by members of the faculty or by outside speakers.

A substantial paper will be required. Also, each student will be required to conduct one session of the seminar.

Prerequisite: Taxation

Two hours per week, second term.

NOTE: Enrolment will be limited to 20 students.

(W, 4-6)

Professor Sherbaniuk, Professor Bird and Mr. McQuillan

TRIAL ADVOCACY (205S)

This course is based on a Canadianized version of a programme prepared by the National Institute for Trial Advocacy in the United States. It is a programme involving student participation. Each week each student will participate in an exercise taken from a trial situation. The areas covered are Opening Statements, Examination-in-Chief and Cross-Examination, Presentation and Handling of Exhibits, Impeachment, Rehabilitation and Advanced Examination, Examination of Expert Witnesses and Closing Argument. As well as student exercises, there are also weekly demonstrations by experienced trial counsel..

Students will be marked on classroom performance.

Three hours per week, second term.

NOTE: Enrollment will be limited to 24 students.

Mr. Stockwood, Mr. Lenczner and Mr. Slaght

(Th, 6-9)

3. COURSES OFFERED IN BOTH TERMS

BUSINESS ORGANIZATIONS (212Y)

The main purpose of this course is to examine the most important types of business organization with a major emphasis on the corporation. The course will start with a brief study of the sole proprietorship and forms of partnerships and compare these forms of organization to the corporation. Much emphasis will be placed upon the legislative framework governing corporations and recent attempts to reform the framework so as to reflect the reconciliation of the different interests involved in the regulation of the corporate enterprise. Although the present corporation and related statutes of Ontario and Canada receive the major focus of attention, including recent proposals for change in such jurisdictions, the legislation of other provinces of Canada in addition to the United Kingdom and the American statutes will be studied.

The subject involves necessarily both a pragmatic or functional look at the modern corporation and a theoretical or jurisprudential examination of the corporation and the parties interested in its operation.

This course deals with the following topics: the choice of form of business enterprise; the nature and disregard of corporate personality; the process of incorporation; the corporate constitution; contracts between corporations and outsiders; the control and management of the corporation especially the relationships affecting promoters, directors, executive committees, officers, and shareholders; financing the corporation, including a study of the types of corporate securities and the impact of securities legislation; dividends and the preservation of the corporate capital fund; and an introductory study of organic changes of the corporation such as mergers, amalgamations, sales of assets, take-over bids, and reorganization.

The method of instruction will require pre-class preparation for class room discussion, and preparation for a parallel set of small group tutorials conducted by a legal practitioner and structured around problem-solving exercises. The method of evaluation will be by final examination and short written tutorial assignments.

Materials required are the Ontario and Canada Corporations Acts and Beck, Getz, Iacobucci and Johnston, Cases and Materials on Business Associations. A recommended reference work is Iacobucci, Pilkington and Prichard, Canadian Business Corporations.

Two hours per week, both terms.

Dean Iacobucci

(1st term - W, 10-11; F, 10-11)
2nd term - W, 10-11; F, 10-11)

CONSTITUTIONAL LAW (229Y)

This course begins with a discussion of some basic Anglo-Canadian constitutional principles: parliamentary sovereignty, the rule of law and responsible government. It then proceeds to an examination of federalism in Canada, touching constitutional amendment, delegation, the principles of constitutional interpretation and the distribution of legislative authority. Consideration is also given to the Canadian Bill of Rights and to constitutional guarantees of individual and group rights.

Evaluation will be by examination. A limited number of students may be permitted to write a paper in lieu of an examination.

Two hours per week, both terms.

First Term: T, 1-2; W, 11-12
Second Term; T, 1-2; F, 11-12)

Professor Laskin

CONSTITUTIONAL LAW (229Y)

This course begins with a discussion of general principles of Canadian constitutional law: the rule of law, parliamentary sovereignty, the relation of the Crown and the legislature, and federalism. This is followed by a discussion of the general principles of interpretation with regard to the distribution of powers, application of these principles to selected heads of legislative authority, constitutional protection of civil liberties, and the operation of the Canadian Bill of Rights.

Evaluation will be by examination. A limited number of students may be permitted to write a paper instead of an examination.

Two hours per week, both terms.

(1st term - T, 1-2; W, 11-12)
2nd term - T, 1-2; W, 11-12)

Professor Swinton

EVIDENCE (241Y)

The purpose of this course is to provide the student with an understanding of the basic principles of the law of evidence in the adversary system. Most of the cases studied concern the criminal trial process, but both civil and criminal evidence are covered. Topics discussed include the competence and compellability of witnesses, the rules relating to relevance and admissibility and the exclusionary rules.

Evaluation will be by examination.

Two hours per week, both terms.

(First Term; T, 10-11; Th, 12-1)
(Second Term; T, 10-11; Th, 12-1)

Professor Mewett

EVIDENCE (241Y)

A study of the presentation of evidence and fact-determination in the Anglo-Canadian litigation process. To be examined are the rationale of the adversary trial as an official forum for dispute settlement by adjudication; the roles within an adversary trial system of judge, counsel, trier of fact, and appellate court; relevancy; testimonial evidence, including qualification of witnesses, examination of witnesses, impeaching and supporting credibility; the hearsay rule and exceptions; opinion testimony; judicial notice; real evidence; problems of circumstantial evidence; confessions; exclusionary rules based on social policies unconnected with the determination of truth; burdens of proof and presumptions. Throughout, emphasis is placed upon identifying doctrine and techniques which will best accommodate the interests of the litigants and collateral social interests involved in the rationale of the trial forum.

The coursebook to be used is S. SCHIFF, EVIDENCE IN THE LITIGATION PROCESS (The Carswell Co. Ltd. 1978). In addition to reasons for judgment in litigated cases, the book contains numerous excerpts from other literature and considerable analytic text sprinkled with questions and problems. Class meetings will be devoted almost exclusively to informed discussion of these materials.

Evaluation will be by examination.

Two hours per week, both terms.

First Term: (T, 10-11; Th, 12-1)
Second Term; (T, 10-11; Th, 12-1)

Professor Schiff

INTERNATIONAL LAW A (252Y)

The international legal system: an introductory study of jurisdiction and dispute settlement in international law, with emphasis on the relationship between domestic and international law. Most of the course is devoted to an examination of general problems such as sources and application of international law rules, subjects of international law (with particular attention to the position of federal states), recognition, and the role of international institutions (including the International Court of Justice) in the regulation of international affairs. The remainder of the course examines aspects of national jurisdiction and the limitations on state sovereignty.

A final examination will be given. A limited number of students will be permitted to write a paper instead of an examination.

Prerequisite or corequisite: Constitutional Law.

Two hours per week, both terms.

(First Term: T, 2-3; Th, 11-12)
Second Term: T, 2-3; Th, 2-3)

Professor Morris

TAXATION (284Y)

This course is an introduction to Canadian income tax law and is intended to provide a conspectus of its most important features. The initial lectures are devoted to a discussion of the purposes of taxation today, the history of the income tax, federal-provincial fiscal relations, the taxing powers of the federal and provincial governments, the factors which are relevant in the formulation of an income tax system; interpretation of taxing statutes; the basis for imposition of an income tax (residence, domicile, citizenship, carrying on business). The bulk of the course is concerned with the following questions: what gains constitute income (income from business, property, office and employment and personal services); how are capital gains taxed; when are income and deduction items recognized as arising; how is income measured (consideration of accounting and business principles); and briefly, how are business enterprises, particularly corporations, taxed.

Some topics are dealt with in lectures, others through the study of cases and still others by an examination of problems.

Evaluation will be by examination.

Two hours per week, both terms.

(1st term - Th, 9-10; F, 9-10)
2nd term - Th, 9-10; F, 9-10)

Professor Sherbaniuk

TAXATION (284Y)

This course is an introduction to Canadian income tax law. The major substantive questions to be dealt with are: which economic gains constitute "income"; how are "capital" gains taxed; when is a gain income for tax purposes; which payments or other economic losses qualify as deductions from income (and when); whose income is taxed in Canada; what special rules apply to the taxation of business entities. Competing principles in the interpretation of taxing statutes and problems of tax planning will be discussed throughout the course. Pre-class study of assigned readings and problems is an essential part of the course.

Evaluation will be by examination.

Two hours per week, both terms.
(1st term - M, 12-1; Th, 11-12)
2nd term - T, 11-12; Th, 11-12)

Professor A. Weinrib

WILLS AND TRUSTS (289Y)

This course will examine the basic concepts of the trust. For reasons of convenience, the institution will be examined chiefly in the context of the distribution of accumulated wealth on, or in anticipation of, death. The course will also examine the formalities incidental to the making and revoking of testamentary documents, intestacy, and Dependants' Relief Legislation. Finally, we will examine a selection of types of problems commonly found in testamentary documents.

The instructor hopes that two themes will manifest themselves during the course. (i) the importance of developing a healthy respect for the sometimes intricate principles of property law which the competent draftsman must learn to use to his client's advantage, rather than to the frustration of his aims; (ii) the even greater importance of framing a sentence which means exactly what you want it to mean, and nothing else.

We may look at some tax problems which arise in the course of planning and settling estates, but these will be raised merely as examples of the way in which the tax collector forces the property lawyer to adjust his techniques. This is not a course in 'estate planning' in the usual tax avoidance or tax minimization sense, and no attempt will be made to present a comprehensive picture of the tax structure affecting transmission of property on death.

Evaluation will be by examination.

Three hours per week, both terms.

Professor Scane

(1st term - M, 10-11; W, 9-10; Th, 10-11)
2nd term - T, 12-1; W, 9-10; F, 12-1)

COURSES OFFERED AT THE CENTRE OF CRIMINOLOGY 1980-81

NOTE: Students are permitted to enroll, each year, in a maximum of three of the Centre of Criminology Seminars open to law students. Application to enroll in any of these seminars must receive the approval of the Centre of Criminology. The seminars which are available to law students are listed below. The method of evaluation for all these seminars is a paper. All seminars are held in Room 8050, Robarts Library, 130 St. George St.

First term at the Centre of Criminology begins on Monday September 15. Second term begins on Monday January 5. Students taking any of those course available to law students must see Ms. Monica Bristol, Room 8001, Robarts Library. Students will receive a form from her which they will take to the instructor, obtain his approval, then return to Ms. Bristol for approval by the graduate secretary of the Centre.

We do not yet know in which terms the seminars will be offered.

JUVENILE JUSTICE

Seminars presented by students will be drawn from the following areas: Delinquency distinguished from adult criminality; the Age of Criminal Responsibility; Male Delinquency distinguished from Female Delinquency; Criminal and Civil management of delinquency; Juvenile Delinquents Act and proposed Young Offenders Act; the role and power of Delinquency Prevention; Role and Character of the Juvenile Court; Procedure in the Juvenile Court, including informality, guilty plea, publicity; Role of prosecution, child representation and advocacy; the Sentencing Process -- reports and witnesses; Disposition -- range, review, orders against parents, use of criminal records; Diversion.

Professor B.M. Dickens

THE MACHINERY OF CRIMINAL PROSECUTIONS

This seminar course will involve itself with an examination of the interrelationship between substantive criminal law and procedure and the machinery of criminal prosecutions. Emphasis will be placed, in particular, upon the role and functions of the Attorney-General, the Minister of Justice, the Solicitor-General, Crown prosecutors, defense counsel, the police, and the courts in the overall prosecutorial system. Special importance will be given to studying the nature and extent of the range of discretionary powers associated with criminal prosecutions, as well as the process of accountability for administering such powers. Each student will be required to make a seminar presentation. Evaluation will be on the combined basis of the presentation, participation in the seminars, discussions and the submission of a substantial paper.

Professor J.Ll.J. Edwards

PENOLOGY

A critical analysis of the development and current state of the penal system in Canada. This analysis is framed by discussion on the history of penal systems, the aims of penal systems, and how the effectiveness of the penal systems in achieving various aims can be assessed by empirical research. Alternatives to the current system are discussed. Observational visits to institutions form part of the requirements for this course.

Professor R.V. Ericson

THE ROLE OF THE POLICE IN MODERN SOCIETY

The focus of this course is the role and place of the police in modern society. After a brief historical analysis of the development of the police function in Western society the parameters of the police function as they exist today are examined. Special attention is given to the range and diversity of police functions, the police role as peace keepers as well as law enforcers, the relationship between the police and the public, the mobilization of police resources, the organization of the police, their legal authority, the role of technology and police discretion. Some consideration will also be given in the course to the role being played in modern society by private police organizations and their relationships to the public police.

Dr. C.D. Shearing

Osgoode Hall - University of Toronto Exchange Programme

Note: Places are guaranteed for two University of Toronto Faculty of Law students in each of the following Osgoode Hall Law School courses:

In the first term, classes start on September 2, 1980. Classes in the second term begin on January 12, 1981.

Courses Offered in the First Term

ADVANCED CONTRACT PLANNING WORKSHOP (215F)

This is an intensive advanced-level seminar in contract planning. It will provide a practical exploration of the planning problems that will confront the contracts lawyer in the social and economic context of the 1980's. If the commercial contract is in essence a vehicle for the allocation of risk, what kind of risk planning is most appropriate in an age of increasing instability and economic uncertainty?

Seminar Outline

I. Planning for Performance

1. A Primer on Contract Planning.

II. Planning for Risks of Non-Performance

2. Flexibility, Indefiniteness and Judicial Gap-Filling.
3. Planning Agreed Remedies.
4. Drafting the Disclaimer Clause.
5. Jockeying for Position and the "Battle of the Forms".

III. The Consequences of Incomplete or Ineffective Risk Planning

6. Risk of Loss in Value or Destruction of Subject-Matter, Planning for Frustration.
7. Risk of Increased Performance Costs. "Inflation-Frustration".
8. Inflation Planning. Stabilization Techniques.
9. Risk Allocation Generally: A Broader Perspective.

IV. Planning Litigation Content

10. The *In Specie* Remedy - Selected Problems: When? Why?
11. Calculating Damages: How? How Much?
12. The Strategy of Pleading in Quasi-Contract
13. The Strategy of Pleading in Tort.

Prerequisite: Commercial Law

Evaluation will be by means of class presentations, research memoranda and role simulation.

Two hours per week, first term.

(W, 2-4)

Professor Belobaba

ENERGY LAW (203F)

This seminar will be concerned with the comparative evaluation of the various regulatory techniques employed with respect to the management of Canada's primary resources. Both renewable and non-renewable resource sectors will be considered; in particular water, petroleum, natural gas, forestry, mineral (uranium-time permitting) resources. The dominant theme of the course will be an examination of the differing perspectives of various branches of industry, consumers utilities, government and public interest groups and organizations and how these concerns can best be represented and resolved.

Reference will be made to contrasting approaches adopted by individual provinces and the differences in methodology applied to the various resources in question.

Conflict between provincial and national interests will be looked at, and constitutional implications as respects both Judicial and co-operative resolutions will be examined.

A series of specific case studies will be developed through which the more general legal and managerial controversies will be considered. An effort will also be made to acquaint students with technical rudiments, particularly those areas now subject to detailed regulatory control such as is true of oil and gas development.

Some of the subjects which will be considered in this course are:

A. Columbia river negotiations
B. Churchill-Nelson Power division
C. National energy board
D. Constitutional controls
E. Royalties & taxation of resource profits
F. MacKenzie Valley pipeline/ALCAN pipeling
G. Stimulation of alternative research and development
H. Forest resources
I. Mineral resource.

Evaluation: Evaluation will be by means of a final examination and class presentation. An alternative method of evaluation allows for a research paper worth 30%.

Three hours per week, first term.

(M,Th,F, 1-2) Professor McDougall

SOVIET LAW: A COMPARATIVE PERSPECTIVE (248F)

A comparative study of Soviet law and the Soviet legal system. After a brief exposition of the historical and philosophical background to Soviet law, the seminar will cover legal institutions, constitutional law and civil rights, civil law and procedure and criminal law and procedure.

Evaluation will be by a major research paper.

Two hours per week, first term.

(W, 2-4) Professor Luryi

Courses Offered in the Second Term

BUREAUCRACY AND THE ADMINISTRATIVE PROCESS (251S)

This course will examine the operation of law enforcement by administrative bodies exercising discretion. It will attempt to understand the process by which legal rules are translated into social action through bureaucracy, and to consider ways of controlling official discretion.

Readings will be assigned from the social and behavioral sciences as well as from administrative law, and will outline theories of formal organization and attempt to provide an understanding of bureaucratic behaviour and the environmental context of organizations. In the light of this, methods of controlling official behaviour will be considered as well as will methods of constitutional design, and in particular the appropriate mix of rule and discretion for various administrative tasks.

Evaluation: Information concerning evaluation is not yet available.

Two hours per week, second term.

(W, 2-4) Professor Wilson

CHILD, FAMILY AND THE STATE (258S)

This seminar seeks to examine, describe and critique the legal relationships that order children in the family context under conditions of the Western contemporary state with particular reference to Canada and the United States. The seminar will draw on historic, sociological, psychological, literacy and legal materials to make sense of the seminar problematic.

The following are suggestions of the materials to be used:

Aries - "Centuries of Childhood" - provides an analysis of the notion of childhood and fixes that concept in an historical setting.

Anna Freud & Margaret Mahler - study on childhood development and therapeutic practices which provides a framework to understand human development in the contemporary family.

Goldstein, Solnit & Freud - "Beyond the Best Interests of the Child" and "Before the Best Interests of the Child" which attempt to apply psychoanalytic understanding to policy determination particularly in respect to state intervention into the family context.

Other materials will probably include:

Poster's - "Critical Theory of the Family." Selected essays, cases, materials and appropriate legislation drawn from the Canadian experience with particular reference to child abuse and child custody.

Brecht's "Caucasian Chalk Circle".

Evaluation will be by a major research paper.

Two hours per week, second term.

(M, 4-6)

Professor Kaplan

RESOURCES MANAGEMENT (209S)

This course will consider the legal framework and related issues and policies with respect to energy in Canada. Energy sources considered will include: petroleum, natural gas, nuclear, hydro and electricity. The course will encompass the energy industry from research and exploration, development and production, transportation, marketing and consumption. Topics studies will include: (1) constitutional aspects of federal/provincial activities in energy; (2) industry/federal/provincial sharing of revenues and economic rent in the energy sector; (3) taxation of the oil and gas and nuclear industries (including provincial royalties and the federal export tax on oil), and related policy goals of protection of Canadian consumers, a fair return for Canada from resource exportation, future self-sufficiency, and industrial development; (4) foreign ownership and control in the energy industry; (5) public and private ownership in resource development; (6) import/export laws; (7) international aspects for Canadian energy; (8) federal regulatory agencies, including the National Energy Board and Atomic Energy Control Board; (9) provincial regulatory agencies (in particular, Alberta and Ontario); (10) energy related environmental protection laws; and (11) the need for a conserver society, and alternative mechanisms to achieve conservation. The course will focus upon the legal issues and institutions concerned with energy, but will be within a context of understanding the alternatives available in developing national and provincial energy policies. There will be guest speakers.

Prerequisite or Corequisite: Administrative Law

Evaluation will be by means of class presentation and a major research paper.

Two hours per week, second term.

(W, 3-5)

Professor McDougall

Check W's print-out June 1980

MacKenzie, Norman A.M. "American Contributions to International Law." (1939), 33 American Society of International Law, Proceedings 104-117. 4118

MacKenzie, Norman A.M. "Canada and the Law of Nations." (1938), 19 British Year Book of International Law 225-226. 4119

MacKenzie, Norman A.M., and Laing, Lionel H., eds. Canada and the Law of Nations; a Selection of Cases in International Law, Affecting Canada or Canadians, Decided by Canadian Courts, by Certain of the Higher Courts in the United States and Great Britain and by International Tribunals. Foreword by Sir Robert Borden. Introduction by James Brown Scott. Toronto: Ryerson Press; New Haven: Yale University Press; etc., 1938. xxvii, 567 p. (Relations of Canada and the United States) / 3287 51 022 4120

Note: Published for the Carnegie Endowment for International Peace, Division of Economics and History. Reprinted New York, Kraus Reprint, 1972.

Reviews: Manley O. Hudson under title: Twelve Casebooks on International Law, in (1938), 32 American Journal of International Law 447-456; John Willis in (1939-40), 3 University of Toronto Law Journal 461-463; Lester H. Woolsey in (1938), 32 American Journal of International Law 624-625; in (1938), 19 Canadian Historical Review 326-329. Elbridge Colby in (1940), 9 Fordham Law Review 443-444; under title: Canada and the World, in (1938), 185 Law Times 371-373. Wilhelm Friede in (1939-40), 9 Zeitschrift fu¨r Ausla¨ndisches O¨ffentliches Recht und Vo¨lkerrecht 190-191; A. Berriedale Keith in (1939), 18 International Affairs 690-691; G.S. Cowan in (1938-39), 18 Dalhousie Review 274-275; J.A.C. in (1939-40), 46 Queen's Quarterly 104-105.

MacKenzie, Norman A.M. "Canada and the Treaty-Making Power." (1937), 15 Canadian Bar Review 436-454. 4121

MacKenzie, Norman A.M. "Canada: The Treaty-Making Power." (1937), 18 British Year Book of International Law 172-175. 4122

MacKenzie, Norman A.M. "Canada: The Treaty-Making Power." (1937), 18 British Year Book of International Law 172-175. / 4974 51 088 4123

MacKenzie, Norman A.M. "Citizenship in Canada." (1934), 15 British Year Book of International Law 159-161. 4124

MacKenzie, Norman A.M. "Commonwealth or Empire." (1934), 28 American Journal of International Law 559-562. 4125

MacKenzie, Norman A.M. "Congress on Laws of Aviation." (1926), 4 Canadian Bar Review 29-34. 4126

MacKenzie, Norman A.M. "Constitutional Developments in the Commonwealth of Nations." (1930), 8 Canadian Bar Review 213-217. 4127

MacKenzie, Norman A.M. "The Crisis in the Far East." (1932-33), 2 University of Toronto Quarterly 3-20. / 4975 51 345 4128

MacKenzie, Norman A.M. "Disarmament." (1929-30), 7 Canadian Defence Quarterly 29-35. / 4976 51 300 4129

MacKenzie, Norman A.M. "The Freedom of the Seas." (1929), 36 Queen's Quarterly 420-436. / 4977 51 172 4130

MacKenzie, Norman A.M. "The International Law Association: 34th Congress, 1926." (1927), 5 Canadian Bar Review 106-111. 4131

MacKenzie, Norman A.M. "International Law - Hot Pursuit - The Three Mile Limit (Comment)." (1929), 7 Canadian Bar Review 407-410. / 4978 51 271 4132

Note: Refers to the I'm Alone, a Canadian schooner, registered in Lunenburg, Nova Scotia, engaged in smuggling liquor into the United States.

MacKenzie, Norman A.M. "International Law and the Contemporary World Situation." (1959-63), 1 University of British Columbia Law Review 679-687. 4133

MacKenzie, Norman A.M. "International Notes." (1926), 4 Canadian Bar Review 241-246. 4134

MacKenzie, Norman A.M. "International and Constitutional Law - Legislative Jurisdiction within Territorial Waters - The Three Mile Limit - The King v. Boutilier. (1929) 2 D.L.R. 849 (Case Note)." (1929), 7 Canadian Bar Review 736-738. / 4973 51 159 4135

MacKenzie, Norman A.M. "The Jay Treaty of 1794." (1929), 7 Canadian Bar Review 431-437. / 4979 51 354 4136

MacKenzie, Norman A.M., ed. The Legal Status of Aliens in Pacific Countries; an International Survey of Law and Practice Concerning Immigration, Naturalization and Deportation of Aliens and Their Legal Rights and Disabilities. London, New York, etc.: Oxford University Press, 1937. xii, 374 p. / 3288 51 068 4137

Note: A report in the International Research Series of the Institute of Pacific Relations issued under the auspices of the secretariat.

Contents: Introduction, by Norman MacKenzie.- Australia.- Canada.- China.- Indo-China.- Pacific Dependencies of Great Britain. - Japan.- Netherlands.- India.- New Zealand.- Philippine Islands.- Russia.- United States of America.

Reviews: Clyde Eagleton in (1938), 32 American Journal of International Law 651-652; F.C. Cronkite in (1938), 4 Canadian Journal of Economics and Political Science 573-576; Cheng Tien-Hsi in (1939), 20 British Year Book of Internationa Law 181-182; G.W. Paton in (1939-40), 3 University of Toronto Law Journal 188-189; in (1938), 19 Canadian Historical Review 326-329.

MacKenzie, Norman A.M. "Legislative Control over Aviation in Canada." (1932), 3 Air Law Review 407-416. / 4980 51 205 4138

MacKenzie, Norman A.M. "The Nature, Place and Function of International Law." (1939-40), 3 University of Toronto Law Journal 114-131. 4139

MacKenzie, Norman A.M. "Problems of Population and Persons." (1936), 30 American Society of International Law, Proceedings 87-96. 4140

MacKenzie, Norman A.M. "The Progressive Codification of International Law." (1926), 4 Canadian Bar Review 302-306. 4141

MacKenzie, Norman A.M. "The Second Unofficial British Commonwealth Relations Conference." (1939), 33 American Journal of International Law 352-356. 4142

Note: The First Conference was held in Toronto in 1933; the second was held Sept. 3-17, 1938, at Lapstone, near Sydney, Australia.

MacKenzie, Norman A.M., and Finkleman, J. "The Status of Aliens in Canada." (1934), 6 Canadian Political Science Association, Proceedings, 60-93. / 6578 51 068 4143

MacKenzie, Norman A.M. "The Teaching of International Law and International Relations in Canadian Universities, 1931." (1932), 10 Canadian Bar Review 519-523. 4144

MacKenzie, Norman A.M. "The Treaty-Making Power in Canada." (1925), 19 American Journal of International Law 489-504. 4145

MacKenzie, Norman A.M. "Two Recent Canadian Treaties." (1925), 6 British Year Book of International Law 191-192. / 4981 51 087 4146

Note: Refers to the Halibut Fisheries treaty with the United States of March 2, 1923 (BTS 18 (1925); 32 LNTS 93), and the Commercial Convention with Belgium, of July 3, 1924 (BTS 7 (1925); 32 LNTS 36), both concluded by Canada on her own behalf.

MacKenzie, W.C. "Problems of the Fisheries in the Atlantic Provinces." In Alexander, Lewis M., and Hawkins, Gordon R.S., eds. Canadian U.S. Maritime Problems (Kingston, R.I., 1972), pp. 50-55. / 3568 51 179 4147

MacKirdy, Kenneth A. "Canada and the Commonwealth." (1967), 74 Queen's Quarterly 452-461. / 4985 51 349 4148

MacKirdy, Kenneth A. "The Commonwealth Idea." (1965-66), 25 Behind the Headlines no. 2 (21 p.) 4149

MacKirdy, Kenneth A. "United Nations: Some Thoughts on Changing Perspectives." (1960-61), 67 Queen's Quarterly 557-567. / 4986 51 217 4150

MacLachlan, Alastair Donald. The Great Peace: Negotiations for the Treaty of Utrecht, 1710-1713. Cambridge, England, 1965. vi, 723 leaves. / 6423 51 347b 4151

Note: Thesis (Ph.D.), Cambridge University, 1965.

MacLaren, Roy. Canadians in Russia, 1918-1919. Toronto: Macmillan of Canada; Lewiston, N.Y.: Maclean-Hunt Press, c1976. viii, 301 p., maps. / 3983 51 286 4152

MacLaren, Roy. Canadians in Russia, 1918-1919. Toronto: Macmillan of Canada; Lewiston, N.Y.: Maclean-Hunt Press, c1976. viii, 301 p., maps. / 6220 51 286 4153

Reviews: David R. Jones in (1977-78), 57 Dalhousie Review 387-388;

MacLaren, Roy. "A Code of Conduct: First Step in Regulation of Multinationals." (1974), International Perspectives 21-24 (May/June) 4154

MacLean, Guy. "The Georgian Affair: An Incident of the American Civil War." (1961), 42 Canadian Historical Review 133-144. (1977-78) / 7229 51 351 4155

MacNab, C.T.A. "Constitutionality of Federal Control of Foreign Investment." (1965), 23 University of Toronto, Faculty of Law Review 95-106. 4156

MacPherson, Ronald B. Tariffs, Markets and Economic Progress; a Re-Appraisal of Trade Policies in the Light of Canada's Productive Capabilities and Long-Term Opportunities. Toronto: Copp Clark, 1958. xi, 91 p. / 3292 51 390 4157

MacQuarrie, Heath Nelson. Pan-American Union and Canadian Foreign Policy. Fredericton, 1949. (3), iii, 164 leaves. 4158
Note: Thesis (M.A.), University of New Brunswick, 1949.

MacRae, A.O. "When Annexation Was in Flower." (1929-30), 9 Dalhousie Review 282-286. / 4989 51 136 4159

MacWilliam, D.A., and Muir, R.C. "Offshore Operating Agreements." (1973), 11 Alberta Law Review 503-516. / 4991 51 184 4160

Macaulay, Robert. "Do American Subsidiary Firms Make Good Canadian Citizens?" (1963), 5 University of Windsor Seminar on Canadian-American Relations, Proceedings 185-194. / 7038 51 416 4161

Macaulay, Wallace D. "The Liability of a Carrier by Sea." (1952), 5 University of New Brunswick Law Journal 26-35 (No. 2). 4162

Macbrayne, Sheila Forbes. Right of Innocent Passage. Montreal, 1956. iv, 267 leaves. / 6304 51 195 4163
Note: Thesis (LL.M.), McGill University, 1956.

Macdonald, H. Ian. "The European Common Market." (1958), 18 Behind the Headlines no. 4 (16 p.) 4164

Macdonald, H. Ian. "The European Economic Community: Background and Bibliography. (1962-63), 22 Behind the Headlines no. 2 (15 p.) 4165

Macdonald, H.I. "Commonwealth Preferences: Canada's Strength at GATT?" (1964), 29 Business Quarterly 36-42 (no. 1) / 4951 51 401 4166

Macdonald, Ronald St. John. The Arctic Frontier. Published in association with the Canadian Institute of International Affairs and the Arctic Institute of North America. Toronto: University of Toronto Press, 1966. 311 p., maps. / 3278 51 140 4167
Note: Some essays are also listed separately.
Reviews: Kenneth Rea in (1966), 32 Canadian Journal of Economics and Political Science 531-532; I. Norman Smith in (1965-66), 21 International Journal 385-386; Gordon Winter in (1967), 43 International Affairs 806-807;

Macdonald, Ronald St. John; Morris, Gerald J.; and Johnston, Douglas M. "Canadian Approaches to International Law." In Macdonald, Ronald St. John, and others. Canadian Perspectives on International Law and Organization (Toronto, 1974), pp. 940-954. / 3533 51 026 4168

Macdonald, Ronald St. John; Morris, Gerald L.; and Johnston, Douglas M. "The Canadian Initiative to Establish a Maritime Zone for Environmental Protection: Its Significance for Multilateral Development of International Law." (1971), 21 University of Toronto Law Journal 247-251. / 4957 51 165 4169
Note: A statement circulated and discussed at the annual conference of the American Society of International Law, meeting in New York on

April 24, 1970. Annexed to a symposium on the International Legal Aspects of Pollution, held in Vancouver, September 1970.

Macdonald, Ronald St. John; Morris, Gerald L.; and Johnston, Douglas M., eds. Canadian Perspectives on International Law and Organization. Toronto: University of Toronto Press, 1974. xx, 972 p. / 3279 51 022 4170

Note: Contains thirty-eight papers in English and French by different authors, listed individually in this bibliography.

Reviews: R. R. Baxter in (1974), 12 Canadian Yearbook of International Law 366-369; Craig Brown in (1976), 8 Victoria University of Wellington Law Review 230-233; Ronald C.K. Cheng in (1975), 33 University of Toronto Faculty of Law Review 113-115; John Claydon under title: Canadian Perspectives on International Law and Organization. Toward an Expanding Role in World Order, in (1975-76), 2 Dalhousie Law Journal 533-552; J. Duthiel de la Rochère in (1976), 28 Revue Internationale de Droit Comparé 404-406; Thomas M. Franck under title: International Law in Canadian Practice: The State of the Art and the Art of the State, in (1975-76), 31 International Journal 180-214; Leslie C. Green under title: Is There a Canadian Internationa Law?, in (1974), 22 Chitty's Law Journal 289-291; Leslie C. Green under title: Focus on International Law, in (1974), International Perspectives 52-55 (September/October); C.A. Hopkins in (1976-77), 48 British Year Book of International Law 425-428; G.V. La Forest in (1975), 53 Canadian Bar Review 442-445; D.M. McRae in (1974), 24 University of Toronto Law Journal 457-463; Edward McWhinney in (1975), 8 Canadian Journal of Political Science 335-337; A. Clayton Rice under title: Canadian Perspectives on International Law and Organization: Systems-Building and the Role of Law, in (1976), 14 Alberta Law Review 344-361; Charles Rousseau in (1974), 78 Revue Générale de Droit International Public 1215-1216; Ko Swan Sik in (1976), 23 Netherlands International Law Review 107-109; Stanislas Slosar in (1975-76), 6 Revue de Droit Université De Sherbrooke 223-231; in (1975), 6 Etudes Internationales 293 (brief notice). Daniel C. Turack in (1975), 4 Capital University Law Review 363-370; Ian Brownlie in (1947), 23 McGill Law Journal 152;

Macdonald, Ronald St. John. "The Developing Relationship Between Superior and Subordinate Political Bodies at the International Level: A Note on the Experience of the United Nations and the Organization of American States." (1964), 2 Canadian Yearbook of International Law 21-54. 4171

Macdonald, Ronald St. John. "Economic Sanctions in the International System." (1969), 7 Canadian Yearbook of International Law 61-91. 4172

Macdonald, Ronald St. John. "Fundamentals of Canadian Foreign Policy." (1958), 12 Year Book of World Affairs 156-180. / 4953 51 347 4173

Macdonald, Ronald St. John. "An Historical Introduction to the Teaching of International Law in Canada." (1974), 12 Canadian Yearbook of International Law 67-110. 4174

Macdonald, Ronald St. John. "An Historical Introduction to the Teaching of International Law in Canada: Part II." (1975), 13 Canadian Yearbook of International Law 255-280. 4175

Macdonald, Ronald St. John. "An Historical Introduction to the Teaching of International Law in Canada: Part III." (1976), 14 Canadian Yearbook of International Law 224-256. 4176

Macdonald, Ronald St. John. "Hungary, Egypt and the United Nations." (1957), 35 Canadian Bar Review 38-71, 603-604 (letter from Edward G. Lee). 4177

Macdonald, Ronald St. John. "International Law - Jay Treaty of 1794 - Abrogation of Treaties by Outbreak of War - Review of Canadian and Foreign Decisions. (Francis v. the Queen), (1954) Ex. C.R. 590; (1955) 4 D.L.R. 760). Casenote." (1956), 34 Canadian Bar Review 4178

Macdonald, Ronald St. John. "International Law - Jay Treaty of 1794 - Abrogation of Treaties by Outbreak of War - Review of Canadian and Foreign Decisions (Comment)." (1956), 34 Canadian Bar Review 602-612. / 4954 51 091 4179

Macdonald, Ronald St. John; Johnston, Douglas M., and Morris, Gerald L., eds. The International Law and Policy of Human Welfare. Alphen Aan den Rijn: Sijthoff _ Noordhoff, 1978. xviii, 690 p. / 6036 51 026 4180
Note: Contains 25 essays, some of which are listed separately.

Macdonald, Ronald St. John; Morris, Gerald L.; and Johnston, Douglas M. "International Law and Society in the Year 2000." (1973), 51 Canadian Bar Review 316-332. 4181

Macdonald, Ronald St. John. "International Law and the Domestic Law of Canada." In Wilner, Gabriel M., ed. Jus et Societas; Essays in Tribute to Wolfgang Friedmann (The Hague, 1979), pp. 220-240. / 3686 51 028 4182

Macdonald, Ronald St. John, Johnston, Douglas M., and Morris, Gerald L. "The International Law of Human Welfare: Concept, Experience, and Priorities." In Macdonald, Ronald St. John, and others. The International Law and Policy of Human Welfare (Alphen Aan den Rijn, 1978), pp. 3-79. / 6175 51 026 4183

Macdonald, Ronald St. John. "International Law- Impleading Foreign Sovereign State - Immunity from Suit - New Method to Test Sovereign Immunity Doctrine. (Rahimtoda v. Nizam of Hyderabad, (1957) 3 All E.R. 441). Casenote." (1958), 36 Canadian Bar Review 549-558. 4184

Macdonald, Ronald St. John. "International Organization Courses in Law Schools - A Canadian Comment." (1965), 59 American Society of International Law, Proceedings 84-87. 4185

Macdonald, Ronald St. John. "International Treaty Law and the Domestic Law of Canada." (1975-76), 2 Dalhousie Law Journal 307-329. 4186

Macdonald, Ronald St. John. "The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice." (1970), 8 Canadian Yearbook of International Law 3-38. 4187

Macdonald, Ronald St. John; Morris, Gerald L.; and Johnston, Douglas M. "The New Lawyer in a Transnational World." (1975), 25 University of Toronto Law Journal 343-357. 4188

Macdonald, Ronald St. John, and Hough, Barbara. "The Nuclear Tests Case Revisited." (1977), 20 German Yearbook of International Law 337-357. / 4956 51 301 4189
Note: Review of the Nuclear Tests Case (Australia v. France), (1974) I.C.J. Reports 253.

Macdonald, Ronald St. John. "The Organization of American States in Action." (1963-64), 15 University of Toronto Law Journal 358-429. 4190

Macdonald, Ronald St. John. "Petitioning an International Authority." In Gotlieb, Allan E., ed. Human Rights, Federalism and Minorities (Toronto, 1970), pp. 121-144. / 3578 51 076 4191

Macdonald, Ronald St. John, and Humphrey, John P., eds. The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms. Toronto: Butterworths, 1979. xx, 460 p. / 6037 51 076 4192

Note: Contains 24 essays by various authors.

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Dean of U of T Law School, scholar, Cecil A. Wright dies

Cecil Augustus Wright, dean of the University of Toronto's Law School and renowned scholar and teacher, died in Toronto yesterday. He was 62.

Dr. Wright was architet of modern legal training in Canada, sculptor of many Ontario laws, and author of textbooks used by law students in half the world.

Caesar to his friends, and a man who paid for his own education in jobs from soda jerk to band leader, Dr. Wright was dean of the Faculty of Law at the University of Toronto from 1948 until his death.

An outstanding educator, the teacher of such men as Paul Martin, Lionel Chevrier and J. J. Robinette, his consuming desire from the time he began teaching at Canada's largest law school, Osgoode Hall, in 1927, was to turn out lawyers who were more than simply practitioners of an art. His belief, that they should be guardians of justice and order and protectors of the rights and liberties of ordinary citizens against arbitrary power, a concept revolutionary in his day, went on to become the foundation of modern legal training.

What he conceived, a former student and colleague, Mr. Justice Bora Laskin of the Supreme Court of Ontario, said, "was the function of today's law school."

This included something else unheard of in his early teaching days but accepted now — that law professors are a branch of the legal system, and it takes the co-operation of all three to keep the legal system healthy.

"He brought a very critical approach to teaching of the law and the work of the courts," Mr. Justice Laskin said. "The idea professors of law might have something to give to the administration of justice is old hat now, but it was Dr. Wright who pioneered the idea."

He also was the first in Canada to promote the concept, later to be accepted by the profession in general, that law is not a closed system, that it must take continual account of the changes that take place in society, and change with them.

Dr. Wright himself had a different way of putting it.

On his appointment as dean of Osgoode Hall, he remarked: "My ambition will be to bring the law closer to the masses of the people." And, "If I have any part to play, I hope it is to turn out students and lawyers qualified and anxious to serve the underprivileged and working classes."

His beliefs went far beyond the classroom.

As editor of the Canadian Bar Review from 1936-46, as author of numerous articles for that publication, the University of Toronto Law Journal, and the Cambridge Law Review, as editor-in-chief, Dominion Law Reports and Criminal Cases, as a member of the Canadian Social Science Research Council, consultant to the American Bar Association's survey of the profession, and Ontario commissioner to the conference on uniformity of legislation, he had the opportunity to, as he put it, "take the law out of mothballs and make it live."

Many times he rewrote antiquated laws himself, or in

Dr. Cecil A. Wright

partnership with others. He was one of the authors of the Ontario Succession Duty Act, 1939, and two years ago, at the request of the Law Reform Commission of Ontario, drafted the law against perpetuities.

And he influenced the teaching of the law incalculably as editor of casebooks on contracts, agency and torts (infringements of civil and private liberties). Today they are used in four Canadian law schools and many other teaching institutions throughout the Commonwealth.

"He has done more for legal teaching and focussing the attention of lawyers on issues and problems than any other Canadian," a former colleague once said.

In 1948, only months after becoming dean of Osgoode, he resigned after the Law Society of Upper Canada, operators of the school, decided more time should be spent on practical training and less on theoretical work.

For nine years he fought what he called the Law Society's "monopoly" on legal education under which students, no matter what institution they attended, had to take their final year's studies at Osgoode in order to be called to the bar.

In 1957, due considerably to Dr. Wright's campaigning, the Law Society agreed to recognize law degrees from other institutions, opening the way for universities to establish equivalent law schools and faculties.

The Law Society also agreed to something Dr. Wright preached for years — that the role of practical training (articling) be minimized in favor of classroom instruction.

Born in London, Ont., Dr. Wright began buying and selling newspaper routes when he was 10. Although as a child he wanted to be a lawyer, his family did not see why he should go to university. The other children in the family weren't and besides, money was scarce, even though his father was a milling company executive.

But with odd jobs, and a particular knack for getting bursaries and scholarships ("I became a thorough-going pot hunter") he financed his education. He was gold medallist in political science at the University of Western Ontario in 1923, and took another gold medal graduating from Osgoode. After being articled to a law firm here, he went on to Harvard, on a borrowed $1,500, and obtained his doctorate in juridical science in one year. The degree usually takes two years of study.

On his appointment as Osgoode dean, he remarked that if he had had more sense he would have "stayed out of this racket and made more money."

But, in the words of his secretary since 1946, Joan McClelland, he never bothered with money. "Goodness knows, he had many opportunities to go to the United States and into private practice," she said.

Why he didn't may be hidden in words he used at the opening of the University of Toronto Faculty of Law in 1962. He quoted Mr. Justice Frankfurter: "Fragile as reason is, and limited as the law is as the expression of the institutionalized medium of reason, that's all we have standing between us and the tyranny of mere will and the cruelty of unbridled, undisciplined feeling."

Dr. Wright leaves his wife Marie, and three children, John, Carol and William.

THE TIMES
FRIDAY APRIL 28 1967

PROF C A WRIGHT

Canadian legal scholar

D. R. S. D. writes:—

Widespread regret and sorrow will be felt in legal circles, and particularly in the Faculties of Law of this country, at the unexpected news of the death of Professor Cecil A. Wright, Q.C., Dean of the Faculty of Law of the University of Toronto. "Caesar" Wright, as he was widely and affectionately known to his friends, was notable for the breadth and depth of his legal learning, which made him one of the best known among Canadian lawyers. Though his interests ranged over other Common Law subjects he was most highly regarded for his contributions to the Law of Torts, particularly through his case-book on the subject which is widely used by teachers and students in all Common Law countries. His eminence as a legal scholar earned him honorary doctorates in addition to his original Ontario and Harvard degrees. He was editor of the *Dominion Law Reports* and of *Canadian Criminal Cases*. For 11 years as editor of the *Canadian Bar Review* he added greatly to the well deserved prestige of that journal.

His contributions to legal education in Canada, and particularly in Ontario, are beyond assessment. For 22 years he was a notable figure in the professional law-school in Toronto, Osgoode Hall, and from 1949 onwards he was Dean of the Law Faculty of the University of Toronto. The course of legal education in Ontario did not at all times run smoothly. Wright tenaciously held to his own convictions, but, when smoother waters were reached, he became recognized as an outstanding contributor to Canadian legal learning. In his own university, he was a great figure and contributed much to its development. The new building of its Law Faculty stands as a memorial to him. In recent years, he took great delight in Massey College of which he was a Senior Fellow.

His very many friends in the United Kingdom will above all at this moment feel profound grief at the passing of a most delightful friend and companion. He possessed extraordinary buoyancy of character. He was at all times vigorous, and expressed his opinions trenchantly and wittily. There was never a dull moment when Wright was about. In personal relations he was of the kindliest disposition. He delighted in extending the most generous hospitality in his home to academic and other visitors from the United Kingdom. In all his activities, he was outstandingly aided by Mrs. Wright, and to her and to their children, is now extended the deepest sympathy in their sudden and heavy loss.

MR. MARTIN FREUD

Martin Freud, the eldest son of Dr. Sigmund Freud, has died in Hove at the age of 77. He left his hometown, Vienna, where he was a lawyer and director of a publishing house, in 1938 and settled in London. Martin Freud was named after his father's great teacher, Professor Jean Martin Charcot, in Paris. He published several autobiographical books, the last one with the title *Reflected Glory*.

MR. HENRY WALTER FEATHERSTONE, O.B.E., former consultant anaesthetist at the United Birmingham Hospitals and a J.P. for Staffordshire, died on Sunday at the age of 73.

Calgary

THE LAW SOCIETY OF UPPER CANADA

OFFICE OF THE SECRETARY

OSGOODE HALL, TORONTO
M5H 2N6

16th March, 1976.

Professor R. St. J. Macdonald Q.C.,
Dean,
Faculty of Law,
Dalhousie University,
Halifax, N.S.

Dear Dean Macdonald:

Enclosed is a copy of a submission made to the Society by the University of Calgary, which seeks approval of its law course leading to the degree of Bachelor of Laws for the purpose of having the graduates of that course enter the Bar Admission Course in Ontario.

When such an application for approval is being considered, it is the Society's practice to ask for the comments of the Deans of all the existing approved law schools. Accordingly, I should be glad if you would comment upon the enclosed submission so that it can be considered further by the Legal Education Committee of the Society in April.

Yours very truly,

Kenneth Jarvis,
Secretary.

t
Enc.

SUBMISSION ON

THE FIRST YEAR CURRICULUM

FACULTY OF LAW, THE UNIVERSITY OF CALGARY

TO

THE LEGAL EDUCATION COMMITTEE

OF

THE LAW SOCIETY OF UPPER CANADA

MARCH 8TH, 1976

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INTRODUCTION

The Faculty of Law, University of Calgary will admit approximately sixty students for the session commencing September, 1976. Only the first-year program will be offered in the 1976/77 academic year, with the second and third years being offered for the first time in 1977/78 and 1978/79 respectively.

The General Faculties Council of The University of Calgary has approved the several elements of this submission.

THE FACULTY OF LAW

David A. Cruickshank, B.A., LL.B. (Western Ontario), LL.M. (Harvard) - Associate Professor of Law. Professor Cruickshank is Assistant Professor of Law at the University of British Columbia.

Eugene E. Dais, A.B. (Berkeley), J.D. (Harvard) - Professor of Law. Professor Dais is Associate Professor of Political Science in The University of Calgary.

Connie D. Hunt, B.A., LL.B. (Saskatchewan), Member of the Saskatchewan Bar, Member of the Northwest Territories Bar - Associate Professor of Law. Professor Hunt was formerly General Counsel to the Inuit Taparist.

J. Christopher Levy, LL.B., LL.M. (Leeds) - Professor of Law. Professor Levy is Professor of Law at the University of Windsor.

Alastair R. Lucas, B.A., LL.B. (Alberta), LL.M. (British Columbia), Member of the Alberta Bar, Member of the Northwest Territories Bar - Professor of Law. Professor Lucas is Associate Professor of Law at the University of British Columbia.

John P. S. McLaren, LL.B. (St. Andrews), LL.M. (London), LL.M. (Michigan), Member of the Ontario Bar - Professor of Law and Dean. Dean McLaren was formerly of the College of Law, University of Saskatchewan and Dean and Professor of Law at the University of Windsor.

Gerald Nemiroff, B.A. (Sr. G. Williams), B.Sc., B.C.L. (McGill), LL.B., LL.M. (Dalhousie), Member of the Manitoba Bar - Professor of Law. Professor Nemiroff is Professor of Law at the University of Manitoba.

Iwan B. Saunders, LL.B. (Wales), LL.M. (Illinois) - Professor of Law. Professor Saunders is Associate Professor of Law at the University of Saskatchewan.

Gail Starr, B.A. (Texas), M.S.L.S. (Case Western), LL.B. (Windsor) - Law Librarian and Associate Professor of Law. Professor Starr was formerly Law Librarian at the University of Windsor.

THE ACADEMIC YEAR

The Faculty of Law will organize its program around three academic years of thirty effective teaching weeks, exclusive of examination periods. Each student will be under instruction or supervision by teaching staff for from fifteen to twenty hours per week in class sessions, seminars, workshops or research projects.

1976/77

March 31	Recommended final date for application for admission to First-Year Law
Sept. 6	Labor Day
Sept. 7	Registration - Faculty of Law Lectures begin
Oct. 11	Thanksgiving Day
Oct. 21-24	Mid-term break
Oct. 25	Lectures resume
Dec. 10	Last day of lectures
Dec. 13-22	Examinations
Jan. 6	Lectures begin in Winter Session
Feb. 28- Mar. 6	Mid-term break
Mar. 7	Lectures resume
Apr. 8	Good Friday
Apr. 20	Last day of lectures
Apr. 21-30	Examinations

LAW LIBRARY

Through donations of $250,000 from the Calgary legal community and the City of Calgary, matched by $500,000 from the Government of Alberta, the Law Library has a collection development fund of $1,000,000.

By September 1976, it will contain 40,000 to 50,000 carefully selected volumes of material for legal teaching and research. The collection will include material providing basic coverage for the study of Canadian law and the Canadian legal system as well as the most significant legal materials from Great Britain, the United States, Australia and New Zealand. In subsequent years the collection will be developed to meet the curricular needs and specialized research needs of students and faculty.

Housed within the Faculty of Law the Law Library will provide convenient access to research materials in their most appropriate form. The collection will include, in addition to the traditional book format, materials in various microforms as well as a collection of audio and video tapes suited to the needs of legal education at Calgary. Further, access to computerized legal information and study systems will be provided as feasibility permits. Students will also have ready access to the research collections of the University Library, which now hold over 1.6 million items.

The physical facilities within the Law Library have been planned so that all of the students will have access to working carrels.

REQUIREMENTS FOR ADMISSION TO THE FIRST YEAR PROGRAM

Subject to satisfying the academic standards set by the Faculty of Law a student may be admitted to the Bachelor of Laws Program who presents proof that he or she:-

1. Possesses a degree granted by The University of Calgary or an equivalent degree from a recognized university.

2. Has completed at least two full years (10 credits) towards a Bachelor of Arts degree at the University of Calgary, or the equivalent at a recognized university.

Applicants are required to submit a Law School Admission Test score and satisfy such other criteria as may be from time to time laid down.

Important elements in assessing student performance will be the Grade Point Average in pre-law work and the Law School Admission Test score. In addition to these criteria the Faculty of Law will be interested in looking at evidence of maturity, work experience and community involvement.

CURRICULUM POLICY

The Faculty of Law reserves the right to apply more flexible academic standards to mature and native students. At present both mature and native students must satisfy the normal minimum requirements for admission to a Bachelor of Laws Program in Alberta, i.e. two years towards a Bachelor of Arts degree or a degree in any other discipline. They will also be required to submit a Law School Admission Test score, and to participate in an interview.

Mature students normally must have attained their twenty-fifth birth day on or before September 1st of the year for which they seek admission.

The Faculty endorses and recommends the Program of Legal Studies for Native People conducted by the College of Law at the University of Saskatchewan. Successful completion of that program will be given considerable weight in assessing the application of students who might otherwise have difficulty in qualifying for admission.

THE CURRICULUM

The Bachelor of Laws program comprises three years of full time study, each divided into two semesters of fifteen weeks teaching. The program is and will be designed to satisfy the requirements of the Law Societies of common law Canada for admission to the respective Bars.

The first year of the LL.B. program comprises a series of compulsory subjects:-

Law 400. Constitutional Law and Judicial Review
Law 401. Crime: Law and Procedure
Law 402. Contracts
Law 403. Legislation and Policy
Law 404. Property
Law 406. Torts and the Loss Compensation Process
Law 408. Workshops

Each of these courses involves three classroom hours per week for one or two semesters as the case may be, except for the Workshops which involve five hours per week for the whole year.

The first year program will open with a short orientation period of two days. For the rest of the first week and the following four weeks students will concentrate on three of the first year subjects, Constitutional Law and Judicial Review, Crime: Law and Procedure, and Contracts. During this period heavy emphasis will be placed on the Workshops as a means for introducing students to the basics of Legal Bibliography and Research and to Legal Institutions. At the beginning of the sixth week of the first semester the courses in Property, and Torts and the Loss Compensation Process will begin. Workshop periods will run for the whole of the first semester. Crime: Law and Procedure will be completed with the end of the first semester.

In the second semester a new half course, Legislation and Policy, will be introduced. The course in Constitutional Law and Judicial Review will terminate at the end of the sixth week of the second semester and the course in Contracts at the end of the eleventh week. Workshops again will run for the whole semester. For the final four weeks of the second semester students will have classes in Legislation and Policy, Property, and Torts and the Loss Compensation Process only. In addition they will be engaged in intensive work in the integrated practice experience which will be handled in the Workshops. With the close of classes in the second semester a ten day period has been set aside for any outstanding examinations, the completion of the integrated practice assignments and their detailed evaluation.

The evaluation process in the Faculty of Law will comprise a range of tests of substantive knowledge, of the level and quality of students' critical capacities, and of skill development, including their ability in research, reasoning and problem solving. The process will have as its objective the sensitizing of students to their performance and to ways of improving it, as well as providing a measure of student progress for the Faculty. The grading pattern is in the process of discussion, and details will be made available to students prior to registration for the 1976/77 session.

EXPLANATORY COMMENT

This statement from the Faculty of Law, University of Calgary constitutes the first phase of the three year Bachelor of Laws program. It comprises the first year curriculum, and includes the courses which both Law Schools and the Legal Profession in common law Canada deem to be the essential substantive foundations of a sound legal education. Subsequently the Faculty of Law will submit details of its curriculum for the second and third year of the LL.B. program incorporating a further pattern and range of courses which blend together the Faculty's and the Profession's views of the elements of a useful and stimulating educational experience in the law.

Each of the courses in the first year curriculum for the LL.B. degree is compulsory. The courses have been developed to satisfy a number of important educational objectives. In the first place they provide a valuable substantive basis for the more complex issues of law addressed in the senior years. Secondly, they balance the traditional concern for a grounding in private law, with an emphasis on the growing importance of public law. Thirdly, they provide a rich source of problems which are susceptible to legal analysis and research. Moreover, they allow for the initiation of the process of developing a variety of other skills which lawyers have to bring to bear both in facilitating human activity and in resolving human problems, such as counselling, planning, drafting, advocacy and negotiation. Fifthly, they raise a series of issues relating to professional responsibility and ethics which face lawyers in their practice. Sixthly, the courses generate a range of important questions concerning the interaction of law and social, cultural, political and economic forces. Finally, they provide a conspectus of a range of institutional settings in which law and lawyers operate, the different types of decision-making processes which generate law and the relationships which these institutions and these decision-making processes involve.

The courses have been organized in a pattern which recognizes the utility of using different courses for achieving different but complementary educational objectives. Both legal and policy analysis are strongly emphasized, but in varying degrees. One course has been selected to show the increasing importance of statute law as opposed to case law. Another attempts to use substantive issues as a vehicle for illustrating the procedural framework in which the law operates. A third is employed to show the increasing interface between private claims and public regulation. The process of introducing the students to skills other than traditional legal analysis is spread throughout the six substantive courses, supplemented by an extensive workshop program. All of the courses reflect the belief that an understanding of rules and principles is worthless unless there is an appreciation of the thought processes which underlie them, the influences both legal and non-legal which molded them, the viability and utility of the principles and rules in practical social settings, and a constant re-evaluation of those rules and principles in the light of changing social values and conditions.

In the development of our second and third year programs we shall be working within the framework of the courses which the Federation of Governing Bodies has designated as of prime importance, as well as those which are recommended by the various Law Societies. Thus our senior curriculum will be designed to incorporate the following areas:-

Civil Procedure
Family Law
Evidence
Wills and Trusts
Commercial Law (Sales and Bills of Exchange)
Corporate Law
Legal Accounting
Land Titles
Agency
Partnership
Taxation
Conflicts
Labour Law
Insurance Law
Local Government or Municipal Law
Land Use Planning Law
Estate Planning Law
Creditors and Debtors Rights
Real Estate Transactions
Equity
Legal History
Natural Resource Law
Basic Oil and Gas.

Advanced courses should be developed in Constitutional Law, Administrative Law, Criminal Law and Procedure and in Torts.

THE FIRST YEAR CURRICULUM COURSES

Law 400. Constitutional Law and Judicial Review — 60 Hours
F (3-0)

The basic elements of Canadian public law utilizing the model of energy development and use. The nature of constitutions and constitutional processes; historical highlights of Canadian constitutional development; principles of interpretation for distribution and limitation of legislative powers; the judicial review process; Federal-Provincial distribution of subject matter for legislation including the federal general power, natural resources and public property, provincial property and civil rights, trade and commerce, taxation, incorporation of companies, transport and communication, criminal law and treaty implementation; the protection of basic rights and freedoms; the nature of the administrative process. Areas of functional concern will include the development, transport and use of petroleum and natural gas and the development of hydro-electric energy. Guest resource personnel will include practitioners in the resource law field, environmentalists, economists and representatives of relevant Government and administrative agencies. The course will include practical exercises in case briefing, constitutional opinion preparation, and advocacy in constitutional and administrative law cases.

Law 401. Crime: Law and Procedure — 60 Hours
H (4-0)

An anatomy of criminal conduct and the law's treatment of it utilizing a limited range of criminal offences. The designation of human conduct as criminal and a consideration of the social, cultural and political forces involved; the development of the criminal process in English common law, its translation to Canada and embodiment in the Criminal Code; the substantive elements of a criminal offence including both the physical and mental elements; the common law and code defences; procedural, tactical and evidential problems associated with criminal prosecution at both the pre-trial and trial stages; the sentencing process; the position at law of the victim. Offences considered may include rape, homicide, theft, assault, and motor vehicle offences. The criminal law process will be viewed not only through the medium of the Criminal Code and appellate cases but also through trial transcripts. Heavy emphasis will be placed upon the interaction between lawyers and other professionals in the criminal law process, with guest appearances by judges, criminal law practitioners, psychiatrists, social workers, and probation and parole officers.

Law 402. Contracts 75 Hours
F (3-0)

A legal and policy analysis of the basic principles and fundamental concepts of the law of contracts as they relate to commercial and consumer transactions. The formulation of contracts including offer, acceptance and consideration; options; estoppel; privity; misrepresentation; mistake; conditions and warranties; standard form contracts, breach of contract and associated remedies; the doctrine of frustration. Emphasis will be placed not only on a knowledge of rules and principles, their rationale, efficacy and social validity, but also upon their creative use to both avoid and resolve disputes. Assignments given will include exercises in drafting, negotiation and dispute resolution.

Law 403. Legislation and Policy 45 Hours
H (3-0)

An examination of the role of legislation in the legal system using the vehicle of selected problems in family law. The Canadian legislative process; the interaction of law and policy in proposals for new legislation and legislative change; the process of Law Reform and the role of Law Reform agencies; the drafting process; the implementation of statutory provisions and delegated legislation; statutory interpretation. Areas of study will include the protection of children and matrimonial property. Particular concern will be paid to the association of lawyers and other interested professionals in the development and implementation of legislative proposals in family law. Guest resource personnel will include psychiatrists, doctors and social workers. Assignments will include exercises in policy formulation and legislative drafting.

Law 404. Property 75 Hours
F (3-0)

An examination of the fundamental concepts of property law and the types of property interests recognized by Anglo-Canadian law, and an introduction to the public law restraints imposed upon private property interests and uses. The historical evolution and a comparison of personal and real property concepts; the basic concepts of possession, ownership and title including a survey of the law relating to chattels and their disposition and an analysis of such real property interests as the fee simple, joint and concurrent ownership, easements, rights of way, mortgages, future interests, tenancies, mineral title and rights in water and air; the Torrens system of land registration; the public regulation and control of private property interests through environmental control, resource management, expropriation, land use, planning and recreational reservation; the modes of private and public dispute resolution; the property perceptions of planners, environmentalists, economists, scientists and Native peoples. Guest resource personnel will include property law specialists, officials of the Land Titles Office, environmentalists and members of relevant Government and administrative agencies. Assignments will include exercises in the preparation of simple forms, drafting, legal planning, and advocacy.

Law 406. Torts and the Loss Compensation Process 75 Hours
F (3-0)

An analysis and critique of competing systems of loss compensation including the law of torts, private insurance compacts and social insurance schemes, with personal injury as the focus. The history of loss compensation; the nature of the tort law process; an anatomy of the law of negligence including an examination of the extent and nature of liability, problems of causation, defences, and remedies; a comparison of negligence with the intentional torts and torts of strict liability; the process of dispute resolution in torts including the defining of issues in statements of claim and defences, pre-trial strategy and discovery, the formulation of the case on 'the facts' and at law, and the conduct of a trial; the private insurance compact, its impact on tort law and the contractual restraints on loss compensation; the development of comprehensive social insurance schemes with particular emphasis on 'no fault' automobile insurance and workmen's compensation and the bureaucratic restraints on loss compensation. Assignments will include exercises involving the research and writing of a memorandum of law, interviewing, pre-trial strategy, and trial and appellate advocacy.

Law 408. Workshops 150 Hours
F (0-5)

A series of intensive sessions designed to provide an institutional and environmental setting for the substantive courses, a forum for the integration and synthesis of principle derived from these courses, and a vehicle for exploring the skills related to each course. An introduction to legal bibliography and the techniques of legal research; the institutional settings of the law including the courts (criminal, civil and family), administrative hearings, and arbitration proceedings; the structure, governance, pursuits and values of the legal profession; problems of professional responsibility and ethics; exercises in legal research and writing, drafting, interviewing, negotiation, counselling, planning and advocacy; an integrated practice experience involving analysis of a dead file and the acting out of parts of the resolution process. Attention will be paid to using the Workshops to show students the overlap of substantive areas and concepts and the complex and diverse texture of legal problems. Extensive use will be made of resource personnel from Judiciary, the Legal Profession and Government.

WEEKS \ COURSE	CONST. & ADMIN. 60	CRIM. LAW 60	LAW LEGIS. & POLICY 45	CONTRACTS 75	REAL PROPERTY 75	TORTS & COMP. SYSTEMS 75	WORKSHOPS MAX. 150	DATE
1								Sep. 8-10
2								
3								
4								
5								
6								Oct. 11-15
7								
8		4						Oct. 25-29
9								
10				3				
11	3							
12								Nov. 22-26
13								
14							5	
15								Dec. 13-17
	CHRISTMAS BREAK							
16								Jan. 3-7
17								
18					3	3		
19								
20								
21								Feb. 7-11
22	MID-TERM BREAK							Feb. 14-18
23								
24								
25								Mar. 7-11
26								
27								Mar. 21-25
28								
29								Apr. 4-8
30								
31								Apr. 25-29
33⅓	EXAMINATIONS							

ASSISTANT DEAN AND
DIRECTOR OF ADMISSIONS

FACULTY OF LAW
UNIVERSITY OF TORONTO
TORONTO M5S 1A1

Received Jan 23/80

January 10, 1980

Professor Ronald St. John Macdonald, Q.C.,
Faculty of Law,
Dalhousie University,
Halifax, Nova Scotia,
B3H 4H9

Dear Ron:

As requested, I am enclosing copies of the Faculty of Law calendar for the academic years from 1975-76 to 1979-80.

I hope you have a wonderful time in Mexico.

Yours sincerely,

Marie

(Ms.) Marie T. Huxter

Enc.
/m

P.S. You may keep the calendars.

Acknowledged May 23/80

November 197 1979

Professor R.C.B. Risk
Faculty of Law
University of Toronto
Toronto, ON
M5S 1A1

Dear Dick,

I refer to my letter of October 11. If you are going to send me anything, I will need it fairly soon, as we have here by mid-December. Perhaps you will phone through this week. I would appreciate hearing from you.

All the best,

Sincerely,

R. St. J. Macdonald, Q.C.
Professor

RM:CS

There was not sent; but I phoned him & he said he did have something & would send it along.

October 11, 1979

Professor R.C.B. Risk
Faculty of Law
University of Toronto
Toronto, Ontario
M5S 1A1

Dear Dick:

It was good talking to you on the telephone on Monday night, You sounded great and I look forward to seeing you in Toronto between Christmas and New Year's. There is certainly lots to talk about.

You mentioned that there is an Archives at the School and that it was from there that you would pull the paper you would send me on loan. Are there any other papers, pamphlets, cuttings, obituaries or other notices that would be interesting for my purposes? If there are, and if you can release them on loan (I will of course pay mailing and other charges) please send them along at your convenience. If there are relevant items that cannot be released, I will go to take a view at Christmas, if you so advise.

I can hardly believe that we are almost into the middle of October. Where, oh where, did August and September go? I have been made an adviser to the American Law Institute's Restatement on the Foreign Relations Law of the U.S. and I want to tell you (when we meet) about the way they organize themselves. It is impressive, to say the least.

Take care of yourself and send me the stuff when you can.

Sincerely,

R. St.J. Macdonald, Q.C.
Professor

RM/ge

November 5, 1979

Professor G.L. Morris
Faculty of Law
University of Toronto
78 Queen's Part Crescent
Toronto, ON

Dear Jerry,

This really is awful--yet another letter from Halifax!!!--and I do apologize. But I thought that I should rush you an additional note to say that I can certainly wait until mid-December for the material on the University of Toronto, if that will be easier from your point of view; and that I hope you can up-date the attached, which I propose to use in paying tribute to your work. Jerry, could you also send along a fairly full, up-to-dated C.V. with information about activities and publications. As you have been the main-stay of the subject at Toronto throughout the 70's, I think that the time has come to say nice things about your work. And for this purpose I need as much information as possible.

Many thanks and all the best.

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

RM:CS
Enclosure

October 31, 1979

Professor G.L. Morris
Faculty of Law
University of Toronto
78 Queen's Park Crescent
Toronoo, ON
M5S 1A1

Dear Jerry,

If it is convenient from your point of view, it would help considerably at this end if I could get a reply to mine of October 1 by the third week in November. I would then be able to integrate the material before and during the Christmas vacation, with a view to consulting you in person or by telephone should clarification be necessary.

It was good seeing you in Ottawa last week, though I regret that we did not have an ppportunity to chat.

All the best,

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

RM:CS

October 1, 1979

Professor G. L. Morris
Faculty of Law
University of Toronto
78 Queen's Park Crescent
Toronto, Ontario
M5S 1A1

1. Sharon
2. Joe

Dear ~~Jerry~~,

I have been asked to complete my essay on the teaching of international law in Canada (which means doing something new on the law schools at Victoria, Calgary, Sherbrooke, U.N.B., and Moncton) and also to bring the existing account down to 1980. I am not overly enthusiastic at the prospect of returning to this subject (it can be dreary, as you know) but I can appreciate the concerns of colleagues who think that the essay should be complete and that it should round off the 1970's; and so I am starting to gather up the material.

As I am a little out of touch with developments at ~~the U. of T.~~, I am wondering if you would be kind enough to provide me with some of the relevant information for the period 1975-1980. In particular, I would like to say something about (i) names of courses and seminars (and instructors) offered during this period; (ii) number of students enrolled (student interest); (iii) number and names of full-time and part-time professors; (iv) materials used (if not too extensive); (v) any noteworthy developments in the school's international law programme (research , books, visiting professors, moots, etc.); (vi) interdisciplinary work (teaching and research); (vii) any comments you would like included about progress in the teaching of international law in Canada since you started teaching, e.g., are we now, in the 1970's, on a plateau due to the economic situation, ~~etc. (the sort of thing we used to talk about).~~

I do apologize for inconveniencing you in this way, at what is probably a very busy time of year; however, I take some consolation from the fact that your position and experience will enable you to dictate the information in fairly short order. As one of our most senior men in this field, I would of course value particularly any general observations about the scene in Ontario and in the country at large. I have a feeling that things have slowed down during the last five years, but perhaps I'm wrong; ~~undoubtedly~~, the Americans (or at least some of them) are quite concerned at the decline of international law teaching in the law schools there. Anyway, whatever you can put me onto about developments in ~~Toronto~~ will be much appreciated.

With personal good wishes, I remain,

Yours sincerely,

Ronnie

→ your own activities, honours,
→ five years — Osgoode — Western
people
incidentally,
your school
↳ I am only covering a five year period (1975-80) and that

Morris at External [may be boiled down as necessary]:

After qualifying for practice in Ontario and obtaining an LL.M. in New York, M. joined the Canadian foreign service in 1958. He served in Ottawa until 1960 (primarily in Legal and United Nations Divisions). From 1960 until 1962 he was Second Secretary at the Canadian High Commission in New Delhi, with a mixture of functional and political assignments. These included general responsibility as consular officer and legal officer, press relations, and occasional liaison with Indian officials concerning the three cease-fire agreements for Indo-China. In 1962 M. was transferred to the Canadian Consulate General in New York and served until 1966 as Consul with particular responsibility for relations with representatives of the mass media. The task of explaining Canadian policy on such matters as relations with Cuba and the Chinese People's Republic, the war in Vietnam and Canada-U.S. trade arrangements was leavened by involvement from time to time in extradition proceedings and other "real law" responsibilities. In May, 1966, M. returned to Ottawa for a tour of duty as second-ranking officer in Legal Division at External Affairs. He resigned shortly after his arrival back in Canada, however, from the Department in order to accept Dean Wright's invitation to teach law at Toronto.

JAMES BRYCE MILNER
1918 - 1969

A TRIBUTE TO JAMES B. MILNER

The unexpected death on 29 May 1969 of Professor James B. Milner came as a great shock to his colleagues in the C.A.U.T. Members of the Academic Freedom and Tenure Committee, the Executive and the professional staff, with whom there were warm bonds of personal friendship, felt his loss in an especially keen way. The Executive is currently considering a suitable memorial to honour Professor Milner for the magnificent work he performed in the service of this Association and on behalf of the Canadian university community.

E. J. M.

If, as I believe, rationality and civility are the hallmarks of the university man, Jim Milner was a distinguished examplar. Contemplative and activist — and in that order — he brought to his discipline, the law, a keen and imaginative mind. He was in the front rank of Canadian legal scholars, exhibiting in the subject in which he had no peer in this country — community plannning law — an interdisciplinary approach compounded of his own competence in handling the legal and non-legal factors which that subject embraces. He was primarily a teacher, in and out of the classroom, who loved personal contact with students and colleagues and he would not have understood a dissociation between teaching and research.

He was a great teacher and a renowned scholar in the law because he saw it in social dimension to which his own wide interests testified. They included, as the members of the C.A.U.T. well know, a profound cencern for the integrity of the University as a centre of learning and for the welfare of faculty and students who alone give a University its meaning. The extraordinary demands on his time and his energy during the past four years, in his capacity as chairman of the C.A.U.'s Committee on Academic Freedom and Tenure, were met with patience, with painstaking inquiry into the facts of the many troublesome cases that confronted the Committee, with scrupulous courtesy to all interested parties, and with devotion to due process. His service to the Canadian University community did not mean denial of his talents to the problems

of his home University of Toronto. Whether as a member of the President's Council or as chairman of the planning committee of the Faculty of Law looking to its future, he worked with dedication and at a physical cost (considering his many other activities, curricular and extra-curricular) to which his colleagues in the Law Faculty, and certainly his wife Jean, can bear witness.

As a close friend for two decades and a faculty colleague for fifteen years I mourn his death at the height of his powers. His own University and Universities everywhere in Canada are the poorer for this tragedy.

The Honourable BORA LASKIN,
Court of Appeal of Ontario.

Readers of the C.A.U.T. *Bulletin* need no reminder of the work of Jim Milner. His reports as Chairman of the Committee on Academic Freedom and Tenure have appeared regularly through five years, the most recent being in this issue. As Chairman of the committee that investigated Simon Fraser University, he was the principal author of its report. Through correspondence and book reviews he made still further contributions to the discussion of university affairs in Canada, in this journal.

Those were only the aspects of his contribution to university life that were most visible to C.A.U.T. members. His work as a member of his own university, as scholar, teacher, and committee member, was wide-ranging and unremitting. In the larger sphere of C.A.U.T. affairs, he gave the most thoughtful devotion to the work of the Committee on Academic Freedom and Tenure. He attended many meetings of the Executive and Finance Committee for the discussion of special problems, and of the Council. He participated in such special and difficult assignments as that at Simon Fraser University (both on the original committee and the review committee) and the more recent one involving the University of New Brunswick. He led, through a period of three years, the complicated discussions that resulted in the development of the *Policy Statement on Academic Appointments and Tenure* — the best statement of its kind in existence anywhere. In addition to all this, he gave to the individual problems of faculty members who appealed to the C.A.U.T. the most sensitive and careful consideration. No one knows how many hours a week

he spent in conversation, direct or by telephone, and correspondence, with faculty members, administrative officers, and the central office of the Association, on such problems. I once estimated that in the seven months of the academic year he and I averaged about five hours a week in telephone conversations with each other, in addition to direct interviews at his office or mine, and journeys to troubled campuses.

His close friend, F. R. Scott, once remarked that good law and good poetry are the foundation of civilization. By that criterion — as by any other — Jim Milner was that rarity, a perfectly civilized man. His idols, so he himself said, were a Professor of Law and a Professor of Poetry : Lon Fuller and F. A. Richards. To say that is to give only a most inadequate suggestion of the richness of his mind. One never became quite accustomed to the startling evidence that he might at any moment provide of the range of his interests — from the poetry of Dylan Thomas and Gerard Manly Hopkins to the music of Bach, the art of stained glass to the mathematics of Stonehenge, recent developments in psychology to the chemistry of the human body. He might have had as his motto the saying of Menander : "I am man, and nothing that belongs to man is alien to me."

Those close to him knew some other qualities : his courage, for he was well aware that his health through many years was uncertain and that the strains he allowed to be placed on him were often hazardous; his patience, for he never gave up his efforts to solve the problems of his colleagues throughout Canada or rebelled at their importunities; his humour, for despite the often unpleasant and sometimes rancorous demands that were made on him, no one had a readier laugh, nor can I forget that he and I found ourselves slowly evolving a Gilbert and Sullivan kind of opera on the subject of professional grievances.

His friendship was deep, generous, unforgettable.

Take him for all in all, I shall not look upon his like again.

J. Percy Smith.

J. B. Milner

At a meeting of the Council of the Faculty of Law held on Monday, 16 June, the following resolution was unanimously adopted by the Council:

This is our first meeting since the sudden death of Jim Milner. All of us were his colleagues, some of us were old students of his and one of us was once upon a time his teacher. Each of us has his own memories of Jim, owes him some peculiar debt, misses him in some special way. Together we mourn him.

We do not need to remind ourselves of what the world would call his 'solid achievements;' his imaginative casebooks and other publications; his immense reputation as a teacher with the kind of student we all want to be admired by; his lasting contribution to the Association of Canadian Law Teachers, to the Town Planning Institute of Canada and to the Canadian Association of University Teachers; his ungrudging service to the future of this University as a member of the President's Council and to the future of this Faculty as Chairman of the Planning Committee. We do need to remind ourselves that these achievements were but 'the outward and visible sign of an inward and spiritual grace.' It is therefore for having been the kind of man he was that we remember him formally now.

More especially do we remember him for having been a man of enthusiasm – with an intense devotion to the heroes, causes, and hobbies of his choice – and a man of courage, who suffered his defeats but always picked himself up and went on as if nothing had happened. By his enthusiasm and courage he helped us in the past and he will, as we think of him, continue to help us in the future.

It is therefore moved by Professor Willis, seconded by Dean Macdonald and passed unanimously: that this inadequate tribute to his memory be inscribed in the minutes of the Council of the Faculty of Law; and that a copy of it be sent, together with the sympathy of all his colleagues, to his wife Jean.

Faculty of Law, University of Toronto, 16 June 1969

JAMES BRYCE MILNER, LL.B., LL.M.

Although his untimely death came at the age of only fifty-one, Professor Milner had already done much to enhance the life of the university and society around him. He pioneered the study of a community planning law in Canada and his extensive writings upon it remain the most fruitful source of information and critical analysis for students interested in the subject. His advice was sought and given both to private planners and to governments and the work of the Law Reform Commission in the planning field will indeed be impoverished by his loss in the midst of the project he had undertaken for them. His casebooks —one in contracts and one in community planning—won wide student approval for their conciseness, organization and selection of materials. His signal service to university life in general, to the protection of its values, lay in his extraordinary contribution as chairman for more than four critical years, of the Academic Freedom and Tenure Committee of the Canadian Association of University Teachers.

All this is a rich legacy yet it represents but a part of the contribution he made. For Professor Milner was above all else a teacher; and it was as a teacher that we most admired him and learned from him and will most fondly remember him.

In the classroom his method was a stream of constant questioning, always seeking to provoke discussion and thereby encourage new responses to old problems. He tried always to take cases out of the sterile pages of the law reports and to place them against the background of the real life fact situations whence they came. None who were fortunate enough to be taught first year contracts by him can fail to recall the illuminating way in which he portrayed the dilemma of Mr. Powell and the fire brigades in *Upton-on-Severn Rural District Council v. Powell.*

Nor was he content merely to teach the written ratio of law decisions. His respect for the student and his own concern for the overall functioning of the legal process in society were far too great for that. Thus he probed the wider jurisprudential questions and offered a wealth of insights to go with them.

He had a choice sense of humour which managed to inject itself into the atmosphere of every class, often by making merry of the smallest detail. Witness the index to his contracts casebook, where, under the heading "cleaners" one finds the listing "reader taken to the".

The demands on his time must have been enormous yet his office door was never closed to students. Many came intending to stay a few minutes only to find themselves rapt and engrossed in conversation an hour later.

He was in short no ordinary law professor. Those who were taught by him must ever remember that experience. Those who were not and will not be have been deprived of an exhilaration that very few teachers can evoke in a student.

JOHN LASKIN

JAMES BRYCE MILNER (1918-1969)

FACULTY OF LAW
UNIVERSITY OF TORONTO

Toronto, Canada M5S 1A1

January 3, 1979

Professor Ronald St. J. MacDonald
Faculty of Law
Dalhousie University
Halifax, Nova Scotia

Dear Ron:

I enclose 2 copies of a memorandum on opportunities at the University of Toronto for graduate studies and research in international business law. We would like to encourage studies and research in this important field and we have a significant range of courses and seminars in international business law, as well as faculty members and legal and other professionals who are specialised and will assist students with research and the preparation of theses.

We would appreciate it if you would be so kind as to assist us by bringing these graduate opportunities to the attention of appropriate university faculties or other educational institutions for the information of potential graduate or special students. If you wish more copies of the memorandum, please let me know.

Yours sincerely,

Ian.

Ian F.G. Baxter
Professor

Enc.

all the best for 1979.

UNIVERSITY OF TORONTO

GRADUATE STUDIES IN LAW

INTERNATIONAL BUSINESS

Graduate studies at the Faculty of Law lead to the degrees of Master of Laws (LL.M.) and Doctor Juris (S.J.D.). There are facilities for study and research at these levels, with faculty supervision, in various areas of international business law, and the Faculty of Law curriculum for 1979-1980 includes the following courses and seminars relevant (in whole or in part) to international business:

International Business and Investment: Mr. Peterson.

[International tax planning (Canada - U.S.A.); Canadian regulation of foreign investment; developing countries].

Multi-national Corporations: Professors Baxter, Hahlo, Safarian (Economics), Mr. Murphy, Mr. Brown.

[Business organization in different countries; relations of multi-nationals and host and parent countries; multi-nationals and international tax planning].

Admiralty Law: Mr. Jones and Professor Baxter.

[Includes international carriage by sea; the new Hamburg Rules; container carriage; marine insurance; conflict of laws].

Common Market Law: Mr. Graham.

[Development of the European Communities. Competition law in the E.E.C.].

Banking and Financial Transactions: Professor Baxter.

[Includes an introduction to international banking and euro-currency markets].

Conflict of Laws: Professor Baxter.

Conflict of Laws: Professor Swan.

Introduction to Comparative Law: Professor Hahlo.

Comparative Legal Studies: Professor Baxter.

The Faculty also has a Programme in Law and Economics, involving courses and research.

General information about the Graduate Programme in Law may be obtained from Professor Stephen M. Waddams, Chairman, Graduate Studies Committee, Faculty of Law, University of Toronto.

It is also possible to study aspects of international business law as a special student without enrolling for a graduate degree.

MATERIALS ON INTERNATIONAL LAW AND FOREIGN POLICY

(Provisional Edition, 1974-75)

Selected by G.L. Morris

Faculty of Law,
University of Toronto.

INTERNATIONAL LAW AND FOREIGN POLICY

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PART 1: LAW, LAWYERS AND FOREIGN POLICY

Introductory Note

The 1974-75 course description for "International Law and Foreign Policy" states that the seminar is "intended to explore the extent to which generally accepted principles of international law have, could have, or should have formed the basis of official Canadian positions with respect to selected current major issues in foreign policy." The main group of issues selected pertains to the law of the sea and the second problem area to be investigated involves questions arising in southern Africa. The course description adds that the aim of the seminar is "to duplicate, as closely as possible, the type of problem analysis actually done by the federal government's legal advisers."

In order to achieve the purpose of the seminar it is necessary to give some thought to (a) the relationship of international law to foreign policy in general, and (b) the role and influence of government international lawyers in the development of foreign policy. To consider (a) meaningfully requires a comprehension of the basic nature, present status and realistic potential of international law, as well as some understanding of the process by which foreign policy is developed.

The challenging problem immediately presented by (b) involves an assessment of the intellectual attributes to be anticipated in the "average" government international lawyer. In other words, is it possible to predict that the well-trained international lawyer in government will tend to bring to his function reasoning processes or a cast of mind that will be a noticeably positive factor in foreign policy deliberations? For more than a decade there has been a rather sharp debate in North America concerning the value, if any, of the legal mind in shaping foreign policy. (See, in particular, Professor Falk's article, infra.)

Does the government international lawyer face any special difficulties, for example, in combining the professional role of lawyer with that of public servant? May he have conflicting obligations when he wears the two hats simultaneously? To what limits can he merely take orders and carry out policy laid down at the political level? Is his relationship with his employer simply that of solicitor and client? Does he just serve his client's interests within legal limits (and is this a fully acceptable role in modern private practice?)?

Is there some objective duty on the government lawyer to press for national policies based on adherence to law? If so, how far does that duty go? How much allowance could be made for the frequent uncertainty as to what "the law" is, where international legal rules are concerned, or for the dynamic process of change apparent in various areas of international law?

Finally, there is a question of whether the government international lawyer should, as a general rule, be involved in the discussion and development of substantive policy or should be brought in as a technical expert at a later stage to draft rules or the terms of an agreement after policy is decided. In this connection, how is the decision made as to what the role of the international lawyer will be in respect of various aspects of foreign policy? Is there a rational basis or is it often fortuitous?

Questions of this sort have been discussed in the United States, perhaps more specifically and fully than in Canada. The international role of a super-power may, with a frequency and directness not matched in a middle power such as Canada, raise sharp and troubling questions for the international lawyer in the service of that state. This is apparent in the well-known article by Professor Richard Falk which is reproduced below from the 1969 Yale Law Journal. Although the core issue of legalism versus anti-legalism canvassed by Falk is relevant to Canada as well, the illustrations cited by Falk involving the application of military power would usually be replaced in Canada by less clear-cut ethical or legal dilemmas. The fact, however, that the issues tend to arise more subtly in Canada does not render them less important.

Among other U.S. materials, a somewhat longer article by Professor Richard Bilder (formerly with the State Department) raises questions pertinent to this seminar but also deals with other matters. See Bilder, "The Office of the Legal Adviser: The State Department Lawyer and Foreign Affairs" (1962), 56 Am.J. Int'l L. 633. For an interesting book-length discussion, see Henkin, HOW NATIONS BEHAVE; LAW AND FOREIGN POLICY (1968).

In Canada there has been a certain amount of literature produced on this subject but some of the most useful recent material deals only in part or by inference with law, lawyers and foreign policy as a discrete topic. Occasionally, an almost complete lack of any reference to international law in an official policy statement can be illuminating. Partly for this reason and partly because it is so basic to any appraisal of current Canadian foreign policy, lengthy excerpts have been reproduced below from volumes 1 and 6 of FOREIGN POLICY FOR CANADIANS, the government's 1970 white paper. Volume 1, the general policy outline, barely mentions law in its 42 pages, while volume 6, on the United Nations, deals with topics which make some discussion of international law unavoidable. A perusal of all six volumes makes it clear that international law is hardly an obsessive theme.

Despite the stated limits to their enquiry, one of the most useful Canadian sources is Gotlieb and Dalfen, "National Jurisdiction and International Responsibility: New Canadian Approaches to International Law" (1973), 67 Am. J. Int'l L. 229, excerpts of which are set out below. They perceive a greater emphasis since 1968 on using international law to further Canada's national interests, although this does not amount to a complete disavowal of concern for the general international order (nor is it as sharp a departure from previous policies as might at first appear). Is this more nationalistic orientation a ground for valid concern, despite the allegedly more central policy role it offers the international lawyer, or is it a reason for satisfaction? Is the new role of the Canadian international lawyer appropriate and acceptable?

Alan Beesley, Gotlieb's successor as Legal Adviser, takes a view seemingly at variance with his predecessor in "The sixties to the Seventies: The Perspective of the Legal Adviser" (not reproduced; chapter 37 of CANADIAN PERSPECTIVES ON INTERNATIONAL LAW AND ORGANIZATION) and in "War, Peace and Law in To-day's Divided World"

(excerpt reproduced below; lecture at University of Toronto on Feb. 26, 1973; a French translation was published in (1974) 5 Etudes Internationales 45). Beesley views Canada as maintaining a major involvement in the development of the international legal order, per se, and suggests that various multilateral arrangements play a cumulative role in reducing the risk to all nations of resort to force by others, even where the individual agreements may seem to be peripheral legal exercises of little direct consequence to a nation such as Canada.

Beesley's attitude may also be compared with the assessment by Macdonald, Morris and Johnston in the excerpt reproduced from "Canadian Approaches to International Law" (chapter 38 of CANADIAN PERSPECTIVES). Note also the critique, reproduced below, of chapter 38 by Professor D. McRae in a review to be published in the University of Toronto Law Journal in early 1975. Does McRae's review respond in valid terms to the analysis in chapter 38?

See also: Cohen, "Canada and the International Legal Order: An Inside Perspective" (chapter 1 of CANADIAN PERSPECTIVES) and the contributions by Cohen and Cadieux to LEGAL ADVISERS AND FOREIGN AFFAIRS (1964).

LAW, LAWYERS, AND THE CONDUCT OF AMERICAN FOREIGN RELATIONS

Richard A. Falk

(1969) 78 Yale L. J. 919.

Recent commentary on the role of law in international affairs has frequently degenerated into a debate between legalists and anti-legalists. The legalists argue that world peace depends upon enlarging the scope and range of legal rules, the growth of habitual respect for law, and the creation of international institutions capable of interpreting and enforcing the law.[1] The anti-legalists argue that the expectations of the legalists are naive and misleading in a world of independent sovereign states, and that the best prospects for peace depend upon the maintenance of balance between the capabilities and commitments of antagonistic countries and ideologies. This balance must be grounded in a diplomatic equilibrium in which no state has any rational prospect of achieving significant expansion by conquest. As the world changes, the legalists, by and large, would alter and reform the legal rules, whereas the anti-legalists would concentrate upon making political readjustments to preserve the balance.[2] After an investigation of the arguments made by both sides in the debate, this essay will focus on three particular facets of the general problem posed by the assumed dichotomy between law and politics: (A) Lawyers as Foreign Policy Planners; (B) Adherence to Law and the Conduct of Foreign Policy; (C) Law and the Future of World Order. The discussion attempts to shift the focus of the present debate to an intermediate position that makes a more

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1. Judith Shklar, in her excellent book on the subject, defines legalism as "the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules." J. SHKLAR, LEGALISM: AN ESSAY ON LAW, MORALS, POLITICS 1 (1964).

2. The conflicting positions of the legalists and antilegalists have recently been set forth with clarity and insight by Louis Henkin. L. HENKIN, HOW NATIONS BEHAVE; LAW AND FOREIGN POLICY 245-71 (1968).

precise and realistic estimate of the contributions, limitations, and potentialities of law and lawyers to the foreign policy-making process of the United States.

The polarity of the opposing positions was clearly visible at the 1963 Annual Meeting of the American Society of International Law. On that occasion Dean Acheson dismissed the importance of law in matters of high sovereign concern in as unqualified a manner as we have heard in recent years from a person of high stature. Mr. Acheson told the large assembly of international lawyers, no doubt attracted partly by the lustre of his presence, that international law is of no significance in the resolution of important issues of foreign policy. His words were characteristically astringent:

> I must conclude that the propriety of the Cuban quarantine is not a legal issue. The power, position, and prestige of the United States had been challenged by another state; and law simply does not deal with such questions of ultimate power—power that comes close to the sources of sovereignty.[3]

Mr. Acheson's remarks were highly provocative. He shared the platform with Abram Chayes, then Legal Adviser to the Secretary of State, who appeared to be proud of the role that law had played in moderating and shaping the execution of the decision to interdict the placement of Soviet missiles on Cuban territory.[4] But what is more, Mr. Acheson was himself an eminent international lawyer, who had returned to the practice of law after leaving the government in 1952. Perhaps the immediate adverse reaction to his comments was magnified by a subconscious feeling among the members of the audience that they had borne witness to a betrayal of their vocation. To justify their feeling it is not difficult to show that many governmental decisions on matters of war and peace are shaped in beneficial ways by a sophisticated handling of international law.[5] Moreover, there are many practical drawbacks to a position that encourages all governments to insist on the legitimacy of sovereign prerogative on occasions of their own choosing.

But, perhaps the anti-legalist position was disputed too mechanically and without sufficient consideration of the way in which legal arguments can be and have been used. In the 1960's a series of controversial American foreign policy undertakings drew heavily upon legal rhetoric and argumentation to defend their validity, especially in reaction against domestic critics in the United States. We find, for instance, the Legal Adviser to the State Department, Mr. Leonard D. Meeker, going to considerable lengths to demonstrate a legal basis for the American military occupation of the Dominican Republic in April of 1965. Mr. Meeker suggested that his approach to international law "would properly be described as practical idealism." In his thinking "fundamentalist views on the nature of international legal obligations are not very useful as a means to achieving practical and just solutions of difficult political, economic, and social problems." Mr. Meeker went on to say that

> [i]t does not seem to me that law and other human institutions should be treated as abstract imperatives which must be followed for the sake of obeisance to some supernatural power or for the sake of some supposed symmetry that is enjoined upon the human race by external forces. Rather, it seems to me that law and other institutions of society should be seen as deliberate and hopefully rational efforts to order the lives of human communities—from small to great—in such a way as to permit realization by all members of a community of the full range of whatever creative powers they may possess.[6]

3. Acheson, Remarks, Proceedings American Society of International Law 13, 14 (1963).
4. *See* Chayes, *Law and the Quarantine of Cuba*, 41 FOREIGN AFF. 550 (1963); Chayes, *The Legal Case for U.S. Action on Cuba*, 47 DEP'T. STATE BULL. 763 (1962). *See also* Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515 (1963).
5. *See* HENKIN, *supra* note 2.
6. Meeker, *The Dominican Situation on the Perspective of International Law*, 53 DEP'T. STATE BULL. 60 (1965).

The cosmic vision expressed by these sentiments is widely shared, but arouses suspicion when used to validate what appeared to most impartial observers as a blatant violation of one of the basic norms of modern international law: the prohibition of unilateral recourse to force except in a situation of self-defense. However one might interpret the Dominican turbulence at the time of the American military involvement, it was not a situation in which the United States could purport to be acting in collective self-defense to protect the Dominican Republic against external attack.[7] Rather, the intervention in Dominican affairs bears an obvious, if odious, resemblance to the Soviet intervention in Czechoslovakia in August 1968. The strength of the comparison is heightened by the reliance of both principal governments upon a regional or collective endorsement to veil the unilateral nature of their use of military power to interfere with the domestic politics of a foreign country.[8] Certainly the Soviet claim to maintain the integrity of governments in the socialist community has a hollowness comparable to the State Department's "practical idealism" when it is used to justify suppressing Czech domestic developments that appear to be merely antithetical to Soviet interests.

This excursion into the dark domains of interventionalist diplomacy adds a dimension to the debate between the legalists and the anti-legalists. The anti-legalists are entitled to complain when a government dresses rationalizations of policy in legal language. In such circumstances, law is less a fig leaf than a see-through garment. Consequently, there is a strong impulse to strip away the legalistic pretension; better see policy as naked power than disguise the choice by enshrouding it in a gauzy film of legalism. Such a call for directness, perhaps an element of Mr. Acheson's remarks, is evident in some more recent comments on the role of law and lawyers in the making of foreign policy.

Mr. Henry Kissinger, the now influential Assistant to President Nixon on National Security Affairs, has often inveighed against what he regards as the detrimental effects of legalism on the formulation of American foreign policy. In his widely studied article on settling the Vietnam war, Kissinger argued that these legalistic tendencies of the Government inhibited the commencement of negotiations with the North Vietnamese. He suggested that ours is "a government which equates commitments with legally enforceable obligations," and that our preoccupation with this equation prevented us from even discerning signals sent by North Vietnam's government indicating its willingness to take satisfactory action in exchange for a bombing halt provided that its action did not have to be based on a formal commitment. Kissinger also contended that "the legalistic phrasing" of Washington's demands "obscured their real merit," in effect arguing that the language of law was inappropriate to the setting and had an undesirable impact upon diplomacy.[9] The repetition of this point several times in Mr. Kissinger's article makes it clear how strongly he feels that talking like a lawyer may keep the policy-maker from perceiving and resolving "the real issues."

This point of view becomes even more pronounced in a general

7. This interpretation that the United States did not act in self-defense is strongly supported even in a conservative account of the Dominican intervention. *See* J. MARTIN, OVERTAKEN BY EVENTS (1966).

8. *Cf.* the principal Soviet legal argument (the so-called Brezhnev Doctrine) for occupying Czechoslovakia as formulated in an article translated from Pravda and published under the title *Sovereignty and International Duties of Socialist Countries.* N.Y. Times, Sept. 27, 1968, at 27, col. 1.

9. Kissinger, *The Viet Nam Negotiations*, 47 FOREIGN AFF. 211, 222-23 (1969).

essay that Kissinger wrote on foreign policy just before he took office.[10] In this essay Kissinger contended that "we have historically shied away" from an inquiry "into the essence of our national interest and into the premises of our foreign policy" because of an insistence on casting our political interests in the form of legal responsibilities: "It is part of American folklore that, while other nations have interests, we have responsibilities; while other nations are concerned with equilibrium, we are concerned with the legal requirements of peace."[11] The rejection of law by Mr. Kissinger was particularly significant because he reoriented his entire analysis of foreign policy in the direction of world order: "The greatest need of the contemporary international system is an agreed concept of order."[12] And at the close of his essay he implied that unless we "ask the right questions"—that is, those that bear on interests—"we will never be able to contribute to building a stable and creative world order . . . ."[13] It seems fair to suggest that Mr. Kissinger regards law and legal rhetoric as an encumbrance rather than as a resource in the construction of a stronger system of world order.

Presumably in the background of this analysis lies John Foster Dulles's frantic search for treaties of alliance in the 1950's, as if a treaty, however fragile its political basis, could give assurance of the ability and willingness of governments around the world to contain Communism. In the foreground, of course, lies the defense of the United States involvement in the Vietnam war by an appeal to treaty commitments and by a claim that a world legal order is thereby sustained.[14] The pseudo-legalist ideology of Dean Rusk and Walt Rostow is the work of non-lawyers, who have frequently been more guilty than lawyers of rigid application of legal rules and the rhetorical use of the language of the law. In fact, Dean Acheson is just one of many attorneys who have served in the State Department; such lawyers tend to be exemplary exponents of the pragmatic traditions of the common law and are themselves anti-legalist in their philosophy. What is disturbing about the simpler statements of the anti-legalist position is its double confusion: first, an inaccurate and simplistic presentation of the legal tradition and, second, a false depiction of the relationship between "a characteristic legalism"[15] and certain recent extravagances in American foreign policy.

10. Kissinger, *Central Issues of American Foreign Policy*, in AGENDA FOR THE NATION 585 (K. Gordon ed. 1968).

11. *Id.* 610.

12. *Id.* 588.

13. *Id.* 614.

14. Even Mr. Kissinger, despite his concern for the formalism and legalism of American foreign policy, writes as follows about "commitments" in the context of the Vietnam war:

> Much of the bitter debate in the United States about the war has been conducted in terms of 1961 and 1962. Unquestionably, the failure at that time to analyze adequately the geopolitical importance of Viet Nam contributed to the current dilemma. But the commitment of 500,000 Americans has settled the issue of the importance of Viet Nam. For what is involved now is confidence in American promises. However fashionable it is to ridicule the terms "credibility" or "prestige," they are not empty phrases; other nations can gear their actions to ours only if they can count on our steadiness. The collapse of the American effort in Viet Nam would not mollify many critics; most of them would simply add the charge of unreliability to the accusation of bad judgment. Those whose safety or national goals depend on American commitments could only be dismayed. In many parts of the world—the Middle East, Europe, Latin America, even Japan—stability depends on confidence in American promises.

Kissinger, *supra* note 9, at 218-19. Mr. Kissinger uses commitment in two different senses and is somewhat vague about the causal link between American "commitments" and specific behavior.

15. Law functions within a structure of shared assumptions; its starting point is the acceptance, by all parties, of the legitimacy of the legal structure and of the values it embodies.

> Everyone understands that this shared value commitment and belief in the adjudication of conflict does not exist in more than a fragmentary manner in international society. Nevertheless, the legal habit of mind has sometimes led the United States to discount these difficulties, even to assume for itself and its own policies an international legitimacy which other states were unwilling to concede. Along with this has gone a trust in formal arrangements and alliances which the social and political realities have not at all times justified.

N.Y. Times, Jan. 6, 1969, at 46, col. 1 (editorial). The intellectual underpinnings of this analysis are explicitly attributed to the celebrated critiques of American foreign policy made more than a decade ago by Kennan and Morgenthau. G. KENNAN, REALITIES OF AMERICAN FOREIGN POLICY (1954); G. KENNAN, AMERICAN DIPLOMACY, 1900-1950 (1952); H. MORGENTHAU, POLITICS AMONG NATIONS (4th ed. 1967); H. MORGENTHAU, IN DEFENSE OF NATIONAL INTEREST (1951).

The comments of Mr. Kissinger, among others, suggest how important it is to enter the debate between legalists and anti-legalists and to examine some particular aspects of the controversy in order to achieve a more realistic and constructive analysis of the proper role for lawyers in foreign policy-making on behalf of the United States Government.[16]

A. *Lawyers as Foreign Policy Planners*

Henry Kissinger characterizes "the sort of analysis at which [Americans] excel" in the conduct of foreign relations as "the pragmatic, legal dissection of individual cases."[17] The same point is made more negatively by Zbigniew Brzezinski, the foreign policy specialist and former government adviser, who writes:

> Coming from a society traditionally suspicious of conceptual thought (where a "problem-solving" approach is held in esteem and concepts are denigrated as "intellectual cubbyholes"), shaped by a legal and pragmatic tradition that stresses the case method and the importance of precedents, the understandable conditioned reflex of the policy-maker is to universalize from the success of specific policies, formulated and applied in the "pre-global" age of American foreign policy.[18]

Kissinger and Brzezinski are associating the case method, which is the main emphasis of the lawyer's professional training, with an inductive and pragmatic approach to foreign policy. And Brzezinski also emphasizes this approach as the distinctive character of the common law as a legal system. Both authors find this strain expressed in the dominant philosophical traditions of the United States, themselves continuations and outgrowths of British empiricism that emphasize problem-solving and pragmatic criteria of judgment. This kind of inductive orientation toward governmental policy-making contrasts with the more conceptual, deductive traditions associated with Continental jurisprudence and philosophy.[19] Each tradition has its distinctive strengths and weaknesses, biases and predispositions that have distinct impacts, depending on a country's particular historical setting.

What is important to appreciate, however, is that a particular legal style is derived from a wider tradition of thought prevailing within a particular society; it is a product of many influences and not attributable in any very illuminating way to a particular experience of vocational training in the law. Thus it is not surprising that ideological predispositions might take precedence over the problem-solving mentality for lawyers (*e.g.*, John Foster Dulles) and non-lawyers (*e.g.*, Dean Rusk, Walt Rostow) in the service of government. And whatever it is that is properly associated with the pragmatic approach of the common law is not at all identical with the legalistic patterns of justification invoked by some lawyers in the course of carrying out their governmental functions.

A parallel tradition of piety and self-sacrifice has its roots in the religious origins of the United States and can be seen clearly in the Puritan heritage. This religiosity seeks to disguise self-interested mo-

16. For fuller development along these lines, see R. FALK, THE STATUS OF LAW IN INTERNATIONAL SOCIETY (1969).

17. Kissinger, *supra* note 9, at 221.

18. Brzezinski, *Purpose and Planning in Foreign Policy*, THE PUBLIC INTEREST, Winter 1969, at 52, 54-55. Kissinger also argues for a better conceptual framework for foreign policy in the essay cited in note 10, *supra*.

19. Brzezinski's statement about the legal tradition contains an odd mixture of misconceptions. The case method is a technique of analysis and pedagogy rather than a widely accepted system of adjudication. (Arbitration would be closer to the ad hoc "problem-solving" that Brzezinski first refers to.) The very importance of precedent is a demonstration that each case is not seen as a discrete problem in the American legal system. Universalizing from the numerous cases which form a line of precedent will quickly bring the thoughtful student of the law to the intellectual cubbyholes of conceptual thought. The difference from Continental systems lies in how we reach that plane of conceptual discussion rather than in taking the extreme nominalist position that generalized concepts have no value at all. The Restatement is the end rather than the beginning.

tives, aspires to act for the common good, and is interested in setting a moral example of unselfish sacrifice for the other governments of the world that, according to this outlook, follow a much more self-centered course of action in foreign affairs.[20] The ideas underlying the doctrine of the separation of church and state, together with the progressive secularization of American society, have stimulated a search for non-religious modes of expression by those entrusted with the task of making and justifying American foreign policy. Law and lawyers have often fulfilled this social need, providing a kind of idealistic discourse that represents partly a genuine reformist tradition and partly a hypocritical disguise for acquisitive behavior. Calvinism has contributed the zealously held notions of personal salvation and a vigilant, omnipotent god, and this combination has led to a confusion between what is beneficial for oneself and for the general welfare. Socially this confusion is compounded by the suggestively similar ideas of *laissez faire*, the "invisible hand" of Adam Smith, and Social Darwinism that are all embodied in American intellectual traditions. The world views of Woodrow Wilson after World War I exemplified these confusions—the idealistic gropings for the grand design conjoined to a search for American leadership and preeminence in world affairs.

In conclusion, then, the inductive particularism of the common law is neither confined to law, nor is it espoused by all American lawyers. The "case" approach reflects a broader kind of philosophical tradition associated with British empiricism and the whole struggle against Thomistic and Cartesian modes of thought and organization evolved out of Catholic dogma and Continental traditions of speculation.[21] Similarly, the legalism that is found in American diplomacy often represents displaced religious and moral sentiments that derive from the whole spiritual foundation of the Republic in colonial times.

20. Those who support the role of the United States in the Vietnam War often emphasize the *absence* of any selfish American interests in Vietnam. We want no territory or foreign bases, and we have no economic holdings or ambitions. Although the denial of any selfish interest may not be altogether convincing, its frequent repetition by high officials is a powerful illustration of the point made in the text. The United States substitutes the rightness of its cause for the selfish pursuit of interests, and feels no compunctions about unleashing its destructive might upon a poor and rather backward Asian country. When interests are pursued then costs tend to be assessed and the enterprise confined by some concept of net worth. But when supposedly selfless principles underlie the commitment then no assessment can be made, and no cost is too high. The American effort to end the Vietnam war indicates that some sense of "worth" finally took precedence over the moralistic insistence that the United States was acting to show that aggression doesn't pay, or that collective self-defense works, or that we are a government that upholds its commitments; since no moral contention was very convincing there was a tendency to shift from one to another in a desperate struggle to plug the dike erected against the mounting tide of domestic and international opposition to the war. But up until President Johnson's speech of March 31, 1968, no government official moved the debate about the war off the terrain of selfless promotion of moral and legal principles the value of which could not be weighed against the adverse effects of its continuation. Within the American elite it has been the pragmatic counter-tradition that has broken with the moralism and legalism of the Rusk-Rostow position. The formulations of Arthur Schlesinger, McGeorge Bundy, and Henry Kissinger are characteristic of this pragmatic (opportunistic?) reevaluation of American policy in Vietnam. Bundy's Address at DePauw University in October 12, 1968, is one of the best examples of this break with moralism. Mr. Bundy says:

> Until the present burden of Vietnam is at least partly lifted from our society, it will not be easy—it may not even be possible—to move forward effectively with other great national tasks. This has not always been my view, but . . . it seems to me wholly clear now that at its current level of effort and cost the war cannot be allowed to continue for long. Its penalities upon us all are much too great. (Mimeographed text, p. 2)

Lest he be understood as a sudden convert to matters of principle, Mr. Bundy makes plain that his change of position on Vietnam was a matter of pure expediency:

> I remind you also, if you stand on the other side, that my argument against escalation and against an indefinite continuation of our present course has been based not on moral outrage or political hostility to the objective, but rather on the simple and practical ground that escalation will not work and that continuation of our present course is unacceptable.

Mr. Schlesinger expresses the same theme when he writes: "The tragedy of Vietnam is the tragedy of the catastrophic overextension and misapplication of valid principles. The original insights of collective security and liberal evangelism were generous and wise." *Vietnam and the End of the Age of Superpowers*, HARPERS, March 1966, at 41-49. My overriding contention, one that will be developed in later stages of the article, is that neither moralism-legalism of the Rusk-Rostow variety nor expediency of the Bundy-Schlesinger variety provide America with an adequate basis for policy and choice in world affairs.

21. Such particularism is also associated with the importance of "town meetings" in early America and the rise of a congregationalist tradition in ecclesiastical affairs.

Legalism in formulation and approach is a way of maintaining the pristine integrity of a moral system in a pluralistic society; the emphatic piety remains resonant even when the rhetorical appeal has been shifted to more secular grounds. It seems no accident that Woodrow Wilson and John Foster Dulles, our two most eminent legalists, were both men of deep, central, religious conviction who devoted themselves to careers in the vortex of secularism. It seems that the espousal of legalism has little, if anything, directly to do with membership in the legal profession. Law may be a foil for suppressed religious concerns; equally lawyers may be problem-solvers with neither the virtues nor the vices of statesmen of more grandiose visions who would build a new world order for our time.

B. *Adherence to Law and the Conduct of Foreign Policy*

The value of a law-oriented foreign policy is obscured by the character of the legalist-anti-legalist debate. The acceptance of a framework for legal restraint in the external relations of the country seems at least as much related to the promotion of national welfare as does adherence to law in domestic affairs. A discretionary basis for foreign policy in the nuclear age seems to increase the risks of self-destructive warfare. The scale of violence is now so large that it becomes less and less tenable to entrust decisions affecting the interests and welfare of the world community to the particular appraisals of policy made by small numbers of executive officials at the national level.[22] The problems of the world—peace, welfare, dignity—increasingly presuppose some form of supranational control to protect the general interest. The prospects for building governmental structures at the world level remain poor, and so in the interest of preventing disastrous breakdowns, the restriction of national freedom of choice could function as one formidable source of restraint upon the ruinous tendencies of our present international society. The norms of international law, impartially interpreted and applied, are a forceful source of restraint upon the self-seeking proclivities of sovereign states. The real difficulty with Mr. Acheson's views about the conduct of diplomacy in a situation of crisis is a prudential one, namely, that to affirm the discretionary basis of foreign policy in the nuclear age is to invite eventual disaster, even if, or perhaps especially if, the effective discretion to act is vested only in the governments of the major powers.

Mr. Kissinger contends that our dedication to "principle" makes it hard for us to articulate a truly vital interest which we would defend against a challenge we thought was "legal."[23] We deny that force is being used by the United States to uphold or enhance America's power and prestige, much less its wealth. American policy-makers normally rely upon a selfless explanation for action taken abroad. Thus we tend to justify our foreign policy decisions by turning to principles of universal appeal, such as the need to resist "aggression." According to Kissinger, these patterns of generalized justification lead to an indefinite multiplication of commitments. He counsels, instead, a hard-headed appraisal of vital interests as a strategy for bringing our "commitments" into better correlation with our "interests" and "capabilities." In such a reorientation it may be necessary to undertake some "illegal" courses of action and to refrain from joining many "legal" causes.

Why is international law a better source of national self-restraint than the kind of interest calculus that Mr. Kissinger proposes? Clearly

22. Garrett Hardin makes this argument in vivid and generic terms through an interpretation of the experience with over-grazing of community commons. Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968).

23. Kissinger, *supra* note 10, at 611.

law has little to offer as a basis for guidance and restraint if it is manipulated in a self-serving and post-facto fashion or becomes assimilated into the tradition of formulating pious self-avowals in legal rhetoric.[24] At the same time, international law provides the potential basis for guiding the action of all governments within an agreed framework. It has relatively stable principles that are not easily altered by shifts in governmental conception of the national interest or by miscalculations as to the intermeshing of definitions of national interests by adversary governments. Kissinger's views seem overly dependent on the wisdom and prudence of the particular group in control of a government.

Self-determination of rights and duties—a self-help system—is severely biased by self-serving interpretations of what is reasonable, interpretations which are marked by hostility, distrust, self-seeking, and wide cultural diversity. In this situation the position and traditions of the United States make its adherence to international law particularly important. The great power of the United States relative to every other country, including the Soviet Union, make its acceptance of restraint particularly significant. Secondly, there is little incentive or likelihood that other principal states could take advantage of American adherence to international law. Technological developments much more than territorial expansion are the key to changes in relative power in the present world. As a result, the legal order presents neither obstacles nor temptations to the potential expansionist state. Thirdly, the rules and expectations embodied in international law are sufficiently permissive to allow a government to take whatever action is needed to uphold its territorial integrity and political independence. Fourthly, the United States needs to set certain examples of self-limitation in the interest of inducing reciprocal restraints by other states. Such reciprocity seems an essential part of any program designed to cope with the spread of weapons of mass destruction to more and more countries in the years ahead. Fifthly, there is a genuine American tradition of respect for law and concern for justice that could play a part in seeking to strengthen the quality of world order. For all these reasons it is important to bring impartial legal perspectives to bear early in the formation of policy.

As in domestic law it is possible, and necessary to distinguish between an *ex parte* manipulation of law and its impartial and autonomous application. The present bureaucratic structure is ill-suited to serve the latter objective. The Legal Adviser is a subordinate officer of the Secretary of State. His role is often couched in terms that require him to be an adversary litigator with the Government as his "client." While his advice on legal matters may be enlightened, and he may try to avoid violence, he still is a subordinate State Department official essentially advocating an adversary position in the Government. This status and arrangement seem too haphazard, except in relation to the routine affairs of international life that are rarely considered by the political officers of government.

The President needs to receive legal advice at the Cabinet level from an Attorney General for International Affairs. The conception of official duty for this proposed post should stress the obligations of impartiality, the search for objective criteria of guidance, and the importance of participating at all stages of the formation and application of foreign policy. Such an Attorney General should be assisted by official panels of experts on various dimensions of international life who have access to all governmental information and are obliged to deliver expert opinions. The Attorney General for International Affairs should be

24. The following passage is a striking illustration of this tradition:
In the period of primarily American responsibility for peace since 1945, we have used our force prudently, cautiously, and for limited and defensive ends. We have used force in conformity with international law, in order to enforce it. When we had a monopoly of nuclear weapons, we did not seek to impose our will on the rest of the world. Nor have we even overthrown the regime of Castro in Cuba.
E. ROSTOW, LAW, POWER, AND THE PURSUIT OF PEACE 11 (1968).
Mr. Rostow seems to be confusing adherence to law with certain decisions to refrain from using all the power at the disposal of a national government. But surely some lesser uses of power may not be compatible with the sovereign status of other countries, nor with the legal prohibitions on non-defensive uses of national force against foreign countries.

regarded as a non-political appointee, subject to removal from office only for cause. He should sit as an *ex officio* member of the National Security Council and command a budget sufficient to enable careful, rapid staff work on all legal questions.

C. *Law and the Future of World Order*

Images of world order may be developed from both legal and non-legal traditions of thought about international affairs. Unfortunately, the images drawn from traditions of legal thought have tended to be models of domestic legal systems generalized to apply to the whole of international society. These models are static, tend to ignore the enormous difficulties of moving from the present decentralized structure of international society to a highly centralized structure, and appear artificial and unrealistic if offered as either a prediction of or a prescription for the future.

On the other hand, the images of world order deriving from non-legal traditions of thought tend to be models of interaction that are only marginally different from the existing structure of power and behavior in international society. Mr. Kissinger's notions about world order appear to be little more than an updating of Metternich's ideas for securing a stable and dynamic equilibrium in international society. The chief buttresses of the non-legal model are alliances, an assessment of the correlation between capabilities and commitments, and a hierarchial ordering of interests vital to the country. The achievement of such world order depends upon an acceptance of the international status quo for an indefinite period, or at least a perceived unwillingness on the part of all major governments to secure major gains through force of arms. The difficulty with this diplomatist image of world order is that it seems to accept decentralized procedures as adequate for the maintenance of minimum order and welfare in international society.

There is presently an intellectual vacuum that needs to be filled with more adequate images of world order, responsive to the history and traditions of a world of sovereign states and to the emerging functional problems that cannot be handled, in many cases, by the national governments of even the most powerful states. The control of oceanic and atmospheric pollution, the regulation of weather modification and other uses of space, the beneficial use of data collection relevant to many phases of human existence, the regulation of the multi-national corporation, problems of resource conservation and exploration, and the moderation of the effects of shifts in the supply of and demand for food suggest the urgency of evolving functional bodies that have a transnational center of authority and control. The maintenance of world order may depend on the design and acceptance of a scheme of overlapping, interlocking, and organizationally disparate functional institutions that ignore the confines of national boundaries and elude the control of national governments. Such a network may come to play an increasingly vital role as problems of armed violence across boundaries are subordinated to the differential opportunities for and hazards of various strategies of technological exploitation. The deployment of fast-breeder nuclear reactors, capable of converting arid land into an agro-industrial complex may become more significant than the deployment of missles with nuclear warheads. Failures to take adequate precautions to prevent damage from radioactive waste may pose greater problems than the danger of war and surprise attack. The proposals for order and control should be responsive to the problems emerging from the international environment.

Moderate population projections predict a world population by the first decade of the twenty-first century that will be almost double what it is today.[25] These increases will be concentrated in the poorer parts of the world which have no prospect of adequately feeding or caring for their populations. The problem is not only preventing famine, but also securing health, education, housing, and a life of some opportunity for most people in the world.[26] Population expansion vastly increases the difficulty of making reasonable progress along all these other lines, and also causes more than proportionate increases in garbage, pollution, and resource depletion. Increasing population densities also raise the propensity of social groups toward disease, riot, distress, and desperate politics. In such environments, strategies of internal and external change that rely on violence are much more likely.

Thus, like the Polish army of the thirties, supposedly buttressed by the working of the balance of power and by impressive treaty systems, we are a knight errant facing the future in gallant ignorance, equipped with ideas whose time has passed. Non-legal approaches to world order characteristically ignore the international dimension of the problems of pollution, population, and poverty. Legal approaches to world order equally ignore the problems of adapting to the new technological environment. Only in relation to nuclear war is the case for drastic change in our attitude toward world order sufficiently understood.

There are several suggestions that follow from this discussion: (1) the outline of a new kind of transnational functionalist world order should be put in explicit and coherent form; (2) international lawyers should begin to define ecological, demographic, and technological developments as within the province of their professional concern; (3) the idea of a world order emphasizing the problems of war and peace should be rejected in favor of a broader conception that is equally concerned with the protection and promotion of dignity, safety, and security for individuals and groups. Power and the mechanisms for restraining its use are no longer adequate foci of concern in our evermore interdependent and overcrowded world of shared danger and opportunity.

The purpose of this article is to redefine the debate on legalism in terms that are more responsive to the international needs of the day.[27] Such an endeavor requires some clarification of what is truly characteristic and distinctive about the legal tradition, especially as it presents itself in our national setting. Only on this basis is it possible to assess the claims advanced for and against law in relation to the conduct of foreign policy. Above all, it is essential to distinguish between the intellectual traditions of an American lawyer and the ideological orientations of American statesmen, who may or may not be lawyers but who use legal rhetoric to express moral preferences which often spring from other and wider sources.

25. Projections of population growth and their conservative interpretation are to be found in Notestein, *Population Growth and Its Control*, in OVERCOMING WORLD HUNGER 9, 16-17 (C. Hardin ed. 1969).

26. For some discussion of projected population growth and its global consequences, see P. EHRLICH, THE POPULATION BOMB (1968); G. MYRDAL, THE ASIAN DRAMA (3 vols. 1968); W. PADDOCK & P. PADDOCK, FAMINE—1975! (1967).

27. My argument should not be read to imply that international lawyers are by and large either legalists or anti-legalists. On the contrary, the academic mainstream of contemporary international legal studies exhibits my search for an intermediate statement of the link between law and politics. The legalist/anti-legalist discussion enjoys prominence mainly in discussions of the proper framework of restraint for the conduct of U.S. foreign policy.

The rejection of legalism does not make the case for anti-legalism. The argument for a common framework of restraint that has some objective standing independent of the judgment of government officials seems overwhelmingly persuasive in the nuclear age when the margin of fatal miscalculation is so small and the prospect of mutually contradictory selection of facts and claims is so great. The search for objectivity in such an atmosphere deserves priority, and the techniques and vocation of the lawyer are admirably suited for the task, especially if the search is removed from governmental pressures by giving national legal advisers greater independence than they now enjoy. In the American context serious consideration should be given to the creation of a Cabinet post of Attorney General for International Affairs. Such efforts at the national level should be accompanied by parallel and complementary efforts to create procedures for the settling of disputes on the international level, whether within specialized agencies, regional or global institutions.

Both the traditional legalist and anti-legalist notions of world order have been slow to adapt to a new set of international concerns that are becoming problems of the first magnitude. We must work for a system of world order which will not only diminish the probability of large-scale and sustained violence, but will also meet the threats that arise from over-population, pollution, technological innovation, and resource depletion. We need, in other words, a redefinition of the task of global planning. That work should include a new, common effort by both legalists and non-legalists. No single disciplinary perspective is adequate in either its analysis of the problems of world order or the design of strategies for their solution. The argument for inter-disciplinary collaboration is both convincing and urgent, as is the case for forging a new synthetic concern for world order that engages specialists in many areas, including law, political science, economics, sociology, ecology, systems design, and the computer sciences.

The primary task is to keep the existing system under some degree of reasonable control during a period of transition to some more centralized system. The task is urgent. Cumulative and symbiotic developments in population growth, resource supply, pollution of oceans and space, and the technology of destruction suggest that only a few decades, at most, remain before the risks and costs of maintaining the existing system of world order will become unendurable.

FOREIGN POLICY FOR CANADIANS (Dept. of External Affairs, Ottawa, 1970)

Volume One (General Policy):

> Canada emerged from the Second World War on the leading edge of an internationalism which sought to create a rational world order out of the ruins of "isms" of the thirties. Canada hoped then that its future security and well-being could be safeguarded through strengthening international institutions—especially in the United Nations family of organizations—which were to be the basis for maintaining world peace and achieving human progress.
>
> When it became apparent that many of these co-operative efforts were endangered by the rigidities of the cold war, viable alternatives to the new world order were needed. The threat of Communist armed aggression—first against a weakened Western Europe, later in Korea and Indochina—led to the establishment of the North Atlantic Treaty Organization (NATO), then the North American Air Defence Command (NORAD) and other security arrangements. These and subsequent peacekeeping operations, and a rather important group of organizations specifically assembled for financial, trade, development and social purposes, relied for their effectiveness on varying degrees of international co-operation.

Canada's foreign policy then was largely concerned with objectives and obligations arising out of active membership in multilateral organizations. Canada's international role, its influence, its self-expression were seen in the context of those intergovernmental bodies. It was all part of the most striking phenomenon of the post-war period—the increasing interdependence of events and nations.

Canadians as Internationalists

During the post-war decades, Canada and Canadians acquired a certain taste and talent for international activities of various kinds. Canadians took pride in the skill with which their political leaders, their military and civilian peacekeepers, their trade and other negotiators conducted the nation's business abroad. The international reputation Canada had then was earned at a time when Canada enjoyed a preferred position and a wide range of opportunities, as one of the few developed countries that had emerged from the Second World War materially unscathed and indeed politically, militarily and economically stronger than ever. It was a position that was bound to be affected by changes in the world power structure resulting from the post-war rehabilitation of larger countries, including friends and former enemies. The Canadian people had broken out of the isolationism of the thirties and come to the realization that there was an interesting and important world outside where Canada should have a distinctive contribution to make. Canadians developed and exercised a substantial interest in international organizations. They moved in ever-growing numbers into the less-developed parts of the world as technicians, teachers and administrators; they encouraged and accepted foreign scholars, students and trainees to enter Canadian institutions of education; Canadians travelled far and wide in search of business, service and pleasure. The emergence of former colonies as free nations offered new challenges to religious groups, private aid societies, universities, humanitarian groups generally.

This varied activity by Canadians has stimulated and substantiated a deep-seated desire in this country to make a distinctive contribution to human betterment. It manifests itself in the various pressures which have been exerted on successive Governments to do more in such international fields as peacekeeping, development aid and cultural cross-fertilization. This altruistic aspiration seems to be shared generally across Canada. What Canada can hope to accomplish in the world must be viewed not only in the light of Canadian aspirations, needs and wants but in terms of what is, from time to time, attainable.

The Changing World

From the outset of this policy review it was apparent that some of the safe assumptions of the post-war decades were crumbling away as the world changed:

—International institutions which had been the focus and instrument of much of Canada's policy were troubled by internal divergences and by criticism about their continuing relevance in new world situations.

—The world powers could no longer be grouped in clearly identifiable ideological camps, groupings which had conditioned political and military thinking since the War.

—Long-standing human problems in the Third World—which in the post-war euphoria seemed manageable in due course—had crystallized into irresistible demands and expectations for international action to deal with development needs and to put an end to race discrimination.

—Science and technology had produced in spectacular array powerful weapons, computerized industry, instant communications, space travel; but in sum these marvellous innovations raced far ahead of political, economic and social institutions, magnifying the problems they faced and rendering them inadequate in some cases.

—Social attitudes had changed. Civil disobedience and the use of violence became the commonplace of the new confrontation politics. The basic values of most societies were called into question—perhaps nowhere more harshly than in North America.

Canada's Changing Outlook

By the mid-sixties Canada had its own set of difficulties. An overheated economy, regional differences and disparities, the reverberations of the quiet revolution in Quebec, all added to the stress and strain on Canada's national fibre. They affected the way Canadians saw themselves and the world around them.

Developments in the outside world—the changes already noted—raised questions and doubts in the minds of some Canadians about Canada's foreign policy. Criticism tended to gather in a hard lump of frustration—accentuated by the war in Vietnam—about having to live in the shadow of the United States and its foreign policy, about the heavy dependence of Canada's economy on continuing American prosperity, and about the marked influence of that large and dynamic society on Canadian life in general.

Canada's "traditional" middle-power role in the world seemed doomed to disappear after the United Nations ordeal in the Congo, in the face of peacekeeping frustrations in Vietnam, following the collapse of the UN Emergency Force (UNEF) in 1967. Western Europe had not only fully recovered from the war but was taking steps toward integration that put strain on transatlantic ties and, combined with changes in the Communist world, called into question the need for continuing Canadian participation in NATO. The renaissance of French Canada, with its direct consequences for relations with French-speaking countries, raised further questions about the fundamentals of Canadian foreign policy.

Policy had not remained static since the war; it had been adjusting to the changing world and to Canada's changing needs. It had served the country well. But an empirical process of adjustment cannot be continued indefinitely. There comes a time for renewal and in 1968 the Government saw that for Canada's foreign policy the time had arrived.

Role and Influence

At times in the past, public disenchantment with Canada's foreign policy was produced in part by an over-emphasis on role and influence obscuring policy objectives and actual interests. It is a risky business to postulate or predict any specific role for Canada in a rapidly evolving world situation. It is even riskier– certainly misleading– to base foreign policy on an assumption that Canada can be cast as the "helpful fixer" in international affairs. That implies, among other things, a reactive rather than active concern with world events, which no longer corresponds with international realities or the Government's approach to foreign policy.

There is no natural, immutable or permanent role for Canada in today's world, no constant weight of influence. Roles and influence may result from pursuing certain policy objectives—and these spin-offs can be of solid value to international relations—but they should not be made the aims of policy. To be liked and to be regarded as good fellows are not ends in themselves; they are a reflection of but not a substitute for policy.

Foreign Policy in Essence

In undertaking this review the Government has been constantly reminded of its need and responsibility to choose carefully aims, objectives and priorities in sufficiently long and broad terms to ensure that essential Canadian interests and values are safeguarded in a world situation where rapid and even radical changes can be anticipated as normal rather than exceptional conditions. Canada, like other states, must act according to how it perceives its aims and interest. External activities should be directly related to national policies pursued within Canada, and serve the same objectives. Diplomatic relations are maintained and strengthened for a wide variety of reasons—among others, trade expansion, collective security, cultural contact, co-operation in development assistance, exchanges in science and technology. Such relationships have to be kept under review to ensure that they continue to serve Canada's objectives effectively. Those may change as both Canada and the world change. In essence, foreign policy is the product of the Government's progressive definition and pursuit of national aims and interests in the international environment. It is the extension abroad of national policies.

NATIONAL AIMS

The ultimate interest of any Canadian Government must be the progressive development of the political, economic and social well-being of all Canadians now and in future. This proposition assumes that for most Canadians their "political" well-being can only be assured if Canada continues in being as an independent, democratic and sovereign state. Some Canadians might hold that Canada could have a higher standard of living by giving up its sovereign independence and joining the United States. Others might argue that Canadians would be better off with a lower standard of living but with fewer limiting commitments and a greater degree of freedom of action, both political and economic. For the majority, the aim appears to be to attain the highest level of prosperity consistent with Canada's political preservation as an independent state. In the light of today's economic interdependence, this seems to be a highly practical and sensible evaluation of national needs.

Basic National Aims

In developing policies to serve the national interests, the Government has set for itself basic national aims which, however described, embrace three essential ideas:

—that Canada will continue secure as an independent political entity;

—that Canada and all Canadians will enjoy enlarging prosperity in the widest possible sense;

—that all Canadians will see in the life they have and the contribution they make to humanity something worthwhile preserving in identity and purpose.

These ideas encompass the main preoccupations of Canada and Canadians today: national sovereignty, unity and security; federalism, personal freedom and parliamentary democracy; national identity, bilingualism and multicultural expression; economic growth, financial stability, and balanced regional development; technological advance, social progress and environmental improvement; human values and humanitarian aspirations.

Pursuit of Canadian Aims

Much of Canada's effort internationally will be directed to bringing about the kinds of situation, development and relationship which will be most favourable to the furtherance of Canadian interests and values. As long as the international structure has the nation state as its basic unit, the Government will be pursuing its aims, to a substantial degree, in the context of its relationships with foreign governments. While Canada's interests might have to be pursued in competition or even in conflict with the interests of other nations, Canada must aim at the best attainable conditions, those in which Canadian interests and values can thrive and Canadian objectives be achieved.

Canada has less reason than most countries to anticipate conflicts between its national aims and those of the international community as a whole. Many Canadian policies can be directed toward the broad goals of that community without unfavourable reaction from the Canadian public. Peace in all its manifestations, economic and social progress, environmental control, the development of international law and institutions—these are international goals which fall squarely into that category. Other external objectives sought by Canada, very directly related to internal problems (agricultural surpluses, energy management, need for resource conservation), are frequently linked to the attainment of international accommodations (cereals agreements, safeguards for the peaceful uses of atomic energy, fisheries conventions) of general benefit to the world community. Canada's action to advance self-interest often coincides with the kind of worthwhile contribution to international affairs that most Canadians clearly favour.

Canada's foreign policy, like all national policy, derives its content and validity from the degree of relevance it has to national interests and basic aims. Objectives have to be set not in a vacuum but in the context in which they will be pursued, that is, on the basis of reasonable assumption

of what the future holds. The task of the Government is to ensure that these alignments and interrelationships are kept up-to-date and in proper perspective. In no area of policy-making is this whole process more formidable than foreign policy.

SHAPING POLICY

The world does not stand still while Canada shapes and sets in motion its foreign policy. The international scene shifts rapidly and sometimes radically, almost from day to day. Within one week an assassination in Cyprus, a decision about another country's import policy, a coup in Cambodia, an important top-level meeting of two German leaders, a dispute in Niamey—while not all such events affect Canadian interest, some have done so, others will.

It is much the same on the domestic scene. An oil-tanker foundering in Canadian territorial waters endangers marine life and underlines once again the need for international co-operation to deal effectively with pollution of the sea as regards both technical remedies and legal responsibilities. A wheat surplus in Western Canada poses very difficult domestic problems and externally requires action to get effective international co-operation in marketing and production policies. A criminal trial in Montreal is considered in a friendly country to have race undertones and causes concern for Canadians and for Canadian business firms there.

The scene shifts constantly, foreign and domestic factors interact in various ways at the same time; they appear quickly, often unexpectedly, as threats or challenges, opportunities or constraints, affecting the pursuit of Canadian national aims. National policies, whether to be applied internally or externally, are shaped by such factors. The trick is to recognize them for what they are and to act accordingly.

The problem is to produce a clear, complete picture from circumstances which are dynamic and ever-changing. It must be held in focus long enough to judge what is really essential to the issue under consideration, to enable the Government to act on it decisively and effectively. That picture gets its shape from information gathered from a variety of sources -- public or official—and sifted and analyzed systematically. The correct focus can only be achieved if all the elements of a particular policy question can be looked at in a conceptual framework which represents the main lines of national policy at home and abroad.

The Framework

Broadly speaking, the totality of Canada's national policy seeks to:

—foster economic growth
—safeguard sovereignty and independence
—work for peace and security
—promote social justice
—enhance the quality of life
—ensure a harmonious natural environment.

These six main themes of national policy form as well the broad framework of foreign policy. They illustrate the point that foreign policy is the extension abroad of national policy. The shape of foreign policy at any given time will be determined by the pattern of emphasis which the Government gives to the six policy themes. It is shaped as well by the constraints of the prevailing situation, at home and abroad, and inevitably by the resources available to the Government at any given time.

Policy Themes

The principal ingredients of Canadian foreign policy are contained in the following descriptions of the six policy themes:

—*Fostering Economic Growth* is primarily a matter of developing the Canadian economy, seeking to ensure its sustained and balanced growth. This theme embraces a wide range of economic, commercial and financial objectives in the foreign field, such as: promotion of exports; management of resources and energies; trade and tariff agreements; loans and investments; currency stabilization and convertibility; improved transportation, communications and technologies generally; manpower and expertise through immigration; tourism. It involves varying degrees of co-operation in a group of international institutions—e.g., the International Monetary Fund (IMF), the General Agreement on Tariffs and Trade (GATT), the Organization for Economic Co-operation and Development (OECD), the Group of Ten—vital to the maintenance of a stable and prosperous economic community in the world.

—*Safeguarding Sovereignty and Independence* is largely a matter of protecting Canada's territorial integrity, its constitutional authority, its national identity and freedom of action. Sovereignty and independence are challenged when foreign fishermen illegally intrude into Canadian territorial waters, when Canadian constitutional arrangements are not fully respected by other governments. They may be affected by external economic and social influences (mainly from the United States); or qualified by international agreement, when Canada in its own interest co-operates internationally in trade (GATT) or financial institutions (IMF), for example. Sovereignty may have to be reaffirmed from time to time, especially when territorial disputes or misunderstandings arise, and should be reinforced by insistence on compliance with Canadian laws and regulations and by employing adequate means of surveillance and control to deal with infringement. Above all, sovereignty should be used to protect vital Canadian interests and promote Canada's aims and objectives.

—*Working for Peace and Security* means seeking to prevent war or at least to contain it. It includes identifying the kind of contribution which Canada can usefully make to the solution of the complex problems of maintaining peace, whether through defence arrangements, arms control, peacekeeping, the relaxation of tensions, international law, or improvement in bilateral relations. In essence, peace and security policies are designed to prevent, minimize or control violence in international relations, while permitting peaceful change.

—*Promoting Social Justice* includes policies of a political, economic and social nature pursued in a broad area of international endeavour and principally today with international groupings (the United Nations, the Commonwealth, la Francophonie). It means, in the contemporary world, focusing attention on two major international issues—race conflict and development assistance. It is also related to international efforts: to develop international law, standards and codes of conduct; and to keep in effective working order a wide variety of international organizations—e.g., the UN Development Programme (UNDP), the UN Conference on Trade and Development (UNCTAD), the International Development Association (IDA), the Development Assistance Committee (DAC).

—*Enhancing the Quality of Life* implies policies that add dimension to economic growth and social reform so as to produce richer life and human fulfilment for all Canadians. Many of these policies are internal by nature, but in the external field they involve such activities as cultural, technological and scientific exchanges which, while supporting other foreign objectives, are designed to yield a rewarding life for Canadians and to reflect clearly Canada's bilingual and multicultural character. Part of this reward lies in the satisfaction that Canada in its external activities is making a worthwhile contribution to human betterment.

—*Ensuring a Harmonious Natural Environment* is closely linked with quality of life and includes policies to deal not only with the deterioration in the natural environment but with the risks of wasteful utilization of natural resources. Implicit are policies: to rationalize the management of Canada's resources and energies; to promote international scientific co-operation and research on all the problems of environment and modern society; to assist in the development of international measures to combat pollution in particular; to ensure Canadian access to scientific and technological information in other countries.

Interrelationships

The conceptual framework serves particularly well to emphasize the various interrelationships which enter into the consideration and conduct of Canada's foreign policy. These include, for example:

- the relationship between domestic and foreign elements of policy designed to serve the same national objective (The utilization of energies and resources in Canada is related to international agreements on their export, both elements being pursued to promote economic growth.);
- the relationship between basic national aims and intermediate objectives for furthering their attainment (National unity is related to the external expressions of Canada's bilingualism and multicultural composition.);
- the relationship between activities designed to serve one set of objectives and those serving other national objectives (Cultural and information programmes are related to trade promotion activities.);
- —the relationship between and among the six main thrusts of policy (Ensuring the natural environment is related to enhancing the quality of life; both are related to the fostering of economic growth; which in turn relates to the promotion of social justice.)

Hard Choices

Most policy decisions—certainly the major ones—involve hard choices which require that a careful balance be struck in assessing the various interests, advantages and other policy factors in play. As in so many fields of human endeavour, trade-offs are involved. For example:

- —In striving to raise national income through economic growth, policies may be pursued which adversely affect the natural environment by increasing the hazards of pollution or by depleting resources too rapidly. Such policies might also cause infringement of social justice (because of inflation, for example) and impair the quality of life for individual Canadians.
- —In seeking social justice for developing nations, through trade policies which offer them concessions or preferences, the Government's policy may adversely affect the domestic market opportunities for certain Canadian industries, or it might involve parallel policies to curtail or reorient their production.
- —Similarly, if international development assistance programmes require a substantial increase in Canadian resources allocated, the trade-off may be some reduction of resources allocated to other governmental activity, like the extension of Canadian welfare programmes or the attack on domestic pollution.
- —Reductions in military expenditure may lead to results difficult to gauge as regards Canada's capacity to ensure its security, to safeguard its sovereignty and independence, and to make a useful contribution to the maintenance of peace; though resources might thereby be freed for other activities.
- —The most difficult choices of the future may result from seeking to recapture and maintain a harmonious natural environment. Such policies may be essential to enhance the quality of life (if not ensure human survival) but they may well require some curtailment of economic growth and freedom of enterprise and a heavy allocation of resources from both public and private sources.

Criteria for Choosing Policy

How then is the choice to be made?

First: The Government could arbitrarily decide that it wants to emphasize specific policy themes like Peace or Independence or the Quality of Life in order to create a certain political image at home and abroad. This choice would be based not on any particular forecast of future events, nor on an assessment of the contribution which specific policy themes would make to the attainment of national aims, but on the pursuit of political philosophy largely in a vacuum. Applied alone, this criterion could easily produce unrealistic results.

Second: The Government could base its policy emphasis solely on what Canada's essential needs might be in various situations forecast. This would be largely a matter of deciding which of the policy themes would best serve to attain national aims in such situations. This approach would produce a foreign policy largely reactive to external events, and more often than not to those which posed foreseeable threats to Canadian interests. If this criterion were allowed to dominate, it could be very restrictive on policy choices because forecasts would be more concerned with constraints than opportunities, hampering the Government's initiative and freedom of manœuvre.

Third: Taking some account of forecasts, and especially the very obvious constraints, the Government could seek to emphasize those foreign policy activities which Canada could do best in the light of all the resources available, and under whichever policy theme such action might most appropriately fall.

In practice, these criteria may have to be applied from time to time in some kind of combination. In specific situations this might produce the best balance of judgment. Nevertheless, the Government regards the three criteria as optional approaches to ranking and has selected the third one as a main determinant of its choice of policy emphasis. The Government's preference stems in part from the conclusion that, since forecasting in the field of external affairs is likely to be more reliable in the shorter term, it will be desirable to assign more weight to forecasts when considering relatively short-term programmes rather than when setting the broad lines of policy. The Government is firmly convinced that Canada's most effective contribution to international affairs in future will derive from the judicious application abroad of talents and skills, knowledge and experience, in fields where Canadians excel or wish to excel (agriculture, atomic energy, commerce, communications, development assistance, geological survey, hydro-electricity, light-aircraft manufacture, peacekeeping, pollution control, for example). This reflects the Government's determination that Canada's available resources—money, manpower, ideas and expertise—will be deployed and used to the best advantage, so that Canada's impact on international relations and on world affairs generally will be commensurate with the distinctive contribution Canadians wish to make in the world.

Foreign policy can be shaped, and is shaped, mainly by the value judgments of the Government at any given time. But it is also shaped by the possibilities that are open to Canada at any given time—basically by the constraints or opportunities presented by the prevailing international situation. It is shaped too by domestic considerations, by the internal pressures exerted on the Government, by the amount of resources which the Government can afford to deploy.

PERSPECTIVES FOR THE SEVENTIES

All government decisions on policy questions depend in some degree on the forecasting of events or situations likely to arise in future, whether short- or long-term. Forecasting in a field as vast and varied as foreign affairs is bound to be difficult, complicated and full of uncertainties. The variables of politics are in the broad arena of international affairs exaggerated, multiplied, diversified and often intensified in their impact. The risks of faulty or short-lived predictions run high and are compounded in an era of swiftly evolving events and technologies, even though some technological advances can be used to improve the process of forecasting.

Forecasts for foreign policy purposes of necessity must be generalized. They rest on the facts and interpretations of international developments which are both subject to correction and change, and susceptible of widely differing deductions.

All this produces complex difficulties of targeting for any government wishing to set its objectives and assign priorities for policies intended to deal with specific issues arising, preferably before they become critical. The Canadian Government, moreover, must assess its various policy needs in the context of two inescapable realities, both crucial to Canada's continuing existence:

—Internally, there is the multi-faceted problem of maintaining national unity. It is political, economic and social in nature; it is not confined to any one province, region or group of citizens; it has constitutional, financial and cultural implications. While most of its manifestations have a heavy bearing on Canada's external affairs— some have already had sharp repercussions on Canada's international relations— in essence they are questions whose answers are to be sought and found within Canada and by Canadians themselves.

—Externally, there is the complex problem of living distinct from but in harmony with the world's most powerful and dynamic nation, the United States. The political, economic, social and cultural effects of being side by side, for thousands of miles of land, water and airspace, are clearly to be seen in the bilateral context. In addition the tightly mixed, often magnified and wide-ranging interests, both shared and conflicting, bring Canada into contact with the United States in many multilateral contexts. It is probably no exaggeration to suggest that Canada's relations almost anywhere in the world touch in one way or another on those of its large neighbour. This has both advantages and disadvantages for Canada.

The many dilemmas of the Canada-United States relationships, combined with —because they are linked in many ways—the no-less-complicated issues of national unity at home, have created for Canada a multi-dimensional problem of policy orientation and emphasis which few nations have faced in such an acute form. This many-sided problem raises some fundamental questions, for example:

- What are the implications of sharing the North American continent with a super-state?
- What kinds of policy should Canada pursue to safeguard its sovereignty, independence and distinct identity?
- What policies will serve to strengthen Canada's economy without impairing political independence?
- How can foreign policy reflect faithfully the diversities and particularities of the Canadian national character?

It was these questions and others in the same vein which ran like threads through the foreign policy review. They are reflected in a variety of ways in the policy conclusions now being presented to the Canadian people in this set of papers.

Power Relationships and Conflicts

Despite the trends toward a relaxation of East-West tensions, most of the available evidence suggests that Europe in the seventies will continue to be divided, with Germany split as two partly competing entities. This will be a source of strain and potential conflict, even though in Eastern Europe there is likely to be a slow evolution toward more liberal Communism, still under Soviet control however. Accordingly, security will remain one of the fundamental concerns of all European states and will affect almost every aspect of the continent's affairs. The relative stability of the past 20 years is likely to continue since the United States and the Soviet Union both seem convinced of the need to avoid nuclear war, whether by miscalculation or by escalation. The super-power competition in the development and deployment of offensive and defensive strategic weapons systems and nuclear warheads will continue but, if the bilateral U.S.A.–U.S.S.R. talks on strategic arms limitations were to succeed, the pace of the arms race would slacken, with proportionate reductions in risks and tensions. Some of these potential benefits may be lost or misplaced through the proliferation of nuclear and conventional armaments, or through failure to find the political and economic accommodation needed to allay perceived threats to vital security interests on both sides.

In any event, the Soviet Union will continue to be preoccupied by its relations with China and the Soviet interest in accommodations with other countries may reflect the degree to which the Chinese threat is considered to be credible to the Soviet Union. Any fighting between these two powers will probably be confined to frontier clashes of limited duration

and scale, though the strategic nuclear threat posed by China will require a regular assessment of the strategic balance as regards China, the Soviet Union and the United States. Security in Asia may largely depend on the future attitudes and actions of China, whose place in the world power picture is not likely to be fully clarified until China emerges from its isolation, at least partly self-imposed. Its triangular relationship with India and Pakistan, together with their unresolved disputes, provides a source of potential instability. However, United States disengagement from the conflict in Vietnam, plus serious efforts at reconciliation, could bring about better relations between China and the United States. The eventual participation of China in world affairs--in disarmament talks and at the United Nations, for example - will reflect more accurately the world power balance and, at the same time, produce new problems.

There are likely to be significant adjustments in global relationships attributable to the emergence of new great powers, notably Japan and Germany. The success of the European communities--the European Economic Community (EEC), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM)--has given the countries of Western Europe increased stability and prosperity and enhanced their international influence.

Because it is in the vital interests of the super-powers to contain sources of conflict there, Europe is likely to remain for some time an area of relative peace and stability. In other geographical areas the general situation is very fluid and political instability will continue to be widespread, though to some extent localized and separate as to cause and effect. There could be prolonged difficulty in reaching an early and satisfactory settlement in Vietnam, for example, and the possibility of subversive activities, communal strife and perhaps guerilla warfare in other Southeast Asian countries. The Middle East situation shows no promise of early solution, and could even deteriorate. In Latin America, more political coups, and perhaps limited conflicts between states, are probable. In southern Africa, racial tension is likely to aggravate in the form of terrorism and sabotage since the remaining white regimes seem determined to persist in their racist policies.

Canada cannot expect to exercise alone decisive influence on the kinds of international conflict implicit in these forecasts, especially those involving larger powers. Nevertheless, there is plenty of room for international co-operation and a continuing Canadian contribution to bringing about a relaxation of tensions, encouraging arms control and disarmament, improving East-West relations, maintaining stable deterrence. There could be further international demands for Canadian participation in peacekeeping operations - especially in regional conflicts. The Government is determined that this special brand of Canadian expertise will not be dispersed or wasted on ill-conceived operations but employed judiciously where the peacekeeping operation and the Canadian contribution to it seem likely to improve the chances for lasting settlement.

American Impact on Canada's Economy and other Economic Developments

On the assumption that reasonable civil order is preserved in the United States and that such international involvements as the Vietnam war are scaled down and avoided in future, the economic and technological ascendancy of the United States will undoubtedly continue during the next decade, although it will be tempered by the economic integration of Europe and the industrial growth of Japan. This ascendancy will continue to have heavy impact on Canada, with political, economic and social implications. The dependence of Canadian private industry and some government programmes on United States techniques and equipment (not to mention capital) will continue to be a fact of life. United States markets for Canadian energy resources and more advanced manufacturing goods will be of growing significance to the Canadian economy. Increasingly, the Canada-United States economic relationship will be affected by agreements between governments and arrangements by multinational corporations and trade unions.

While such developments should be beneficial for Canada's economic growth, the constant danger that sovereignty, independence and cultural identity may be impaired will require a conscious effort on Canada's part to keep the whole situation under control. Active pursuit of trade diversification and technological co-operation with European and other developed countries will be needed to provide countervailing factors. Improvements in United States relations with the Soviet Union and China---which would seem quite possible within the decade --would enhance Canada's peace and security but would also reduce trading advantages which Canada now enjoys with Eastern Europe and China. In general, United States developments and policies are bound to have profound effects on Canada's position during the seventies, even though there is no reason to believe that the United States Government would consider intervening directly in Canadian affairs.

National incomes will continue to increase at a constant and rapid rate in developed countries. However, there could be disturbances in the interrelated fields of finance, trade and economic activity generally. Individually, countries will probably experience balance-of-payments and other crises. There is a continuing temptation to autarkic policies which could be very unsettling to the varying patterns of trade.

Technological advances can be expected to produce rapidly-changing evolution in the world economic situation. The internationalization of industry, largely in the form of multinational corporations, appears to be a firm feature of the future economic scene and one which governments generally may have to grapple with more consciously and more frequently in future. The international machinery and internal arrangements within the major industrial countries should be able to prevent a major economic crisis from occurring, but developments of sufficient magnitude and duration to disturb Canada seriously could take place. The Canadian Government has a clear interest in sustaining the effectiveness of the international agencies concerned, and in maintaining close relations with governments in the key countries with a view to encouraging the right kinds of policy.

Canada must earn its living in a tough and complicated world. Perhaps the hardest choice in this area of policy—one which arises frequently out of today's economic realities—will be to maintain a proper balance of interest and advantage between Canada's essential needs in ensuring health and growth in its economy and Canada's determination to safeguard its sovereignty and independence. Nor are these necessarily in conflict at all points, for economic growth is essential to sovereignty and independence.

In developing the complex of vital relationships between Canada and the United States, Canadians must choose very carefully if they are to resolve satisfactorily the conflicts which do arise between maintaining their high standard of living and preserving their political independence. They can have both. In an era of heavy demand for energy and other resources, the cards are by no means stacked in one hand.

The Rich-Poor Nation Imbalance

The frustration of developing countries during the next decade will increase as they feel more acutely the limitations on their own technological and material progress, compared with that of industrialized countries. Their sense of impotence to gain quickly and effectively a more equitable distribution of needed resources will become more bitter if the signs of flagging interest and disillusionment on the part of more-developed countries are not reversed. The frustration is likely to manifest itself in various ways. Developing countries will increasingly set aside their political differences to form regional blocs that will urge and put pressure on developed countries to adopt policies that will accommodate the needs of developing countries. If these efforts fail, or do not succeed as quickly as the developing countries hope, recriminations, racial tension and, in some cases, political and economic reprisals against the governments, private investors and nationals of the more-developed countries are likely to increase in magnitude.

The emphasis of development efforts during the coming decade will probably be on human development, including education, social change and control of population. These in turn will lead to a greater awareness of the outside world and a greater appetite for quick change. In addition, a shift of emphasis can be expected from direct development assistance to a range of more sophisticated methods of effecting resource transfers to developing countries and of increasing their export earnings. Industrialized states will be called upon to take meaningful steps to facilitate the access to their markets of products from developing countries, and such other measures as financing unexpected shortfalls in the foreign exchange receipts of developing countries. There is likely to be growing pressure to recognize that a long-term solution to the growing disparity between rich and poor will entail a more rational international division of labour. This in turn would entail developed countries agreeing to make structural changes in their economies that would allow them to absorb the products that developing countries can produce most competitively.

Canada has been contributing to development assistance programmes as long as they have been in existence and increasingly as new nations emerged, in the United Nations, the Commonwealth and la Francophonie. The Government regards development assistance as the major element in its pursuit of Social Justice policies for the benefit of nations less fortunate than Canada. The alternatives in this field are not whether development assistance should be continued on an increasing scale but how and in what amount. Because of their importance, these and other questions are the subject of a separate policy paper in this series. Development assistance is clearly an integral part of Canada's foreign policy and increasingly is being co-ordinated with trade, financial and political policies. It enhances

the quality of life not only in receiving countries but in Canada as well, as Canadians gain knowledge, experience and understanding of other people and find opportunities abroad to apply Canadian knowledge and experience to the solution of development problems which rank foremost in the priorities of the world today.

Technological Progress and Environmental Problems

The impact of science and technology on international affairs is becoming increasingly significant and varied as new advances are made. It will be important for Canada to be assured of access to scientific development abroad and to participate in multinational co-operation in scientific undertakings, co-operation which is expanding in scope and complexity. The direct impact of science and technology will bear significantly on such fields as transportation and mass communications, automation and the industrial process, the increasing internationalization of industry, and life in the developing countries (some of which may not be able to make the necessary adjustments with the speed required, widening the gulf between them and the developed countries). The problem of harnessing science and technology to serve human objectives, rather than allowing autonomous scientific and technological advances to dictate the accommodations to be made by man, may prove to be the major challenge of coming decades.

Already modern technology has produced serious social and environmental problems in developed nations and will continue to do so unless remedial measures are taken. This is an argument in favour of vigorous co-ordinated research, an institutionalized sharing of experience in various fields, and co-operative action in sectors of international responsibility. The principal changes in the everyday life of Canadians during the next decade are likely to be caused by scientific and technological changes, and by the social and political consequences which flow from them. There will be increasing demands for action to deal with such consequences by mobilizing science and technology to serve social ends. Legal structures, domestic and international, will have to be developed in tune with those demands.

It is already apparent that the existence of pollution presents complex problems which require effective action at all international and national levels. It is equally apparent that some remedial measures will be costly, complicated and perhaps disrupting to development and will affect the competitiveness of growing national economies. But even the existing threats of ecological imbalance may be among the most dangerous and imminent which the world faces. With about 7 per cent of the world population, North America is consuming about 50 per cent of the world's resources The rising aspirations of expanding populations will demand that progressively more attention be paid to achieving the optimum economy in the consumption of non-renewable resources. Anti-pollution and resource conservation measures will of necessity have to be linked with others of a social nature designed to deal with acute problems of many kinds arising in the whole human environment—problems of urbanization, industrialization, rural rehabilitation, of improving the quality of life for all age-groups in the population. The problems and their remedies will continue to spill across national boundaries.

Governments at all levels in Canada, Canadians generally both as corporate and individual citizens, are clearly required to act vigorously and effectively in order to deal with a whole range of environmental problems, headed by pollution. There is no question about the high priorities which attach to these urgent problems. They lie squarely within the closely-related policy themes Quality of Life and Harmonious Natural Environment. The real alternatives which the Government is considering and will have to face increasingly, relate to finding the most effective methods. The international ramifications are obvious, especially in Canada-United States relations, and just as obvious is the need for solid international co-operation.

Social Unrest

Many ideologies will continue in the seventies to exert an influence, perhaps in new forms, but more likely as variants of the contemporary ones. Some of these may become mixed with Canada's internal differences. The most profound effects for the Canadian people could be caused by the continued and widespread questioning of Western value systems—particularly the revolt against the mass-consumption society of North America with its lack of humanism. Powerful influences will undoubtedly come from the United States, but developments in Europe, Latin America and within the Communist group of nations could also have a bearing on the evolution of Canadian society. The implications for foreign policy are

varied and not very precise. There might, for example, be some public sentiment in favour of restricting immigration or imposing other controls to ensure national security. Bitter experience of past decades has demonstrated rather conclusively, however, that ideological threats cannot be contained merely by throwing up barriers, military or otherwise. The alternative – and this the Government favours and is pursuing – is to seek as far as possible to pursue policies at home and abroad which convince all Canadians that the Canada they have is the kind of country they want.

The Conduct of Foreign Policy

"One world" is not likely to be achieved in the next decade or so. As suggested earlier, United States relations with either or both the Soviet Union and China could improve, making possible real progress toward more effective instruments for international co-operation, but generally speaking progress in that direction is likely to be slow.

There will probably be a continuing world-wide trend toward regionalism in one form or another. In Western Europe the growth of a sense of shared European identity has expressed itself in a movement toward greater integration, as exemplified by the EEC, which will undoubtedly be carried forward in spite of formidable obstacles. Elsewhere, loose regionalism, ranging from the Association of South-East Asian Nations (ASEAN) in the Pacific to the Organization of American States (OAS) and the Organization of African Unity (OAU), now seems to be an accepted type of grouping for many states but a number of more tightly-knit functional or sub-regional groupings have been growing (Caribbean Free Trade Area (CARIFTA), the regional development banks, or l'Agence de Coopération culturelle et technique for *francophone* countries) adding to earlier international bodies composed of countries with common interests (NATO, Warsaw Pact Organization, OECD and many others).

Nevertheless, international organizations, more or less world-wide in composition or representation, will continue particularly under the United Nations ægis. The role of those international organizations should gain more substance as there is a greater multilateralization of the policy-formulating process in such fields as communications, outer space, the seabed, anti-pollution, arms control, aid co-ordination, and rationalization of agricultural production. In some fields this need will require new institutional machinery, whereas in others existing institutions can satisfy the requirements, though they will regularly require strengthening or reorientation.

Membership in international organizations is not an end in itself and Canada's effort at all times will be directed to ensuring that those organizations continue to serve a useful purpose to the full extent of their capacity to do so. The trend toward regionalism, on the other hand, poses problems for Canada because its geographical region is dominated by the United States; and because excessive regionalism in other geographical areas complicates Canada's effort to establish effective counterweights to the United States. Nevertheless, the Government sees no alternative to finding such countervailing influences, and this will be reflected in the new policy emphasis on geographical diversification of Canada's interests – more attention to the Pacific and to Latin America, for example – while taking fully into account new multilateral arrangements in Europe.

Challenges Close to Home

If there are no unpleasant political and military surprises on a grand scale, it may not be unrealistic to assume that for the next decade or so the real external challenges to essential Canadian interests could be:

- —trade protectionism in the policies of foreign governments or regional groupings which could impair the multilateral trade and payments system developed since the Second World War;
- —other developments abroad, including excessive inflation or deflation seriously affecting Canada's economy;
- —a sharpening of ideological conflict with a further upsetting influence on Western value systems (the effect of the Vietnam war has been massive in this regard); and/or deteriorating conditions (poverty, race discrimination, archaic institutions) leading to violent disturbances (including civil wars, riots, student demonstrations), which are not only important in themselves but can also be detrimental to trade and investment abroad and to unity and security at home;
- —the erosive effect on separate identity and independence of international activities and influences, mainly under American inspiration and direction, in the economic field (multinational corporations, international trade unions). Such activities and

influences have yielded many practical benefits, but the degree of restriction they impose on national freedom of action must be constantly and carefully gauged if sovereignty, national unity and separate identity are to be safeguarded.

Coupled with these challenges and also involving international co-operation will be the need to consult closely on the utilization of natural resources, the drive to sustain economic growth and the advances in science and technology, so that they serve to improve rather than impair the quality of life for all Canadians.

POLICY PROJECTIONS

From this whole review a pattern of policy for the seventies emerges. None of the six themes—Sovereignty and Independence, Peace and Security, Social Justice, Quality of Life, Harmonious Natural Environment or Economic Growth- can be neglected. In the light of current forecasts, domestic and international, there is every reason to give a higher priority than in the past to the themes of Harmonious Natural Environment and Quality of Life. Canadians have become more and more aware of a pressing need to take positive action to ward off threats to the physical attractions of Canada, and to safeguard the social conditions and human values which signify Canada's distinct identity. They are increasingly concerned about minimizing the abrasions of rapidly-evolving technologies, conserving natural resources, reducing disparities regional and otherwise, dealing with pollution, improving urban and rural living conditions, protecting consumers, cultural enrichment, improving methods of communication and transportation, expanding research and development in many fields. All of these concerns have international ramifications. To enlarge external activities in these fields and to meet ongoing commitments such as development assistance (Social Justice), disarmament negotiations, the promotion of *détente* and peacekeeping (Peace and Security), it will be essential to maintain the strength of Canada's economy (Economic Growth).

Policy Patterns

To achieve the desired results, various mixes of policy are possible. For example, priorities could be set as follows:

—In response to popular sentiment, which is concerned with the threats of poverty and pollution and the challenge to national unity, the themes could be ranked beginning with (i) Social Justice, (ii) Quality of Life, (iii) Sovereignty and Independence.

OR

—In order to meet growing environmental problems the emphasis could be (i) Harmonious Natural Environment; (ii) Quality of Life; (iii) Social Justice.

OR

—In order to deal with economic crises the policy emphasis could be: (i) Economic Growth; (ii) Social Justice.

After considering these and other alternatives, and having in mind its determination to emphasize what Canada can do best in order to promote its objectives abroad, the Government is of the view that the foreign policy pattern for the seventies should be based on a ranking of the six policy themes which gives highest priorities to Economic Growth, Social Justice and Quality of Life policies. In making this decision, the Government is fully aware that giving this kind of emphasis to those themes of policy does not mean that other policies and activities would or indeed could, be neglected. Policies related to other themes (Peace and Security, Sovereignty and Independence) would merely be placed in a new pattern of emphasis. Emphasis on sovereignty and independence, in any event, primarily depends on the extent to which they are challenged or have to be used at any given time to safeguard national interests. Peace and Security depend mainly on external developments. On the other hand, the survival of Canada as a nation is being challenged internally by divisive forces. This underlines further the need for new emphasis on policies, domestic and external, that promote economic growth, social justice and an enhanced quality of life for all Canadians.

Inevitably, sudden developments, unanticipated and perhaps irrational, could require the Government to make urgent and radical readjustments of its policy positions and priorities, at least as long as the emergency might last. Flexibility is essential but so too is a sense of direction and purpose, so that Canada's foreign policy is not over-reactive but is oriented positively in the direction of national aims. This is one of the main conclusions of the policy review.

Emerging Policy

While the review was going on, while the conceptual framework was taking shape, the Government has been taking decisions and initiating action which reflect a changing emphasis of policy and Canada's changing outlook on the world:

—The Government's intention to seek diplomatic relations with the People's Republic of China was announced in May 1968. After reviewing the alternatives for achieving that end, the Government decided the details of how and where to proceed, and did so. That action was linked with the Government's desire to give more emphasis to Pacific affairs generally.

—At the same time the Government announced that it would give speedy and favourable consideration to the creation of the International Development Research Centre in Canada. Appropriate legislative action has been taken to establish this institute, which will seek to apply the latest advances in science and technology to the problems of international development. This signifies the Government's growing concern, both nationally and internationally, with policies relating to social justice and environmental problems.

—The decision on Canada's future military contribution to NATO was taken after a very exhaustive examination of factors and trends in Europe (discussed in the sector paper on Europe), attitudes in Canada, and alternatives ranging from non-alignment or neutrality in world power relationships to increased involvement in collective defence arrangements. The decision was based on the Government's belief that in years to come there would be better uses for the Canadian forces and better political means of pursuing foreign policy objectives than through continued military presence in Europe of the then-existing size. It was part of an emerging view that the Government must seek to make the best use of Canada's available resources, which were recognized as being not unlimited.

— Other decisions, some taken more recently, reflected increasingly the shift of policy emphasis toward the policy pattern which has now been established. The increased interest and activity in *francophone* countries is not only reflected in the extension of Canada's development assistance programmes but also demonstrates a desire to give full expression to bilingualism and to the technological and cultural achievements of Canada.

— The decisions to block the proposed sale of Denison Mines stock and to establish the Canadian Radio and Television Commission reflected the Government's awareness of the ever-present need to safeguard Canada's independence and identity, while pursuing policies of economic growth and cultural development. Discussions about a Canada Development Corporation had similar objectives. In the same vein were decisions to proceed with legislation on Arctic waters pollution, on territorial sea and fishing zones. Such steps are taken not to advance jingoistic claims nor to demonstrate independence needlessly, but to promote national objectives and to protect national interests.

The pattern has now been set, the policy is in motion. The broad implications for the future are becoming apparent. If the seventies do present Canada with anything like the challenges and conditions foreshadowed in Chapter IV, prime importance will attach to internal conditions in the country and steps taken by the Government—at home and abroad—to improve those conditions. Sound domestic policies are basic to effective foreign relations. The most appropriate foreign policy for the immediate future will be the one:

—which strengthens and extends sound domestic policies dealing with key national issues, including economic and social well-being for all Canadians, language and cultural distinctions, rational utilization of natural resources, environmental problems of all kinds;

—which gives Canadians satisfaction and self-respect about their distinct identity, about the values their country stands for, about shouldering their share of international responsibility, about the quality of life in Canada; and,

—which helps Canada to compete effectively in earning its living and making its own way with the least possible dependence on any outside power.

The salient features of policy in future can be seen in the summary descriptions that follow under the theme headings.

Economic Growth

The Government's choices, as reflected in this paper and the accompanying sector studies, underscore the priority which attaches to the network of policies, at home and abroad, designed to ensure that the growth of the national economy is balanced and sustained. Obviously, in the foreign field this means keeping up-to-date on such key matters as discoveries in science and technology, management of energies and resources, significant trends in world trade and finance, policies of major trading countries and blocs, activities of multinational corporations. It calls for constant efforts to expand world trade, bilaterally and multilaterally, through commercial, tariff and financial agreements; to enlarge and diversify markets for established Canadian exports. It requires intensive research and development studies in depth and on a regular basis, to discover and devise: new patterns of trade and investment, innovations in goods and services offered, new relationships with individual trading partners and with economic groupings. It also requires a sound framework of international co-operation.

Emphasis on economic growth assumes, as well, the continuation of immigration policies and programmes designed to ensure that the manpower requirements of a dynamic economy are fully met. It calls for an intensification and co-ordination of cultural, information and other diplomatic activity to make Canada fully known and respected abroad as a land of high-quality products, whether cultural or commercial, and as an attractive place for investors, traders, tourists and the kind of immigrant Canada needs. Increasingly these policies involve consultations with the provinces about relevant matters and co-operation with them in foreign countries. To resolve constitutional issues is not enough; to provide a better service abroad for all parts of Canada is necessary if Canadians are to be fully convinced of the advantages in Canada's federal system. Of necessity too, if Canada's external economic policies are to be fully successful, there must be closer contact between Canadian citizens-- businessmen in particular-- operating abroad and all departments and agencies in the foreign field, so that there may be a full awareness by both sides of all the possiblities for promoting -most effectively and economically--essential Canadian interests in countries and areas concerned.

Social Justice

Development assistance –which now implies trade and aid– is fully recognized as an expanding area of the Government's external activity, which has substantial benefit of an international significance transcending the relatively modest national costs incurred. Development assistance provides a special opportunity for a significant and distinctive Canadian contribution in the contemporary world. It is, moreover, a principal manifestation of Canada's continuing willingness to accept its share of international responsibility, a self-imposed duty to help improve the human condition.

At the same time, the Government realizes that development programmes alone will not solve all the problems of stability in the Third World. Tensions exist there because of ancient animosities, stratified societies resting on large depressed classes, wide dissemination of armaments from Western and Communist sources. To be optimized, therefore, development assistance programmes will have to be correlated with policies relating to a set of very difficult international issues bearing such labels as the peaceful settlement of disputes, promotion of human rights and freedoms, race conflict (which backlashes in a variety of ways in many countries), control of arms export, and military training programmes. Most of these issues arise in one form or another in the United Nations and Commonwealth contexts, where they tend to magnify the divergent interests of members. They can pose policy choices of great complexity if competing national objectives, very closely balanced as to importance, are involved (total rejection of race discrimination and continuing trade with white regimes in southern Africa, for example).

Quality of Life

There is a close link between environmental ills and the quality of life. The current emphasis on policies and measures to give all Canadians the advantages they have a right to expect as citizens ranks high in the Government's domestic priorities. In the international context, exchanges of all kinds--for purposes of education, science, culture, sport—are multiplying with government encouragement and assistance. But Canada and the world community have yet to deal effectively with some urgent problems closely related to quality of life-- hijacking and terrorism in the air when the airbus is here and supersonic aircraft are being tested; the alarming dimensions of the drug traffic today; internal security problems,

not only based on legitimate domestic grievances but aggravated by outside agitation; organized crime across frontiers and trials with international implications; consumer protection against possible abuses by internationalized business activity. These are a few items on a much longer list. It is not that nothing is being done among countries but that much more must be done to bring such problems under control.

Most of the matters mentioned in this chapter will continue to have importance in international affairs, but they may have to give place, in terms of priority, to other problems which are pressing hard on the international community. These are the problems of the human environment. Anti-pollution programmes can be envisaged which eventually will open opportunities for creative international activity. Even now there is plenty of scope for institutionalized exchanges and for more concrete co-operative action. Canada has begun to take steps at home for dealing with the wide variety of environmental problems which a big industrialized country on the North American model is bound to face. The expertise resulting from domestic research and experience will be applied internationally to similar problems, just as foreign knowledge and experience can be tapped for the benefit of Canada. Like development aid, such programmes, and especially those involving effective anti-pollution remedies, are likely to prove costly in future, the more so because crash action may be required if measures are to be made effective in time to check the present pace of deterioration. The job to be done assumes a healthy, expanding economy and concentration of resources on key problems.

It may call for a degree of intergovernmental co-operation not yet envisaged or practicable in existing international organizations. Whatever the difficulties and complications, the Government attaches high priority to environmental problems and intends to see that this priority is reflected in its national policies, at home and abroad.

Peace and Security

The policies and activities dealt with so far in this chapter manifest the Government's broad desire to do something effective to advance the cause of international stability and human betterment. They are not the only ways whereby Canada seeks to fulfil that desire. Participating in negotiations on arms control and on *détente*, seeking closer relations with individual countries in Eastern Europe, establishing diplomatic relations with China, joining in programmes for disaster and refugee relief, co-operating to promote trade expansion and to stabilize international finance, promoting progressive development of international law and standards in a variety of fields, seeking to improve peaceful methods (particularly peacekeeping) and to strengthen world order generally--all these are continuing external activities of Canada, and form part of the Government's ongoing foreign policy, not as matters of routine but as sectors of a broad front on which to probe systematically for openings toward solid progress.

Those activities are all important because they are broadly aimed at removing the obstacles to improvement in the international situation; clearly, as well, they serve Canada's self-interest, to the extent that they contribute to its national security and well-being. The Government is very conscious of its duty to ensure that national security is safeguarded in all respects. Defence arrangements must be maintained at a level sufficient to ensure respect for Canada's sovereignty and territorial integrity, and also to sustain the confidence of the United States and other allies. A compelling consideration in this regard is the Government's determination to help prevent war between the super-powers, by sharing in the responsibility for maintaining stable nuclear deterrence and by participating in NATO policy-making in both political and military fields. The Government has no illusions about the limitations on its capacity to exert decisive or even weighty influence in consultations or negotiations involving the larger powers. But it is determined that Canada's ideas will be advanced, that Canada's voice will be heard, when questions vital to world peace and security are being discussed.

Canada has gained some special knowledge and experience in the broad area of "peace" talks—disarmament and arms control, *détente* and peacekeeping. It has more experience than many other countries when it comes to action in the peacekeeping field. The Government has no intention of relegating that know-how and experience to the national archives while the possibility remains that Canadian participation may be needed—in the sense that it is both essential and feasible in Canada's own judgment—to resolve a crisis or to ensure the successful outcome of a negotiation. In the whole area of peace activity, especially at the present time, it seems wise for Canada to hold something in reserve to meet emergency situations when a Canadian contribution can be solidly helpful. In the meantime, the

Government will continue to give priority to its participation in arms-control talks and, as a minimum preparation for responding to other peace demands which may arise, the Government will keep its policy research and development on relevant subjects fully up-to-date. It will try to ensure, in any negotiations under way (arms control in Geneva, peace-keeping in New York), that Canadian interests and ideas are adequately taken into account.

Sovereignty and Independence

Seeing itself as a North American state, Canada has had to take a hard look across the oceans which surround it, and at the western hemisphere as a whole. In spite of the continuing and complex interdependence in today's world, Canada's particular situation requires a certain degree of self-reliance and self-expression if this country is to thrive as an independent state in a world of rapidly-shifting power structures and relationships. This special requirement has a very direct bearing on how the Government should:

—Manage its complex relations with the United States, especially as regards trade and finance, energies and resources, continental defence. The key to Canada's continuing freedom to develop according to its own perceptions will be the judicious use of Canadian sovereignty whenever Canada's aims and interests are placed in jeopardy—whether in relation to territorial claims, foreign ownership, cultural distinction, or energy and resource management.

—Develop future relations with other countries in the western hemisphere, and with countries in other geographical regions. The predominance of transatlantic ties—with Britain, France and Western Europe generally (and new links with the Common Market)—will be adjusted to reflect a more evenly distributed policy emphasis, which envisages expanding activities in the Pacific basin and Latin America.

—Deploy its limited human resources, the wealth which Canadians can generate, its science and technology, to promote a durable and balanced prosperity in the broadest socio-economic sense. There are limitations on what a nation of little more than 20 million can hope to accomplish in a world in which much larger powers have a dominant role.

—Seek to sustain Canada's distinct identity, including particularities of language, culture, custom and institution. The Canadian contribution, to be most effective and distinctive, will have to be concentrated both as to kind and place.

The Government has adopted the approach put forward in this general report because of a firm conviction that Canada must in future develop its external policies in a coherent way and in line with closely defined national objectives, as set by the Government. The same approach is reflected in the five sector papers which form an integral part of the presentation of foreign policy which the Government wishes to make to the Canadian people at the present time. They contain the more detailed discussion of policies being pursued and options faced by the Government in those sectors of its external policy.

The sector heads selected for report at this time—Europe, Latin America, the Pacific, International Development, and the United Nations—were chosen because they seemed particularly relevant to new issues being raised in the country. They embrace such questions as Canada's participation in NATO, membership in the Organization of American States, diplomatic relations with the People's Republic of China, the level of development assistance, problems of southern Africa, peacekeeping and arms control. These were neither the only sectors of policy which were considered important by the Government, nor indeed the only ones to be reviewed. They were areas which required examination in some depth, because they involved basic assumptions about Canadian foreign policy since the Second World War. The present report is sufficiently broad in scope to reveal the main contours of Canada's external policy as a whole and to suggest how and where it should be reshaped primarily to bring it into line with new forces and factors at work both at home and abroad.

These papers are concerned with substantive policy rather than methods. For the most part they do not deal with the details of bilateral relations, even those of the greatest importance (with the United States, Britain, France, the Soviet Union, for example). Those relations are clearly involved in many of the policy issues raised throughout the papers. The kind and degree of that involvement as regards Canada-United

States relations is attested to by the numerous references to the United States in most of the papers.

This report poses some basic questions which it attempts to answer. Where it does not give the answer, it tries to suggest some of the factors which need to be taken into account in thinking about such unanswered questions. It is a reflection of the Government's concern about the need to deal with questions Canadians have raised about the country's foreign policy. To do so, it seemed very desirable, and even necessary, to look at the whole policy picture and to think about it in comprehensive terms. In considering this policy report, Canadians should be asking themselves: "What kind of Canada do we want?". Canadians should be thinking about that question and in those terms, because in essence what kind of foreign policy Canada has will depend largely on what kind of country Canadians think Canada is, or should be in the coming decade.

FOREIGN POLICY FOR CANADIANS
(Dept. of External Affairs, Ottawa, 1970)

Volume Six (The United Nations):

(Editor's note: The following text is a somewhat edited version of the policy paper on matters pertaining to the United Nations. In particular, the sections on Southern Africa and the deep seabed have been included in the parts of this collection of materials dealing with those specific topics and do not, therefore, appear in this introductory part. In reading this document you may wish to consider whether the general tone of this paper is entirely consistent with that of the general policy paper. Is there a more internationalist orientation in this paper, despite some references to the pursuit of Canada's national interests? If so, what conclusions would you draw concerning the reasons for the difference? After reading this paper, see whether you can outline, to your own satisfaction, the essential basis for distinguishing a "legal problem" from a "political problem" in the context of Canadian foreign policy.)

ASSUMPTIONS AND CHANGING CIRCUMSTANCES

In an age when the technology of communication—by air, land and sea, or by electronic means—is daily making the world smaller, and the capacity to obliterate our civilization in an instant is in man's grasp, it is unrealistic to think that the nations of this world can exist in isolation from each other. This interdependence makes essential a centre for harmonizing the actions of nations. In the context of recorded history, the United Nations is the most ambitious effort ever made to reconcile the political, economic, social and cultural differences in the world. At the same time, it is an increasingly accurate reflection of a highly imperfect world in which the concept of the sovereign state results in so many conflicting views about what is desirable and makes "harmonizing the actions" of nations so difficult. But, though the goals of the Charter—peace and security, economic and social justice, and individual human rights—have not yet been fully realized, they remain a valid rule of conduct for the signatory states.

It follows that, although priorities may change from time to time and emphases shift, it would not be realistic to postulate as a policy alternative that Canada withdraw from the organization, try to form a different organization or play in it merely a passive and disengaged role. It is, there-

fore, also a basic premise that Canada wishes to continue its policy of working actively to achieve the goal of making the United Nations an effective instrument for international co-operation and to improve its capacity to discharge its Charter responsibilities.

Any review of Canadian foreign policy, as it relates to the United Nations and its Specialized Agencies, has to begin by taking into account the relevant changes affecting the United Nations, its composition, its structure and its functions. Two developments—decolonization and the scientific and technological revolution of the last two decades—have had a major impact on the world and on the United Nations, which is so much, if not entirely, a reflection of it.

Decolonization is responsible for a radical change in the composition of the United Nations since Canada signed the Charter as a founding member. While originally there were 51 members, mostly Western European, Latin American and Asian, there are now 126. The African, Asian and Latin American representatives, if they join forces, have a commanding majority. Canada, as one of the 22 Western nations, thus finds itself coping with the problem of being one of a permanent minority.

The affairs of the General Assembly and its subordinate bodies, as well as the Specialized Agencies, are now dominated by a coalition of African-Asian and Latin American nations which varies somewhat in composition depending on the issue in question but is united in a preeminent aim to overcome the problems of underdevelopment, in opposition to the residue of colonialism, and in the desire to avoid involvement in East-West differences.

The impact of science and technology on relations between nations is one of the most important factors to be taken into account in the development of Canadian policy toward the UN. The problem of maintaining international peace and security has acquired new dimensions since the invention of thermonuclear weapons, intercontinental missiles and spy satellites. The super-powers now find it virtually impossible to contemplate general or total war, since in this event neither could, with present or foreseeable means, prevent the destruction of their own society. For Canada and others whose location makes them automatically the concern of a great power, the danger of direct attack is correspondingly reduced. But the dangers of miscalculation arising from conflict of interest in strategic areas such as the border between East and West in Europe or the Middle East, or the harmful possible effects of unilateral disarmament or of a sudden shift in the strategic balance of power, remain as threats to the vital interests of all nations, including Canada, whose prosperity and progress flourish in direct relation to freedom of commerce and the level of peace and stability throughout the world.

Both the super-powers and the other permanent members of the Security Council are aware of the danger of conflict in peripheral areas. When direct confrontation is involved they have almost invariably elected to deal directly with each other. On the other hand, the great powers have on many occasions turned to the Security Council as a means of preventing an escalation of what is essentially a local conflict into a major crisis. But those types of conflict situation which in the future seem likely to occur with increasing frequency (e.g. civil strife, indirect aggression, guerilla warfare supported by liberation movements) do not readily lend themselves to UN intervention. The peacekeeping demands on the UN will most probably take the form mainly of requests for the establishment of military observer missions. In any event, in the light of Canada's special record and experience of participation in peacekeeping operations, the United Nations will expect Canada to continue to provide advice and assistance in the peacekeeping of the future.

Technological progress since the Second World War has introduced a new situation in many ways, not only in terms of defence and the balance of power but also in terms of the widespread effects of increasingly sophisticated communications systems. On the positive side, modern communications have brought home to all of us the interdependence of states. The intensive use of the mass media, and particularly the development of satellite communications, also open up, however, possibilities (of a kind not foreseen by the authors of the Charter) of new forms of intervention in the affairs of states. The question arises as to whether such forms of intervention are too subtle to be even identified in terms of, let alone deterred by, the Charter and other international agreements.

Some of the changes which have taken place as a result of technological progress in the last 25 years have been beneficial. Economic and social change throughout the world has occurred as a by-product of scientific and technological change. Unfortunately, however, the benefits of technology which have become so rapidly apparent in countries like Canada, which are already highly developed, have had little impact in the developing countries of the world. Consequently, the gap between the rich and the poor tends to widen cruelly, just at the time when the potential benefits of a highly-developed society are greater than ever before.

The impetus for change has also been reflected in the progressive development and codification of international law within the United Nations. The various organizations within the UN system have increasingly turned to the drafting of multilateral conventions as the best method of achieving this end. Much of the new law has been created to meet the demands of new technology. On certain questions, such as colonialism, on which it is not possible to produce a consensus, the practice has arisen of adopting a resolution in the form of a declaration, which does not create international law but which is often cited by states in terms which suggest it does. Little has been achieved thus far in persuading states to accept compulsory procedures for the settlement of disputes, and even less in establishing effective means for preventing violations of international law amounting to breaches of the peace. Nevertheless, states tend to take their treaty obligations seriously and the United Nations and its Specialized Agencies have been more successful than is generally realized in laying the foundation for a world order based on the rule of law.

Changing circumstances in the 25 years which have elapsed since the foundation of the United Nations have also had their effects in Canada. Its economy, its technology and its participation in world trade have developed enormously. Social and cultural changes of a most significant nature have also taken place. These changes are reflected in Canada's relations with the rest of the world, which now encompass not only the nations which existed in 1945 but a host of new members of the international community, many of whom achieved independence only in the last ten years and most of whom need help from the international community in their efforts to attain economic and social advancement. This study is concerned primarily with Canada's relationships with other nations in the context of common membership in the United Nations and its agencies; it should be remembered that these associations complement but cannot replace the direct relationship Canada maintains through the traditional method of diplomatic recognition and the exchange of missions.

CANADA'S OBJECTIVES AT THE UNITED NATIONS

It is a basic premise that Canada should continue its policy of working actively to achieve the goal of making the United Nations an effective instrument for international co-operation and improving its capacity to discharge its Charter responsibilities. Within that general context, it must be expected that at one time or another the activities of the organization will touch on almost every aspect of Canada's foreign policy objectives and that Canadian representatives will have the opportunity and responsibility to pursue these objectives in many different ways.

But, over and above this basic challenge, the UN offers its members the opportunity of self-realization and of co-operation in the pursuit of common causes or goals on a universal scale. Therefore, while seeking through its policies, foreign as well as domestic, to unite Canada, the Canadian Government has the opportunity in the United Nations and the Specialized Agencies to draw on Canada's abundant resources, its bilingualism in two universal languages, its excellence in modern science and technology and its experience of a complex system of democratic government (federalism), to communicate with other countries, particularly the developing countries, and to contribute to international co-operation in selective fields of endeavour, thus attaining a richer measure of national self-realization for Canada as well as helping others to realize their potential.

In order to give a new sense of purpose to Canadian participation in the United Nations, it is necessary to focus on a few selected goals which are of intrinsic importance. These objectives must take account of the changing circumstances both in the world situation and in the world organization and the possibilities for constructive action by governments at the time, it being realized that Canada's foreign policy is essentially the projection abroad of Canadian interests. They have been selected as worthy of special consideration because of their importance intrinsically, as well as because they give maximum opportunity to Canada for self-realization in terms of Canadian resources and capabilities. They are discussed in the subsequent paragraphs of this study under the following headings:

1. Contributing to social and economic development
2. Working to stop the arms race
3. Promoting peacekeeping and peace-making through the United Nations

4. Reconciling Canadian objectives in southern Africa
5. Taking measures to prevent further deterioration in the human environment
6. Promoting international co-operation in the peaceful uses of satellite systems
7. Promoting international co-operation in the use of the seabed beyond the limits of national jurisdiction
8. Promoting observance of human rights, including adherence to and respect for various United Nations conventions
9. Contributing to the progressive development and codification of international law
10. Projecting Canada as a bilingual country within the United Nations context
11. Contributing to the institutional development of the United Nations as a centre for harmonizing the actions of nations.

Contributing to Social and Economic Development

With the large increase in UN membership from the Third World, social and economic development has become a dominant theme of UN activities and debate. The developing countries are increasingly expressing their concern about the widening gap between the standards of living of developed and developing countries, their weak position in international trade, the rising level of repayments for aid received in the past and rapidly increasing populations sharing limited resources. Thus they look to the UN system, which devotes nearly 80 per cent of its resources (some $600 million annually) to economic and social activities, as a means to focus the attention of governments and peoples on the critical problems of development, and on the efforts of developing countries to solve their problems, as well as providing a forum for expressing, and, to the extent possible, resolving, the conflicting views and interests of developing and developed countries. This effort is now concentrated on the development of a strategy for the Second Development Decade, which begins in January 1971.

The United Nations, its Specialized Agencies, the Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the World Bank Institutions, as well as the General Agreement on Tariffs and Trade (GATT), provide centres for the creation of standards of economic and social development, and for the establishment of internationally acceptable economic planning goals, international action programmes and international commodity agreements and arrangements. They also provide an important pool of resources for technical assistance and pre-investment analysis and, through the World Bank, regional development banks and the United Nations Development Programme (UNDP), capital and technical resources free from the ideological and political influence which is associated with bilateral programmes. In addition, the UN system provides basic economic and social data and statistics which are internationally acceptable.

A decision to work actively, in particular during the Second Development Decade, in support of the economic and social development activities of the UN system would seem to have both political and administrative advantages. Canada is at present the fifth-largest contributor to the voluntary economic and technical assistance funds in the UN family of organizations and the sixth largest in the World Bank Institutions. An increased contribution to such multilateral programmes, as recommended in the policy review on Canada's development assistance, would be a positive political response, based on humanitarian principles and Canada's own interests, to the appeals of the developing countries at a time when they are looking for signs of commitment to their needs from the developed countries. On the administrative side, the United Nations system has access to experienced personnel and technical data and has an administrative organization capable of planning and implementing in most developing countries comprehensive aid programmes based on sound priorities. There would be little additional administrative burden on Canadian facilities.

The provision of foreign aid is only one aspect of the projection of Canada's concern with the problems of economic and social development throughout the world. Also, Canada's position in the continuing debate in UN bodies on economic and social issues is an important dimension of its membership in the United Nations family. In view of the importance and magnitude of the programmes now being administered by the UN family and the needs of the developing countries, it is essential that Canada play a stronger role than hitherto in the work of the United Nations and the Specialized Agencies in order to ensure that present and future programmes are carefully planned and properly managed and that the resources which Canada and other countries contribute are being well used.

Specific means of further contributing to economic and social development through the UN system would include:

a) Increased contributions to the United Nations system, and particularly to those organizations which have demonstrated competence in administering their expanding and complex programmes efficiently and effectively.

b) New initiatives in the field of international trade in UN forums (e.g. UNCTAD) in addition to other forums such as the GATT, so as to improve the foreign-exchange earnings of developing countries.

c) Greater efforts to ensure that national and international machinery are adequate to meet the challenges of economic and social development.

d) Co-operative efforts to make the UNDP and the World Bank Institutions the central agencies for the allocation of multilateral development assistance resources and focal points for improving the co-ordination of UN development programmes.

e) Joining with other countries in devoting more attention to the population crisis.

f) Greater efforts to place Canadians in the secretariats and field programmes of the UN system and to increase the number of federal civil servants with experience in UN activities.

Working to Stop the Arms Race

Canada, a country with an advanced nuclear technological and supply capability, has participated in the United Nations arms-control and disarmament discussions since their beginning in 1945. These discussions during the late 1940s and early 1950s attempted to achieve progress toward disarmament but were frustrated by the "cold war" and by disagreements concerning verification and control of disarmament. During the 1960s, however, encouraging progress was made on measures for control of nuclear weapons short of complete disarmament; these arms-control measures include the following: the treaty banning nuclear weapons testing in the atmosphere, in outer space and under water; the treaty banning weapons of mass destruction in outer space; the treaty prohibiting nuclear weapons in Latin America; and the treaty on the non-proliferation of nuclear weapons.

A number of basic factors have been, and are likely to continue to be, during the 1970s, the most influential in the determination of Canadian arms control and disarmament policies. These include:

a) Canada's realistic appreciation of the value of peace for the prosperity and development of this country and of other nations;

b) Canada's past contribution to the international community's search for collective security through arms control and disarmament and for the peaceful settlement of disputes;

c) Canada's importance in the context of North American defence arrangements, as well as its particular vulnerability stemming from its geographical situation between the super-powers; and

d) Canada's success in the development of nuclear science and technology and its prospects for the commercial exploitation of atomic energy for peaceful purposes. . . .

At the present time and in the foreseeable future, the ultimate preventative of war between the super-powers is the mutual balance of nuclear deterrence—that is, the existence in both the United States and the Soviet Union of a credible capability to inflict unacceptable retaliatory damage in a nuclear exchange. However, a sharply-accelerated pace in the competitive evolution of strategic nuclear weapons could upset the existing balance, which constitutes a credible deterrent, and make it less stable. Potentially destabilizing developments in the strategic arms race are capable of presenting grave risks for international security in the 1970s. This adds urgency to the search for successful nuclear arms control measures.

Canadian policy should, therefore, seek to contribute, commensurate with the nation's resources and capabilities, to the maintenance of a stable balance of mutual deterrence, on which Canadian and international security currently rests, and, more specifically, to the reduction through negotiated arms-control measures of the risks of nuclear conflict. In pursuing these objectives, competing but parallel exigencies of Canadian political, commercial and defence interests which are associated with the fundamentals of peace and security must be carefully calculated in the process of decision.

The outlook for arms control and disarmament during the next ten years of the Disarmament Decade proclaimed by the twenty-fourth session of the United Nations General Assembly will be influenced primarily by the following potential developments:

a) substantial progress in the Strategic Arms Limitation Talks (SALT) between the United States and the Soviet Union;

b) the effective operation of the Non-Proliferation Treaty and the accession to it of "near-nuclear" nations;

c) a reduction of international tensions and progress toward East-West *détente*, particularly in Europe; and

d) eventual participation of China and France in arms-control and disarmament negotiations. . . .

During the 1970s, hopes for progress toward disarmament and for stopping the arms race are most likely to be realized through arms control and limitation agreements. Nevertheless, general and complete disarmament remains as an ultimate objective of Canadian policy as well as of the United Nations.

In the 1970s, Canada should assign a high priority to working to stop the arms race in nuclear and other weapons as a means of contributing to Canadian security and to a less dangerous world environment. In particular, Canada should not rest content to see the major nuclear powers determine exclusively the pace of progress or lack of it in the field of arms control. Rather, Canada should pursue these arms-control objectives persistently and imaginatively in the contexts of the United States consultations with Canada and its other NATO allies concerning the crucial Strategic Arms Limitation Talks, the Conference of the Committee on Disarmament in Geneva and the United Nations in New York.

Promoting Peacekeeping and Peace-making through the United Nations

Under the Charter, member states have an obligation to work for the achievement of the first purpose of the United Nations, namely:

> "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace, . . ."

Canada has sought over the years to encourage the development of the capability of the United Nations to fulfill this purpose effectively. Initially Canada tried to promote the practical realization of the collective security arrangements provided for in Articles 43 to 47 of Chapter VII of the Charter, the effect of which would have been to enable the Security Council to take collective action to deal with any threat to the peace, breach of the peace, or act of aggression.

Within a few years after the founding of the United Nations, two things became apparent:

a) that international political circumstances, especially the cold war and consequent disputes among the great powers, would lead to an indefinite delay in the implementation of Articles 43 to 47; in other words, the security system envisaged in the UN Charter, which had been regarded as the major advance over the League of Nations, could not be implemented;

b) that there were crises in the world which, while not serious enough to justify enforcement action under Chapter VII, were sufficiently serious to require UN intervention with the consent of the parties concerned.

It was against this background that the whole concept of peacekeeping in which Canada has played such an active role, particularly since the Suez crisis in 1956, evolved. The Korean operation was a special, and perhaps unique, case of UN action to resist aggression.

The breakdown of the system of collective security through enforcement action led at first to a political vacuum, and then to a change in thinking and emphasis. The concept of "peacekeeping"—the use of military observers, truce supervisory missions, or major military forces for non-forcible purposes, with the consent of the parties directly concerned—was a pragmatic and *ad hoc* development. The enforcement provisions of the Charter were tacitly abandoned in favour of recommendatory measures, steps were taken to permit the Assembly to initiate peacekeeping action in certain circumstances, and use was made of the military resources of the small and middle powers. Recently, for a number of reasons, the pendulum has swung back to the Security Council.

It has been a continuing objective of Canadian foreign policy to work towards strengthening the authority of the United Nations, particularly the capacity of the UN to act as a peacekeeping agency for the control of conflict and the mediation of disputes. This objective has been pursued

as part of Canada's general determination to work for peace and security, and remains a valid one for the future.

The forseeable prospects are not great that the UN will be asked to undertake major operations involving peacekeeping forces on a scale comparable to the UN Emergency Force in the Middle East or the UN operations in the Congo, and most certainly not without great power agreement in the Security Council. Unlike the situations related to the period of rapid decolonization, when UN intervention was invited either by the colonial power or successor states, the types of strife which seem likely to occur with increasing frequency are related to internal conflict: e.g. civil war, racial or other forms of dissention within an independent state, indirect aggression and guerilla warfare fomented by liberation movements, which do not readily lend themselves to UN intervention. The demands which are made on the UN are more likely to take the form of requests for the establishment of military observer missions for specific and limited purposes. It follows that the types of request which are likely to be made of Canada over the next five to ten years will most probably take the form of helping to man UN observer missions.

Canada's exceptional knowledge and experience will be of value irrespective of the form of future peacekeeping operations and, consistent with our basic interest in maintaining peace and security, Canada should continue to take an active part, based on that experience, in negotiations at the United Nations on the peacekeeping role of the organization.

In the light of the foregoing it is considered that:

a) Canada's response to requests for participation in future UN peacekeeping operations should be decided upon in each instance in the light of its assessment of whether the UN can play a useful role;

b) Canada should continue its standby arrangements and training of Canadian forces for possible service with the UN;

c) Canada should continue to play an active part in the preparation of guidelines or "models" for UN operations;

d) Canada should encourage the present trend of making more effective use of the Security Council even though it is not likely to be represented on it before the mid-seventies;

e) Canada should seek the improvement of ways and means for the peaceful settlement of disputes, recognizing that the first responsibility for settling a dispute rests on the parties, but that a wide range of intermediary action under the UN is envisaged in Chapter VI of the Charter.

Taking Measures to Prevent Further Deterioration in the Human Environment

At its twenty-third session, the General Assembly decided to convene in 1972 a Conference on the Human Environment. By this decision the United Nations turned its attention to a new area of concern to mankind—the problems of human environment which affect man's physical, mental and social well-being as well as the development of the world in which he lives.

Canada should seek to have the Conference concentrate on components of the basic problems, as identified and elaborated by the Preparatory Committee, which are suited to action and management by public authorities, national and international. There must be an improved understanding of the need for sharing of responsibility by the international community and the Conference might elaborate guidelines which would set out the rights of states to a sound environment and the obligations which states have to ensure that they do not contribute to the destruction of that environment.

The Conference could make a significant contribution if it were to give a clear and concise statement on the need for and action required by public authorities at the local, national, regional and international levels to deal with the problems of defining, planning, managing and controlling the human environment. At some stage, appropriate international machinery could be established designed to develop common co-operative plans of action which could ultimately involve regulatory and adjudicatory

procedures being established as an integral part of long-term plans for improvement of the environment. Programmes of action for planners and managers should be based on the latest scientific information.

Promoting International Co-operation in the Peaceful Uses of Satellite Systems

In recognition of rapid developments in outer space technology, the UN General Assembly established in 1957 the United Nations Committee on the Peaceful Uses of Outer Space, of which Canada is a member. The Committee provides a specialized forum for the consideration of political, legal, social, technical and other issues connected with international co-operation in the peaceful exploration and use of outer space. In 1967 the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space came into force, and in 1968 the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space came into force. The Committee is now concerned with the preparation of a draft agreement on Liability for Damage Caused by the Launching of Objects into Outer Space.

In 1967 the General Assembly requested the Committee on the Peaceful Uses of Outer Space "to study the technical feasibility of communications by direct broadcast from satellites and the current and foreseeable developments in this field, as well as the implications of such developments". In response to this resolution, Canada and Sweden proposed that a working group be established to study direct broadcasting from satellites, and they have submitted several joint papers for study by the working group. These papers will offer observations on the technical, political, legal, social, cultural and economic implications of direct broadcasting from satellites.

The need for Canada to establish a domestic satellite communications system was analysed in the Government White Paper of March 28, 1968. A lower-cost telecommunications and television service, available to any point in Canada, particularly the North, should have a profound effect on the development of the country. This system should be in operation early in the 1970s.

The international aspects of these considerations led Canada to become in 1964 one of the founding members of the International Telecommunications Satellite Consortium (INTELSAT), now comprising some 75 states intent on the creation and operation of a world-wide commercial satellite communications system. Canada has also participated actively in the international use of satellites for space research.

The exploration and use of space requires international co-operation on a broad scale in order, *inter alia*, to bridge the rapidly widening gap in space technology and benefit between the developed and less-developed states. The possibility, for example, of instantaneous world-wide communications requires new and imaginative planning and implementation, particularly in the legal field, if the danger of chaos or lack of law, hindering orderly and equitable development, is to be avoided.

Canada's task in the seventies is to work with other states, taking into account Canadian domestic requirements, towards making available to all mankind the benefits from international satellite systems. In particular, it should:

(1) continue support of the United Nations studies on the technical, political, economic, legal, social and cultural implications of direct broadcasting from satellites;

(2) press for the availability of the benefits to be derived from the use of satellite systems on a global and non-discriminatory basis;

(3) seek the development of organizational and administrative arrangements which will have special regard to smaller non-space states and to developing areas; and

(4) obtain an equitable use of the radio-frequency spectrum for all space communications and an adequately-planned means of ensuring the fair sharing of synchronous orbit positions.

To this end, Canada should, itself:

a) encourage the International Telecommunication Union to participate actively in the orderly development of international co-ordination and of standards and associated regulatory needs, including allocation of frequencies for present and future satellite communications systems and the establishment of conditions to safeguard "in orbit" positions, particularly over the equator;

b) encourage the Specialized Agencies such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Meteorological Organization (WMO) and the International Civil Aviation Organization (ICAO) to take account of the need for the best use of satellite systems in their own fields of jurisdiction and at the same time encourage greater co-ordination within the United Nations;

c) join in the study of supplementary arrangements to foster international co-operation and regulation of aspects of space comunications not adequately covered by existing organizations; and

d) actively develop legal principles which might govern the activities of states in the exploration and use of outer space and, in particular, to promote the conclusion of an appropriate agreement on liability for damage caused by the launching of objects into outer space. . . .

Promoting Observance of Human Rights, Including Adherence to and Respect for Various United Nations Conventions

The Universal Declaration of Human Rights adopted in 1948 established the broad principles which the members of the United Nations believed would be the framework within which future declarations and conventions would be shaped. During the last two decades, in the wake of the Universal Declaration, a wealth of international legislation has come into existence.

The Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, with the Optional Protocol thereto, and the Convention on the Elimination of All Forms of Racial Discrimination represent the culminating point in the efforts of the organization to transform the exhortatory provisions of the Universal Declaration into legally-binding obligations.

Although much has been accomplished on the legislative side of the United Nations work in the field of human rights, progress in implementation has been very limited and will require increasing attention during the period which lies ahead. The most widely used method by which the United Nations tries to follow the evolution of the respect for human rights in various parts of the world has been that of periodic reporting. Other methods of implementation, not yet in operation, are provided for in the Covenant on Civil and Political Rights and in the Convention on Racial Discrimination. Attention is also being given to the possibility of studying individual situations which reveal a consistent pattern of violations of human rights, and to a proposal to establish the office of the United Nations High Commissioner for Human Rights.

Also important, in the long term, is the proposal for increased resort to regional machinery for the safeguarding of human rights. Positive experience has been gained from the human rights procedures formulated within the framework of the Council of Europe. In Canada, some provinces have set up human rights commissions and others have appointed ombudsmen.

Canada's general approach to human rights issues in the UN has tended to be cautious, in particular with respect to ratification of human rights instruments, mainly because of problems arising as a consequence of divided federal and provincial jurisdiction. A number of the instruments adopted by the United Nations fall, at least partially, within provincial jurisdiction, e.g. the Convention on Racial Discrimination and the Convention on Civil and Political Rights. Deficiencies in the machinery for federal-provincial consultations on these questions have not encouraged wide understanding of the importance of these international undertakings and have hindered attainment of the support required from the provincial governments before Canada could adhere to them.

Canada's future approach to human rights at the United Nations should be both positive and vigorous. Now that it is committed to protect and safeguard the rights of Canadians, both individually and as disadvantaged minorities, it should accept the obligation to participate actively in this important area of the UN's work. The enthusiasm and interest displayed by Canadians in the programme that was carried out in this country as part of the International Year for Human Rights demonstrated that there is an expectation that Canada will participate in international efforts in the human rights field on a more extensive and meaningful scale than in the past. Specifically, urgent attention should be given to the development of effective procedures for consulting with the provinces and securing their support for Canadian signature and ratification of UN instruments in the field of human rights. In situations where, following consultations with the provinces, Canada has either ratified or wishes to adhere to an international instrument dealing with human rights, we should encourage early and concerted action by federal and provincial legislatures to bring Canadian domestic legislation into conformity with the legal obligations of the text.

As the emphasis in the UN in the years ahead will undoubtedly concentrate on the very difficult task of ensuring the implementation and general acceptance of human rights already enunciated in such instruments as the Covenants, Canada should give particular attention to ways in which it can further this process; the Canadian record of implementation will have obvious relevance in this respect.

Contributing to the Progressive Development and Codification of International Law

United Nations law-making activities are now very wide-ranging. They include, for example, the following fields: human rights; definition of aggression; seven basic "friendly relations" principles of the Charter; Outer Space Liability Convention; direct satellite broadcasting; the peaceful uses and reservation for mankind of seabed resources beyond national jurisdiction; private international trade law; special diplomatic missions; the relations between states and international organizations; state succession; and state responsibility. States of all political shadings are co-operating in developing and strengthening a UN-oriented legal basis of a world order. Canada is playing a vigorous and dynamic role in these activities, particularly on issues touching on Canada's national interests.

In the next decade, there will probably be bolder demands by developing countries for trade concessions and aid from developed countries as a legal right. The developing countries will also continue to press for the establishment of international machinery to foster trade and financial measures in order to accelerate economic development and raise living standards in the poorer parts of the world through the United Nations Conference on Trade and Development. The United Nations Commission on International Trade Law, established in 1966, is endeavouring to promote the progressive harmonization of trade law with a view to reducing or removing the legal obstacles to the flow of international trade. Canada should continue to follow closely developments in these and other bodies within the UN system which are concerned with the elaboration of general rights and duties between developed and developing countries on trade and aid questions and should ensure that its legal position and trade and aid policies are closely co-ordinated.

Another major question in the future will be the impact on the development of international law within the UN should the People's Republic of China gain admission. The Communist Chinese would probably tend to identify with the non-aligned states, while at the same time postulating a Marxist-Leninist (Maoist) approach to the development of international law. Canada should, therefore, continue its current programme of serious scientific studies of the legal doctrines held by the People's Republic of China.

Another continuing trend may be the assertion of a legal doctrine which would preclude a state subject to infiltration by armed bands, subversion or terrorism by another state from calling on third states to assist it in defending itself. Canada should ensure that any definition of aggression adopted by the UN for possible application by the Security Council will safeguard the Council's authority and cover such indirect aggression as well as direct armed aggression.

The elaboration in declaratory form of the basic principles of international law reflected in the UN Charter will be continued by the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States. Both the potential benefits and dangers which this exercise presents necessitate continued Canadian involvement to ensure that the results contribute to the orderly development of international law.

Another trend will be the further development of the concept of the legitimacy of intervention by the UN on humanitarian grounds in matters which might otherwise be excluded by Article 2 (7) of the Charter. Recent developments have illustrated the need to develop some agreed basis in international law for assistance to civilians in the case of internal or guerilla-type conflict which would not infringe on the sovereignty of member states. Canada should encourage efforts to amend the Geneva Red Cross Conventions and to develop in the UN principles intended to provide a legal basis for humanitarian assistance. It should at the same time participate in efforts to institutionalize the provision of aid through the UN system to civilian populations involved in internal as well as international conflicts.

Canada will continue to participate actively in efforts to develop principles of international law intended to safeguard the physical environment, basing its approach on the principles enunciated (and applied by Canada) in the Trail Smelter case, in the Test Ban Treaty, and developed by the

International Joint Commission, and on the fundamental right of self-defence. In particular, Canada should contribute to the development of rules of international law to protect coastal states against pollution.

Canada will continue to encourage the awareness of the importance of international law on the part of developing countries through contributions to bilateral and multilateral programmes of training, scholarship and seminars in international law which emphasize the need for peaceful settlement procedures and the requirement for one set of principles to govern the practice of all states.

Canada will continue to ensure that its political and legal positions are correlated in its approach to such essentially political problems as peace-keeping, disarmament, universality in the UN and the shift from regional security arrangements back to the original Charter concept of UN collective security. Progress on these issues will have concomitant effects on the development of a rational legal basis for a world order.

In sum, while basing its foreign policy on recognized principles of international law, Canada will continue to introduce constructive innovations (as Canada has done on the law of the sea and on the Arctic environment) where international law is not sufficiently responsive to present or future needs.

Contributing to the Institutional Development of the United Nations as a Centre for Harmonizing the Actions of Nations

.... With its Specialized Agencies, its subsidiary organs, its special committees and other international bodies, the United Nations continues—despite recognized shortcomings and handicaps—to serve the cause of world order in many different ways on a shrinking planet. Within the United Nations framework there exists the capacity for developing progressively a world-wide system of institutions and laws, standards and reforms, rights and obligations, and codes of international conduct. The system also provides the means of international co-operation among nations in the pursuit of objectives such as those described above.

The Government will continue its firm support for international organizations within the United Nations family. It will be prepared to join new ones established to serve international purposes consistent with the broad objectives Canada is seeking abroad through other external activities. The Government will be particularly concerned to ensure that all United Nations bodies are maintained in a state of maximum effectiveness for dealing with real problems emerging in a rapidly changing world.

This attitude underlies the Government's approach to the United Nations and the issues it seems likely to face in the coming decade. The objectives that Canada will be pursuing are in line with the basic policy emphasis described in the general paper in this series—Economic Growth, Social Justice, Quality of Life, Peace and Security. The United Nations and its related international organizations provide the instrumentalities and an ambiance for giving international expression and meaning to most of those policies. The Government will be looking for opportunities to do so, and in a way which will strengthen the capacity of the United Nations to contribute to similar ends.

In its contribution to the General Debate that opened the twenty-fourth General Assembly of the United Nations, Canada called for a strengthening and renewal of the organization, a refinement of objectives, a surer sense of priorities, a simplification of procedures. Canada urged upon the member nations a broader view than that confined to narrow concepts of sovereignty and national interest, the need for effective action rather than empty debate, for negotiated settlements rather than sterile confrontations.

The two great functions of the United Nations—to keep the peace and to improve the conditions of life on earth—call for a newly-effective and rejuvenated United Nations structure. Together with other nations, Canada will continue to work toward this end.

National Jurisdiction and International Responsibility: New Canadian Approaches to International Law†

(1973) 67 Am. J. Int'l L. 229

By Allan Gotlieb and Charles Dalfen***

I.

The Changing Focus of Canadian Foreign Policy

The National Interest

It is the purpose of this paper to describe Canadian approaches toward international law, as they have evolved in recent years, particularly in relation to activities in outer space and "ocean space" made possible by new technological developments. It is intended to demonstrate both the similarities and the dissimilarities in these new approaches as compared with those followed by Canada in the past. Not within the scope of this study are questions about the validity of a particular point of view expressed by Canada, the extent to which new positions are well founded in the traditional concepts of international law, whether precedents for particular concepts are or are not correctly interpreted by Canada's spokesmen and negotiators. What we are setting out to do is to observe and describe new Canadian attitudes toward international law and to evaluate their significance. History has not yet allowed us the privilege of a perspective in time. We plead this defense for the errors we may make in both interpretation and evaluation.

During the past few years, political scientists and students of Canadian affairs have started to take a searching look at Canadian foreign policy in the Trudeau era.[1]

It is the thesis of many of these writers on Canadian affairs that foreign policy during the past few years has been fundamentally different from what it was in the period from the end of World War II until 1968. They assert that the goals and philosophies underlying Canada's approach to foreign affairs remained remarkably consistent during most of this period but, beginning in the late 1960's, the assumptions and goals of Canadian foreign policy were suddenly thrown into question and changed. During the two decades preceding 1968, Canada's foreign policy, it is said, was "internationalist" in approach. Canadian policies were based on the premise that the maintenance of international peace and security must be the foremost goal of any country's foreign policy and support for the United Nations, NATO, and NORAD remained at the basis of Canada's quest for collective security.[2]

† Portions of this paper were presented by Allan Gotlieb at the Second Annual Conference of the Canadian Council on International Law on October 13, 1972. The views expressed in the paper are his personal ones and do not necessarily reflect the policies or opinions of the Department of Communications or of the Government of Canada.

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[1] *See,* for example, PETER C. DOBBELL, CANADA'S SEARCH FOR NEW ROLES: FOREIGN POLICY IN THE TRUDEAU ERA (1972); D. C. THOMSON and R. F. SWANSON, CANADIAN FOREIGN POLICY: OPTIONS AND PERSPECTIVES (1971); BRUCE THORDARSON, TRUDEAU AND FOREIGN POLICY: A STUDY IN DECISION-MAKING (1972). *See also* J. J. Granatstein and D. Smiley, *Full circle in foreign policy: two views,* 3 CANADIAN FORUM, 16–19; Ivan L. Head, *The Foreign Policy of The New Canada,* 50 FOREIGN AFFAIRS 237 (1972); K. J. Holsti, 29 BEHIND THE HEADLINES (Aug. 1970); also testimony of K. J. Holsti in Minutes of Proceedings of the Standing Committee on External Affairs and National Defence, House of Commons, (Cdn.), 3rd Sess., 28th Parl., Jan. 19, 1971.

[2] *See,* for example, THORDARSON, *supra* note 1, at 1–4.

This internationalist approach is contrasted with the pronouncements of Prime Minister Trudeau in the spring of 1968 and of the Secretary of State for External Affairs in *Foreign Policy for Canadians*, a Government White Paper comprising six booklets published in 1970, which contained the results of a comprehensive foreign policy review.[3] On May 29, 1968, the Prime Minister stated that the country's "paramount interest" was "to ensure the political survival of Canada as a federal and bilingual sovereign state."[4]

Under the new foreign policy, the stress would be on national self-interest and the development of national goals which would reflect this self-interest.[5] The foreign policy review proclaimed six basic principles or national aims. Highest priority was attached to economic growth, social justice, and quality of life.[6] These were followed by: sovereignty and independence, working for peace and security, and assuring a harmonious natural environment. In an often quoted phrase, the review stated that foreign policy is "the extension abroad of national policy."[7] Foreign policy was seen as the product of the government's progressive definition and pursuit of national aims and interests in the international environment.

It would appear that there has indeed been a qualitative change in Canadian foreign policy since 1968. There has been a de-emphasis of Canada's world role, its altruistic mission, and its potential as a contributor to solutions to international problems. There is much less talk, in general, of Canada's world responsibilities and of any special or particular international role. International goals are now regarded as relating primarily to the betterment of Canadians.

To be sure, the Canadian Government emphasizes that these goals, whether pursued at home or abroad, must be accompanied by a sense of international responsibility, as they are not regarded as attainable in a world of injustice and instability. But unlike the case in earlier years when world responsibilities were evoked without any very clearly defined relationship to specific national goals other than that of the maintenance of international peace and security, Canada no longer speaks of world responsibilities as offering guiding principles in themselves.

At the same time, however, the distinction between the concept of a world role and the pursuit of national interests does not necessarily entail different policy priorities. Indeed, it follows from the very pursuit of national interests, properly understood, that a state like Canada must concern itself with world order, economic stability, and development for all countries, as well as with increased international security.

In summary, it appears that, while under the current approach there is a new stress on national self-interest, there is also recognition of the absence of any fundamental incompatibility between the pursuit of national goals and international objectives, and between self-development and world order. Self-interest requires the betterment of Canada but also implies a world order which is favorable to or compatible with such betterment. This fundamental aspect of contemporary Canadian foreign policy has sometimes been ignored by commentators.

The Canadian Approach to International Law

These recent trends in Canadian foreign policy have had significant implications for Canada's attitude and approach to international law.

First, the new foreign policy created a conceptual framework in which it became logical and necessary for problems relating to the national interest to occupy the center of the stage in the field of foreign policy. In 1968 there was a growing awareness that Canada—the country with the longest coastline in the world, the second largest continental shelf in the world, a frozen terrain highly vulnerable to damage from oil spills, threatened fishing stocks in adjacent waters, resources in increasingly short supply, and subject to growing pressures from the South—would be faced with international developments that could have an overwhelming relevance for its future well-being, its sovereignty, and its very survival. The

[3] Canada Department of External Affairs, FOREIGN POLICY FOR CANADIANS (6 booklets), (1970) [hereinafter cited as "White Paper"].

[4] "Policy statement by the Prime Minister—Canada and the World," May 29, 1968.

[5] *Cf.* Transcript of interview en route from Leningrad to Ottawa, May 28, 1971, quoted in DOBELL, *supra* note 1, at 147, where the Prime Minister is quoted as saying that Canada is not "trying to determine external events; we are just trying to make sure that our foreign policy helps our national policy."

[6] "White Paper," general booklet, *supra* note 3, at 32.

[7] *Ibid.*, 16.

new foreign policy has made it far easier for these challenges to be addressed by Canadian negotiators and representatives, policymakers and others, as the central issues of Canadian foreign policy. As these matters are, traditionally and currently, also central to international law, questions of international legal policy have moved from the periphery of concern to the main stage of Canada's external activities.

Secondly, with the shift in Canada's objectives, Canadian attitudes have changed as to the appropriate or most effective instruments for achieving those objectives. International law has come to be seen as an instrument that has a direct, perhaps critical, bearing on national interests. The Canadian role in the development of international law has accordingly become far more active. And this in turn has instilled a greater awareness in many Canadians of international law and its relevance.

This does not necessarily entail, as we shall discuss later, an increased commitment to idealistic attitudes about the law. There is simply a greater realization by Canadians that activities that take place beyond the boundaries of Canada can directly affect them and that international law is a possible instrument for regulating these activities.

We should remember that the year that saw the Trudeau Government come to power was the year of the Santa Barbara oil spills; the year after the *Torrey Canyon* incident; the year before the voyage of the S.S. *Manhattan*. It is hardly surprising, therefore, that when Canadians begin, perhaps for the first time, to sense that their well-being, their environment, and their national health can be affected by dangers from outside the country, that attitudes toward international law begin to change and the law comes to be regarded, whether consciously or unconsciously, as an instrument to protect the threatened society.

Thirdly, it follows from these changes that a sharply increasing emphasis emerges on firming up the rules of the game that make states internationally responsible for their activities—and particularly for any harm resulting from these activities—whether in space, on the high seas, in coastal areas, or in the atmosphere. In other words, Canadian representatives have begun to work keenly for the adoption of stringent rules of international law in areas of national interest to Canada. There has been a continuation of the earlier emphasis on international solutions but with less reliance on the need to fall back on compromise solutions. Many examples demonstrate this point.

Fourthly, at least in cases where the dependence on multilateral action to protect the national interest seems unrealistic, a tendency emerges towards claiming national jurisdiction in order to make Canada less vulnerable to external—or what are perceived to be external—dangers. Thus on the one hand, Canada seeks to increase the scope of international responsibility for harm done to the state and its citizens, and on the other, with equal vigor and for the same purposes, pursues the route of taking matters into its own hands and asserting national jurisdiction. These two tendencies, both justified as contributing to the development of international law,[8] can in certain cases be in conflict, but are on the whole, as we suggest below, complementary.

Fifthly, the Canadian approach to international law, whether in multilateral rulemaking or in taking unilateral action, arising, as it seems to do, in response to the threat or fear of the consequences of activities based on advanced technology, is less in terms of traditional concepts of international law than of concepts that are themselves directly influenced by the technology that is perceived to be the source of the dangers.

In sum, the areas of international affairs that Canada has tended to focus on over the past few years have three elements in common:

(a) the areas relate generally to Canada's environment, resources, and geography *i.e.*, to its physical and economic integrity;

(b) the areas are affected, from a variety of different standpoints, by the rapid growth of technology;

(c) the areas have central international legal aspects.

[8] The perplexity of this dual approach generally in state practice has been the subject of much comment. Thus Julius Stone: ". . . it must remain a constant source of perplexity to distinguish departures from existing rules of international law which are merely outrageous breaches, from those which manifest inchoate legal change. But this is a perplexity with which, regrettably, we must learn to live." Stone, *What Price Effectiveness?* INTERNATIONAL LAW IN THE TWENTIETH CENTURY, (Leo Gross ed. 1969), 160 at 165, also in 1956 PROC. AMER. SOC. OF INT. LAW 198 at 203.

Canada's policy pattern in relation to these areas appears to take the following course. It begins, usually in appropriate international forums, with proposals affirming and extending state responsibility for activities that can harm the interests of other states through fault or otherwise; Canada may indeed demand objective judicial or quasi-administrative determination of who is responsible for the damage. In the absence of acceptable and relevant international legal rules and procedures for their application, Canada may next decide to seek jurisdictional extensions for purposes of preventing or regulating the harmful activities—first at the international level and, failing that, unilaterally. This latter step may be coupled with a rejection of existing procedures for the international settlement of disputes. And finally Canada may seek to achieve an international regime or international rules which embody both the elements of enhanced international responsibility and extended national jurisdiction and which thereby legitimate the national position.

The Reality of the Change

Accepting the accuracy of this dialectical description of recent trends in Canada's approach to international law, the question arises whether the approach to international law in recent years has changed basically from that of the past, or whether it represents only a change in style or rhetoric, but is basically an evolution or extension of earlier trends. In support of the latter case, a number of analogies and similarities may be drawn upon.

Canada did indeed play a highly important role following the mid 50's in international discussions on the law of the sea—an area where Canada's self-interest was directly involved. During the early 50's, Canada had already been among the first to launch the idea of a flexible approach to the definition of a coastal state's sovereign rights over the resources of the continental shelf, and it was responsible for promoting a separate convention on the continental shelf at the U.N. Conference on the Law of the Sea in 1958.[9]

Canada also advocated—unsuccessfully—that the abstention principle be introduced into the Convention on High Seas Fishing, adopted at the 1958 conference.[10] Even more significant was Canada's decision to adopt a functional approach to the problems of coastal jurisdiction. Because Canada believed that a twelve-mile exclusive fishing zone would be in its own national interest—whether the approach was valid from a scientific point of view is another matter—it took the initiative in 1956 to define the concept and waged a remarkable worldwide campaign to get it accepted from 1958 to the early 60's.[11] Failing to obtain an international legal endorsement for such an extension, Canada went ahead on a unilateral basis.

The route of first seeking an international rule—a twelve-mile fishing zone—and then taking national action in its absence would seem to support the case for continuity from Pearson to Trudeau, at least in terms of the formal pattern. It was Prime Minister Pearson himself who, on June 4, 1963, announced Canada's intention of drawing straight baselines. The effect of this, as was well known at the time, would have been to close as Canadian internal waters the Gulf of St. Lawrence, Hudson Strait, Hecate Bay, Dixon Strait, the Bay of Fundy, and other special bodies of waters.[12]

On the other hand, the international initiative of Canada in the areas of fisheries and the continental shelf were, we believe, the sole examples of this approach within a twenty-year period. When the proposals were advanced, it was in the name of compromise. In its pamphlet, *A Canadian Proposal*, submitted by the Canadian Government to all countries in 1960, the Honorable George Drew stated in the opening lines that: "In putting forward the Canadian proposal, we do so with no claim that we have discovered any magic formula but only in the hope that it may offer a possibility of agreement between widely differing points of view which have already been expressed." While Canada unilaterally created a twelve-

[9] Allan E. Gotlieb, *Recent Developments concerning the Exploration and Exploitation of the Ocean Floor*. 15 McGILL L. J., 260 at 266 (1969),

[10] J. A. Yogis, *Canadian Fisheries and International Law* in R. ST. JOHN MACDONALD et al., CANADIAN PERSPECTIVES ON INTERNATIONAL LAW AND ORGANIZATION (not yet published).

[11] A. E. Gotlieb, *The Canadian contribution to the concept of a fishing zone in International Law*, 1964 CANADIAN Y. B. OF INTERNATIONAL LAW, 55 at 63 [hereinafter cited as "Fishing Zone"].

[12] 1 H. C. DEB. (Can.) 1963, at 621.

mile fishing zone pursuant to the Territorial Seas and Fishing Zones of Canada Act,[13] state practice had already begun to recognize the legitimacy of this approach.[14] Moreover Canada allowed states fishing in the new zones to continue to do so by Order-in-Council,[15] pending agreements with the states concerned; by 1968 it had not yet begun to phase them out nor had Canada drawn any baselines in the particularly controversial areas prior to the Trudeau Government's coming into power.[16] The policy of drawing straight baselines, although a very controversial response to meet the danger of more efficient distant water fishing activities in adjacent maritime areas, was itself based entirely on traditional concepts[17] and involved nothing particularly innovative in response to the new dangers posed by the highly mechanized foreign fishing fleets.

The reasons for Canada's reluctance to move decisively were obvious. The route of international agreement had to be pursued because Canada was subject to the compulsory jurisdiction of the International Court of Justice. For a number of years Canada was clearly unwilling to take any steps to avoid that jurisdiction. Moreover, succeeding Secretaries of State for External Affairs publicly stressed that Canada's national goals in this area would be attained by diplomacy and negotiation. But so long as Canada could be called into Court, it was impossible for the government to implement any innovative approach to international law having adverse effects on any country willing to challenge Canada in international litigation. Thus from the standpoint of Canada's approach to international law, the most decisive act in the whole Canadian story over the past two decades was the placing in 1970 of new reservations on Canada's acceptance of the compulsory jurisdiction of the International Court so as to exclude jurisdiction over "disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada."[18] This action made it possible for the Canadian Government to avoid the necessity of seeking compromise resolutions or agreements. It was now free to act in the absence of agreement; it became free resolutely to pursue stringent and more absolute concepts of international responsibility when its national self-interest was affected and to implement these concepts unilaterally in the absence of agreement.

The Diplomatic Infrastructure

The shift in emphasis has been reflected not only in new policies but also in the structure, the manpower resource allocation, and the basic attitudes within the Department of External Affairs. In the 50's, Canadian representation at the U.N. legal committee dealing with the law of the

[13] R.S.C. 1970, c. T-7.

[14] Gotlieb, "Fishing Zone" *supra* note 11, 71–73.

[15] *Ibid.*, 75–76. Countries possessing treaty rights or claiming "traditional rights" to fish in Canadian waters were allowed, pending negotiations, to continue to fish within the 12-mile fishing zone pursuant to Orders-in-Council under the Coastal Fisheries Protection Act (S.C. 1953, 1–2 Eliz. II, c. 15, s. 4): P.C. 1964–1112 of July 17, 1964.

[16] While in 1967 a series of straight baselines were drawn along the coasts of Labrador and Newfoundland, it was only in 1969 that a further series were drawn off the coasts of Nova Scotia, Vancouver Island, and the Queen Charlotte Islands. It was not until 1970 that the government by way of Order-in-Council drew "fisheries closing lines" across the entrances to the Gulf of St. Lawrence, the Bay of Fundy, Queen Charlotte Sound, and Dixon-Entrance Hecate Strait (104 CANADA GAZETTE, No. 52, Dec. 26, 1970). 10 ILM 438 (1971).

[17] As set out in Art. 4 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639; 516 UNTS 205); and *see* Anglo-Norwegian Fisheries case [1951] ICJ REP. 116.

[18] Text of reservation reproduced in 1970 CANADIAN Y. B. OF INTERNATIONAL LAW, 34; also in 9 ILM 598 (1970).

sea—an important issue for Canada—would typically consist of an inexperienced non-professional delegate, advised by a junior foreign service officer. Indeed, during the period 1957–59, while Canada pressed internationally for a twelve-mile fishing zone, its whole headquarters operation was conducted by one senior and one junior officer. And matters relating to coastal waters, fisheries, the continental shelf, and environment, which were of course known to have a certain importance for Canada, seem to have been regarded as rather marginal to Canadian foreign policy concerns. At the same time, in the U.N. political committees dealing with such topics as the Middle East there would typically be a large group of Canadian officials actively engaged in trying to deal with the global issues. The big issues for this country were the multilateral ones—questions of peace and war, peacekeeping, and Canada's role in the world.

When one examines Canada's participation in international legal discussions and in relation to the progressive development of international law, the fundamental objective of Canadian participation appears to have been to advance and favor solutions that were acceptable to a great majority of states. The attitudes of Canada here tended to derive from Canada's alleged role of being "a helpful fixer" in international relations. But Canada did not play a very active role in international legal discussions in the two decades following World War II, nor did it take many initiatives, almost certainly because of the lack of resources in the Legal Branch of the Department of External Affairs. To the extent Canada did involve itself in general multilateral legal issues, for example in such matters as the development of principles of international law relating to peaceful and friendly relations among states or the development of the laws relating to outer space, it would appear that the basic attitude of the Canadian representatives was to try to be as helpful as possible in producing compromise solutions. This was a matter of habit, a carryover from a general tendency to produce compromise solutions acceptable to "both sides" or both parties. The habit was engrained; it was the result of training and reflected an entire outlook on the part of many individuals in the foreign service. Departmental reports of the time usually refer to the compromise role that Canada was trying to play, but a close survey suggests that Canadian legal initiatives were few in number.[19] There were others that official publications have not revealed. These touched on such matters as asserting the primacy of international law and strengthening the role of the International Court of Justice by having Commonwealth countries drop all reservations to their declarations of compulsory ICJ jurisdiction. They showed imagination and initiative and the distinctly Canadian flair for supporting the development of international social and political institutions. And they were examples, par excellence, of the international approach to foreign policy.

II

The Focus of Canadian International Legal Policy

The Technological Challenge

Technological developments, particularly in relation to the exploration and exploitation of outer space, the sea, and the seabed—all realms either completely or substantially beyond sovereign jurisdiction—have posed a challenge to Canadian decisionmakers newly concerned with Canada's sovereignty and integrity, and the interests that these entail. Challenge, like its character in Chinese script, contains the elements both of danger and of opportunity....

... In Canada's case, it evoked the realization that Canada—even Canada—could now be a "victim."

[19] *See* for example, Canada and the U.N. "*1945 to 1965*" (1966).

Canadian Responses

Canadian responses to the technological challenge—to its opportunities and its dangers—have been informed both by a concern with its national interests and with the need for appropriate international legal (and organizational) arrangements.

In exploiting the benefits of space and ocean technology, national and international interests have been in a considerable degree of harmony. Ventures in outer space, for example, are extremely costly, require a high degree of expertise (of which the centers are few), and usually require focal points in a number of countries. All these factors strongly dictate international cooperation as a method of achieving national goals. Even where technology-based ventures are national, international cooperation is required. Telesat Canada, in establishing a domestic satellite system, has had to coordinate with Intelsat, notify frequencies to the International Telecommunication Union, procure a launch from NASA and the craft in the United States.[20] But in coping with the dangers of technology, the relationship between national and international interests has often been more complex.

Canada has had to make certain very difficult and innovative decisions, the results of which, in terms of the development of international law, have been the subject of a range of very different opinions. The new concern with Canadian interests and the realization that Canada is vulnerable have led to a priority emphasis on the protection of Canada—including its land, water, ice, air, and other resources—from the growing variety of dangers that new technology threatens it with. This has required a new focus on realms beyond sovereign jurisdiction where technology has opened the door to new activities, on the boundaries of these realms (and thus—and perhaps more importantly—of sovereignty itself), and on regulating activities in these regions in order to reduce dangers to Canada.

For reasons perhaps idealistic but certainly utilitarian, the pattern of Canadian responses to the dangers posed by the different technological activities in outer space, the sea, and the seabed reveals, as we have said, a continued readiness to pursue an international solution in the first instance. In areas ranging from satellite broadcasting to environmental pollution, Canada's first reaction has been to seek responses in international conferences. Thus, with regard to the effects of direct satellite broadcasting Canada, along with Sweden, initiated the establishment of a U.N. Working Group to discuss the effects of this activity about which international concern was growing.[21]

In the area of earth resources sensing, Canada took the initiative in proposing that the U.N. Committee on the Peaceful Uses of Outer Space (UNCPUOS) examine the legal aspects of this activity.[22] With regard to space objects in general, Canada advocated stringent measures of international responsibility for fallen objects [23] and it was Canada that submitted a draft proposal for a mandatory international registration system.[24] And with regard to oil pollution, it was Canada that advocated stringent measures of international responsibility both at the Brussels and Stockholm conferences.[25]

As to the substance of the Canadian responses, we suggest that a threefold policy pattern has emerged, depending on whether the activity appears to raise non-physical "socio-economic" threats, threats to territory, or threats to "ultra-territorial" resources, particularly of the oceans and the seabed. We suggest, further, that the responses at each of the three levels have important implications for the development of international law in response to the impact of technology.

[20] Charles M. Dalfen, "Space Assessment 1972—Arrangements and Prospects for Cooperation" AIAA Paper No. 72-740, July 1972, at 5.

[21] UNCPUOS meeting, October 1968, UN Docs. A/AC.105/PV.55, at 62–70 (Sweden) and A/AC.105/PV.58, at 31–32 (Canada).

[22] General Statement made May 2, 1972 by D. M. Miller, Head of Canadian Delegation, 11th Session of Legal Sub-Committee of UNCPUOS.

[23] For example, at the eighth session of the UNCPUOS, June 9–July 4, 1969.

[24] UN Doc. A/AC.105/101 at 18 *et seq.*

[25] On Canada's efforts at the 1969 Brussels Conference to achieve greater international responsibility, *see* L. C. Green, *International Law and Canada's Oil Pollution Legislation*, 50 OREGON L. REV. 462 at 472–76 (1971); L. H. J. Legault, *The Freedom of the Seas: A License to Pollute?* 21 U. OF TORONTO L. J. 211 at 211–19 (1971). On Canada's position at Stockholm, *see* "Background Information on the Stockholm Conference on the Human Environment," Department of the Environment, Ottawa, June 21, 1972, also H. C. DEB (Can.) June 21, 1972, at 3333.

(a) *Socio-psychological or economic non-physical threats*: Where particular activities—particularly in outer space—are perceived by Canada essentially as non-physical, but as threatening social values or raising dangers of economic exploitation, Canada has tended to take the position that solutions to the problems posed by these unwanted intrusions do not lie in trying to establish onerous international norms which might be difficult to agree upon, more difficult to enforce, and might tend to respond prematurely to technological developments before they have been fully tested and their actual impact adequately assessed.[26]

To Canada, the real problem in these cases has appeared to lie in allaying fears. Canada has therefore advocated cooperative arrangements and projects among groups of states, wherein participation might enhance mutual confidence among the participants and dissipate their fears of exploitation. This has been the case with regard to direct satellite broadcasting and appears to be developing as the Canadian position in respect of earth resources sensing by satellite. States which actually participated in the full operations of cooperative satellite systems for these purposes would, in Canada's view, tend to be less fearful of the effects on themselves of the activities of these systems. Moreover as their confidence grew, the need for constraining norms would diminish. This approach, in short, has been one of seeking cooperative operational solutions to potential legal problems, at least at the outset, before their full nature can be gauged.

In this connection, the Canadian–U.S. Agreement of May 1971 on a joint program in experimental remote sensing is relevant. This agreement provides for a number of joint experiments in monitoring environmental conditions and mapping national phenomena. At the same time, and as a result of a Canadian initiative to ensure that legal precedents not be established prematurely, the agreement stipulates that it is "understood that the proposed program shall be without prejudice to any rights and obligations" of the two governments under international law with respect to remote sensing activities.[27]

Assessment: It would appear that this approach is useful not only in respect of certain types of activities in outer space, but also for projects such as the development of ocean data acquisition systems[28] and for most research activities in various realms beyond sovereign jurisdiction.

Most of these activities are costly and complex and can have a social or economic impact in a number of different jurisdictions simultaneously. The advantages of cooperative arrangements are that they confer the benefits of participation in advanced technological systems, such as developing skills and transferring information, and thereby tend to defuse whatever emotions are aroused by any socio-economic penetration they entail. They permit the technology to develop without firm—and perhaps inhibiting—rules of international law, and at the same time provide for a wide distribution of the benefits of technology. In the process, these arrangements should allay a certain amount of mistrust that is at the root of some of the fears. Certain problems of unwelcome socio-economic intrusion may not be entirely swept aside, and legal solutions, in the form of rules or codes, may still have to be sought. But the problems should by that point be real rather than hypothetical and should be fewer in number. Most importantly, the political context in which legal solutions are sought should be informed by the experience and the benefits of the cooperative arrangements and therefore favorable to appropriate legal solutions.

(b) *Threats to territory*: The threats to territory are essentially threats of physical damage to persons, property, and more broadly, to ecology. These dangers are presented, *inter alia*, by satellite activities, since space objects or their parts can fall to earth, and by the ocean transport of such commodities as oil. Of course, pollution can affect ultra-territorial resources as well as territory, but Canada's response to this threat has been primarily motivated by territorial effects, which are more closely related to physical damage than to resource management.

[26] For Canadian position on direct broadcast satellites, *see* three Canada–Sweden Working Papers to UN Working Group on Direct Broadcast Satellites, UN Docs. A/AC.105/49, A/AC.105/59 and A/AC.105/WG.3/L.1, *passim*. *See* esp. the last at paras. 35–38.

[27] Draft Note from the Canadian Ambassador to the Secretary of State of the United States of America, signed May 15, 1971; Diplomatic Note, paragraph 2.

[28] For details *see* "Legal Problems Associated with Ocean Data Acquisition Systems," Inergovernmental Oceanographic Commission Technical Series, No. 5, UNESCO, 1969.

Canada's territory occupies 1/14th of the earth's surface and is traversed by a large number of orbiting satellites. Moreover, since Canada is likely to have fewer satellites than the U.S. or the USSR (and even than European countries or Japan), it is more likely to be the victim of a falling space object than to be the cause of a space object falling on another country. The likelihood of oil spills from supertankers is much greater than that of falling space objects, as is the likely extent and long-term impact of damage to Canadian coasts and ecology from such spills. And with long coastlines, particularly in the Arctic regions, where the hazards of navigation are greater than elsewhere and where the ecological effects of oil spills are far more devasting even than on water or land, Canada has felt the threat even more directly and immediately than many other countries.[29]

In response to both these types of potential damage to its territory, Canada's position has been first of all to work through appropriate international channels to establish rules of liability for such damage and procedures of redress. But even more than other countries, Canada has insisted that such rules and procedures be effective in affording adequate redress for damage.... ... The Canadian position has thus been to seek rigorous international standards of responsibility and a commitment to settle disputes in a compulsory manner in favor of the victim state.

In response to the threat of pollution, and particularly of oil spills on the seas, Canada's first efforts were directed towards achieving rigorous standards of liability for damage from oil spills. At the 1969 Brussels conference of the Intergovernmental Maritime Consultative Organization (IMCO), Canada participated in the elaboration of a convention on civil liability for oil pollution damage[37] and another on intervention on the high seas in cases of oil pollution.[38] The former provides for the strict liability of shipowners for oil pollution damage up to a certain limit, and the latter, even more significantly, permits a coastal state to go out to the high seas beyond its territorial sea and to sink a ship that is spilling oil. Canada was not, however, really satisfied with either.

In relation to the civil damage convention, Canada's position was that strict liability was not adequate, given that oil carrying on the high seas is inherently hazardous. It sought without success to impose absolute liability with no exemptions for natural or other causes. As to the parties liable, Canada considered that the shipowner and cargo-owner should be jointly and severally liable, and not solely the former. Canada was also opposed to the limits imposed in the convention, preferring the formula of "maximum credible damage." Finally, Canada was concerned that the geographic limits of the convention were not wide enough, since they did not cover zones beyond the territorial sea, such as traditional fishing zones.[39]

In connection with the convention on intervention in the high seas, Canada played a major role in extending it to cover "major" pollution, and not only pollution with "catastrophic" or "disastrous" consequences; on the other hand, Canada did not succeed in extending coverage beyond oil pollution to all other types of pollution.[40]

In the end, Canada abstained on the intervention convention and voted against the one on civil liability, due, in part, to the failure of the convention to include the points it had raised as important.

[29] See for example, Richard B. Bilder, *The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea*, 69 MICH. L. REV. 1 at 5 (1970-71); Prime Minister's Remarks to the Annual Meeting of the Canadian Press, Toronto, April 13, 1970. . . . .

[37] Convention on Civil Liability for Oil Pollution Damage, Brussels (opened for signature Nov, 29, 1969); 64 AJIL 481 (1970); 9 ILM 45 (1970).

[38] Convention on Intervention on the High Seas in cases of Oil Pollution, Brussels, (opened for signature Nov. 29, 1969); 64 AJIL 471 (1970); 9 ILM 25 (1970).

[39] Legault, *supra* note 25, at 215.

[40] *Ibid.*, 214-15. In addition, Canada succeeded in having the coastal state's liability for damage caused by its preventive measures limited to the extent that such damage is attributable to measures exceeding what was reasonably necessary to prevent or minimize pollution damage. On the other hand, Canada did not succeed in obtaining a provision which would have permitted claims against a coastal state for excessive and unreasonable preventive measures to be offset against claims against the ship for pollution damage when the parties to the two claims were the same.

More importantly, however, it was becoming clear to Canada that in relation to a threat as intense and as potentially damaging as an oil spill, there was a need to go beyond liability and even beyond intervention as set forth, since these were essentially *post facto* reactions to spills that had already occurred.[41] What was required was *preventive* measures against such occurrences in the first place.

Given the intensity of the physical threat to its territorial well-being, and the inadequacy and unlikeliness of international responses to such a threat, Canada turned to its domestic institutions for the appropriate means of dealing with it. The story has been often told but, in essence, Parliament passed the Arctic Waters Pollution Prevention Act in 1970, which provided for preventive measures against oil spills in an area up to 100 miles from Canada's Arctic coast.[42] It established security standards that all ships and persons in these zones would have to adhere to, to be enforced by Canadian officials.[43] At the same time, Canada entered, as we have already noted, a reservation to its acceptance of the compulsory jurisdiction of the ICJ, excluding from that jurisdiction disputes arising as a result of this legislation.[44] This entire "package" has stirred heated reactions at home and abroad.

Having failed to achieve international protection and then having unilaterally established a functional national jurisdiction, Canada immediately turned back to the international realms to pursue a synthesized approach to the pollution problem that would incorporate both international and national aspects in a comprehensive response. Thus at the Stockholm Conference on the Human Environment in June 1972, Canada strenuously advocated an approach that would both greatly increase the nature and scope of a state's international responsibility for the effects of its environmental actions on others and also grant recognition to the special authority of coastal states, as a type of custodial authority delegated by the world community, in areas adjacent to its territory.[45]

From the 23 Principles and the Statement of Objectives on the Marine Environment proposed by Canada and unanimously endorsed by the Stockholm Conference,[46] it would appear that certain elements in the Canadian position are gaining acceptance.

The statement of objectives adopted at the conference, which stresses the need to protect the total marine environment, specifically recognizes the particular interests of coastal states in the management of coastal area resources to prevent and control marine pollution through effective management.[47] The general tenor of the 23 Principles is similar. Without in any way endorsing the principle of control zones as such, the principles emphasize the duty of all states "whether acting individually or in conjunction with other states under agreed international arrangements" to adopt appropriate antipollution measures.[48] The functional, preventive,

[41] Thus, for example, the Convention on Intervention on the High Seas (*supra* note 38), at Art. I(1) provides that states parties "may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, *following upon a maritime casualty or acts related to such a casualty*, which may reasonably be expected to result in major harmful consequences." (Emphasis added).

[42] Hereinafter Arctic Act. 18–19 Eliz. 2, c. 47 (Can. 1970). *See* for example Bilder, *supra* note 29, at 2–5, 23–25; Maxwell Cohen, *The Arctic and the National Interest* in 26 INT. JOURNAL 68 *et seq.* (1970); DOBELL, *supra* note 1, at 69–70; Claude Forget, *Pollution and Territorial Sovereignty in the Arctic*, in HUGH INNIS et al. INTERNATIONAL INVOLVEMENT 40 (1972); Head, *supra* note 1, at 242, THORDARSON, *supra* note 1, at 186; Trudeau, Speech to the Annual Assembly of Canadian Press, April 15, 1970 in 1970 CANADIAN Y. B. OF INTERNATIONAL LAW 213–14 (1970).

[43] Arctic Act, §12 and regulations thereunder.

[44] See reference in *supra* note 18.

[45] Canada has relied very heavily on an extrapolation of the principle in the Trial Smelter Arbitration case (U.S. v. Canada, 3 U.N.R.I.A.A. (1941), 1905) that under international law no state has the right to use or permit the use of its territory in such a manner as to cause injury in or to the territory of another when the case is of serious consequence and the injury is established by clear and convincing evidence.

[46] "Text of Canadian Proposals Accepted Unanimously in a Plenary Session of the U.N. Conference on the Human Environment on the 14th of June, 1972." [Hereinafter cited as "Proposals."].

[47] For statement of objectives, *see* Canadian Working Paper on the Preservation of the Marine Environment, Department of External Affairs, Aug. 18, 1972, at 23 [hereinafter cited as "Paper"].

[48] "Proposals," Principle No. 2.

and nonacquisitive principles basic to the Canadian position are all generally reflected in the unanimously endorsed principles. So also, in principle is the idea of state responsibility for damage arising from pollution caused by state activities or by organizations or individuals under their jurisdiction.[49]

Perhaps even more significant is the support given to the combination of international standards and national enforcement that Canada is coming to favor. Thus Principle 8 provides that:

> Every state should cooperate with other states and competent international organizations with regard to the elaboration and implementation of internationally agreed rules, standards and procedures for the prevention of marine pollution on global, regional and national levels.

At the same time, Principle 4 provides that:

> States should ensure that this national legislation provides adequate sanctions against those who infringe existing regulations on marine pollution,

without limiting either the zone in which this provision may be implemented or the category of "those who infringe." [50]

Nevertheless, the full thrust of the Canadian position in regard to coastal state jurisdiction to prevent marine pollution is reflected not so much in the 23 Principles as in three principles on the rights of coastal states, originally submitted by Canada to the Intergovernmental Working Group on Marine Pollution in November 1971. Essentially, these principles propose the concept of coastal pollution control zones, the right of coastal states to prohibit ships not complying with international standards from entering these zones, and the express delegation to coastal states of international authority to exercise pollution control powers. These principles were not, however, endorsed by the Stockholm Conference, but were taken note of and referred to IMCO for information and to the Law of the Sea Conference for appropriate action.[51]

The entire approach of substituting for the older notion of flag state jurisdiction a new form of shared concurrent jurisdiction between flag and coastal states reflects the Canadian approach of regarding multilateral and unilateral action as closely interlocking approaches which lie at the heart of the evolution of customary international law. The Canadian representative at the U.N. General Assembly, Alan Beesley, in speaking on December 4, 1970, of the "organic relationship of law on the national and international planes" [52] commented that:

> What is required, in our view, is a judicious mix of the two approaches taking into account the complex set of inter-related and sometimes conflicting political, economic and legal considerations, both national and international and based upon the imperatives of time itself. The seriousness of the problem can determine the urgency of action, which in turn can sometimes dictate the means chosen.[53]

Assessment: The point here is not to debate the merits of Canada's legal arguments in support of its legislation, some of which have changed and are still evolving. Possibly—in view of its ICJ reservation—Canada does not believe that under existing international law they are all that strong at present. The point rather is to comprehend these measures in the light of the development of Canada's foreign policy and to assess them in terms of their appropriateness as community responses to the dangers posed.

The participation in international discussions, first in IMCO and most recently at the Stockholm Conference, can be said to represent a continuity of the earlier Canadian belief in the appropriateness of international agreements for the solution of international problems of all kinds. In fact, as a result of the transborder nature of the technology and the fact that the threats to national territory actually arise from its application in realms beyond sovereign jurisdiction, the appropriateness of this international focus is underlined on the basis of functional considerations.

[49] *Ibid.*, Principle No. 7.

[50] Canada has also been working with other countries to develop a convention to forbid dumping into the sea of certain toxic substances carried in ships (Convention on the Dumping of Waste at Sea 11 ILM 1291 (1972).) The jurisdictional aspects of the draft convention may provide a basis for accommodation between flag states and coastal states, enabling both to enforce the convention against offending parties, though the final decision on the question of enforcement jurisdiction is being left to the Law of the Sea Conference.

[51] "Paper," 10–11.

[52] Speech of J. A. Beesley to 1st Committee of UNGA quoted in part in 1971 CANADIAN Y. B. OF INTERNATIONAL LAW, 276–78.

[53] *Idem.*

It is the unilateral measures, however, (as distinct from the multilateral ones) that more directly represent the recent Canadian reorientation, in that they reflect both a heightened concern with territorial integrity and, even more significantly, a new willingness to take measures to protect that integrity, even at the risk—dramatically increased by the ICJ reservation—of appearing to disregard international legal precedents and procedures.

Until Canada was prepared to foreclose the possibility of a challenge before the International Court, any prospective measures it might have taken would very likely have been tenuous and very possibly successfully challenged. In view of the environmental dangers involved, however, Canada could not accept this. In political terms, the effect of the reservation to the Court's compulsory jurisdiction has been to give Canada an effective lever in international negotiations, where it can back up its insistence upon high standards of responsibility with its demonstrated willingness to resort to unilateral measures where the protection of its own territory is concerned. In a new kind of dialectic, both the "thesis" of international solutions and the "antithesis" of national solutions can now be appropriately synthesized in effective and realistic solutions embodying both elements. It is this type of comprehensive solution that Canada has advanced in its Stockholm and post-Stockholm proposals.

To what extent is the Canadian position appropriate as an international response? On one level, it has been criticized as a very dangerous challenge to international law, in virtue of its unilateral nature, of its supposed contempt for the World Court, and of setting a dangerous precedent that, even if functionally or substantially appropriate for dealing with oil spills, can easily lead to abuse in other areas. It has been challenged, further, as inconsistent with longstanding principles of freedom of navigation on the high seas.[54]

At another level, however, it can perhaps be argued that this arrangement, whereby a particular coastal state is responsible for enforcing standards of prevention within certain zones at a certain distance from its coast, has a number of merits.

For one thing, both the zones and the measures are directly related to the requirements of preventing the potential dangers arising from the particular activity. While strictly speaking they may interfere with freedom of navigation, they do so only to the degree functionally necessary to prevent dangerous oil spills. They are in that sense analogous to domestic law interfering with an individual's freedom of movement by forbidding him from transporting explosives along public streets without adequate safeguards.

Secondly, it is preventive and does not require that states sit idly by until disasters have happened.

Thirdly, it establishes zones of authority which are, unlike zones of control beyond sovereign jurisdiction, nonacquisitive. Canada does not acquire direct benefits in these zones but rather incurs responsibility to prevent certain defined harms.

Fourthly, this decentralized arrangement takes due account of the institutional and political decentralization of the international legal-political system and of the unlikelihood—however preferable, given the global nature of the threat—of any international body's performing the task effectively in the foreseeable future. Indeed, the IMCO Convention on Intervention in the High Seas has already formally delegated to coastal states the *post facto* authority to sink ships from which oil has spilled. In general, the underwriting by the community of self-help operations in areas beyond national boundaries is familiar in a number of areas of international law, for example in the laws against piracy.

At the same time, in order to legitimize this arrangement, there would have to be an appropriate multilateral—and indeed, near-universal—instrument which determined the appropriate zones for different activities (for example, 100 mile pollution zones), which formulated standards for these activities, and which expressly delegated to coastal states functions as enforcing agents. It is difficult to predict at this time whether such or similar arrangements, however effective and functional they may be, will emerge at the Conference on the Law of the Sea.

[54] *See* for example: Louis Henkin, *Arctic Anti-Pollution: Does Canada Make—or Break—International Law?*, 65 AJIL 131, 136 (1971); Bilder, *supra* note 29, at 30.

Until such time as it does prove acceptable, Canada's unilateral legislation must be regarded as a "claim," in the McDougalian sense, against which counterclaims may be raised and which may or may not become accepted authoritative community policy. It is suggested that the soundness of the functional provisions of the legislation for meeting the dangers to which it responds, the realism with which it reflects technical, economic, and political realities, and its potential for universality might well lead to its adoption as authoritative community policy, or international law.

(c) *Threats to "ultra-territorial" resources*: The resources involved here are essentially fisheries beyond the territorial sea and resources of the seabed, including minerals, sedentary and nonsedentary fisheries.

The basic threat to these resources is their exploitation in a manner that exhausts them. Canada has felt this particularly acutely in respect of its traditional fishing grounds. Unlike many other fishing countries, Canada's fishermen do not go far afield but rely mainly on inshore fishing.

As in the case of the socio-economic threats and the threats of physical damage, the threats to the resources of the sea and the seabed have arisen as a result of technological developments that have permitted their unprecedented exploitation. Until fairly recently fishing techniques were such that the quantities fished did not threaten the very existence of certain species. And seabed mining was nonexistent. With technological advances producing factory ships and deep sea mining installations, the situation has changed quite markedly.

Unlike in the other cases, however, where the threats affect territories (usually land) fully understood to be within sovereign jurisdiction, here the threat is to resources that, although physically closer to some countries than others, can be exploited by any number of different states, some at great distances away. The questions whether, to what limit, and on what basis the ocean and seabed resources adjacent to a state's coast may be considered in a certain sense "its own" must thus be answered as a preliminary to a response to threats to them. The answer suggested by traditional international law lies in the rule of sovereignty over the ocean and seabed resources within the limits of the territorial sea (whether taken as 3 or 12 miles). Fish, however, do not respect these artificial boundaries and threats to their existence can arise in the course of their migratory route beyond any territorial sea. Governments have tended not to put the matter in terms of sovereignty over fish. Rather, zones have been unilaterally claimed where the emphasis is on conservation (without differentiating between "ours" and "theirs"). The effect, however, is virtually acquisitive, as one of the chief conservationist techniques is to keep others out.

In the case of fisheries, as long as the supply of fish in the ocean appeared inexhaustible—and this was the underlying assumption of international law for nearly three centuries—all fisheries beyond three miles from any coast could be left to be shared by all.[55] With the threat to the fishing resources brought about by improved fishing technology, however, two alternative responses—not dissimilar from those with regard to the physical threats discussed earlier—presented themselves. One was to try to achieve international agreement on conservation measures and on self-restraint in fishing. The other was to extend one's jurisdiction to encompass as many of one's traditional fishing interests as possible.

Canada's first response, beginning more than sixty years ago, was to enter into international agreements that provided for the conservation of certain species in certain areas. Thus it became a party to the Fur Seals Treaty,[56] the Pacific Halibut Treaty,[57] the Sockeye Salmon Fisheries Con-

[55] Yogis, *supra* note 10, at 1–2.

[56] Fur Seals Treaty of 1911 in *Treaties and Agreements Affecting Canada in force between His Majesty and the United States of America, 1814–1925*, 391 (1927); TS 564; 5 AJIL Supp. 267 (1911).

[57] Treaty between Canada and the United States of America for Securing the Preservation of the Halibut Fishery of the North Pacific Ocean, signed March 2, 1923, ratified October 21, 1924. *Treaties and Agreements Affecting Canada in force between His Majesty and the United States of America . . . 1814–1925*, 505 (1927); TS 701; 43 Stat. 1841.

vention,[58] and in 1949 and 1952, the Northwest Atlantic[59] and North Pacific Fisheries Conventions.[60] All of these have permitted different types of conservation measures to be taken. Under the Convention on Fisheries and Conservation of the Living Resources of the Sea of 1958[61] (to which Canada is not a party), coastal states were recognized as having a special interest in the fisheries adjacent to their territorial seas and permitted, to a certain degree, to adopt conservation measures to preserve these fisheries. But because the convention was so hedged about with limitations and restrictions as to be inadequate to protect Canadian fisheries, Canada proposed, at the U.N. Conference on the Law of the Sea of 1958, that the abstention principle, first contained in the North Pacific Fisheries Convention, form part of the new instrument.[62] This was not, however, accepted by the conference.

Perhaps more significant was Canada's espousal at that conference of the notion of a functional, rather than sovereign approach to fisheries jurisdiction:[63] this was embodied in the Canadian six-plus-six formula with a phasing-out period for traditional foreign fisheries.[64] After the failure of all multilateral efforts to endorse this concept, Parliament enacted the Territorial Sea and Fishing Zones Act in 1964,[65] proclaiming a twelve-mile fishing zone to be drawn from straight baselines around Canada's coasts within which fishing would be limited to Canadian fishermen.[66] Only in a very limited sense could this measure be considered to be an acquisitive action since it was not applied without their agreement to states fishing within the zones. Nor did the Act provide an answer to foreign fishing in the special bodies of water, such as the Gulf of St. Lawrence, in view of the unwillingness of some of the fishing and maritime states to accept the application of the straight baseline system so as to enclose these areas as Canadian internal waters.

Accordingly, the amendments of 1970 to the Territorial Sea and Fishing Zones Act,[67] in addition to obliterating the twelve-mile fishing zone through establishing a territorial sea of that breadth, provided that the Governor-in-Council would draw fisheries closing lines across the entrances to major bodies of water in special need of fisheries conservation protection.[68] The new lines, which have now been drawn, have extended Canadian fisheries jurisdiction over 80,000 square miles without, as in the case of pollution zones, any risk of litigation before the ICJ. Canada has now concluded, agreements with some six countries, five of which will phase out their fishing activities in the special bodies of water before a specific date.[69]

The fisheries management approach, which Canada is now advocating as a basis for international agreement, reflects a particular application of the same broad approach underlying Canada's pollution control initiatives, *i.e.* international standards plus specialized jurisdiction of the coastal

[58] Convention between His Majesty and the United States of America for the Protection, Preservation and Extension of the Sockeye Fisheries in the Fraser River System, signed May 26, 1930, ratified July 28, 1937, 1937 Can. T.S. No. 13; 50 Stat. 1355; TS 918; 6 Bevans 41; 184 LNTS 305.

[59] Northwest Atlantic Fisheries Convention signed February 8, 1949, in force July 3, 1950, 1950 Can. T.S. No. 10; 1 UST 477; TIAS 2089; 157 UNTS 157.

[60] International Convention for the High Seas Fisheries of the North Pacific Ocean, signed May 9, 1952; in force June 12, 1953, 1953 Can. T.S. No. 3; 4 UST 380; TIAS 2786; 205 UNTS 65.

[61] UN Doc. A/Conf.13/L.54 (See A/Conf.13/38, p. 139); 52 AJIL 851 (1958).

[62] Yogis, *supra* note 10, at 13, 20.

[63] Discussed at length in Gotlieb, "Fishing Zone," 64–71.

[64] This formula proposed a six-mile territorial sea and a further six-mile exclusive fishing zone. UN Doc. A/Conf.13/C.1/L.77 Rev. 3, April 17, 1958.

[65] R.S.C. 1970, c. T-7.

[66] Statutes of Canada 1964–65, c. 22, §§3–5.

[67] Statutes of Canada 1969–70, c. 68.

[68] *Ibid.*, 4; *Cf.* the effect of the 12-mile limit on straits formerly considered international, but which Canada's action would render internal when they are less than 24 miles across (*e.g.* the Northwest Passage). In these cases the *innocent* passage rule which Canada also seeks to redefine in the light of previously unforeseen technological threats (*e.g.* oil pollution) would apply rather than that of unrestricted passage as obtains on the high seas. *See* for example: *Some Examples of Current Issues of International Law of Particular Importance to Canada*, Department of External Affairs Legal Division, June 10, 1970 at 14–15; statements of J. A. Beesley, Seabed Committee, March 24, 1971, at 9, August 10, 1972, at 15; Canadian note to U.S., April 16, 1970, quoted in 1971 CANADIAN Y. B. OF INTERNATIONAL LAW, 289 at 292.

[69] The five countries in question are the United Kingdom, Denmark, Norway, Portugal, and Spain. A sixth country, France, has been granted certain rights reciprocal to those enjoyed by Canada off St. Pierre and Miquelon. Under a more general agreement, subject to renewal in 1973, the United States is allowed to fish in the same areas, to the same extent, and for the same species (with specific exceptions in the agreement) as it has traditionally done.

state for the management of the marine environment and resources in areas adjacent to the twelve-mile territorial sea. As in pollution control, there is the notion of specialized jurisdiction, limitations on the activities of foreign vessels, and recognition of the coastal state's authority on the basis of internationally agreed rules and standards, subject to appropriate dispute-settlement procedures. This is sometimes referred to by Canadian spokesmen as the concept of "custodianship," by which is meant that the coastal states' rights and powers, whether sovereign or delegated, must be balanced with responsibilities and must take into account vital community interests in the use of the sea.[70]

According to a Canadian statement of March 15 of last year, "these principles do not presuppose exclusive fishing rights by the Coastal State with regard to coastal species, but rather the authority to manage those species and the right to a preferential share in their harvest as appropriate in the circumstances . . ." [71]

The precise meaning of "a preferential share" is, however, not yet entirely clear. In both fisheries and pollution control the objective is the reconciliation of opposing claims; however, in the former there are, it seems, acquisitive consequences whereas there are virtually none in respect of pollution control. As for the special bodies of water, it would seem that foreign fishing will continue only to the extent that there are actual treaty rights.

Nor is the particular balance Canada wishes to strike between national and community interests clear. What are, for example, the areas beyond sovereign jurisdiction in which the coastal management authority is to be applied? Are the areas now within Canada's fishery closing lines also embraced? Are the principles guiding the extent of the preference of the fishermen of the coastal state the same regardless of the area or zone? Is the concept of preferential treatment normally to be understood as exclusive except where the coastal state agrees otherwise? Are the principles of preference in all cases to be settled by agreement?

Although these questions appear to be as yet unanswered, the Canadian approach is clearly a functional one which views fisheries management as part of the management of the marine environment as a whole. What establishes its functional character---unlike the patrimonial or economic zone favored by a growing number of the developing countries—are both the limitation of the jurisdiction to fisheries and the differentiations in jurisdiction made as among different species of fish. The Canadian approach distingiushes sedentary, pelagic, nonsedentary coastal, and andronomous species and it suggests different regimes for each. The functional aspect is also indicated in the flexible approach to the limitation of the authority of the coastal state, based either on geographic or biological factors or both, as well as in the shared responsibilities between the coastal and fishing states for some species.[72]

We see once again the same dialectic—failure of the international approach to assure adequate conservation; action to establish a Canadian fisheries jurisdiction, first through seeking international recognition of fishing zones on the basis of straight baselines and then through unilateral proclamation of these zones and of fishing closing lines; then espousal of a new international position advocating international agreement on fishing management, embodying recognition of the special interest and the management authority of the coastal state (along with preferential rights for the coastal state in the harvest of the living resources).

[70] This concept was referred to, for example, by A. W. May, Alternate Canadian representative to the UN Seabed Committee (Preparatory Committee for the Third Law of the Sea Conference) Sub-Committee II, in a statement of March 28, 1972.

[71] Statement by J. A. Beesley, representative of Canada to the UN Seabed Committee (Preparatory Committee for the Third Law of the Sea Conference), Sub-Committee II, March 15, 1972.

[72] Working paper submitted by Canada to the Seabed Committee, Sub-Committee II, July 26, 1972; "Management of the Living Resources of the Sea." Statement by A. W. H. Needler, deputy-representative of Canada, Seabed Committee, Sub-Committee II, July 28, 1972. Beesley statement *see supra* note 71.

In regard to the resources of the seabed, particularly minerals,[78] Canada's policy pattern has been somewhat different, partly as a result of the course of international developments relating to the law of the seabed. The Continental Shelf Convention of 1958 conferred "sovereign rights on adjacent states in the exploration and exploitation of the minerals of the continental shelf," defined as extending out to a depth of 200 meters or to the limit of exploitability.[74] Since that time, it is becoming clear that the exploitability limitation is hardly a limitation at all, since mining operations can be carried on out to the abyssal depths of the ocean floor. It was, however, only after jurisdictional questions had been considered that the international community turned to the question of the exploitation and conservation of resources beyond national jurisdiction.[75]

Canada, with the second largest continental shelf in the world (amounting to 1.3 million square miles on three oceans—one quarter of the land mass of Canada itself), has from the outset supported a definition of the continental shelf based on the exploitability test.[76] In recent statements, Canadian spokesmen have suggested that the definition should be based on a combination of criteria such as distance and geomorphological factors and should reflect "existing law and the acquired rights of states."[77] Moreover it appears that Canada is exercising jurisdiction, pursuant to the Continental Shelf Convention which it has ratified,[78] with respect to the entire geographical shelf (*i.e.* the margin).[79] Permits have been issued for exploration as far as 400 miles from the coast and at 3,500 meters in depth.

Unlike the case in regard to fisheries, where the resources beyond a three-mile territorial sea were for three centuries fished as *res communis*, and where it was only with the threat to their continued existence that coastal state jurisdiction over them was extended outwards, there was no similar exploitation of seabed minerals and hence no notion of where *res communis* began or ended. Accordingly the assertion in the late 40's and 50's—beginning with the Truman Declaration of 1945—of sovereign rights at great distances from shore met with little community resistance. Furthermore, any notion of, or zone of, custodianship, to serve as an intermediate regime between the regimes of sovereign rights and *res communis*, does not appear to have gained a substantial degree of acceptance, though such zones have been proposed *inter alia* by the United States and the Netherlands.[80] This has been due partly to the fact that unlike the case in fisheries, the different objective criteria chosen to define the limits both of such a regime and of the shelf itself have each greatly favored some states—not infrequently their proponents—over others.

Canada did not support the U.S. proposal which it saw as suitable for U.S. interests but not for Canada's given its far more extensive shelf. And unlike its position in the cases of fishing and pollution, Canada is not in favor of such an intermediary zone or regime in regard to the seabed.[81] Canada has, however, stated that the concept of custodianship—which it distinguishes from an intermediate zone—may have some potential application to the continental shelf in terms of coastal states' accepting a voluntary international development tax on offshore mineral resources

[78] As distinct from particular sedentary resources such as sponges, pearls, etc. where certain rules have in fact been developed.

[74] The 1958 Geneva Convention on the Continental Shelf, Arts. 1, 2: UN Doc. A/Conf.13/38, A/Conf.13/L.55, April 28, 1958; 52 AJIL 858 (1958).

[75] Gotlieb, *Recent Developments, supra* note 9, at 272–77.

[76] *See* Beesley, *The Law of the Sea Conference: factors behind Canada's stand*, INTERNATIONAL PERSPECTIVES, July/Aug. 1972 (Dept. of External Affairs) 28 at 29 [Hereinafter cited as "Factors"].

[77] For example, statement by J. A. Beesley, representative of Canada to UN Seabed Committee, Plenary Session Geneva, August 10, 1972: "To our delegation at least it seems likely that the precise definition will have to be based on a combination of criteria such as distance and geomorphological factors. This appears to us to be the only solution which would adequately reflect existing law and the acquired rights of states, the need for the early establishment of a regime and machinery applicable to the area beyond national jurisdiction, and thus considerations of equity in terms of both contribution and benefits."

[78] Instrument of Ratification submitted Feb. 6, 1970 with effect as of March 8, 1970.

[79] The basis for such an approach is discussed in Gotlieb . . . *Recent Developments, supra* note 9, at 266, 274.

[80] The Netherlands proposal can be found in UN Doc. A/AC.138/SC.1/L.9, March 21, 1972. For the U.S. proposal, made by President Nixon on May 23, 1970, *see* 62 DEPT. STATE BULL. 737 (1970); also in 9 ILM 806 (1970).

[81] *See* statement of D. G. Crosby, Alternate Canadian representative to UN Seabed Committee (Preparatory Committee for the Third Law of the Sea Conference), Sub-Committee I, March 23, 1972, at 5–8.

within the entire limits of national jurisdiction.[82]

Canada has actively supported the concept of an international resource management system for resources beyond the continental shelf. It has moreover advocated that in the control and supervision of seabed resource activities, this regime should ensure the protection of the marine environment, maximize conservation of resources, and promote scientific activities.[83]

Assessment: Ocean fish and the minerals of the seabed are both resources that most states value and have been long considered as shareable. In both cases, the technology that has facilitated the most efficient exploitation of the resources has at the same time posed threats to their continued supply. The minerals of the seabed are of course entirely nonrenewable; the fisheries will not renew their supplies of fish if too heavily depleted.

In both cases, the responses to the threats have been voiced in terms of conservation, cooperative management, and responsible exploitation of the shared resources, but the actual responses have consisted of unilateral assertions of extended areas of jurisdiction over the resources. While international deliberations have focused on the shared international areas, national policies have been directed towards enlarging exclusive or preferential national areas; although the words have been resource-oriented, the actions have been jurisdiction-oriented. In short, "undivided" shares in the totality of the resources have been unilaterally converted by an increasing number of states to exclusive shares in the resources in areas beyond the territorial seas of the different states.

In respect of ocean fisheries, Canadian positions prior to 1970 were quite in line with those of other countries. While Canada developed certain innovative concepts and pressed them vigorously, for example in relation to the contiguous zone, its efforts were essentially in the earlier Canadian tradition of attempting to reconcile conflicting interests, in this case between coastal states and fishing states, falling short of action likely to be challenged in international law. It was only in 1970, with the drawing of closing lines around traditional fisheries, that Canada moved to a position the legality of which, had Canada not cut off the prospect, was likely to be the subject of challenge before the International Court of Justice.

Unlike the case with pollution zones, where functional jurisdiction was unilaterally extended to regulate high seas activities for protective and nonacquisitive purposes, here functional jurisdiction was unilaterally extended in order to manage coastal species and to have a preferential share in their harvest, *i.e.* for both conservationist and acquisitive purposes. Although the precise extent of the preference is as yet uncertain, there are pressures in Canada for virtually the total withdrawal of foreign fishermen from the traditional Canadian fishing zones.[89] Moreover, the essence of its position appears to be that since Canada expends cost and effort on research, breeding, and conservation, its coastal fisheries should be open primarily or exclusively to Canadian fishermen; where there is a clear surplus, foreigners may fish under Canadian management and control.

As there is no doubt that existing conservation agreements are inadequate and a proper and effective regime for the protection of ocean fisheries is lacking, it is clear, in our view, that a better basis for coastal state management is called for. It may also be argued that what is also called for is for Canada and states seeking an economic or patrimonial zone to come to terms with whether they want an effective conservation system for fishery resources beyond the territorial sea for fishermen of all countries or whether they want a regime reserved exclusively, or even primarily, for their own fishermen.

[82] *See* statement of J. A. Beesley of Aug. 5, 1971 at 9 where the notion is expressed that since coastal states enjoy special rights and privileges in regard to continental shelf resources, they ought to recognize some duty towards the international community as a whole, and particularly developing countries to contribute to them at least some of the benefits from the rights and privileges enjoyed by coastal states.

[83] International Seabed Regime and Machinery Working Paper submitted by Delegation of Canada to the Seabed Committee, Aug. 24, 1971, UN Doc. A/AC.138/59. . . .

[89] *See* DOBELL, *supra* note 1, at 76.

The two objectives have different requirements and different implications for the type of international legal regime adopted. At present, it is arguable—and is argued by some—that, despite a number of valid Canadian points, the acquisitive extension of Canadian jurisdiction does not bode well for the development of a community-oriented conservationist international legal regime for ocean fisheries as opposed to a sovereignty-oriented exploitation of the resources.[90] But it is also arguable that the Canadian approach, as asserted both in national action and international discussions, is a realistic one in that it takes into account both political and economic realities and serves as a spur both to the establishment of a new and fairer balance between the interests of coastal and distant fishing states and to the development of more effective conservation agreements on a worldwide basis. If we look at the present state of the fisheries of the world, it is clear that the traditional approach has failed badly.

With regard to the seabed, here again the language is that of custodianship, but in effect great care is taken by Canadian spokesmen to distinguish this from any regime that would render Canadian rights on any part of the continental shelf adjacent to Canada anything less than sovereign.[91]

While there may appear to be something self-serving or hypocritical in assertions of custodial or delegated functions, there is some reason for hope that the stress on responsibility which these terms imply, combined with the search for a consensus on realistic international standards designed to preserve the marine environment and to reduce the threat to its resources, will prove more effective in achieving a just balance than the older more laissez-faire customary law regime. If there are acquisitive elements in the new approach that Canada advocates, there are also acquisitive elements in the older, traditional rules. It is only natural that Canada, as a coastal inshore fishing state, should wish to see, in a new, more scientifically-oriented resource management regime, a better deal for the fishermen of the coastal state. It is also perhaps only natural that Canada, as a country with a vast continental shelf but without vast amounts for investment in its exploitation, should be more interested in guarding and protecting the resources of its shelf than in promoting the investment and exploitation of the shelf by more capital-rich countries.[92] The proper balance between the interests in play is not an easy one to strike.

Conclusions

This paper has attempted to examine the significant Canadian initiatives of the past few years, in responding to threats to Canadian territory and resources, posed by technology as applied in outer space and "ocean space." In particular, it has examined the dual Canadian approach of extending national jurisdiction unilaterally as well as of working towards heightened international responsibility.

This review of the half dozen or so areas where Canadian policy has made an impact reveals that what is perhaps most significant is not the dichotomy or the duality itself but the interrelationship and indeed the interdependence between the two themes or approaches in terms of effective international responses. And although Canadian statements have not always been consistent on the matter, it is effectiveness above all that Canadian policy now emphasizes in dealing with the threats.

The distinction between threats to territory and threats to resources is one which, although clear for analytic purposes, is not always so in practice. Thus the threat of marine pollution is one which, although responded to by Canada initially as a threat to its land, water, and Arctic ice, actually affects resources, including fish, sea animals, and birds which land on oil covered beaches or whose ocean food is poisoned.

In terms of responses to the threats, although the alternatives of a unilateral or "national" approach and a multilateral or "international" approach are important to discern both analytically and in order to understand the development of Canadian policy, they are not alternatives in terms of effective responses. It is becoming clear that such responses to the threats posed by technology must involve coordinated action through international bodies and national authorities. Effective action requires authorization at both levels. Indeed in the last analysis, national jurisdiction and international responsibility involve no dichotomy, they are two elements in a more complete and appropriate response.

[90] *Cf.* Wolfgang Friedmann, Oliver J. Lissitzyn, Richard Pugh, 1972 Supplement to International Law, Cases and Materials, at 92.

[91] *Cf.* Crosby, *supra* note 81, at 6–8.

[92] *See* Beesley, "Factors," *supra* note 76, at 29.

What emerges from the realms examined is that any effective international community response requires the acceptance of the principle of the international responsibility of states for the consequences of resource exploitation and for damage caused by their nationals. This in turn requires the compulsory adjudication of damage claims and their prompt equitable settlement. But beyond a *post facto* regime of compensation, what an effective response also requires are rules and standards for resource conservation, ship security, etc., in order to prevent undesirable events in the first place. In order to gain maximum adherence, these rules ought to be internationally formulated and authorized.

Finally, it is clear that the effective implementation of any regime is probably most effective when carried out by coastal states. Their own interests, proximity, and established mechanisms, combined with the absence of effective enforcement mechanisms at the international level, reinforce this conclusion. If coastal states were delegated community authority of this kind, then non-spatially designated functions or the notion of zones in which coastal states were responsible for enforcing international standards, would seem to follow. These functions or zones would be based on such considerations as what is necessary for functional effectiveness, how much a coastal state can reasonably be asked to police, and how far it should be permitted to extend its authority. While functions or zones would vary in relation to different problems, a coordinated approach at both international and national levels would tend to permit a total environmental approach across a variety of related realms such as pollution control, scientific research, fisheries exploitation, and so forth.

At the same time, certain problems remain, particularly with respect to the delineation of the appropriate zones or areas in which the coastal states' functions may be exercised, and to the rights and obligations of coastal and foreign states within them.

What emerges with regard to the regimes of ocean space, particularly pollution control and fisheries, is that apart from the zones in which sovereign rights may exclusively be exercised, *e.g.* territorial sea, and the zones beyond which sovereign rights may not be exercised, *e.g.* high seas, a notion of an intermediary protection or conservation regime is developing, thanks in no small measure to Canadian initiatives in establishing and promoting pollution zones and regimes of fisheries management. On the seabed, similar proposals have been advanced by the United States and, more recently, the Netherlands, although Canada has not supported these.

In relation to the realms of ocean space, it is clear so far that neither the limits of the particular zones nor the concept of an intermediate regime in which coastal states enforce community standards have been fully accepted either by Canada or generally. In Canada's case, and indeed in the case of all coastal states, there is still the vexing problem of acquisitive versus nonacquisitive jurisdiction. This is important not only in respect of the rights and obligations of states in the intermediate zones but also of their very delineation. Thus fishing zones drawn primarily for acquisitive purposes and those drawn for species conservation purposes may be quite different.

Canada has not only accepted but has proposed a nonacquisitive zone in regard to pollution control. It may be argued that the acquisitive aspect should be subordinated in relation to ocean fisheries and the seabed, thus avoiding the carving up of what may be regarded as community resources. On the other hand, it may equally be argued that the acquisitive element is also a central aspect of the current regime of freedom of the high seas, both in regard to fishing and seabed resource exploitation, that it favors certain states, and that it should therefore be curtailed or balanced against other interests. While Canada has not found the answers to achieving the ideal balance between the interests of coastal and fishing states, or of developing and developed countries, it has contributed to a solution and broken new ground in dealing with the as yet unresolved problem of the

ideal distribution of limited fishing and seabed mineral resources among the various members of the international community.

One distinction remains to be examined—the one we began with, *viz*, between traditional Canadian policies and those of very recent years, coinciding with the term of office of the Trudeau Government. What appears clear is that in this latter period there has been a markedly heightened emphasis on Canadian interests and concern with Canada's well-being. Moreover, a new willingness has developed to pursue these interests by means formerly considered out of bounds—such as limiting Canada's acceptance to the compulsory jurisdiction of the World Court—and there is a greater readiness to pursue the route of unilateral action.

At the same time, despite the notable shift in emphasis, there has been in many respects a consistent evolution in the substantive development of policy, if not always in the method of its pursuit. Fisheries is a good example; the twelve-mile territorial sea plus the fishing closing lines of 1970 is certainly no radical break from the policy of contiguous fishing zones proclaimed in 1964. Moreover, while the objectives of Canadian policy are now more exclusively defined as the pursuit of national interests, it is evident that the national interest embraces, as it must, the development of an equitable international regime that would link international and national responsibility in an effective and harmonious manner. Moreover, apart from substantive policy, the Canadian approach appears to have retained consistency also in pursuing solutions at the international level to what are clearly community problems. This legacy of the Canadian diplomatic tradition has remained a constant feature of Canadian foreign policy up to the present time. What is significant about this consistent international approach is that it has provided Canada with strong international credentials to develop and improve international law. It keeps important avenues open for Canadian negotiations. What is therefore all important is that this avenue be used in the most constructive possible way.

[Editor's note: Because of its particular focus on Canada's law-policy philosophy, the above article has been included in the introductory materials. It is obviously also an important article in the specific context of the law of the sea. Its survey and analysis of the Canadian position on aspects of offshore jurisdiction should be re-read in conjunction with the materials in the law of the sea section.]

[Editor's note: The following remarks by the official who was Legal Adviser to the Department of External Affairs during much of the period subsequent to the formation of the Trudeau government gives a less immediately nationalistic view of the nature, uses, effectiveness and possible benefits of international law. This results partly from the nature of the topic, but the exposition nonetheless brings out the possible longer-term value to Canada of "internationalist" activity in the international law field. Are you persuaded that Canada should allocate substantial attention and resources to these "Pearsonian" efforts, or should a policy be followed of generally limiting significant Canadian legal-diplomatic involvement to those issues pertaining directly to major Canadian interests, such as fisheries and natural recources?]

"WAR, PEACE AND LAW IN TODAY'S DIVIDED WORLD"

Address given by J. Alan Beesley,
Legal Adviser to the
Department of External Affairs,
on February 26, 1973

As the fourth in the series of
Leonard Beaton Memorial Lectures
at the University of Toronto
on the theme
"War and Peace in a Changing World"

The Nature of International Law:

There would seem to be as many views of the nature and purpose of international law as there are learned authors writing on the subject. If we look to the origins of international law, then it is quite clear that Hugo Grotius perceived international law as a means of establishing order among nations and restricting war as far as possible.../

Kelsen, the great publicist in the Grotian tradition, views international law as a complex of norms regulating the mutual behaviour of states who are the specific subjects of international law. He considers that international law is "law" if it is a coercive order, that is to say, a set of norms regulating the behaviour of states by attaching certain coercive acts or sanctions as consequences to breaches of the "rule of law"...

He concludes that the path which international law must follow in order to transform itself from its present state of decentralization to one analogous to that of domestic legal systems is through the establishment and utilization of international tribunals.[59] I question this last conclusion, as I consider the International Court almost irrelevant at this stage of development of international society to the problem of control of the use of force, and I suggest that its habitual use will come about as a consequence of rather than as a cause of changes in national attitudes.

Myres McDougal[60] is probably the leading scholar identified with the modernist approach to international law, combining legal realism with the systematic policy science pioneered by Harold Lasswell. McDougal focusses upon the processes of authoritative decision-making transcending the boundaries

of particular territorial communities. McDougal, like Kelsen, accepts the decentralized character of international society but comes to different conclusions. He stresses the decision-maker located in the national system as the prime actor in international law and calls upon these decision-makers to balance national interests against world community interests to the extent that the two perspectives collide.[61] Thus McDougal is at the other end of the spectrum from Kelsen with his stress on law as binding norms....

Landheer points out that to Max Huber the existence of a certain equilibrium was a pre-requisite for the functioning of international law.[68] According to this view, international law expresses an equilibrium rather than creates one. A slightly different approach is taken by Schwarzenberger who holds that international law does not condition but is conditioned by the rule of force.[69] According to this view, international law expresses power relationships instead of regulating them. There is, unfortunately, considerable validity in both the Huber and Schwarzenberger views of international law which are not, in my view, mutually exclusive. Examples of legal doctrines illustrating power relationships are title by conquest for the acquisition of territory or the exclusion of duress as a ground for invalidating a peace treaty. It is important, however, to note the existence of other rules which are quite different in their origin, such as, for example, diplomatic immunity, which is based upon reciprocity, or air navigation rules which reflect common interests. The distinction between actual contemporary state practice concerning the rules of law on the use of force and contemporary state practice on other rules of international law is central, in my view - a point to which I shall return.

My personal perspective is very close to that of Falk, who draws attention to the double nature of international law as an intellectual discipline devoted to the study of order in world affairs and an operative code of conduct capable of exerting varying degrees of beneficial and detrimental influence on the quality of international life. He tends to stress the functions of international law in the light of the characteristic patterns of interaction in the present international system.[70] He suggests that in order to avoid either cynicism or utopianism it is necessary "to emphasize the limits of legal ordering as an independent variable in the existence of a social system".[71] In other words, he regards law as one of the central elements in the development of world order, but cautions against expecting too much of it too soon.

Conclusions:

At this stage, I feel an obligation to give my own wholly personal views. Firstly, there is no doubt in my mind that with respect to the use of force - but not other issues - international law reflects more what "ought to be" rather than what "is". Even in the light of the absence of clear principles of international law concerning constraints on non-international conflicts there is no lack of norms concerning the legality of the use of force. The problem is, as pointed out by Stanley Hoffmann that, "legal norms never constrain all by themselves. Behaviour is restrained (1) either by self-restraint arising out of a sense of duty pure and simple...or (2) by self-restraint due to the calculation of interest...or (3) by the actual use of force on behalf of the norm."[72] I concur with him in his view that international law if viewed as a system of coercion is weak law, particularly with respect to the use of force, the one issue on which restraints on behaviour happen to be the crucial issue. I agree with him also in the view that "the failure of the constraining function has always been at the heart of the weakness of international law. But this failure takes on a new dimension, and constraint a new urgency, at a time when the free resort to violence means the possibility of total war."[73] I suggest, however, that international society is gradually moving towards the application of Hoffmann's second behavioural norm - self-restraint, due to a calculation of interest, a point to which I shall return.

My reason for stressing the nature of international society as it is rather than as it might be is that here too I agree with Hoffmann that "those who advocate, for the promotion of international law, the 'emergence of effective supra-national management on a regional and universal basis' of the use or threat of force, i.e. a more centralized world society, are right in pointing out what would ideally be needed. But they skip much too fast over two sets of problems: (1) What kind of 'supra-national management?...(2)...how will one get the states to move in this direction?"[74]

....Like McDougal, I consider the actual processes of decision-making an essential factor in the determination of the ultimate effect of law upon the use of force, particularly in seeking accommodations between the national interest and the interests of the international community, but I am unable to avoid the conclusion of Hoffmann that

"in a clash between inadequate law and supreme political interests, law bows".[75] Ultimately, as Hoffmann points out, "if 'the survival of states is not a matter of law'[76]...the states are still above the law...by definition...a legal system is a normative one, i.e. it is - just like an ethical code - a set of rules for human behaviour, and not merely the transcription of empirical rules of human behaviour."[77]

Ivan Head describes the function of international law very aptly in his article "The Limits of Adjudication" appearing in "This Fire-Proof House":[78]

> "Law suits and wars both stem from one party's desire to alter the status quo: to change territorial boundaries, to refuse to remain a colony, to divorce a spouse, to refuse to perform a contractual obligation, to steal. Changes don't always spawn disputes; the law performs an immensely successful role in facilitating changes in accordance with acceptable legal principles, and the number of changes arranged amicably exceeds by far the number of incidents which evolve into disputes. The success of legal institutions and legal processes in these areas is encouraging, but the role of settlor of disputes must still be played. And it must be played well if the law is to remain as an alternative to violence."[79]

With respect to the use of force, one is obliged to admit that international law as such is, at this stage of the development of international society, almost peripheral as a motivating factor, and legal principles tend to be utilized more often to justify uses of force - a means of communication, as some authors point out - than as a reason for refraining from the use of force.

At this point in my address I have said rather little from which anyone might derive any encouragement. I happen to believe, however, that international law is already having an effect, albeit indirect, on the use of force and that this effect will be cumulative in its gradual development of a system of constraints. I concur completely, as I suggested a little earlier, with the following summation by Falk:

> "No form of law, however much it is supported by the social environment, has been able to eliminate altogether violations of its most fundamental rules of restraint. If one examines the domestic incidence of murder or rebellion in the best-ordered society, the record discloses a frequency of violation that would disappoint any legal perfectionist ....Thus it is not realistic to anticipate the perfection of international order through the perfectionof the legal system, nor through the successful emulation in international society of the kind of legal system that has emerged in the most successful domestic states."[80]

He goes on to suggest that,

> "A failure to heed such realism is partly why movements dedicated to 'world peace through world law' seem so characteristically naive. And it is through an over-awareness of this naiveté that critical observers are invited to denigrate the role of law altogether in world affairs."[81]

Falk concludes that,

"The inability of international law to guarantee an altogether peaceful world does not imply its inability to promote a more peaceful world, or to deal adequately with the many aspects of international life having nothing directly to do with war and peace."[82]

I am deeply convinced that international law can play and is playing an effective role in the regulation of the conduct of states on a wide variety of complex issues in their relations with one another. States abide by the law because it is in their national self-interest to do so. I am equally convinced that as the law-creating and law-fulfilling processes continue to develop, international law will gradually have an increasing impact in constraining the use of force. There are many reasons why I hold these convictions. Firstly, if we were to consider even matters seemingly marginal to problems concerning the use of force, such as issues relating to the environment, to the law of the sea, to air navigation, to diplomatic intercourse, to international labour standards, to international health standards and a variety of other fields, one is struck by the rapidly developing network of interlocking treaties which bind states to civilized rules of conduct founded upon their common interests. While some of these rules are based on reciprocity, others are based simply on the recognition of the common interest. It is a fact of international life that states do not take their treaty obligations lightly. It is another fact of contemporary international life that the treaty-making process has accelerated under the aegis of the UN to a fantastic degree since the Second World War, to the point that it has almost supplanted the customary law-making process as the legislative system on the international plane. Every state in the world is now bound by bilateral, limited multilateral or universal treaties on a vast range of subjects of great diversity and increasing complexity. No state is obliged to bind itself by such treaties. Increasingly, however, states are finding it in their national interests to do so. This voluntary undertaking of a treaty commitment is admittedly merely the expression of a willingness to be bound to a rule which in most cases cannot be imposed without the consent of the state in question. Nevertheless, states do accept such obligations and in so doing are aware that the acceptance of a treaty obligation is at one and the same time an expression of sovereignty and an acceptance of a lessening of the exercise of that sovereignty. Thus, the inter-dependence of states which we all talk about finds concrete form in the interlocking network of treaties to which I have referred. Studies have been made, most notably, in the case of Canada, by Allan Gotlieb,[83] indicating the extent to which an examination of treaty

relationships reveals the actual relationships between countries. I have no doubt whatsoever that international society is gradually becoming integrated into an international community by this process of creation and adoption of legal obligations which in many cases gradually acquire the character of rules of international law.

Quite apart from the process I have just described there have been a number of specific developments in international law which, taken together, provide further grounds for encouragement concerning the future of international law and its effect upon the use of force. One such example is the non-proliferation treaty.[84] Although some of the nuclear powers have not yet adhered to it, thus far no state other than the great powers has acquired nuclear capacity. Another example is the partial test ban treaty.[85] While some states have not yet adhered to it, at least the process of weeding down the number and size of nuclear explosions has been begun. Another example is the seabed arms control treaty.[86] It may be that at this point in time no state wishes to implant nuclear weapons or other weapons of mass destruction on the seabed, but the treaty guards against such action in the future. Another example is the treaty banning the stationing of weapons of mass destruction in space.[87] Like the other treaties mentioned it does not have a direct effect upon the use of force but it clearly has an indirect effect, particularly if one considers the possibilities and probabilities in the absence of this treaty and the others mentioned. In each case a door is closed on possible uses of force of the most catastrophic nature known to man. In each case international law is playing a role, even if only as the reflection of the wills of the most powerful states, rather than as an independent force obliging them to act in a certain way, whether or not they have consented to do so.

There are still other examples which can have beneficial effects upon law as a constraint upon the use of force, not only of themselves but through their impact on the thinking of decision-makers on other matters. One such example is the treaty banning claims to sovereignty in outer space and of celestial bodies.[88] A similar example not yet in treaty form is the UN declaration proclaiming that the seabed beyond national jurisdiction shall not be subject to the sovereignty of any state but shall be reserved for purely peaceful purposes for the benefit of mankind.[89] If neither of these developments appears to be world-shaking in its direct impact upon the use of force, their real significance can best be seen by a consideration of the

alternatives to the approaches reflected in these instruments. Consider, for example, the implications of the landings by the USA of astronauts on the moon and the landings by the USSR of space vehicles in the absence of such prior binding agreements. The possibilities of claims and counter-claims to sovereignty and the disputes which could conceivably arise therefrom are limitless. Similarly, the Antarctic Treaty[90] is not usually ranked as a great break-through in developing constraints on the use of force. It is not beyond the reach of one's imagination, however, to conceive of the use of force to establish competing claims to territory in the Antarctic in the absence of such a treaty.

The law-creating process I have described may appear so peripheral and so gradualist as to be analagous to that of a drop falling into a bucket. The process might more accurately be compared, in my view, to that of a series of drops of water falling upon stone. Over the past 25 years the rough edges of the stone have been worn away. There is more and more evidence of the willingness of states to join together in regulating their conduct by rules of law applying to a wide range of human activity. Major resistance continues to be encountered as yet concerning direct constraints upon the use of force. It seems fairly clear that contrary to the expectations after both the First and Second World Wars, international society will not develop into an international community by settling first the problems of the use of force. The process, in my view, will, on the contrary, be that of regulating so many fields of conduct so effectively that there will be less and less reason to resort to force, and thus less resistance to the gradual acceptance of real constraints upon its use. We in the West have not been in the forefront in perceiving the importance of treaty-making, particularly multilateral treaty-making, as a working tool for the gradual construction of world order. We have continued to defend the customary law-making process on the international plane while not sufficiently perceiving the long-term benefits of treaty making. A kind of breakthrough occurred, however, with the agreement in the mid-sixties on the Vienna Convention[91] on the law of treaties itself, that is to say, a treaty which approaches the status, together with the Charter of the UN, of a constitution for the developing world order, for that is what the law of treaties convention comprises, in my view. This treaty represents a virtual tour de force, combining as it does the basis for certainty and stability in the framework for relations of states with the necessary flexibility to enable these relations to

adapt and adjust as changes occur. I am personally quite confident that, while we may never achieve a complete and effective cessation of the use of force internationally, nor have we on the domestic plane, we are already well into the process of creating a system for the regulation of relations between states which will gradually make the use of force less relevant.

What I have said provides relatively little hope for the immediate future if we are to look to international law for restraints upon the use of force. I have no doubt, however, that with every year that goes by the superstructure of international law which is gradually being erected will have an increasing impact upon the use of force as much as upon particular areas of human and state activity which such treaties regulate.

[Editor's note: The following text of a short public address by the Secretary of State for External Affairs is fairly typical of the rather bland but upbeat surveys usually delivered on such occasions. Despite the title, the emphasis is very much on a factual summary of developments rather than on an analysis of the relationship between international law and the foreign policy process. Note, however, the final paragraph under the heading "Attitude of Developing Nations", where Mr. Sharp remarked:

> "Problems of this kind remind us that advances in international law do not take place in a vacuum. The underlying political problems must first be solved, and political agreement reached. Generally speaking, this is the stage of greatest difficulty, where movement is slowest. Once political agreement is achieved, the writing of the law becomes a highly technical matter for experts."

How much significance would you attach to Mr. Sharp's comment? Is he drawing a clear-cut division between political problems and legal problems (or more precisely, between the "political stage" and the "legal stage" of a single problem)? If so, is his approach valid or is he misapprehending the law-policy relationship and the nature of the government lawyer's function? If he is indicating too narrow a role for the international lawyer, how would you define the appropriate role?

Over a decade ago, a law-trained Secretary of State for External Affairs expressed the view that a problem was justiciable if the parties to the dispute said it was. Along analogous lines,

could we helpfully say that in international affairs a legal problem exists when persons involved label it as such? Would you prefer to say that ideally a lawyer should be involved throughout any problem-solving process and, in that sense, his role is co-extensive with that of the political scientist, economist, scientific adviser and other members of the official team?

Is any attempt to define or formalize in general terms the government lawyer's role and the concept of a legal problem unhelpful? In doing so, are we merely building a ponderous rigidity into the conduct of official international business? Can the best approach to the handling of endlessly varied international problems be achieved by an unstructured ad hoc assessment at a senior level? So far as your practical knowledge takes you, what would seem to be the relative merits of the two procedural modes?]

Canadian Foreign Policy and International Law

SPEECH BY THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, THE HONOURABLE MITCHELL SHARP, TO THE INTERNATIONAL LAW ASSOCIATION AND THE CANADIAN INSTITUTE OF INTERNATIONAL AFFAIRS, IN MONTREAL, ON MARCH 29, 1971.

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. . . I always embark upon speeches about international law with some trepidation, since I am neither a lawyer nor a professor. On the other hand, some eminent international jurists tell me that this might be a distinct advantage for a foreign minister. In any case, I can assure you that I have the highest regard for international lawyers, whether practising or preaching, and over the years I have benefited a great deal from their advice and assistance.

Perhaps I might begin this brief survey of current international legal developments by looking at the work of the United Nations, where so many of them have taken place. Since 1945 (admittedly with ups and downs, but with a definite ascending curve), the United Nations has been actively pursuing the goal of an international order based on the rule of law. In particular, the world organization has lead the way in enshrining basic principles of human rights and human dignity in international documents and legal instruments. The Universal Declaration of Human Rights of 1948, the International Covenants on Economic, Social and Cultural Rights, and of Civil and Political Rights, of 1966, and the International Convention on the Elimination of Racial Discrimination, also of 1966, are accomplishments of great significance. The racial discrimination convention was ratified by Canada while the twenty-fifth United Nations General Assembly was meeting last autumn, and we are now pursuing with the provinces the question of becoming a party to the international convenants. These instruments, taken together with others dealing with refugees, relief and rehabilitation and the status of women, constitute, in a very real sense, an international human rights bill. Canada will continue to play a prominent role in all such international efforts to uphold and protect the fundamental rights of all peoples everywhere.

Environmental Law

Another area of great importance is the development of international law relating to the environment. When we speak of the environment today, our minds automatically turn to pollution. However, the United Nations lawmaking activities in this field began with relatively unpolluted environmental regions such as outer space and the seabed. Only recently has the organization taken up the immense problems of the growing pollution of our soil, waters, and the air we

breathe. The 28-nation United Nations Committee on the Peaceful Uses of Outer Space, of which Canada is a member, was responsible for the drafting of what may be called the outer-space "charter", the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. In addition to postulating the peaceful character of space exploration and the rule that celestial bodies are not subject to national appropriation, the treaty obliges states to avoid harmful contamination and damage to the earth's environment resulting from space activities.

In 1967, the General Assembly established a special committee to examine "the reservation exclusively for peaceful purposes of the seabed and ocean-floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and the use of their resources in the interest of mankind". This subject, with its far-reaching legal, political, economic and military implications, will be a matter of intense study and debate for some time to come. Canada was one of the 35 countries on the original committee, and we are currently an active member of the new enlarged preparatory committee for the 1973 Law of the Sea Conference, about which I shall have more to say shortly.

Nuclear-Arms Control

A subject directly aligned to peaceful uses of space and the seabed is nuclear-arms control. Both the 1963 Partial Nuclear Test-Ban Treaty and the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, as well as the Seabed Arms-Control Treaty of 1971, are significant landmarks. Endeavours to proscribe all chemical and bacteriological weapons of war and all underground nuclear tests are currently under way, and Canada is playing a major role in these discussions at the Geneva meeting of the United Nations Conference of the Committee on Disarmament.

The United Nations has also been organizing efforts on a number of fronts in preparation for the Conference on Human Environment, which will be held in Stockholm in 1972, with Maurice Strong as Secretary-General. There have already been two preparatory committee meetings, in September of last year and this February. Canadian delegations participated actively at both sessions, in keeping with the vigorous role Canada has played nationally and internationally in the adoption of anti-pollution measures. In particular, we are attempting to gain general agreement that the proposed declaration on the human environment include substantive principles of international environmental law and not mere expressions of desirable objectives.

Attitude of Developing Nations

One of the difficulties faced in the development of effective international law in this field is the attitude of the developing nations. The developing nations are very much aware that environmental pollution is a by-product of industrialization, itself an essential pre-condition of economic growth. These nations see in the thrust toward international pollution control an attempt to preserve their countries as "game preserves", to use a colourful expression. Developments in international law must be in step with developments in technology that will enable the less-affluent nations to enjoy the benefits of industrialization without incurring the dangers of unacceptable levels of pollution.

This must come about in a way that will enable these countries to compete in international markets. There is no fair or acceptable way to require developing nations to build higher costs into their economies than are faced by the technologically-advanced nations. At the same time, any attempt to make an exception for the developing nations by providing lower standards of pollution control for them would be self-defeating. It would set up sanctuaries which would attract those industries responsible for the worst type of pollution, causing eccentric and unhealthy capital flows and laying up trouble for the future.

Problems of this kind remind us that advances in international law do not take place in a vacuum. The underlying political problems must first be solved, and political agreement reached. Generally speaking, this is the stage of greatest difficulty, where movement is slowest. Once political agreement is achieved, the writing of the law becomes a highly technical matter for experts.

Role of UN Specialized Agencies

Still within the United Nations framework, the Specialized Agencies have also been very active in the creation of new international law. The work of one such agency, the Inter-governmental Maritime Consultative Organization (IMCO), is closely related to protection of the environment. Canada has been participating in preparing for the IMCO-sponsored Marine Pollution Conference to be held in 1973. The elaboration of a draft Convention on the Establishment of an International Fund for the Compensation of Victims of Oil Pollution is of particular concern to us. We are also involved in the Maritime Safety Committee of IMCO, which examines navigation and safety requirements for vessels and makes recommendations on those aspects of shipping.

Canada has a particular interest in shifting the emphasis of the Law of the Sea toward the protection of the interests of coastal states. The Law of the Sea has historically been written to protect the interest of the so-called flag states that have very great shipping industries, and has been designed to provide for the greatest possible freedom of movement and action for merchant fleets. Recent maritime disasters, such as the sinking of the *Arrow*, have brought home to us the need to combine maximum freedom of movement for shipping with essential controls to protect the coastal environment.

Canada's position in this general field of international law is well known. We strongly favour international co-operation to preserve the oceans of the world and the ecological balance of especially fragile areas. With the urgency of the problems in mind, the Government passed two important acts last year directed towards protecting the Canadian Arctic and the marine environment and Canadian off-shore fisheries resources. Recent amendments to the Canada Shipping Act will impose stringent anti-pollution measures within Canada's territorial sea and newly-created fishing-zones. It is our hope that these moves on Canada's part will lead to international agreement, developing the new Law of the Sea so that it will be acceptable to coastal and flag states alike.

Law of the Sea Meeting

The preparatory committee of the 1973 Law of the Sea Conference has just concluded a four-week meeting in Geneva. This has been primarily concerned with organizational preparations for the forthcoming conference, which we hope will further develop this important and dynamic field of law in all its facets. A major objective is to resolve, through multilateral agreement, the outstanding issues relating to the sea and the seabed which have been a source of differences among states and could lead to further differences in the future.

The Canadian delegation in Geneva last week outlined a process which could be implemented without awaiting the results of the 1973 Conference. This would involve the immediate determination, as of a stated date, of the minimum non-contentious area of the seabed beyond the limits of national jurisdiction; the simultaneous establishment of an interim international machinery for that area; and the simultaneous creation of an "international development fund" to be derived from voluntary contributions made by the coastal states on the basis of a fixed percentage of revenues accruing from off-shore exploitation beyond the outer limits of their internal waters. We are looking forward with interest to the reaction to the Canadian suggestion. It will be discussed at the next preparatory committee meeting this summer.

Canada has been actively involved in all these efforts to lay down accepted norms in international legal instruments directed towards preserving and promoting the peaceful uses of our environmental heritage, under the rule of law. We shall continue our support for the development and expansion of the areas subject to such rule. For example, we have been pressing for several years for the conclusion of an effective liability convention in respect of objects launched into outer space. The Canadian position on this question has consistently favoured a victim-oriented treaty that will ensure that just and equitable compensation will be paid to states suffering loss due to injurious space activities.

Role of ICAO

When examining the creation of new international law, we must certainly take note of the recent efforts of the International Civil Aviation Organization. ICAO, with its headquarters here in Montreal, has recently made important strides in its fight to prevent and deter aircraft hijackings and other forms of unlawful interference with air transport. The kind of international legal framework being developed, including the 1963 Tokyo Convention on Crimes on Board Aircraft, the 1970 Hague Convention on Hijacking, and the draft Unlawful Interference

Convention (to be subject of a diplomatic conference this September) will contribute substantially to maintaining and promoting safety in the air. As a major aviation country and as a member of the ICAO Council, Canada has been especially active in the field of international air law, one in which we did a lot of the pioneering work in the forties and fifties and to which we continue to attach a very high degree of importance.

Humanitarian Law

There has recently been significant activity in the development of international humanitarian law, which is generally based on the four Geneva Red Cross Conventions of 1949. Since that immediate postwar era, events have shown that the Conventions should be strengthened and extended, to make them more effective in the kinds of conflict that are all too prevalent today. In particular, Canada and a number of other countries would like to see the adoption of more comprehensive, internationally-accepted standards of conduct with respect to civilian populations in non-international conflict situations, such as the recent war in Nigeria. At the 1969 International Red Cross Conference in Istanbul, the Canadian delegation presented a number of proposals on the subject which received widespread support. The International Committee of the Red Cross has now convened a meeting of governmental experts on humanitarian law to take place in Geneva at the end of May. Canada will be taking an active part with a view to securing agreement on provisions that could be incorporated in one or more international accords, supplementing and augmenting the 1949 Conventions. The United Nations has also given this matter serious attention and its Secretariat has been working in close collaboration with the Red Cross and interested governments.

One other field of international endeavour which has become of special interest to Canada concerns international action to prevent and deter the kidnapping of diplomats and other related acts of terrorism. These types of unlawful act place responsible governments in extremely difficult situations. In order to develop an international legal framework to deal with this threat to normal diplomatic activity, the Organization of American States and the Council of Europe have independently been examining the possibility of drafting international conventions. We are, of course, following these developments very closely and we have been in contact with the OAS and other governments so that Canadian views and interest will be taken into account.

No Effective Enforcement

All these activities I have been reviewing are directed towards fostering international co-operation and better regulating man's peaceful use of the substance and attributes of the world and universe in which we live. However, dissession, disagreement, and disputes are an inevitable part of international affairs as conducted by sovereign states. The years since the last world conflict have indeed witnessed some progress in providing for their pacific resolution. Nevertheless, it is a fact — and current crises in several regions of the globe bear this illuminating testimony — that we have not yet created or established effective machinery for enforcing such international law as already exists. It seems to me that the international community is still bound up with outdated notions that impede the settlement of differences by peaceful means. The 1969 Law of Treaties Convention, to which Canada became a party last December, makes a substantial contribution to the uniformity and applicability of international rules relating to treaties. But we have not yet succeeded in developing a similar codification of a compulsory third-party settlement of disputes procedure. While I honestly wish I could say to you that this object will be realized soon, I am afraid that contemporary international relations do not bode particularly well with respect to banishing strife and conflict in favour of law and diplomacy. Yet responsible persons in government, in international organizations, and in private professional and academic institutions and associations must continue to press for an end to the use of force as a means of settling disputes. While the millenium is certainly not at hand, it can perhaps be brought a little less distant.

If progress is to be made, nations must give up narrow and anachronistic ideas of sovereignty. This raises a complex and emotionally-charged subject. I

for one do not regard acceptance of limitations on sovereignty as unthinkable. We have already accepted such limitations in the economic and communications fields; these should point the way to acceptance of limitations of sovereignty in the interests of peace and security. I hope that Canada will find a way to provide leadership toward such a worthwhile goal.

World Court

In my view it would not be proper to discuss international law without mentioning the International Court of Justice. Canadian views on increasing the effectiveness of the World Court are well known. The Canadian delegation at last year's United Nations General Assembly supported an adopted resolution entitled "Review of the role of the ICJ". By means of this resolution member states of the United Nations, and states parties to the Statute of the Court, were invited to submit to the Secretary-General suggestions concerning the role of the Court, on the basis of a questionnaire to be prepared by the Secretariat. In the light of these comments, and those which the ICJ itself may wish to put forward, the Secretary-General is to prepare a comprehensive report to be available for the twenty-sixth session of the Assembly. The questionnaire has recently been received in Ottawa and we are at present engaged in formulating the Canadian views to be transmitted to United Nations headquarters. This initiative, which, as the resolution states, "should seek to facilitate the greatest possible contribution by the Court to the advancement of the rule of law and the promotion of justice among nations", is most welcome Canada has always supported and will continue to support all such efforts to help the ICJ to continue to serve, with renewed effectiveness, as the principal judicial organ of the United Nations.

Before concluding, I should like to say a very few words to this distinguished audience about the skilled practitioners of the art of legal diplomacy. Many nations, including Canada, rely to a great extent on these experts to develop, promote and create a body of generally acceptable international law that is materially relevant to the modern age in which we live. This speaks much more eloquently than any individual foreign minister can of the reliance and trust that is placed in them. I also believe that their continuing contact with important professional and academic institutions and associations, such as the ILA and CIIA, can help these legal experts to keep fully aware and take into account informed opinion on these detailed and complex subjects. This is another reason I am pleased to have had the opportunity of addressing you this evening — to maintain and enhance this relationship between the foreign-policy making branch of the Government, which is directly concerned with international law, and the Canadian professional and academic community of which your associations are a significant and influential part.

(Editor's note: An important interpretation of the foreign policy of the present Canadian government can be found in Ivan L. Head, The Foreign Policy of the New Canada (1972), 50 Foreign Affairs 237-252. It is written by the former international law professor who is a principal architect of the Trudeau government's philosophy of international relations. The article has been described as a visionary defence of "radical realism" in Canadian foreign policy. Are you impressed? More important, do you perceive the policy basis that you might expect to be developed by two former law teachers occupying the positions of Prime Minister and foreign policy adviser? Is it, in your estimation, markedly law-oriented?)

Canadian Approaches to International Law

R. ST J. MACDONALD,

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DOUGLAS M. JOHNSTON

[reprinted from Macdonald, Morris and Johnston (eds.), "Canadian Perspectives on International Law and Organization" (1974, University of Toronto Press.)]

The federal government of Canada

The Canadian government has, to an extent not commonly matched by other governments, developed an 'elite cadre' of international lawyers whose intellectual calibre equals the best academic minds in the field. This represents a considerable change from the situation twenty years ago when, as one or two veteran international lawyers recall, it was not easy to find experienced colleagues in government with whom views could be usefully exchanged. A generation ago, for one thing, there was a greater tendency than today to utilize the services of government constitutional lawyers or general solicitors with little training or prior interest in international law. At that time, of course, it was not always easy to find lawyers in Canada with specialized qualifications.

The first legal adviser in the Department of External Affairs was appointed in 1913. His task was to advise the government on policy matters involving questions of international law and on related legal issues in consultation with the Department of Justice and other appropriate departments. In the early decades of the office, the legal advisers played an important technical and policy role in resolving significant problems, which incorporated both constitutional and international law aspects, of the developing Canadian participation in the Commonwealth and the general international community. Until after World War II, the legal side of External Affairs remained very small. Prior to 1945 Loring Christie and John Read were the dominant figures. Subsequently, Max H. Wershof became a prominent legal officer and one of the most notable postwar legal advisers.

As the need for legal services in External Affairs grew, an expanded Legal Division became increasingly essential. It was not always easy, in a rotational service, to ensure that legal officers with specialized training and a desire to emphasize legal work during their careers were available to fill every position in the division. A consistent, determined recruiting policy was necessary if the right individuals were to be attracted and retained.

In the early 1950s, when a career in the Canadian diplomatic service was gaining high prestige, a number of able people with a particular interest and background in international law began to be recruited as foreign service officers. The professional capacity of these new officers in Legal Division more consistently matched the demands of their function, and the division itself became more influential than before. Admittedly, a number of urgent legal problems (law of the sea being the outstanding example) began to demand attention at about this same time, thus ensuring a central role for Legal Division and for law-trained officers in other branches such as United Nations Division. Several individuals, notably Wershof and his equally vigorous colleague, Marcel Cadieux, should be given considerable credit for capitalizing on the new opportunities to develop the international law component of the service as a focal point of influence on policy development. A culmination of this growing role was reached in the mid-1960s when trained international lawyers occupied senior levels in the department: Paul Martin as secretary of state;

by both a minister and an undersecretary who were international lawyers. Once that situation had altered, the policy-making role of the international law hierarchy was bound to be modified, with much depending on the character and capacity of two or three legal officers just below the top level in the department. At present the team appears to function capably and effectively.

Perhaps the team of international lawyers developed in Ottawa during the fifteen years prior to 1968 could have come into being only under a succession of External Affairs ministers who were similarly oriented and had the strong support of their prime ministers. For two decades such a situation existed. Lester Pearson, as minister, had the advantage of being the handpicked choice of his predecessor, Louis St Laurent, when the latter became prime minister. While Pearson was not a lawyer, he had been a career diplomat who thoroughly understood international organizations and most of the legal underpinning of international relations. His successors after the change of government, Sidney Smith and Howard Green, were both lawyers interested in and generally receptive to creative uses of international law. Both ministers had notable influence with Prime Minister John Diefenbaker, a lawyer whose long concern with human rights appeared to be parallelled by a sympathy for the general viewpoint espoused by the government's international law advisers.

A new plateau in the role played by the legal service at External Affairs was reached with the installation of Paul Martin as minister in 1963. He was oriented in much the same way as his three predecessors but had a more professional view of international law. Martin was a fully trained international lawyer with experience extending back to the League of Nations and was interested in the development, as well as the day-to-day practice, of international law. In this respect he closely resembled his Undersecretary, Marcel Cadieux, with whom he seems to have developed an easy, harmonious working relationship. They probably responded instinctively as international lawyers to virtually all problems that came across their desks. Martin also had the benefit of having Lester Pearson as his prime minister, with all the understanding and support which that implied.

It is our impression that Pearson, Smith, Green, and Martin provided an environment hospitable for international lawyers and that the latter moved with relative speed to make the most of a favourable situation. In the years prior to 1968 there grew up a sort of natural creative tension between senior law-trained officials and their political masters which was highly productive. It seems equally clear that there has been a change, at least in degree, since 1968. Mitchell Sharp is not a lawyer, for one thing, but came to his portfolio with a background in business and trade problems. Like his Undersecretary, A.E. Ritchie, who is an economist, Sharp cannot be expected to react as a lawyer might. In consequence, the development of policy and the formulation of priorities will take place within a different set of conceptual parameters and the role played by legal advisers may be somewhat different. In this connection we might recall the 1970 white paper, *Foreign Policy for Canadians,* which (to the extent that an emphasis can be perceived in the Delphic obscurity of many of its passages) appears to stress economic interests and priorities. This preoccupation with economic concerns may explain Canada's emphasis on the law of the sea and related environmental questions as the principal current issues in international law.

Mr Sharp has faced an obvious difficulty in his relationship with Prime Minister Trudeau, who is both strong-willed and of a notably different temperament. Trudeau has shown a readiness to rely on the advice and negotiating skill available in the self-contained advisory staff in his own office, instead of turning to External Affairs. In fact, it is only recently that the prime minister has curbed the obvious scepticism about the department and its personnel that he displayed on assuming leadership of the government. It seems fair to suggest that Mitchell Sharp has found himself burdened, to an unusual extent, with foreign policies conceived elsewhere in the government apparatus and imposed whether or not the career experts in External Affairs concurred.

The role of the present prime minister may give some cause for concern. Although we cannot be certain what he thinks of public international law, we are doubtful of his essential commitment to legal solutions as a primary frame of reference. Frequently he appears more interested in 'cost-benefit' analyses than in law. In respect of both domestic and international issues, the prime minister seems often to have emphasized economic arguments, while introducing legal rationales only to the extent that they provide a convenient supplementary argument. In international affairs the prime minister has not been markedly law-oriented in his approach, despite his training and background.

We are unable to discern a strong pattern of concern for the development of international law, under the present administration, except where it would serve Canada's immediate national interests. There does not appear to be much interest in the development of a legal regime as such. While international lawyers of the

highest calibre are available in the public service, we conclude that they are called on to employ their talents in a somewhat narrower range of issues than in past years and are more frequently used as adjunct-technicians after policy has been discussed and settled on non-legal bases. Except in relation to certain issues of great and direct concern to Canada, international lawyers may have difficulty in finding interest or support for suggested policy initiatives. To the extent to which this impression may be accurate, we find it a discouraging diminution of the potential contribution that can be made by skilled international lawyers.

National style and philosophy in Canadian approaches to international law

In a period of rising national consciousness in Canada it is interesting to consider whether a distinctively Canadian approach to internationl law is evolving in this country. Government international lawyers might be regarded as pursuing a 'national' approach to international law when they are more or less consciously acting out a distinguishable national philosophy, which is established in government policy. The academic international lawyers in a particular country might be regarded as exhibiting a national approach by showing more or less unconsciously a significant number of assumptions and characteristics of style in the practice of their craft. . . .

National philosophy

Few countries in the world have presented views on international law that are sufficiently consistent and distinctive to be regarded as the product of a national philosophy. Canada could certainly not be included among those that have. It might even be said that the *absence* of a tradition that could sustain such a philosophy is characteristically Canadian. The reasons for this are familiar to all Canadians who have joined the national exercise in self-analysis. Cultural diversity is both a fact and, at present, a creed in Canadian society. The Anglo-Saxon and Celtic subcultures in Canada, unlike the French, have never been strongly attracted to 'philosophy.' The ideas of a settled tradition and a national philosophy are perhaps considered alien by many Canadians, who may even view them as in some way antithetical to social mobility and economic development.

Nationalism itself can be thought of as a kind of national philosophy, with potential effects on the nature of national contributions to international law. But until recently relatively few Canadians were strongly moved by nationalist sentiment, though in many other countries nationalism is concomitant with an emphasis, such as the Canadian, on economic development and social mobility. Until the early 1960s the idea of nationalism was largely of interest to small groups of intellectuals in various regions of the country. For most Canadians, who continued to place a high value on the virtue of moderation, nationalism denoted a form of political extremism. Since then, however, many Canadians at different levels of society have come to believe that a separate 'national identity' must be secured in order to be freed of the economic and cultural influences of the United States.

Sharing a critical view of nationalism as a political force, at least until recent years most Canadian international lawyers have shown little interest in the possibility or desirability of a Canadian national (or cultural) influence on the development of international law. Both in government service and the academic community, they seem on the contrary to have taken some degree of professional pride in the growth of Canada's non-nationalist reputation in the world of diplomacy. Like their counterparts elsewhere, Canadian government international lawyers have, of course, always been required to keep an eye on the compatibility of international law and national interest, but the internationalist element in government policy enabled them to escape the appearance of pursuing a restrictive view of Canadian national interest. Canadian diplomatic activity in the United Nations, especially in response to peace-keeping problems, earned Canada much goodwill and credibility as an internationally minded state. No doubt this reputation helped to encourage Canadian government international lawyers to engage conspicuously in the quest for international solutions. Viewed from the United Nations, at least, Canada seemed respectably distant from the danger of overcommitment to a philosophy of 'national purposes.'

Canadian academic international lawyers were on the whole content to accept praise for Canadian diplomatic contributions to internationalism. Until the mid-1960s their ranks were still thin and they lacked the professional opportunities to 'monitor' Canada's legal operations abroad. Even today, of course, the possibilities of 'counter-research' are largely unexplored by international lawyers in Canada.

Whether a peculiarly Canadian national philosophy evolves in international law during the last three decades of the twentieth century may depend chiefly on

whether there emerges a distinctively Canadian mix of social attitudes towards technology and a distinctively Canadian set of political responses. Succeeding Canadian governments will find themselves required to focus on shifting points of balance between developmental and environmental demands on the political community. Canadian positions on international law will, to this extent, be regarded as responses to the political need to reconcile growth and quality philosophies in Canadian society. For an international lawyer, the growth-quality dilemma is part of the larger confrontation between the rich and the poor countries of the world. It is difficult to see how Canada can avoid becoming increasingly embroiled in rich-versus-poor antagonisms. Accordingly, we can expect Canadian international legal idealism to be put to increasingly painful tests in this context.

A Canadian national philosophy in international law might then be characterized by reference to the critical point of emphasis on a 'technological-ideological' continuum. At one extreme, the 'technological' pole, international law is identified as a preferred problem-solving technique available to national governments, international organizations, and other major participants in the global process of decision-making. At the other extreme, the 'ideological' pole, international law is identified as a system of values applicable to the most threatening issues between the rich and poor areas of the world. The first of these different, though not necessarily conflicting, approaches to international law would be essentially pragmatic and specific in concept, favouring empirical methods of research, often in conjunction with the social sciences and other disciplines. The second approach, the ideological, would be essentially systemic in concept and lean more heavily on value commitment in the abstract, favouring the personal involvement of international lawyers in international causes related to social welfare problems which are aggravated by the widening economic and technological disparities in the world community.

We expect that a Canadian national philosophy will evolve on the technological side of the continuum. For a wide variety of reasons – historical, cultural, political, social, and geographical – Canadian international lawyers are not likely to acquire sophistication on the ideological side of international law. They are perhaps unlikely even to try to match their counterparts in, say, socialist countries in the rhetorical, emotive, system-justifying uses of international law. It remains doubtful how strongly Canadians will even want to learn how to use international law for purposes of reinforcing long-range expectations, for example in the area of human rights and fundamental freedoms or in relation to peaceful coexistence. The ideological use of international law just does not seem likely to become the Canadian way. Canadian government officials will continue to live for tomorrow's crisis, concentrating on the practical rather than the theoretical side of the exercise. Canadian academic international lawyers will continue to write mostly in response to events of direct Canadian significance rather than on the basis of long-range expectations or on theoretical questions of general interest.

The chief dangers are, then, that Canadian academic international lawyers will remain unnecessarily remote from international welfare issues aggravated by widening disparities between rich and poor areas of the world, and continue to neglect important questions of legal theory; and that Canadian government international lawyers will find themselves required to practise legal technique increasingly as a branch of political economy, serving mostly acquisitive purposes and gradually impairing Canada's reputation as a genuine internationally minded state.

Canadian officials have taken bold and imaginative initiatives on the technological side of international law – especially in the law of the sea, communications, and environmental protection – and have thus accentuated the problem-solving functions of the lawyer's craft. This is an appropriate emphasis, since the chief needs and opportunities of Canadian society are still generally understood in technological terms, despite the ideological protests of many young citizens and of some intellectuals. Neither of these protest groups have the right kind of knowledge or sophistication to spell out the implications of their antitechnological position in terms of a Canadian approach to international law. Moreover, not a single Canadian academic international lawyer has so far attempted a critical, systemic view of international law along the lines, for example, of Richard Falk in the United States. This may be attributed to a Canadian tendency to avoid or moderate ideological positions, or to a Canadian distaste for interdisciplinary collaboration and systemic perspective, as suggested above. The technological emphasis in Canadian approaches to international law may have the effect of reducing the difficulty of interdisciplinary collaboration in joint studies of international problems. Unfortunately, this advantage may be more apparent then real, for the lack of systemic perspective may prevent such studies from struggling above the level of superficiality. Interdisciplinary collaboration is likely, however, to be encouraged by the present federal government policy favouring government-academic interaction in policy-related studies. This policy, it might be added, is regarded as ethically acceptable by many Canadian political scientists, lawyers, and economists.

SUGGESTIONS AND RECOMMENDATIONS

Drawing on the foregoing summary of the state of international law in the academic community and at the governmental level, we now offer a number of suggestions and recommendations.

At the outset, we wish to record our conviction that Canada can best prosper and flourish within an orderly international community. Contrary to current government views, reflected for example in the 1970 white paper, we believe that the building of a sound international order, based on a flexible system of law and organization, must remain Canada's first priority in the field of foreign policy. We would go even farther and suggest that Canada has a special interest in promoting the development of a rational international structure: a special interest because we are the neighbour of a superpower whose views we cannot assume will be identical with our own; a special interest because we do not fit neatly into any geographical community, such as exists in Europe and Latin America; a special interest because, as an economically advanced country whose wealth is likely to become suspect, it is probable that we will come under increasing criticism if we pursue a narrow self-interest; and a special interest because, as a technologically advanced country, we are obliged to contribute to the solution of international problems of resource allocation and management. For all of these reasons Canada as a vulnerable state would lose out more significantly than most if the world were allowed to organize itself on an *ad hoc* political basis. That way lies the danger of subordination to the philosophies, interests, and values of less vulnerable states. The higher realism, in our view, requires us to dedicate ourselves to the continuing quest for the development of world order.

In our opinion Canadian international lawyers have not only the incentive but also the resources and opportunities to make more substantial contributions to the development of the international legal order. At the governmental level there is a need for more sustained, systematic, long-range planning in the area of international law and organization. We believe that it is necessary for government policy-planners to get beyond immediate issues and conference deadlines to a more generalized conception of basic disorders in the international community. A vulnerable middle-sized state such as Canada seems to have a special interest in the restructuring of world society on the basis of international law but can play a special role in this effort only through the deliberate invention and assessment of new policy alternatives. Institutional and procedural innovations resulting from systematic studies would provide Canada with a clearer idea of how to orchestrate its foreign policy and how to employ international law as a shield as well as a sword.

We admit to a concern about the fragmentation of foreign policy and the consequential extension of international law into an increasing number of governmental departments. The proliferation of international lawyers throughout government departments is a worldwide phenomenon, following quite naturally from the increasing complexity of international relations and the tendency to decentralize the making of foreign policy to a variety of lead agencies, usually in the technological and scientific fields. We welcome the rise of 'houses' of international law within the technological departments because of the technical and legal expertise that is likely to emerge. We suspect, however, that this evolutionary trend means that in the future decisions will be made increasingly on a functional basis, and that this trend may impair the prospects of developing an overall philosophy of world order. Each functional 'house' of international law will be too limited to produce a comprehensive ideological framework of reference for policy-makers. The consequent need for effective co-ordination by individual departments and by interdepartmental committees will reinforce the case for such a framework built on the foundations of long-range systematic studies. . . .

The following excerpts are from a review of CANADIAN PERSPECTIVES ON INTERNATIONAL LAW AND ORGANIZATION. The review is scheduled for publication in the University of Toronto Law Journal in early 1975. Written by Professor D.M. McRae of the Faculty of Law, University of British Columbia, the critique focusses especially on chapter 38, "Canadian Approaches to International Law", excerpts from which are set out immediately above.

A feature of the field of international law in Canada has been that many significant contributions to the literature have been made by international lawyers in government and it appears from Canadian Perspectives on International Law that there is some disagreement over the role these lawyers should be allowed to play. Professor Cohen refers, albeit in a delicate fashion, to a dispute over the role of the Department of External Affairs in respect of policy-making and international law-making. The point is taken up by the editors in their concluding essay, "Canadian Approaches to International Law," where some forceful, if at times elliptical, comments are made on the inhibited role of government international lawyers under the former Minister of External Affairs who was not a lawyer and under a Prime Minister who, it is alleged, is not "markedly law-oriented in his approach" to international affairs. The latter, it is suggested, has shown a willingness to rely on advice emanating from his own office, rather than looking to the Department of External Affairs. This, the editors consider, has led to a diminution in the contribution that can be made by international lawyers whose expertise is thus employed on a far narrower range of issues than has been the case in the past.

To the extent that the editors perceive a change in function in government international lawyers since the days of Pearson and Martin their views appear to be substantiated indirectly at least in the essay by Ambassador J.A. Beesley, ("The Sixties to the Seventies: the Perspective of the Legal Adviser"). Ambassador Beesley asserts that the "basic function of the legal adviser is to attempt to safeguard Canadian interests as they may be affected by international law" (p. 918). He acknowledges that Ambassador Marcel Cadieux' perception of the role of the legal adviser as

attempting to ensure that Canada's role in international affairs is conducted in accordance with generally accepted legal principles, practices and processes" (p. 938 fn. 7), is "central to the advisory function" of the legal adviser and he comments that, "ideally, there is no conflict between this aspect of his responsibilities and his basic 'solicitor-client' function of protecting his country's national interest" (p. 924).

The difference between the editors and Ambassador Beesley appears to be more than emphasis and relates to role and approach. The editors look upon the halcyon Pearsonian period culminating in the late sixties when there was a "law-oriented 'power-axis' in External Affairs" (p. 942) and when considerations of international law were "included as central elements of policy" (ibid). On the other hand Ambassador Beesley frequently refers to the Department of External Affairs' publication Foreign Policy for Canadians (1970), (a document in whose passages the editors find "Delphic obscurity",) where it is asserted that foreign policy is the "extension abroad of national policies," and thus has provided a fruitful ground for debate since its appearance. Whether there has in fact been a change in Canada's foreign policy objectives and means of pursuing them dominated the First Annual Meeting of the Canadian Council on International Law in October 1972, and has been discussed elsewhere. Obviously, it will continue to be debated for some time to come.

The authors' implied criticism of the function assigned to international lawyers in External Affairs should not be allowed to pass without comment. They are, it is suggested, being unduly utopian in expecting the brunt of the responsibility for ensuring that international law becomes a major consideration in foreign policy formulation to rest with international lawyers in government. Surely Ambassador Beesley is correct in describing the relationship of the government international lawyer to the government as basically one of "solicitor-client." To advocate a broader function for the government international lawyer is to require of him more than that expected of his counterpart in the private practice of law, whose function might well be described as safeguarding his client's interests as they are affected by law. The municipal lawyer,

it is true, ensures that his clients' affairs are conducted in accordance with the law, although the distinction between what is legally permissible and what is legally impermissible is not as clear-cut under international law as under municipal law. Also, the role of the legal adviser to a government is in some ways different from that of the municipal lawyer, for, as Ambassador Beesley points out, the government international lawyer's function is a dynamic one involving him both in the identification of existing rules and in participating in the process of change and development of international law. One need not agree with every method by which governments attempt to change existing law in order to recognize the particular function that the legal adviser must play for his government.

Moreover, the editors' comments about the role of the international legal adviser might tend to shift undesirably the focus of responsibility for ensuring that government policies are weighed in the light of international law considerations. It might be argued that an equal responsibility rests with the community of international lawyers within the country. Through a constant identification of appropriate rules for international conduct, and an evaluation of them in the light of particular problems, international lawyers can ensure that their government's foreign policies are assessed publicly against relevant international law constraints. In this respect the work of international lawyers in Canada appears deficient. One does not find in the literature a regular practice by Canadian international lawyers of subjecting their government's policies to detailed analysis and criticism as, for example, one finds amongs a number of international lawyers in the United States. A particularly significant example is the lack of reaction by international lawyers to the recent reservation by the Canadian government to its acceptance of the jurisdiction of the International Court of Justice. Canadian Perspectives on International Law is no exception in this regard. Professor Yogis ("Canadian Fisheries and International Law") simply describes the government's action as "regrettable " (p. 405). Professor Cohen suggests that the action "may vaguely be defended in the face of the ambiguities with respect to present rules " (p. 10), and even Wolfgang Friedmann ("Canada and the International Legal Order: An Outside Perspective,") who does go as far as to say that Canada has "joined the general race for an

extension of national controls and a further reduction of the already lamentably weak sphere of international legal and administrative controls," states that there were "extenuating circumstances " (p. 51). With a few exceptions the reaction of international lawyers in Canada to the reservation to the Court's jurisdiction has been similarly reticent. The point is that the issue should have been debated openly with arguments both for and against the action openly expressed.

There is, then, a vital function yet to be performed by international lawyers in Canada in providing a continued evaluation and criticism of strategies and policies of their government in the light of existing international law and future directions in which that law is likely to move. Ideally such reflection should take place prospectively in order to benefit both government decision-makers and international lawyers within and outside government. The editors of Canadian Perspectives suggest that a special research unit "with wide-ranging responsibilities for identification, clarification, and analysis of problems of long-range interest to Canada" (p. 951), be set up. However, they propose that such a unit be established within the Department of External Affairs, whereas it might be argued that freedom from any hint of a lack of independence is a consideration important enough to justify placing the unit outside government. In the ultimate event the value of the unit, which of course would have to be interdisciplinary in scope, would depend upon the quality of its work and its ability to command the attention and respect of foreign policy-analysts and international lawyers, both within and outside government. One of the valuable contributions of Canadian Perspectives on International Law is that issues of this kind have now been squarely raised and can be discussed fully.

PART 2: FOREIGN POLICY AND THE LAW OF THE SEA

Introductory Note

This part of the course is primarily concerned with the group of issues relating to the nature and extent of a coastal state's maritime jurisdiction, which have pre-occupied the United Nations' Third Law of the Sea Conference. Questions unrelated to the claims of coastal states have, at least relatively, been treated as secondary by the Conference. Because Canada has been a leading participant in the protracted attempts to resolve the immensely important problems on the conference agenda, the relationship between international law and Canadian foreign policy on these matters is a topic of legitimate world concern.

Although these issues are so closely related as to make separate treatment extremely difficult, there is one sub-topic that can be considered apart from the main group without doing extreme violence to logical arrangement. This sub-topic, "Special Problems of Canada's Arctic Jurisdiction", has been dealt with in Section A, while the general problem, "Canada's Pursuit of Offshore Jurisdiction at the Caracas Conference," is in Section B. The need to keep materials within reasonable limits has restricted the selection to a small fraction of what might legitimately have been included. Particularly in Section B, there is a heavy emphasis on survey articles covering the major issues succinctly from various national viewpoints. Additional reading suggestions are given at the end of the two sections.

SECTION A: Special Problems of Canada's Arctic Jurisdiction

[The text below is taken from THE INTERNATIONAL LAW OF POLLUTION (Barros and Johnston edn; 1974) at page 262]

AN ACT TO PREVENT POLLUTION OF AREAS OF THE ARCTIC WATERS ADJACENT TO THE MAINLAND AND ISLANDS OF THE CANADIAN ARCTIC (1970)

Came into effect on August 2, 1972.

Whereas Parliament recognizes that recent developments in relation to the exploitation of the natural resources of arctic areas, including the natural resources of the Canadian arctic, and the transportation of those resources to the markets of the world are of potentially great significance to international trade and commerce and to the economy of Canada in particular;

And whereas Parliament at the same time recognizes and is determined to fulfil its obligation to see that the natural resources of the Canadian arctic are developed and exploited and the arctic waters adjacent to the mainland and islands of the Canadian arctic are navigated only in a manner that takes cognizance of Canada's responsibility for the welfare of the Eskimo and other inhabitants of the Canadian arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian arctic;

Now therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: