INTERNATIONAL ECONOMIC RELATIONS

Instructor: John Quinn

Weight: 2 credits

Prerequisites: None

Method of Instruction: Discussion and Lecture

Method of Assessment: Paper

~~This~~ a course is designed to survey the legal rules and procedures that shape international trade and investment. This goal requires an integrated analysis of both international and national regulatory laws and institutions and, to a much lesser extent, the transmission of some basic knowledge about the private law of international business transactions. ~~Students who have not taken the private law course will be assigned appropriate introductory materials; the private law content of this course will be negligible.~~ The course will focus on the public regulation, both international and domestic, of the import-export trade and foreign direct and indirect investment. At the international level, the course ~~will be~~ is concerned primarily with the rules and jurisprudence of the General Agreement on Tariffs and Trade (GATT), and with certain ancillary or allied agreements and institutions. The national regulatory laws discussed ~~in the course will be~~ and selected from the laws of Canada, the EEC, Japan and the U.S. The laws of Canada and the United States ~~will be~~ and analyzed in somewhat more depth and detail than those of the other two jurisdictions.

The following specific topics will receive detailed coverage: (1) the institutional structure and decision-making processes of the GATT; (2) the "most-favoured nation" principle and economic discrimination; (3) tariff and non-tariff barriers to imports and exports; (4) unfair trading practices; (5) safeguard protection and adjustment to foreign competition; (6) trade between developed and developing economies; and (7) direct and indirect controls on various forms of transnational investment.

Introduction:

This essay is an exploration, an overflight, a series of trial contacts, a limited inquiry. Hopefully it will assist others in finding new paths to the horizon of a general history of the subject. I wish to explore the potential, the richness of our past, to see what the roots and origins of our traditions may be. The past is never neutral: the way the past is understood affects our thinking about the future.

Materials Used

There are no references to the Spanish literature of international law at all, not even to the Spanish classics. Nor is there resort to the Mexican or Latin American legal literature. A few of the writings and statements of Latin American experts are known and read, such as those of Castaneda and Robles of Mexico, but these materials are usually acquir ed through United Nations sources and are studied in English.

There are very few Russian materials used by Canadian professors and students. Tunkin's text book, in Butler's translation, is on several reading lists, as are a few of his articles in English,such as his essay in the California Law Review on customary international law. Soviet material on the law of the sea is followed closely, in English, and the Soviet Yearbook is sometimes referred to. Canadian international lawyers have few contacts with their Russian academic colleagues. No meetings have been held and, unfortunately, there are only one or two Canadian international lawyers who speak Russian. The names of the younger Russian scholars are known, but there is no contact and Soviet thinking is not influential in Canadian law schools.

As far as European literature is concerned, most of the material used by Canadian professors and students, to the extent that it is used at all, is British, French, German, and Dutch. There is occasional reference to some of the voluminous

materials from Italy, Austria, and Greece, such as the books by Sereni, Quadne, and Ago, and a few of the articles from Vienna and Thessolonikia, but, in the main, and apart from France, references are to British text books and articles and to the English language articles from Germany, The Netherlands, and the Scandinavian countries. In this connection, special mention should be made of the German Yearbook of International Law, the Encyclopedia of the Max Planck Institute, the several publications from Holland, and (still useful) the Manual edited by the late Max Sorenson. Generally speaking, however, there is no Italian, German or Dutch "influence" as such, in Canadian law schools.

In the four lae schools of Quebec (McGill, Montreal, Laval, Sherbrooke), in the civil law section of the University of Ottawa, and at the lae school at Moncton, New Brunswick, the great French text books, reviews and periodicals are in constant use. Rousseau, Reuter, Virally, to name only three. The Annuaire Francaise and the Revue Generale are read regularly and regarded as very influential. Articles from Belgium, especially in the Revue Belge, are also studied and appreciated.

In English speaking Canada, the dominant outside influences continue to come from Britain and the United States, with some attention being paid to Australian case books and text books, such as Guleg. The preferred English texts are Lauterpacht, Schwarzerberger, Brownlie, Bowett, Akehurst. The American materials include: Henkin's case book, Bishop,

MacDougal and Reisman, etc. etc. The American Journal is in constant use as is I.L.M.

In brief, the major intellectual influences come from the United States, Britain, and France, in that order. In contrast to an earlier period of Canadian history, intellectual links with Europe are especially strong, except of course with France. In this connection, it should be emphasized that Canada is extremely fortunate to have a vigorous French intellectual tradition enriching the Canadian legal scene.

Of course, there are Canadian materials: Castel's case book, now in its fourth edition; the Queen's course book, which is used in four or five schools; L.G. Green's International Law Through the Cases; the U.B.C. casebook by C.B. Bourne; casebooks on international economic law and commercial transactions at Osgoode Hall and at McGill; a three volume French language casebook used at the University of Montreal and at Laval. Many professors have their own collections of materials (Vlasic at McGill), and there are specialist collections on air law, and the law of the sea. Currently an important new case book is proposed by Kindred.

There are Canadian collections of essays, such as Canadian Perspectives on international law, and in the published proce edings of the CCIL; many comments in the university law journals and in the documents section of the Canadian Yearbook.

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I. INTRODUCTION

Most scholarship in international law and organization tends to be reactive in origin. That is, it is usually designed more or less consciously as a response, or reaction, to contempary events outside the observer. Moreover, the events to which most international lawyers tend to react are almost always political events, rather than (say) historical trends or social problems.

This reactive tendency in international lawyers is due in large part to the nature of legal training and the purposes of the legal profession. All lawyers are trained to deal with an issue which has emerged (or re-emerged) from a new fact situation of immediate concern to society at large. The reactive approach of most international lawyers is especially understandable when they are engaged to serve a client's interest: in government service, in corporate practice, or in the employment of international organizations. International law (and I.O.) specialists in these three categories are required to respond to instructions which are the direct result of a political event, and usually the terms of reference leave little scope for choice except at the tactical level.

The same tendency is found in academic international lawyers too, to some extent. This is understandable, since they belong to the same profession as their governmental counterparts, and it is also desirable to the extent that they

can provide alternative perspectives from the academic community. But the academic always has the luxury of choosing between working reactively and working in a different manner.

Non-reactive approaches might be lumped together and, at the risk of creating confusion, characterized as reflective. That is, the choice of subject-matter, the framework of inquiry, the method of research, and the focus of concern might all be the product of reflection, instead of a response to the practical need to maintain continuity of discourse in official documents and academic literature.

Because of his freedom of choice, the academic must accept the responsibility for neglected areas of research and scholarship in international law and organization. Presumably one of his obligations is to help compensate, through personal choice, for "distortions" or "obsessions" that arise in the literature as a consequence of political events and the obligations falling on non-academic international lawyers to react to them. Arguably, for example, academics at present should be especially sensitive to neglected areas in the field at a time when so many international lawyers are ~~becoming increasingly~~ involved in the law of the sea, even more so than they were in the immediate past with legal problems associated with the events of the Vietnam War. In the immediate future we can expect a similar preoccupation with legal aspects of the Middle East crisis, the energy crisis, and problems of environmental protection.

II. NON-REACTIVE APPROACHES

~~It is suggested, then, that~~ Our attempt to identify research priorities in Canada ~~should be~~ has been influenced, among other things, by dissatisfaction with the academic's tendency to be preoccupied unduly with the crisis of the moment. To escape the constraints imposed by this tendency, it is useful to consider four alternative types of non-reactive approaches to research and scholarship in the field of international law and organization: historical, reformist, predictive, and conceptualist.

A. Historical Research: Little effort has apparently been made in Canada to conduct historical research in international law. It would be possible to write a full-size book on the history of international law in Canada, if access could be secured to the files of External Affairs for this purpose. A monograph could be done on the Legal Advisor's role in Canadian foreign policy, and another on the history of international law teaching in Canadian law schools. Legal histories of the Arctic and of the Great Lakes would be of special interest to Canadians, as would a historical study of Canadian juridical initiatives in the United Nations.

B. Reformist Research: If Canadian legal histories might be regarded as too parochial or too difficult to complete on the present basis of historical experience, the same could not be said

of reformist studies. There is no reason why we should not undertake a systematic study of, say, the international law of state responsibility, leading perhaps to suggested reforms and draft articles for codification comparable with the Harvard Research Drafts of the 1930's. If this is too broad, the project might be confined to the elaboration of draft articles on state responsibility for environment damage, going beyond the recommendations of the U.N. (Stockholm) Conference on the Human Environment endorsed by the U.N. General Assembly in 1972. Alternatively, the reformist approach to a research program might suggest a project concerned with remedying deficiencies in existing international organs (e.g., U.N. Security Council), or with a critique of the program of a new agency (e.g., U.N. Environment Secretariat), or with a proposal for a new body (e.g., an international court of criminal justice.

One might wish to distinguish different kinds of "reformist" contributions to international law and organization. Some scholars have tended to concentrate on the elaboration of world organizational models which are designed explicitly as basic law reform proposals. The failure of these proposals to be accepted, or indeed to be seriously considered, by states or inter-state organizations, might be regarded by some scholars as sufficient reason for perservering with this kind of literature. Other international lawyers have been able to use the opportunities of an official appointment in order to

translate their personal reformist concern into an intergovernmental program of law reform. The outstanding recent example is Arvid Pardo, who personal intervention as the Maltese Ambassador to the United Nations led directly to the establishment of the U.N. Seabed Committee and to the convening of the Third U.N. Conference on the Law of the Sea. Other scholars, such as Myres McDougal and Harold Lasswell are refomrists in a different sense, setting their sights on the reformation of the craft itself. Within their innovative framework of analysis law reform is only one of several intellectual tasks to which they address themselves.

C. Predictive Research: The third route, by predictive studies, ma;y perhaps be the most challenging. Yet it is a legitimate function of all lawyers to identify changes that may challenge the existing legal order and to elaborate institutional means for adapting it to the management of foreseeable conflicts of interest. In this belief, a recent issue of the Canadian Bar Review, was devoted entirely to the future of law in the year 2000 A.D. The predictive role seems especially appropriate for international lawyers, confronted with the immense complexity of world community problems, greater than that of the problems in any single national society. A notable recent effort to outline the future of the international legal order was carried out under the editorship of Richard Falk and Cyril Black.

Presumably it would be worthwhile to consider several feasible types of projects on future legal problems which can be anticipated through the projection of present trends. For example, Canada as an "empty" country might be expected to have a special future interest in the legal aspects of a demand for "living space" by disastrously over-populated territories. Similarly,, a project on the law of the sea in 2000 A.D. would seem to be especially pertinent to future Canadian needs and interests. But no doubt any large-scale research proposal other than a purely historical project would, or should, have a predictive component.

D. Conceptualist Research: The conceptualist approach is the most difficult to characterize. In some countries, such as Germany, it may take the form of a Kantian quest for "pure" ideas without explicit concern for their immediate practical application in the world of action. The work of Hans Kelsen comes readily to mind, and it may be wondered if this kind of scholarship is in some sense alien to the North American academic mind. If not, it may be too idiosyncratic to lend itself to institutional "team" research.

Something of the Germanic tradition of systematic conceptualization is present in the policy science scholarship of Lasswell and McDougal, but it is so thickly overlaid with social science objectives and techniques that it stands or falls

as an intensely American contribution to the field of study. What is more relevant, policy science is too deeply imbued with political awareness to be classified as a purely conceptualist approach to international law and organization.

At the opposite pole, in terms of methodology, the orthodox "English" approach to international legal research reflects a profound interest in the logical capability of traditional legal concepts and inter-conceptual relationships. This kind of conceptualist scholarship attains virtual autonomy, sealing it off from other disciplines and making it as independent of political events as the practitioners wish to make it. At its best, this kind of milieu tends to produce a high rate of long-range scholarly insights. In common with other European approaches, the "tight" English conceptualist style means that the production of a "comprehensive" textbook on international law is still regarded as a feasible undertaking. But the English style may be no better suited to institutional research than the German.

III. CRITERIA FOR DETERMINING RESEARCH PRIORITIES

A. Intrinsic Criteria: In choosing among alternative research proposals, account must be taken of limiting factors which are intrinsic to Canada, and to the Canadian academic community in particular. Thre is no point here in labouring the obvious: most ~~members of the C.C.I.L.~~ scholars do not have ready access to

first-class library collections in the area of international law and organization; Canada has only recently developed a sizable fraternity of international lawyers; the substantial minority in government service have little opportunity for sustained research outside the terms of their employment; many of the majority in the academic community have to live with the suspicion that international law has a relatively low priority in the law school or political science department; and we all have to contend with the geographical facts of Canadian life, which often seem to conspire to reduce national programs to disparate regional efforts.

B. Extrinsic Criteria: Less obviously perhaps, there are also "extrinsic" criteria for determining research priorities, in the form of objectives which are ulterior to the mere production of scholarship.

1. Development of scholarly capability. One ulterior purpose of sponsoring institutional research might be to remedy some of the deficiencies in the scholarship produced by Canadian international lawyers. For example, most of us tend to pay undue attention to the English-language and French-language literature, although this does make up the larger part of total world writings in the field. In this way we neglect major contributions from a number of productive sources in countries such as West Germany, Italy, the Soviet Union, Japan, and

several Latin American states. An inventory of foreign language capability among C.C.I.L. members might suggest regions of the world where we could undertake a comparative research project.

2. Promotion of inter-cultural collaboration. Even without foreign language capability, all Canadian international lawyers are equipped to co-opeate in a joint research project with either anglophone or francophone international lawyers, or both. There would, therefore, be no language difficulty in cllaborating with colleagues in Africa, or many areas of Asia. A joint research project with international lawyers in other regions of the world might focus on an ambitious subject, such as the emergence of regional international law (e.g., Asian approaches to the law of the sea). Alternatively, the C.C.I.L. could undertake a joint research project on a comparative study of international law trends in selected ~~Commonwealth~~ countries (e.g., Kenya, Tanzania, Nigeria, India, Malaysia, Singapore, Australia,, New Zealand, and Canada) or a similar study in selected middle-size powers (e.g., Yugoslavia, Italy, Egypt, Nigeria, Brazil, Indonesia, Australia, and Canada). In studies of these kinds the work to be done would have to be shared among the academic international lawyers teaching in these countries, with occasional study report meetings for purposes of project coordination.

More boldly, the mutual benefits of inter-cultural collaboration might be sought through a teaching exchange

program or a teaching-and-research program. There is no better way of learning to appreciate different cultural perspectives on international law than by living, teaching and studying in a foreign country for an extended period. In this spirit, it might be tempting to explore the feasibility of a teaching-and-study program in China, a country whose future contributions to international law are a matter of enormous speculative interest throughout the world. This would no doubt be difficult to accomplish, but recent disclosures suggest it would be worth pursuing.

3. Promotion of inter-institutional cooperation. Obviously, however, it would be much easier, and more productive physically, to collaborate with an organization which already has considerable experience in sponsoring research projects. From this point of view, collaboration with The American Society of International Law would make the most sense, and there is of course no scarcity of topics of common interest between Canada and the United States. To a lesser extent, research cooperation with similar societies in the U.K., France, Australia, Italy, the Netherlands and other countries would also be fairly easy and productive. Yet it would perhaps be more interesting in some ways for the C.C.I.L. to establish research contacts with its counterparts in less familiar parts of the world, such as Nigeria, Egypt, Israel,, India, Japan, and the Philippines.

4. Promotion of inter-disciplinary research. Many subjects of interest in the larger field of international relations would require the collaboration of political scientists and international lawyers: for example, a study of the political foundations of law-making in the United Nations. Others might also require the participation of economists: for example, a project on the future of international commodity arrangements. Large-scale undertakings of this kind would almost certainly have a predictive component, and this aspect alone would necessitate interaction between disciplines. An example of this would be any large-scale program in the field of compliance inducement, where it would be necessary to anticipate new alignments in international politics and to consider probable changes in the effectiveness of alternative sanctions (in the light of fuel crisis projections, for example).

Some topics might be suggested which are inter-disciplinary in scope but could be researched fully without resort to other disciplines by international lawyers committed to a comprehensive framework of analysis. A research program in problems of law-making in the world community could be undertaken solely by international lawyers, if the approach were sufficiently broad. It would no doubt be necessary to emphasize the predictive function involved in such a program: the prediction of the future inputs of particular countries, especially in the developing world; of the future of diplomatic

law-making conferences and of the International Law Commission; of the emerging status of "law-making" resolutions of political organs of the United Nations; and so on.

5. Self-discovery. One result of certain kinds of research, such as inter-cultural and interdisciplinary, might be that we would learn something about ourselves, our craft or profession. Are international lawyers, in Canada and elsewhere, more "idealistic" or "altruistic" than other lawyers? Are government international lawyers more "cynical" about the uses of international law than their academic colleagues? Or is this kind of cynicism a product of the culture? If so, what variations exist today in different cultures? If a common legal tradition and training do not erase individual differences of attitude among international lawyers, what are the influences of heredity and environment?

Postgraduate studies often tend to be an index of qualitative achievement in any university or field. In Canadian legal education postgraduate research and teaching have emerged rather cautiously but the number of students and faculties offering such opportunities are increasing steadily. It has been evident for some time that Canada provided unique opportunities for the study of comparative law since the common law and Franco-civilian systems lived in a mutually fruitful co-existence, particularly in Quebec, but with the civil law also influencing certain common law provinces and their doctrinal developments. Courses in comparative law (and the civil law) are now given in several law schools in the common law provinces and common law courses in Quebec. Postgraduate studies generally are offered at almost all law faculties. At McGill, an Institute of Comparative Law began to operate in 1966-67, while already well-developed postgraduate studies existed there in the operations of the Institute of Air and Space Law where since 1950 many comparative law problems were examined in the

context of international air law, public and private. At the University of Montreal an Institute of Public Law has been in operation for several years; and at Toronto an Institute of Criminal Law and Criminology.

Perhaps the most significant features to be found in the changing spirit and structure of legal studies in Canada are those that have to do with the assertion of full intellectual autonomy by the law faculties in relation to the bar (with some 1973-74 less satisfying developments in Quebec toward greater Bar control of courses taught) and the serious effort to bring law and the behavioural sciences into cooperative exercises for their mutual benefit without losing any of the essential training objectives for the legal profession. Legal education in Canada has had to press harder and longer for this autonomy, and for a recognition of the intellectual as well as the professional status of university law studies, than has been the case in the United States. With these difficulties now overcome the next period of law faculty development doubtless will be devoted to a qualitative improvement in teaching materials, libraries, post-graduate studies, "clinical" opportunities and course experiments in substance and method, and in the general productivity of Canadian scholars. The doctrinal or sociologically oriented contribution of Canadian legal scholarship tends to be reasonably developed on the public law side but until recently it was somewhat more modest in private law, to say nothing of such areas as jurisprudence and legal history. It is evident that with the rise of a large and increasingly

confident generation of law teachers, with improved libraries and more balanced teaching loads, there now will be opportunities for the law schools to become factors of significance both for the legal profession and for social studies as a whole. All of these aspects are underscored by the rise of provincial law reform commissions with their heavy emphasis on research in private law and their expanding use of law teachers for the purpose. Perhaps also for the first time in modern Canadian university policy it is beginning to be evident that legal studies are being given some reasonable allocation of resources in contrast to an earlier period when, on the whole, a kind of deprived status seemed to be the fate of many law faculties in contrast with resources allocated to medicine, agriculture, engineering, etc.

The challenges of the new federalism; the opportunities of the natural laboratory of comparative law provided by the presence of the civil and common law, the two great legal systems of the modern world; the rise of cadres of able young men devoting themselves to careers in law teaching, research and scholarship; the more open search for a creative balance betwen law as a professional study and as an active member of the behavioural sciences family; the recognition by the bar and the public of law schools as responsible not only for professional training but for a liberal education in the legal order, for much of law reform research as well as for the progressive and scientific development of law; all of these, now undersritten by new resources, are likely to continue to stimulate the upward surge in legal scholarship in Canada.

MAXWELL COHEN

When Canadians were engaged in shaping postwar international institutions, the role of international law did not seem to be a major preoccupation. Canada certainly wanted an international court, preferably the old court continued, and there was much talk about 'the world rule of law'. It was conventional thinking, ~~nevertheless~~. The officials concerned were not so naive as to cling to that illusion of earlier years of the century: that all disputes could be settled by legal conclusion. ~~But~~ there were other illusions. There was a hankering after objectivity and even automaticity in the process of peace maintenance. Economics, it was hoped, could be kept free of politics. International law and the courts were seen largely as things to be appealed to. The whole subject was dealt with apart from the main economic, social, and political issues. It was largely the concern ~~in Ottawa~~ of the legal adviser, John Read, who became an excellent judge of the first ICJ, but was not regarded as an activist. It was, of course, recognized that international law would not remain static, but there was only a faint comprehension of what that was going to mean, namely, that the devising of new law would prove to be what the United Nations was mainly about.

At the present time, international law is the ~~aspect of the United Nations and the~~ centre of Canadian policy and the area in which Canadians have excelled, ~~of late~~. The Canadian contribution to the law of outer space, the sea, and the dry land is ~~every~~ thought to be ~~bit~~ as significant as Canada's contributions to world order

of a more spectacular kind (such as peace keeping) in the 50s. Why the difference? It was less a change of mind, a shifting of priorities, than a gradual evolution of Canada's conception of world order and of the true function of the UN. There has been a profound broadening of our idea of what international law is. It is much less a professional affair of the lawyers and much more the concern of those working on every committee of the UN General Assembly and every agency within the system. The central purpose of the system is now (seem to be) the progressive definition of rules and regulations to ensure that we do not kill ourselves off by disease, famine, storm or drang.

The change in the world balance forced Canada to think more in terms of building than defending world order, ~~and Canadians have been good at this~~. As a large and vulnerable country, a country dependent on a stable world, Canada increasingly ~~realized its own strong vested interests~~ (came to recognize that its own) (were best protected) in widely accepted regulation, ~~even to protect us from benignly overbearing neighbours~~. Our historic condition, which is ambiguous, gave us from the beginning some insight into the plight of both the weak and the strong. This happy ambivalence may be illustrated ~~by~~ by the Canadian contribution (from rich experience) to the effort at formulating rules for multinational corporations.

From the early days of the formative period, Canada adopted ~~the~~ a functional approach (to set laws and relations). As early as 1944, Mr. Pearson rejected the idea of imposing a global order from above in favour of 'calling special conferences to deal with special

subjects; working from the ground up, going from the specific to the general. In this tradition, Canada perceived the law of the sea conference 'not really as a confernece in the traditional sense but rather a law reform movement'. ~~The conference process, and the pressure cooker effect of intensive international negotiation, have contributed to a remarkable transformation of traditional and outmoded rules of international law... Canada has every reason to be conscious of the orderly nature of this transformation.~~

The Arctic waters Pollution Prevention Act was a climactic step - and in the right direction. It was certainly a bolder tactic than we had used previously in the realm of international law, though no bolder than Canadian actions in other fields on the admission of new members to the UN in 1955, ~~for example~~. The change was in tactics, In the philosophical approach there was continuity. The ~~AWPPA~~ was a classic example of functionalism in practice, extending the law to do that which was necessary and no more - the rejection of Utopian universalism in favour of the lapidary tack.

The heart of functionalism was the desire for orderly transformation. Canada said this sort of thing in the 1940's, ~~forties~~, when it stressed the need for economic and social bodies that would be equal in status to the Security Council. However, Canadian officials did not at the time see the extent to which those bodies would be drafting new conditions, new understandings, and agreements. After reviewing the years of the creation, one of Canada's leading students has concluded that our

most important contribution to the UN was made not at San Francisco but at Chicago, where Canada supplied the theoretical basis (the four freedoms) for a new law of the air, and at Bretton Woods, where Canada contributed beyond its status to the new monetary regime. However, that sort of thing was not so readily thought of as international law at the time.

Interestingly, prevailing opinion in Ottawa at the end of the war was sceptical about the role of the UN in human rights. It was not that officials were unconcerned, but they foresaw the conflicts and frustrations involved in getting any consensus on human rights from states with such conflicting views on the subject. Their predictions were justified, but they could not foresee the irresistible public pressure from our own Western publics and from spokesmen of new members, to try to do something, even if little was actually accomplished.

Canada was beguiled, of course, and understandably so, by the hope of a world body that would impose the law on the recalcitrant. We underestimated the extent to which consensus could be found in the basic national interests of states. Since then, struggling for that consensus has been Canada's principal task in all facets of the UN. It is unfortunate that this redirection of our approach to world order is not yet grasped by the public or even by political leaders in Western countries. They are still under the spell of the dream of international law and justice imposed by an omnipotent UN. They are obsessed by the need for policing, and because they cling to that misconception that they regard the UN as a failure. It is not easy

to impress people with the extraordinary amount of world order building that has been accomplished by rules and laws. They take for granted, as acts of God, the rules of the air, the control of disease, the watch on the weather, not to mention the international telegraph. None of this seems as exciting as the war between Iran and Iraq, which has not yet been stopped by the Security Council.

The public tends to judge the UN by the failures of its bodies rather than their accomplishments. We should draw attention not just to the results, good or bad, but to the mechanisms. If the United Nations as such is to be blamed for the inability of its members in the Security Council or elsewhere to reach agreement, then it should be credited with this most heartening proof that multilateral diplomacy is possible, even in the age of superpowers and the balance of terror.

In conclusions I would like to draw your attention to the wise words of Leonard Woolf, from whose book, International Government, published in 1916, are derived the Canadian perspectives on the United Nations, our own brand of functionalism. It remains, in my view, a much sounder approach than that to be found in more celebrated efforts to devise a world government for angels.

In recent years:

The law of the sea: this is an area, and always has been, of great interest to Canada. We are surrounded by oceans on three sides and for half of our southern border by the St. Lawrence River system, including the Great Lakes. Our Arctic coast consists of an archipelago and just about every other feature of international maritime problems exists for Canada, including international straits and base-line problems. We have an expansive and rich continental shelf off our coasts, fishing is an important part of our economy, we live on trade and are concerned about pollution. I think that we would agree that every contemporary concern of international law of the sea affects Canada in some way, either as a trading state or coastal state.

No exposituon of Canada's concern for international law would be complete without a reference to transportation and communication. Because of the vastness of our land and the sparseness of our population, the ability to communicate over long distances is critical. We therefore took up the possibilities of satellite communication at an early stage and participated in the forming of the Interim International Communications Satellite Consortium. We were also deeply involved in drafting the definitive arrangements for the Satellite Communication organization, which is called INTELSAT. We have ourselves developed a domestic communication satellite system

We have always strongly supported the peaceful settlement of international disputes and have been prepared to submit such cases to the International Court and to arbitration and accept the consequences. I am thinking, for example, of the I'm Alone, in which a Candian ship by that name was sunk by a United States Coast Guard vessel after hot pursuit for having allegedly engaged in liquor smuggling. In that case, the Canadian claim for compensation was referred to Commissioners appointed under Convention provisions. The decision in this case has become a landmark in international law, especially as it relates to hot pursuit. In the Trail Smelter Case, we also agreed to a settlement by arbitration when a Canadian smelter was accused of having damated the atmosphere in the United States when discharges into the air were swept across the border. More recently, we submitted to the Gut Dam decision, the Gulf of Maine Case, and a case to GATT.

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(3)

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the International Court of to

→ the Gulf of Maine Case, and a case to GATT.

→ March 1972

Canada has historically played a constructive role in the maintenance and respect of international law, and in the strengthening of the role of the International Court of Justice. As regards ~~of~~ the exceptions Canada ~~has taken~~ took recently to the compulsory jurisdiction of the International Court of Justice with respect to questions relating to our 100-mile pollution zones in the Arctic, it might be thought that our devotion to the rule of law in the past was somewhat abstract and gratuitous some might say, cynical, and that when our national interest was involved directly, we quickly took refuge in the exceptions that other self-serving states have relied upon for a long time but that is not the case. Such an interpretation would involve a serious error in assessing the motives and the objectives of Canada. In the area of maritime jurisdiction and particularly in the area of the rights of a state to protect its national interest against destruction of its environment, the law is as yet hopelessly inadequate. It seemed to us, therefore, that it would not be sensible for any state, and this includes a state as devoted to the concept of universal international law as Canada, to go to the Court, when there is no way of having in advance, given the state of the rules, any clear indication of the possible directions those decisions will take. When it came to Canadian legislation relating to the Arctic pollution zones, we had entered into an area so uncertain, in which the law was so rudimentary, that a sovereign

state obliged to protect its national interest, could be expected to be reluctant to submit those interests to a more than usually unpredictable Court.

Let me remind you of the context in which Canadian legislation was introduced. It was at that time that we had just had an experience of an oil tanker breaking up, in winter conditions very similar to those conditions which exist in the Canadian Arctic throughout the year, off the east coast of Canada, and spilling oil, which soon became a menace to the ecology and virtually incapable of removal. What, we wondered, would happen if a similar case occurred in the Arctic where there would be no summer whose warmth would melt the ice and permit the sea and time to wash the land clean. At precisely the same time, oil was discovered on the North Slope of Alaska, and Humble Oil conceived of the idea of sending tankers through the Northwest Passage to carry oil away from the oil fields. The nightmare of possibilities did not allow us the luxury of time. It is no secret that, prior to the introduction of our legislation, we consulted with the governments of a number of countries, including that of the United States, in order to assess the likelihood of arriving at an early international agreement. Our appreciation of the situation was that this was not possible. Therefore, after making certain that early international agreement was unlikely, we acted unilaterally in a situation where it seemed to us time was of the essence and inaction could result in irreparable harm. ~~Now it is commonly~~

In contrast to this episode concerning the Arctic pollution zone legislation, any true appreciation of the Canadian role in international law must be seen in a much broader context. If we can look at this together I think you will be able to better appreciate how we came by our reputation as stolid supporters of the rule of international law.

In the field of environmental protection, Canada played an important role at Stockholm in 1972, and in other multilateral arenas. It has also continued to seek bilateral international solutions with the United States, solutions which will solve our local problems, which may also be effective regional models to be applied elsewhere and which may someday be the basis for comprehensive world solutions to more universal problems. The most pressing area for solution lies in the Great Lakes. The greatest concentration of industrial and human growth, with its necessary wastes, is concentrated, in both Canada and the United States, on the Great Lakes. As a result, an unprecedented amount of human and industrial easte is daily discharged into the Lakes and their related river system. At least one lake is dead and the others are dying, very quickly. Action is urgently needed. And Canadian and United States negotiators are working literally around the clock to reach a comprehensive agreement on the control of discharges into the Lakes and on the measures that must be taken to clean out the Lakes. The task will be enormous and reaching international agreement is difficult, especially since large sums of money will be involved in cleaning the Lakes, and since there are vested private and public interests whose economies are based on patterns of waste dispotal which they will have to abandon. But the problem cries out for international solution.

[Put this on a separate page]

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(5) [illegible]

By what yardstick do we assess the strength of the academic community of international lawyers in Canada, or in any other country for that matter? What kind of information do we require in order to evaluate the adequacy of a country's academic community? The following items would be relevant.

The number of full-time academic international lawyers; their training and background; the quality and volume of published research in the field of international law; the number of law faculties in the country; the number and quality of periodicals dealing specifically with international law; library and other research facilities in the field of international law; availability of the latest information and its accessibility to scholars; the position of international law in the law school curriculum, i.e., whether the subject is compulsory or not; the number of international law courses in the undergraduate and the graduate programmes; the extent of academic participation in government and UN activities, e.g. as consultants; the position of international lawyers in the law school, at the Bar, and in the country at large; their impact on government politics and their availabiity to influence public opinion within their communities; the existence and activities of professional organizations, such as national societies of international law.

2. Other kind of information required

1. availability of employment for students specializing in international law (law firms, Sohn.

3. Criteria by which to measure the quality of the academic community of international lawyers in a particular country

1. Scholarly writings of general, not parochial character. (Sohn)
2. Producing students who are a ble to participate constructi[illegible]ally in int_ernational negotiations, both public and private. (Sohn)
3. Independenc e of thought and scholarly achievement, including concentration on basic subjects. (Skaby)
4. producing [illegible] national history pertinent to [illegible] PIL, such as (on) boundaries, nationality, etc. (Bade)
5. mostly by their publications (Teddy)
6. Good academic faciltiies and (environment) ~~eminent~~ not enough: there must also be avenues available in which the skills, expertise and value of int. legal ~~describes~~ disciplines can be brought to bear, ie the extent to which they bring their expertise to bear on officials and policy makers.
7. the existence of a (perhaps several) substitute international law publications (Eli: see himP
8. a strong and active institution (CCIL.): Eli
9. a mix of generalists and specialists.

Apart from the usual responsibilities generally accepted by and for all academics, namely, teaching, research, administration, and community service, is it possible to identify other responsibilities that are particularly appropriate for adademic international lawyers? The answers are as follows:

1. compiling the state practice and the judicial and administrative pronouncements of their own country;
2. compiling the foreign relations law of their own country;
3. identifying and interpreting international law developments to colleagues outside as well as inside the university ;
4. contributing to the development of the international legal literature on current problems of international law;
5. making their national literature on international law known and available to scholars and officials outside the country;
6. participating in organizations like the I.L.A. and UN Association;
7. serving with national delegations, if asked to do so.

April 15
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Notes to work :

1. Other responsibilities :

N.B

1. Establishing centre of study at level of sufficiently high quality to attract students, esp from developing countries. (Soka)

Use

2. Contributing to an understanding of the role of int. law by the media and general public within their country.

Postgraduate study

Although graduate programmes originated in Canada as early as 1903, when Toronto started to offer an LL.M. degree (doctorate added in 1947), followed by Dalhousie in 1946 (doctorate added in 1980), McGill's Air and Space Law Institute in 1951 (both master's and doctorate), Ottawa in 1957 and Laval in 1959 (offering a diplome d'etudes supérieures), it was not until the 1960s that most programmes were established.

Prior to 1960, enrolments were low, usually with only one or two students each year, frequently with no enrolments at all. An exception was McGill's Air and Space Law Institute which from its inception usually had over ten students a year. Bewtween 1960 and 1970 this pattern continued in the common law schools,but in civil law schools enrolments were usually higher with a large proportion being part-time students.

It is apparent from the figures referred to in the footnotes that t here was a signifcant expansion of graduate programme across Canada. In the common law schoos, U.B.C., Toronto, Osgoode, Queen's and Dalhousie developed notably. Alberta, curiously, remains static. In the civil law schools, where the graduate programmes are much larger, the majority of students are part-time. In a review of their programmes for 1982 Ottawa university dec ided to encounter more full time students in the future.

Although most schools are unrestricted as to subjects which can be pursued, several schools have developed areas of specialization. At U. B.C. most students are attracted to corporate, tax, environmental, and family law; at Alberta the emphasis is on oil and gas, tax and commercial law, health and tort law; Toronto is concentrating on international business transactions, tax, corporations, and constitutional law; at Osgoode, labour law, criminal law, environmental law, and land use planning, and company law. The McGill Air and Space Institute pffers specialist courses in air and space law but includes compulsory courses in private and public international law. The McGill Comparative Law Institute offers civil law, international commercial law, comparative private international law, and, recently, medical law. At Queen's the concentration is on international, labour, criminal constitutional,administrative, and tax law. At Ottawa: commercial, labour, and criminal law. Laval, economic law which includes corporation, tax, commercial and international economic law, administrative, aabour and civil law; and Dalhousie, marine and environmental, international, labour, tax and family law.

Schools which maintain statistics on the number of students enrolled for particular subjects indicate that the study of public international law does not play a prominent part in Canadian graduate studies. Dalhousie, Ottawa, and Queen's generally have one third of their students undertaking

studies in this or a related field. University of British Columbia, Alberta and Osgoode usually average one student a year, while Toronto has two or rhree annually. The majority of these students are Canadian citizens, although the statistics on this point are vague and open to inaccuracy.

Few schools envisage any change in the imemdiate future. Of those that do, Dalhousie has initiated a J.S.D. programme offering instruction in marine, environmental, and comparative law. A part-time, two year LL.M. , designed to assist members of the bar to specialize, was added in

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One indication of the status of graduate programmes is the interest and qualify of the applicants. It is thus satisfying to record that there has been a significant increase in the number and quality of applications over the past several years. However, there is a long way to go before it can be said that graduate work in international law is flourishing in Canada.

Footnotes

1. Osgoode (LL.M., D. Jur., post-graduate diploma) and Montreal (master's and doctorate) in 1961, University of British Columbia (LL.M.) 1962, McGill's Comparative Law Institute (master's and doctorate) 1965, Alberta 1967, Laval (LL.M.) 1968, Queen's 1969 and Ottawa (LL.M.) 1970

2. At the start of the 1970's enrolments across Canada stood at the following: UBC: 2 students (LL.M.); Alberta: 6 students (LL.M.); Toronto: 8 students (6 LL.M, 2 doctorate); Osgoode: 14 students (LL.M.); Queens: 4 students (LL.M.); Ottawa: 40 students (27 LL.M., 13 doctorate); McGill Air and Space Law Institute: 24 students (22 LL.M., 2 doctorate); McGill Comparative Law Institute: figures not available; Montreal : 1972 figures, 19 students (18 LL.m., 1 doctorate) ; Laval: 35 students (LL.M.; Dalhousie: 1 students (LL.M.). In 1980 the figures were as follows: UBC: 12 students (LL.M.); Alberta: 2 students (LL.M.); Toronto: 32 students (23 LL.M., 9 doctorate); Osgoode: 18 students (16 LL.M., 2 doctorate); Queens: 8 students (LL.M.); Ottawa: 79 students (76 LL.M., 3 doctorate); McGill Air and Space Law Institute: 43 students (35 LL.M. , 8 doctorate); McGill Comparative Law Institute: 54 students (44 LL.M., 10 doctorate) Montreal: 117 students (114 LL.M., 3 doctorate); Laval: 103 students (90 LL.M., 13 doctorate); and Dalhousie: 10 Students (LL.M.)

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~~In 1981, a questionnaire, circulated to ten Canadian law schools, sought to ascertain the history and extent of post-graduate study in law in Canada, particularly in the area of public international law.~~

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Library and Research Resources

The opinions expressed in this section are based on two questionnaires completed in 1980-81: one, by twenty-seven professors of international law representing fifteen Canadian law schools, the other, by the chief librarians of the country's eighteen law school libraries.

Canadian law librarians consider that prior to the 1960's law library holdings in public international law and international relations were inadequate to meet the needs of both basic teaching and research. However, in the early seventies, significant efforts were made to increase monograph and periodical collections. Those efforts brought collections up to an 'adequate-to-good' standard for undergraduate teaching purposes. In the period 1975-1980, economic conditions, particularly inflation and devaluation of the Canadian dollar, necessitated the introduction of various restraints on acquisitions policies across the country. These restraints did not affect international law collections specifically, although some schools were forced to make cuts in periodical subscriptions; however, financial restraints did affect expansion programmes in general, of which international law was one.

The unanimous opinion of the professors was that, by 1980, public international law collections were adequate-to-very good

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for meeting their requirements of classroom preparation, the needs of undergraduate students, and the needs of the legal community in their geographical areas. Generally, these views were endorsed by the librarians.

However, when it came to a question of the adequacy of collections for professorial research and the needs of graduate students, a divergent pattern emerged. In these categories, the majority opinion of professors was that the collections were 'adequate-to-good'. One quarter of those surveyed reported that ~~they~~ their institutions had 'inadequate' facilities; nevertheless, of this quarter, only three said that their work had suffered 'considerably' due to lack of library resources. The most serious short-comings seemed to exist at the universities of Saskatchewan, ~~Alberta~~, Manitoba, New Brunswick and Ottawa, although the latter school ~~has the opportunity to consult~~ enjoys access to government libraries in its vicinity. Dalhousie, Osgoode and McGill received consistently high ratings. Of the four law schools not represented in the questionnaire to professors, Calgary (understandably) had a minimal international law collection, accounted for by the fact that it only started teaching international law in 1980. Victoria had a policy of providing coverage for basic introductory courses, preferring not to duplicate facilities offered at the University of British Columbia. The Toronto librarian recorded an insufficient collection to support research, and the University of Montreal

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had a medium size collection. It is surely of ~~may be of some~~ concern to note that in the Canada of 1980 only two professors believed that facilities in their libraries for personal research were 'very good'.

Many schools had developed areas of special interest. Professors questioned gave the following examples as particular areas of interest which their respective library had developed: Dalhousie for law of the sea, human rights, environmental, comparative, and general international; Laval for business law; Sherbrooke for international organizations and international business law; McGill for air and space, public international, law of the sea, and environmental; Carlton for international organizations and East European law; Osgoode for business, human rights, E.E.C., marine, and general international; University of Western Ontario for international organizations and international economic law generally; Queen's for general international, law of the sea, international economic law, and human rights; Windsor for general international, marine, human rights, and tribunals and arbitration; Alberta for business law and American perspectives on international law; and, the University of British Columbia for law of the sea, water resources, and general international. In terms of monograph title holdings, only Dalhousie, Toronto, Osgoode and Queen's hold over four thousand titles. University of New Brunswick, Ottawa and Calgary hold less than five hundred.

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The majority of acquisitions were either in the French or English language. McGill University acquired air and space law material in languages other than English, and the University of British Columbia acquired a minimal amount of Japanese material. However, most libraries had determined as a matter of policy, perhaps sensibly, that foreign language material should not be acquired because of limited demand by users. Fifteen librarians admitted that their foreign language collections were inadequate but believed that inter-library loan was the best way to overcome this problem. Most of the professors surveyed were conversant with and used French and English materials, but a number, particularly in Western Canada, complained about lack of access to non-English publications. Other languages most frequently mentioned, but to a far lesser extent, were German, Spanish, Dutch, Russian, and Italian.

The librarians reported that, apart from the Law School in Manitoba, major documents of international organizations within the United Nations system have become available in all universities across Canada, although, in some instances, the collection was not housed in the law school library. Professors at Dalhousie and at the University of New Brunswick experienced problems in acquiring U.N. documents, and several professors in other schools relied on personal connections to acquire such material.

Documents from international organizations other than the United Nations were not as readily available. Nine professors

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reported the position on the availability of documentation of international organizations as 'inadequate', while the majority stated that it was 'adequate to good'. Delay in acquiring recently published material was cited as a reoccurring problem both by professors and librarians.

All libraries offered inter-library loan services, but, interestingly, only rare-to-occasional use was made of this service for requests in international law. A small number of libraries provided special services for researchers in international law. For example, the University of British Columbia provided a monthly computer printout of ocean publications; Carlton provided computer services and a research librarian; McGill has a special librarian, and Sherbrooke a detailed catalogue by subject matter; Dalhousie provided bibliographic research and computer assistance.

All but one librarian reported close professional associations with teachers of international law and indicated that the teachers ~~latter~~ were aware of the strengths and weaknesses of the collection. The teachers involved themselves in selection and acquisition policies. Most professors held small monograph and document collections of their own, which reduced their dependence on library facilities, but these personal collections, while they helped to meet teaching obligations, were regarded as inadequate for serious research.

With regard to library resources and services, it is significant that professors identified no single obstacle as

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hampering their research, writing, and teaching responsibilities. Financial constraints on libraries generally, lack of documentation from international organizations, lack of French-language documentation in particular, difficulties associated with keeping up with the proliferation of materials, time delays in acquiring requested materials, lack of in-depth or synthetic writing in some areas, and heavy administrative loads, were commonly occurring difficulties referred to by many professors.

Looking to the future, most librarians naturally urged the lifting of budgetary restrictions which, by 1980, were affecting all major aspects of their operations. The librarians linked improvements in their international law collections to user damand: where demand was considerable, as it was, particularly for English language materials, in schools with a strong teacher component in international law, the collections tended to be continually upgraded. Most librarians expressed interest in the concept of co-ordinated development, but little indication was given as to what that would involve. Twenty-two of the twenty-seven professors agreed that a cross-country catalogue would be useful and that microfilm would be a useful aid to easier use of the materials.

As indicated, these surveys were based mainly on opinions expressed by professors and librarians working in the field of international law. The results probably contain more subjectivity than would be the case with factually-based surveys. Several

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comments were obviously based on intuition: for example, one professor believed that international law collections were becoming 'worse than they were'; one librarian believed that the greatest need was to provide librarian education in international law materials so that librarians would 'know how and what to get'. These comments illustrate the need to back intuition with hard data. However, it seems that [Canadian law schools] have not yet been able to establish a qualitative and quantitative baseline to evaluate progress in development of international law collections. Hopefully, these initial surveys will demonstrate the need and motivate the desire for more comprehensive work by a body with sufficient resources.

[A] The Canadian Yearbook now in its 25th year There are a fes specialized journals, such as the Journals of the Air and Space Law Institute, but no journals corresponding to those in many US universities. ~~international law reviews.~~

Dr. C .W. Witkor's splendid new bibliography of Canadian writings on international law deserves special attention.

2. Continuity

While it is undeniable that in some schools there has been an excessive turn - over of faculty, with the result that the teaching of international law has suffered, Canada has nevertheless suceeded in building up a permanent cadre of scholars (dedicated to the development of the subject) who have been uninterruptedly at work for many years. There are ten or more scholars who have been continually working in the area for twenty years or more. After a long, slow start, it can be said that Canada has established a relatively small but more or less permanent group of dedicated workers in the field. This is important because few real contributions can be made without a commitment to the subject over long periods of time. It must be admitted that in the last few years (since 1980) not many new people have come into the suhject. Question: how many international lawyers should a country of 25 million people have? Our establishment has grown as the country has grown (compare the situation in 1985 with the situation in 1945 or 1955), but the fact is that we still need more f,ll-time professors in the field, more members in the vineyard to hack fresh paths through the forest.

3. There has been a marked improvement in the quality as well as quantity of academic writing on international law, but there has been nothing in the universities to match the exciting contributions that Canada has made in conference diplomacy, notably at the conferences on the law of the sea. (Consult Taylor)

4. Areas of interest to ~~the writers and~~ teachers and writers.

What areas have people written on? Ask C.W.

Check Cyil, UTLJ. etc.

There has been great interest in the law of the sea (Dalhousie, Ottawa, UBC, MCGill). There has been a lot of interest in the development of the international law of human right s (Humphrey) Mr. Trude au's visits to Latin America and to China were not reflected in any visible interest or writing on either of these areas. There has been interest on maritime delimitations which led on to the Gulf of Maine Case, and on the Arctic (Pharand). Some interest on US-Canadian relations, e.g. the CBA-ABA dispute settlement proposal. On acid rain. On extratenuability.

5. Graduate Programmes

1. See Derek Mendes de Casta's report to Allan Sinclair: very useful.
2. Ask Douglas for his huge file on graduate studies
3. Ask Selgar
4. We are a little weak here: this area could and should be improved.

6. General conclusions

1. What are the main periods of "push"?

Probably the 1960s, McGill excepted.

2. We have progessed: there are more people involved; there are more of everything; our instutions have exhibitied a capacity to change, to adopt, to improve. We have good b uildings across the coun try. Our libraries have improved a lot. We do have a few leading centers: air and space at McGill; DOSP at Dalhousie; Canada-U.S. at Western Ontario; Japanese Studies at UBC

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We have a yearbook (an established one); a bibliography (C.W.'s); a basic course in every school; a Council (since 1972 an Academic in Residence; a cadre of full-time professors; some graduate programmes; legal periodicals (how many??) that include PIL; about 5-6 good casebooks; a branch of the I.L.A.; what we lack are textbook$.

3. How ~~very~~ fortunate we have been in the high calibre of those who have gone before us: Weldon, Lafleur, Corbett, MacKay, Humphrey: they laid the foundation for high standards and a believe in the cimportance in the subject.

4. The constant struggle to be outward looking, to get above and beyond the local, visitors from Asis, Africa, Europe and elsewhere often find North America a self-satisfied and inward looking society. In Canada we are struggling hard against the tendency. All in all, we have done reasonably well.

5. We are today in an interim period, be tween the end of one stage and the start of another. There may be some loss of dynamism, of the belief in progress, ~~of revolutionary necessity,~~ though I am not sure. ~~All that may have been lost to us, and without it we have nothing to fuel the movement forward.~~

6. The foundation of our Council has made an enormous difference, but a difference that could not have been made without the expansion and rejuvenation of law schools throughout Canada. A good deal has been done to pull the group together, but ~~I am not sorry and~~ we need to remember ~~how~~ unevenly and uncertainly intellectual life in Canada has developed.

1. Has international law in Canada any distinctive character? Probably not.

2. No distinctive philosophical movement has arisen among Canadian international lawyers and caught the scholarly imagination of the world. As I have been arguing, a national philosophy is not a philosophy common to all the philosophers of a nation but one prominent within a nation; and the community that fosters it, if any, need not therefore be one reflecting any state or any society as a whole. Nor need such unity as a n-tional philosophy has to be a self-conscious one, any more than members of what history deems to be an artistic movement need think of themselves as such. Such unity may become visible after the event, perhaps long after, in the perspective, or the distorting glass, of history or historians.

3. We whould not forget how unevenly and uncertainly intellectual life in this country has developed.

4. Canadians are surrounded by splendid material within their environment to inspire a re-thinking of such concepts as sovereignty, nation, nationhood, nationality, independence, equality: they have a fine opportunity to bring conceptual enlightenment to bear on the older and perhaps in appropriate models handed down from obsolete phases of social development.

5. Have Canadian international lawyers given enough attention to specifically Canadian issues?

See the Queen's Conference.

6. Canada:

a huge expanse of territority, small isolared towns and cities, regional dislocations and disparities, a still-pioneering population. The relation between population and resources (pp. 137÷138 of Breeval) . Population density per kilometer