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UNMET CHALLENGES OF INEQUALITY IN THE WORLD COMMUNITY *

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"[W]e are faced now with a frightful division of the world"¹

The eleven prior lectures in this series have been directed either to the interest of Justice Roberts in the need for justice and law in our domestic environment, or to his awareness of the menaces and opportunities facing all mankind on this small, blue-green-white planet. My classification shows seven lectures on the first major theme² and four on the second.³ It is appropriate that I attempt to deal with inequality

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¹ *The Rule of Law in the International Community*, address by Owen J. Roberts, Oxford University, Nov. 23, 1951, in *FREEDOM & UNION*, Jan. 1952, at 26.

² Devlin, *Law, Democracy, and Morality*, 110 U. PA. L. REV. 635 (1962); Frankfurter, *The Supreme Court in the Mirror of the Justices*, 105 U. PA. L. REV. 781 (1957); Freund, *New Vistas in Constitutional Law*, 112 U. PA. L. REV. 631 (1964); Goldberg, *Can We Afford Liberty?*, 117 U. PA. L. REV. 665 (1969); Goodhart, *The Rule of Law and Absolute Sovereignty*, 106 U. PA. L. REV. 943 (1958); Traynor, *The Unguarded Affairs of the Semikempt Mistress*, 113 U. PA. L. REV. 485 (1965); Wechsler, *Sentencing, Correction, and the Model Penal Code*, 109 U. PA. L. REV. 465 (1961).

³ Cordier, *The Rule of Law in the World Community*, 111 U. PA. L. REV. 892 (1963); Eban, *Multilateral Diplomacy in the Nuclear Age*, 114 U. PA. L. REV. 984 (1966); Spaak, *Problems Facing the West*, 107 U. PA. L. REV. 1085 (1959); Williams, *Fundamental Rights and the Prospect for Democracy in Nigeria*, 115 U. PA. L. REV. 1073 (1967).

problems arising outside our borders, rather than with those within, thus making the count seven to five. Never, however, would I want to be misunderstood as believing internal and external challenges of inequality separable, except in terms of an analyst's competence to discuss them. I used to think most of us knew they were not.

What about today? Many observers see us as avoiding thought about indignity, poverty, and injustice abroad. Perhaps it is not neo-isolationism as much as it is neo-ethnocentrism that leads to so many evasions, overt and subconscious, of the ever-mounting challenges and needs of the poorer southern half of the earth. Thus some, influenced by a remarkable and very puritanical masochism, say that the United States should withdraw from the external world until it has perfected itself.⁴ Others are cautious, even selfish, because by the high standards of our own society they are insecure or deprived. Many are ready to give up the thus far short, low-cost (by the standards of our Marshall Plan reconstruction assistance to developed but devastated countries) war against poverty and inequality facing the 66 percent of the world's present population enjoying only 12.5 percent of the "gross world product."⁵ The reasons given run the full range of clichés: "Aid is a graft-ridden giveaway." "Our assistance to them hasn't made them love/respect/cooperate with/follow us." "Aid is imperialism."

Of those who are unconcerned with the issue of help to the disadvantaged outside our borders, the most appealing—and honest—are the poor in spirit of our times: those who see no way out of man's tragic condition. "If the bomb doesn't get you, the environment or the population explosion will." Maybe they are right, but I think there is still a chance. Let us be sure we know what the world situation really is, and then try—urgently—to help turn it around.

My mission here is not to preach against the decline in the percentage of our total national contribution to the moderate alleviation of the shockingly low quality of life in most of the world. The point is often made and often ignored.⁶ Rather, in this presentation I seek to

⁴ This was a major theme of an address by George F. Kennan, *America After Vietnam*, delivered at the Prelude to Independence ceremony, Colonial Williamsburg, June 1, 1968 (published in pamphlet form).

⁵ COMMISSION ON INTERNATIONAL DEVELOPMENT, PARTNERS IN DEVELOPMENT 24, chart 1 (1969) [hereinafter cited as PEARSON REPORT].

⁶ 1969 was a year of major and minor "assizes" on development assistance, the merited Grand Assize being the PEARSON REPORT. All called with varying degrees of specificity for a reversal in the downward trend of United States overall inputs into "foreign aid." During the same period, to my eye a preponderance of editorial opinion favored more rather than less aid. From within the Congress, however, came confusing sounds. Many of the "favorable" attitudes in the Congress and in the press were beclouded by a generalized and uncritical preference for "as is" multilateral channels for the allocation and supervision of transfers of capital and human resources from the United States to developing countries. On overall levels of aid, and on channels preferable to those presently available, there were differences between

direct the attention of minds or viscera, or preferably both, to contemporary, worldwide problems of inequality—most of which were probably not seen as great challenges to world organization by Owen J. Roberts or most others, including myself, in his time.

In general, the situation in the early postwar period, after the United Nations came into being and formal colonialism was dying, was not unlike the early “constitutional” state of the struggle of American blacks to escape from inequality. In both cases, energies and hopes were initially focused on making and applying great liberating norms—of rules and legal structure. We did not then often have occasion to relax from the effort and look ahead. Now the blacks’ fight against inequality shows new contours of complexity and challenge. We are beyond the proper application of the old “rights.” We grope for new relationships, new sharings. So it is also with the challenges of inequality in the world community. In context, the excerpt at the heading of this piece makes clear that the “frightful division” Justice Roberts feared was “a division of ideologies, one or the other of which I think must ultimately prevail.”⁷ It is not this division that seems so exclusively threatening today. Man, to be sure, probably needs the stick as well as the carrot to motivate him. In the earlier days of foreign assistance the stick was fear of communism. Frenzy has receded as experience and habituation have taken hold, but no other “gut drive” has yet developed. It should not be hard to find, for the increasingly sharp division of the world has already given us a clearly discernible transnational parallel to the unstructured, highly irrational, violent conduct that troubles and threatens us at home. One has only to think of nationalistic demagogues with nuclear bombs—small ones, of course, filched from power reactor fuel—used somewhat as domestic terrorists use chemical explosives today. Or, to parade another possible future, think for a moment about the “mini-war” in Central America. It may be the first population explosion war. Salvadorans, lacking land and opportunities in their own overcrowded country, just went over the border into emptier Honduras, where they were badly treated as aliens. Their country responded. Result: irrational fighting and instability. At this point I think of all the men in Mexico, behind the border wire at Calexico, looking north, where there may be work; and I think of twice their number in the not so distant future.

the viewpoints of the chairmen, respectively, of the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs. The chairmen of the Inter-American Subcommittees of these committees also differed widely. Only the unrelenting and tactically masterful opposition of the Honorable Otto E. Passman to all types of foreign aid appropriations by the United States was, as always, fixed and certain.

⁷ Roberts, *supra* note 1, at 26.

It would be impossible, without becoming maudlin, to cover even by briefest reference the many transnational inequities that shock the conscience. I shall deal with a selected group: those that I see as most pregnant with danger for global well-being and the quality of life on this planet. They are: (1) the organizational inequalities; (2) the developmental inequalities; and (3) the nuclear inequalities.

I. ORGANIZATIONAL INEQUALITIES

By organizational inequalities I mean those inherent in existing multinational organizations, such as the United Nations, as well as those deriving from the schism between the richer, northern half and the poorer, southern half of the world.

The vast differences in well-being between people in today's world are organized into discrete legal-political packets: national states. A major problem of our time is that the people who are struggling to develop can be reached and involved in the process only through the state which rules over them. And the state brings with it rigidities, compartmentalizations, distortions, inefficiencies, and above all, additional inequalities that immensely hinder and complicate the development process.

It has become trite to quote Orwell's grim parable about unequal equality, but recollection of it is inescapable when we force ourselves to face the vast differences between the assumptions about and the realities of international organizations today. The tendency of many, even professional observers, is to see the world of states in a way that would not have startled Prince Metternich. Article two, paragraph one of the United Nations Charter declares that "[t]he Organization is based on the principle of the sovereign equality of all its Members." Twenty-five articles later we come to the veto. Then we recall the somewhat less-than-equal assumptions of "Big Three" world-control-for-peace underlying the Dumbarton Oaks proposal that went to San Francisco, where, with one significant modification demanded by nonveto states,⁸ it became the constitution of our basic, universal organization.

Today, instead of 51 members, the United Nations has 123. Problems completely unforeseen at its inception have arisen: polarizations, mini-states, bloc voting in the General Assembly, greater use of the veto in the Security Council, interminable oratory, floods of paper, loss of effective leadership in the Secretariat. Expectations have declined markedly as to how the United Nations can respond effectively to a wide array of needs. I refer here to United Nations "proper," that is, to the Security Council, the General Assembly, the Economic and Social

⁸ U.N. CHARTER art. 51.

Council, and, to the extent that it still has work to do, the Trusteeship Council. Neither the veto system in the Security Council nor the "one country, one vote" arrangement in the General Assembly and its related councils seems any longer to assure mankind that through United Nations deliberative processes new truth and new answers will come. Instead of being a superior source of either commands or recommendations, the United Nations has largely become, at worst, a center for confused, often highly emotive, jabbing at issues; at best, a medium for the expression of values or decisions developed or reached through other means. The United Nations Development Programme, which I shall discuss later, deserves somewhat different conclusions.

The specialized and the autonomous worldwide agencies loosely linked to the central core of the United Nations system vary in power and authority, as well as in arrangements for national-state participation through voting and membership on operating and governing councils and committees.⁹ The extent to which the tremendous enlargement of United Nations membership has affected the operations, and the effects of the operations, of each of these agencies is a function of the variables just listed. Parts II and III herein will include analyses of the effects of inequality, as organized into national-state patterns, on the utility and the effectiveness of three of these agencies: the World Bank Group, the International Monetary Fund, and the International Atomic Energy Agency. In relationship to some but not all states, these three, especially the first two, come nearer than do other organizations to being "deciding" rather than "service providing" institutions. It is, therefore, within these agencies of the world community that the stresses and the consequences of organized (national-state) inequalities are the most challenging. It is significant that weighted voting in accordance with quantity of investment is a characteristic of the decisionmaking process of the World Bank and the Monetary Fund, and that the International Atomic Energy Agency is not in substantial control of the sources of supply of special nuclear materials.

Today we view international organizations differently than we did in 1945. The world has followed in the intervening twenty-five years two patterns of modifying the nation-state system. One, the pattern just discussed, is fully structured. The other is thus far only partially structured, and often only dimly perceived. It is the pattern of regional groupings of peoples through various types of associations between the states into which people continue to be organized.

These groupings are not necessarily classifiable as "regional arrangements" under Chapter VIII of the United Nations Charter.

⁹ For a useful descriptive survey and collection of basic organic acts, see W. FRIEDMAN, O. LISSITZYN, & R. PUGH, *INTERNATIONAL LAW* 1008-101 (1969).

Regional associations with which the Charter is concerned are essentially directed toward collective security; as such they characteristically include member states that vary widely as to existing power and related capabilities. A good example of a United Nations "regional arrangement" is the inter-American security system,¹⁰ based upon the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty), some of the mechanisms of the Organization of American States, and the preponderant hemispheric military power of the United States. These arrangements have their utilities, without doubt; and the institutions that cluster around the central purpose of their being are adaptable to other needs: witness, for example, the involvement of the Organization of American States in development-related activities.

But beyond security-seeking regional arrangements we find new trends toward enlarging the size of the "service-control" area—the area in which an institution is significant. The world's most developed example of this is the European Economic Community (EEC). Originally, this grouping was seen as one that, beginning with the creation of a wider spatial ambit for economic operations, would evolve rapidly toward a common defense structure and culminate in a political association of a generally federalist pattern.

Although discernible United States attitudes toward regional arrangements elsewhere than in Western Europe have shifted over time,¹¹ unification there has been something of an American dream for quite a long time. From 1948 on, Western European regionalism was supported here for almost all the reasons prompting United States interest in that region: as security in the cold war context, as an instrumentality for economic reconstruction, and as an aid in redressing the new political inequality caused by the rise among states of two superpowers. While not all Marshall Plan money went to those European countries now integrated in a common market, that remarkable outpouring, peaking from 1949 through 1954 and ending within a decade, did go to a group of countries that for economic reconstruction and development organized themselves into an Office of European Economic Cooperation (OEEC). This regional institution fixed priorities, planned reconstruction, and distributed on a regional basis 13.4 billion dollars in United States grants and 1.9 billion in loans.¹²

¹⁰ *Id.* 960-65; cf. C. OLIVER, *THE INTER-AMERICAN SECURITY SYSTEM AND THE CUBAN CRISIS* (1964).

¹¹ See Nye, *United States Policy Toward Regional Organization*, 23 *INT'L ORGANIZATION* 719 (1969).

¹² STATISTICS & REPORTS DIVISION, OFFICE OF PROGRAM & POLICY COORDINATION, AGENCY FOR INTERNATIONAL DEVELOPMENT, U.S. ECONOMIC ASSISTANCE PROGRAMS ADMINISTERED BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT AND PREDECESSOR AGENCIES: APRIL 3, 1948—JUNE 30, 1968, at 67 (table, "Europe-Total") (1969) [hereinafter cited as USAID SUMMARY].

In the OEEC the United States was an observer, not a voter. Moreover, in support of European unification, the United States modified its attachment to unconditional most-favored-nation treatment so as to encourage communitywide free trade. It was foreseen at the time that the wider opportunities and greater well-being such a common market would give to the roughly 225,000,000 people of Western Europe would also cost the United States its most-favored-nation trading rights with each member state. Perhaps not so clearly foreseen was that the new grouping would in time eliminate more inequalities than we had expected, such as those implied by our vague dream—not yet ended—of an Atlantic regional grouping within which we, without any identifiable loss of “sovereignty,” would to some unspecified extent become one among several.¹³

The new grouping in Europe has not achieved the displacement of existing states or very much supranationality. But through it relative inequality between the peoples living under this system and those living in the United States has been markedly reduced. The adjustments made within the EEC as to voting, the shift of certain essentially executive powers to new transnational institutions of experts, the slowly increasing participation in selection of goals by the people-representing assembly, and even the apparent outcome of President de Gaulle’s effort to return power to the capitals of the member countries,¹⁴ stand as signposts along a road that others may follow.

It is equally important to notice the effects of this experience with regionalism on the poorer parts of the world. So far, conventional and developmental foreign policy of the Six vis-à-vis the poor nations is almost exclusively national rather than regional. So far there is almost nothing in events to suggest that EEC responses in such formal institutions as the United Nations might be coordinated and unified through the regional structure. There is little evidence, moreover, that Latin Americans and Afro-Asians presently use regional instrumentalities for such purposes.

The economic success of regionalized Western Europe has accentuated a newly perceived, deeply divisive dichotomy: the affluent northern half versus the poverty-ridden southern half of “Spaceship Earth.” By granting trade preferences to developing countries which are associated with member countries, Western Europe has created a discrimination in its treatment of different poor regions. Another economic

¹³ The halcyon days of the “Grand Design” for an Atlantic Community alignment were roughly 1957-63. The new nationalism of General de Gaulle marked the abatement, if not the end, of this expectancy that there would be a new Atlantic regionalism among the developed nations of the West.

¹⁴ See J. NEWHOUSE, *COLLISION IN BRUSSELS: THE CRISIS OF JUNE 30* (Tocqueville Series No. 2, 1967).

success story (at least in total productivity terms) is that of the Soviet Union and its dominated Eastern European associates. But, because of Soviet dominance, its decisions to stay outside the major multinational institutions for development, and the rather enigmatic character of its foreign assistance, the Eastern European regional arrangement seems to enjoy today the "psycho-political" advantages of being thought outside the rich world while actually in it. Japan is a special case. So far it has not concentrated its assistance efforts in any one of the three major poverty areas of the world (sub-Sahara Africa, South and Southeast Asia, and Latin America), although probably it will before long.

The north-south division of the world is seen perhaps most sharply in connection with the United Nations Commission for Trade and Development (UNCTAD), where the majority of members are poor countries that see in the markets of the affluent, closed to them by tariffs and quotas or by their own higher costs, solutions to many of their problems of low national income and tragically high unemployment. One response of the rich European countries has been limited rather than general trade preferences. Through UNCTAD and other instrumentalities, the United States is fighting for Latin America the battle for generalized (that is, nondiscriminatory) trade preferences, to date without tangible positive results. The United States has implied that, if not successful in this effort, it may once again compromise the unconditional most-favored-nation principle, this time to limit preferences in its markets to those developing countries denied preferences elsewhere in the developed world.

Another organizationally oriented response to the concern of the developing world about its ability to earn and grow by profiting in the markets of the rich is for the developed countries to urge the poor countries to accept capital and technical assistance for the creation of new trading areas made up of their own national market territories. After early reluctance to support initial Latin American activities along these lines, the United States became in the Kennedy-Johnson years a strong, even insistent, supporter of regionwide market areas.¹⁵ Developing-country "common markets" have been associated, not unnaturally, with the preferment of the regional agencies for coordination and planning of developmental aid. These two organizational aspects of development are not inseparably linked, however; and it may be that emerging official attitudes in this country, already committed to the latter, may not as strongly support the former.¹⁶

¹⁵ This culminated in the Western Hemisphere summit meeting of the presidents at Punta del Este, Uruguay, in April 1967. Cf. Oliver, *Physical Integration and the Future of Latin America*, 36 SOCIAL RESEARCH 253 (1969).

¹⁶ Almost complete silence on regional market integration in the developing Americas has characterized official utterances of the Nixon administration on inter-

To summarize, almost all the seventy-odd new states that have come into existence after the United Nations began to function have entered the world community under severe conditions of de facto inequality. Through these inexperienced but sovereign instrumentalities and their counterparts among older states in the poor world, larger and larger numbers of disadvantaged people grope for improvement in their condition. In seeking help for their constituencies, the poor states deal with affluent states, either directly or through highly structured international organizations in which the rich states have many advantages of decisionmaking. Meanwhile, outside the formal structure of the United Nations, a successful regional effort in economic rehabilitation was carried out, largely through the exercise of group decisionmaking by grant beneficiaries. Although the success of this regional effort has itself sharpened the division of the world into rich nations and poor nations, it may become the model for development-related regionalism elsewhere. Whether it will depends to a considerable extent upon what the true situation is as to inequalities—and the effects thereof—specifically related to the development process. To this I now turn.

II. DEVELOPMENTAL INEQUALITIES

A fundamental developmental inequality, one that deeply challenges all organizational arrangements, is that developing countries are vastly unequal among themselves. The *Pearson Report*, assuming that less than \$500 annual income per person is the unambiguous criterion of a "developing country," notes that by this standard there are more than 100 developing countries, containing about two-thirds of the world's population *at the present time*.¹⁷ These countries vary tremendously in area, total population, density of population, rate of population growth, natural resources, industrialization, trade, government, and cultural patterns.

It is hard even for experts to keep these significant differences in mind. When I began to represent the United States at the World Bank, I looked for the first time at the *World Bank Atlas*.¹⁸ On one map therein, the states of the world are given a size related to their populations rather than their areas. These countries are shaded from a deep

American policy. This may result from an assumption under the "low profile doctrine" that the matter is no longer suitable for United States-Latin dialogue until revived by the latter. Or it may mark a new estimate that the market-integration movements have slipped so badly as to have become hopeless.

¹⁷ PEARSON REPORT 23.

¹⁸ INFORMATION & PUBLIC AFFAIRS DEP'T, INTERNATIONAL BANK FOR RECONSTRUCTION & DEVELOPMENT (WORLD BANK), *WORLD BANK ATLAS* (updated periodically). Many of its charts are also published in *FINANCE & DEVELOPMENT*, a quarterly publication of the International Monetary Fund and the World Bank group. The map I refer to is carried in *FINANCE & DEVELOPMENT*, Mar. 1969, at 30-41.

green for the very rich, those with a gross national product (GNP) per head of over \$1200, to a light tan for the very poor, those with a GNP per capita of less than \$100 a year. The light tan areas are vast, including mainland China, India, Pakistan, Indonesia, North Vietnam, Burma, Nepal, Afghanistan, Nigeria, Ethiopia, Tanzania, Kenya, and the Malagasy Republic. For me, just out of the Alliance for Progress fight against poverty in the Western Hemisphere, the first startling lesson from this map was that there is only one, relatively small, spot of tan in the Americas: Haiti.

In all of Africa only South Africa, Libya, and French Somaliland produce \$500 or more per person. In Asia only Japan, Hong Kong, Singapore, Kuwait, and Brunei reach or exceed that figure. In Oceania those countries that have "made it" to development are Australia, New Zealand, New Caledonia, French Polynesia, Guam, and American Samoa. In the Western Hemisphere the developed political units are the United States, Canada, Puerto Rico, Panama, Trinidad-Tobago, Martinique, Netherlands Antilles, Virgin Islands, Argentina, Venezuela, Chile, Uruguay, and French Guiana. In all of Europe, including the U.S.S.R., only three out of thirty countries are below \$500 per head.

Excluding special cases, such as oil-rich sheikdoms, tourist havens, and associated areas not states, fourteen European countries are among the very rich, along with the United States, Canada, Israel (almost), Australia, and New Zealand. There is not a single very rich black country on the planet. Japan will be found in the "club" in the next firm statistics, becoming the first Asian rich country. No other Asian country is even close.

Brazil, one of the world's largest states in area and over 80,000,000 in population—the single most significant country in the Western Hemisphere after the United States—has a GNP per head of \$240, less than that of Albania, Turkey, and Portugal, the poorest countries in Europe. Yet along with Mexico and Argentina, Brazil is one of the three "advanced export countries" of Latin America, and as such creates special problems for the other developing American countries as to freer trade among them all through regional market arrangements.

Actually, as anyone from the affluent world who has lived in or closely observed developing countries knows, the statistics given above gloss over harsh reality. Putting aside both factual errors and doctrinal disputes about the components of the measure, GNP—or, more accurately, gross domestic product (GDP)—masks vast inequities in the actual distribution of benefits and opportunities within most societies. We do not have, alas, a developed methodology for the comparative

measurement of "fairness-in-sharing" of GNP or GDP. Brief examination tells us that the very rich countries by the GNP-GDP standard are either participatory democracies or ideologically egalitarian states in which alterations in patterns of resource enjoyment are fiscally possible if politics or dogma should so require. In the poorer countries, however, the fiscal possibilities are much more restricted, and frequently brake social changes even if they are otherwise politically acceptable.

Conventional Wisdom about the development process—one of the major disruptive inequalities viewed from the "people" standpoint—declares that the only business of development is economic development; that is, the augmentation of the total production of goods and services for export, consumption, and savings. In classic doctrine, better conditions of life within the nation will come inevitably—if slowly—by trickling down from increases in GNP-GDP. The parallels between this harsh and unrealistic doctrine and certain discredited notions of domestic economic inevitability held in this country from time to time seem very striking to me.

Now there is no avoiding the fact that a country has to have something worth dividing more equitably before it is worthwhile trying to divide it. Therefore, economic development is essential and paramount. Also, the development process is traumatic for those going through it, and inevitably a very large part of the necessary abstention from consumption—even where less than \$100 per capita per year is available—must fall on the masses. But "trickle-down" will not do as a development philosophy. It seems essential that economic and social development go hand-in-hand, rather than for the latter to be ignored or deferred—or go unplanned—until the former is accomplished. Lack of planned social development resulted in frustrating and corrosive dilemmas for too many developing countries; for those, for example, which ignored agriculture and industrialized, using the most modern, labor-saving machinery in lands of very low employment to manufacture goods not really competitive with those of developed countries. This is the route of the prestige national airline, the military telecommunications system, and too many "impact projects."

Nowhere does failure to ignore the "people inequality" problem in the development process seem to me more dangerous and inadequate than in contemporary authoritative declarations and recent studies which implicitly revive the trickle-down approach. Outmoded attitudes resurface: (1) "Trade, not aid." (2) "Foreign private investment is the key." (3) "Multilateral bank lending is best."

First: People in developing countries, even if illiterate, are cannier—or more cynical—than some politicians of developed countries believe.

They want to know what the new total assistance input patterns will look like: will they increase, as they should, or decrease behind cover of cliché? What is the implication, they must wonder, of a United States resurvey of foreign assistance (the *Peterson Report*)¹⁹ that does not care to make any recommendation as to the total United States foreign aid contribution in terms of some fraction of one percent of the United States GNP, especially when figures in the upper one-half of the one percent range have recently been spoken of with approval by the United Nations Development Program and the *Pearson Report*?

Developing countries should make more from their exports. The real challenge to their making more from their exports is, in general, price. Tariffs and quantitative restrictions are often secondary disadvantages. Price subvention paid by consumers in developed countries would be the most difficult kind of foreign assistance to obtain that I can think of. And it would be a poor form of assistance from the people standpoint (the traders in developing countries are not infrequently oligarchs), unless the concession-givers could negotiate for equitable people-use of the new benefits received by the concession-getters. So far, this type of trade negotiation is unknown to economic diplomacy, although I think it ought to be tried—but not as a cure-all or substitute for development assistance.

Second: It is very dangerous, perhaps even tragic, that at a time when awareness of developing-country “hang-ups” should be receiving increased attention there is so much bland disregard in developed countries of the intense anxieties of people in developing countries about permanent, proprietary foreign ownership. Foreign investment from the private sector creates capital inflow (less repatriations of earnings and earlier investment), and can have a significant modernizing effect on business methods and marketing. It has a place and a future, provided it is not made to carry a development load it cannot manage. It would not, under the best of conditions, justify taking a single dollar out of already too low public assistance packages for the under \$500 a year per capita countries.

Third: Purely multilateral foreign assistance has nothing against it, except the simple fact that there are no worldwide, or even regional, *full-range*²⁰ development agencies. A development bank is not the same

¹⁹ PRESIDENTIAL TASK FORCE ON INTERNATIONAL DEVELOPMENT, U.S. FOREIGN ASSISTANCE IN THE 1970s: A NEW APPROACH 4, 26-36 (1970) [hereinafter cited as PETERSON REPORT].

²⁰ I use this term to denote a development assistance agency that is authorized and has funded capabilities to provide technical assistance, supporting assistance, and all types of development grants and loans. As to development loans it should be empowered to make program (general balance of payments) as well as project (the funding of discrete construction, such as a hydroelectric power plant or a railway) loans. It should also have the legal ability to make sector loans—

as a development agency. USAID is the only "full-range development agency" in the world. Multilateralization proposals frequently refer to the World Bank Group, which comprises the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and two other institutions helpful in the development process but not at issue here. There are definite limitations upon what the World Bank can do, however, although its current president has in several key speeches²¹ urged the Bank Group to move beyond its traditional, self-sought role of providing loans for national infrastructural capital purposes.

The limitations on the World Bank proper (IBRD) arise from: (1) psychological constraints related to the securities market for World Bank bonds, (2) traditional viewpoints on the part of some of its staff and management, (3) lack of contemporary development assistance experience on the part of certain of its executive directors voting the weighted shares of the developed countries, and (4) backstopping of executive directors by finance ministries, rather than development ministries, within member governments. The above limitations relate to and reinforce the expectation of the financial community of the developed world that World Bank loan proposals should always be capable of credible quantification, and that as quantified they will convincingly show, by incremental or cost-benefit analysis, that the borrower can repay and improve developmentally in the process. President McNamara's calls for expansion of Bank Group activities into education, population, agriculture, urbanization, employment, and industrialization give assurance that top management expects to lead the Bank out of its earlier concentration on railways, telephone systems, roads, and other basic sinews of growth. The first three of these proposed new activities, however, are inherently difficult to quantify. The other three may pre-

loans to the foreign exchange resources of a developing country for the improvement of a defined sector, such as primary education, the local currency generated thereby also to be used for local currency costs in the same sector. Also, a full-range development agency should have the power to make concessional loans—loans provided on terms of repayment below the cost to the lender of the money loaned. No international assistance agency presently in existence has all these capabilities. The United States Agency for International Development (USAID) has them all, plus investment guarantees and feasibility studies for the private sector. No other developed-country national assistance agency has the array of authorized and funded capabilities of USAID.

²¹ Addresses by Robert S. McNamara, President, World Bank Group, to the Board of Governors, Sept. 30, 1968 & Sept. 29, 1969 (available in pamphlet form from the Bank). In the 1968 report Mr. McNamara called for quantitative improvement by expansion of the Bank Group's operations, and for qualitative improvement by Bank Group entry into lending operations relating to education, agriculture, and population. In his 1969 statement Mr. McNamara recapitulated the course he had proposed the year before, reported achievement of the quantitative expansion, reiterated the new qualitative program, and proposed that to it there be added inputs related to unemployment, urbanization, and industrialization. *See also* INTERNATIONAL BANK FOR RECONSTRUCTION & DEVELOPMENT (WORLD BANK) & INTERNATIONAL DEVELOPMENT ASS'N, ANNUAL REPORT 1969, at 10-11, 18 (1969).

sent serious measurement problems should projects falling thereunder be essentially social. It remains to be seen whether the member governments from the rich world will instruct their executive directors to go along where cost-benefit is not clearly demonstrable.

Even should lending criteria be relaxed, the IBRD still has to lend at rates within the range of what money costs it, and on fairly tight grace and repayment schedules. The IDA, however, provides credits that are highly concessional (fifty-year repayment period; ten-year grace; three-quarters of one percent service charge, but no interest). Thus IDA could be an international development agency in the true sense;²² but it is not yet, because the expectations of a number of the developed member states lead to as rigorous appraisal of the quantifiable success-capability of IDA loans as of IBRD loans. The going rule is that the only difference between an IDA loan and an IBRD loan is that IDA borrowers are the countries that foreseeably do not have the foreign exchange capability of repaying on the more difficult IBRD terms. Until IDA breaks from IBRD lending criteria of the sort just mentioned, and until it is financed adequately to be able to lend to countries in the very lowest poverty class,²³ it is not going to be the full-range development agency that Mr. McNamara's program needs.

The difficulties just analyzed are often ignored when a shift to a mainly multilateral lending approach is advocated. Again, the problem has a domestic parallel: what shall be the decisionmaking role of the poor here in connection with their improvement? The international issue is quiescent but present in the current operations of the World Bank Group and the International Monetary Fund (IMF). The developing-country representatives are in very weak voting positions in these institutions.²⁴ Probably the only factor that has prevented tensions from breaking through more often to disturb the calm correctness of board meetings in both institutions is that the role of the executive directors, as contrasted with that of staff and management, is to approve or disapprove, not to initiate. From my experience in Bank Group-IMF circles, however, I know that the strains are there. They will get worse, especially if developing-country voting power is further reduced as a result of new capitalizations in which they cannot partici-

²² See note 20 *supra*.

²³ GNP of \$100 or less per person.

²⁴ In the IBRD, the American voting share is 24.87%; the United States and other developed countries together have about 70% of the total voting power therein. In the IDA, International Finance Corporation (IFC), and IMF the actual strengths vary slightly, but not significantly, from the IBRD pattern. At the present, executive directors from less well-developed countries are fearful that their already slight representation may be further reduced as new programs are once again heavily subscribed by the rich countries, with only token subscription by the developing countries.

pate. Developing-country inequalities seem especially noticeable in the Fund, because although its writ runs to the monetary policies of all member countries, rich and poor alike, its reserve-parity prescriptions actually are written mainly for the weaker countries, and hardly ever for the very rich countries—especially those whose currencies have become reserve currencies.²⁵

Yet both these major, universal institutions, the Bank and the Fund, are clearly development-oriented at the management level and admirably staffed for sound, useful technical assistance to, or direction of, many aspects of development. But if the United States goes ahead with proposals to put more and more of its development assistance into multilateral channels, not only will the multilateral agencies themselves have to be modified, but the institutional sources within the United States Government of strong-voiced instruction to, or oversight of, those who vote the big shares of the United States ought to be reexamined. Let me be frank: development, especially social or “people” development, is not a major mission of the United States Treasury Department, nor of the Federal Reserve Governors. They have other responsibilities. I trust that if the recommendation of the *Peterson Report*²⁶ to Balkanize USAID goes into effect, at least the new United States International Development Council proposed by Peterson’s group for high-level supervision of the contemplated scattering of United States assistance decisionmaking power will also backstop the World Bank Group. The power should go where the development sense-of-mission is.

There remain for appraisal three other aspects of developing-country participation in the development process: regional lending agencies and their affiliates, structured like the World Bank Group; the United Nations Development Programme; and developing-area counterparts of the OEEC of Marshall Plan days.

The Inter-American Development Bank (IDB) and the Asian Development Bank (ADB) have “hard” and “soft” lending capabilities. In the IDB, the only fully-developed country member, the United States, has an overwhelmingly preponderant vote, especially on “soft” loans. In actual operations, it is very gingerly used; the IDB itself has from the beginning claimed—and has achieved—a “Latin character.” I am satisfied from my examination of its loan policy statements and of the loan roster that the IDB has gone considerably farther, especially through its “softer” loan avenues, than has the IBRD-IDA in giving

²⁵ A statement based upon observations by the writer while a development-concerned official of the United States Government and corroborated by a number of monetary economists.

²⁶ PETERSON REPORT 4, 26-36.

loan assistance to relatively less quantifiable, essentially social, projects. The ADB is in the first years of its operation; and it, too, is marked by some concentration of voting power in the developed-country members, of which a key one is Japan. It is too early in the operating life of the ADB for impressions as to developmental priorities and outlooks between its developed and its developing members.

African regional institutions, including the Organization of African Unity, do not, de jure, include developed-country participation. As such they may represent a significant trend related to a general theme of this paper. So far, however, there is little to report, except in relationship to the IBRD-IDA "atmospherics" of polarization discussed previously. But the attitudes of the African, Asian, and Latin American regions of development towards the United Nations Development Programme (UNDP) do require brief attention.

The UNDP, on the face of it, would seem to suffer from the impasse of formal equality (one country, one vote) that plagues the General Assembly and its associated organs. The UNDP is hierarchically under the Economic and Social Council, and its governing council is evenly divided between developed and developing members. Actually, because of the vitality and developmental skills of its managing director and staff, the UNDP seems to parallel in practice the allocation of authority between truly international management and national representational elements that we have seen in the World Bank Group and the IMF. Unfortunately, polarization between the developed and the developing countries is now also discernible in the UNDP. One sign of this is seen from a statement in *A Study of the Capacity of the United Nations Development System* (the "Jackson Report"): ²⁷

[I]n 1966, the developing countries, feeling even more sharply the deficiencies of both bilateral and United Nations systems of aiding their development, finally used their voting strength in the UN General Assembly to force through the Capital Development Fund But the pledging conference was largely boycotted by the developed countries

. . . .

Three years later, pledged contributions to the Fund still totalled only US\$2.6 million, of which no more than US \$128,000 had been actually paid in by 3 June 1969.²⁸

Other divisions of viewpoint have developed during UNDP consideration of the *Jackson Report* itself, particularly as to its rather favorable view of the World Bank Group's role as presently played and

²⁷ U.N. Doc. DP/5 (1969) (2 volumes combined).

²⁸ *Id.* vol. 2, at 17.

its effort to give greater emphasis to agriculture and less to industrialization.²⁹ The developing country members of the governing council of the UNDP have their doubts about the first of these points and only reluctantly accept the second. Only a few months ago, in January of this year, a "confrontation crisis" of sorts occurred, and harmony has not yet been entirely restored.

These problems in existing broad-based international organizations for development have induced some to look to new, regional forms of association as better instrumentalities for meeting the resentments, inhibitions, and other difficulties resulting from the inequalities between the participating nations in broad-based international organizations. In addition, regional common market or trading arrangements have their logical, as well as psychological, contributions to make. Regional structures for planning and allocation of foreign assistance, and for review of national performance as to developmental courses of action undertaken, have very clear attractiveness.

The Latin American countries of the Western Hemisphere are in the vanguard here. With recognition of the important contributions made by studies of the Asian prospects,³⁰ let us focus now on Latin American events. Latin American group efforts toward development began without United States involvement or significant assistance. The USAID summary of American external assistance contains, for Latin America during the Marshall Plan years, the entry "No PROGRAMS PRIOR TO FY 1952." In fiscal year 1953, while Europe was getting one and one-quarter billion dollars, Latin America got twenty-one million. It was not until fiscal year 1959 that total loans and grants to all of Latin America rose over one hundred million dollars. Total assistance of something slightly less than one-half billion dollars was not reached until fiscal year 1962.³¹

Beginning through the United Nations, especially its Economic Commission for Latin America, the Latin Americans were meanwhile formulating the goals of what, when in 1961 the United States finally came into institutionalized developmental relationships in the hemisphere, was given the name "Alliance for Progress." From the beginning the United States-Latin American program sought a collective approach to the planning of development, first through the group called the "Nine Wise Men," and eventually through the Inter-American Commission of the Alliance for Progress, known in all

²⁹ Received informally from knowledgeable sources.

³⁰ I am especially indebted to Arthur Paul for his personal instruction about regionalism in Asia. See A. PAUL, *REGIONALISM IN ASIA: A NEW THRUST FOR DEVELOPMENT* (Asia Foundation Occasional Paper No. 1, 1968); Paul, *The Key to Asian Regionalism, SOLIDARITY*, Jan. 1969.

³¹ USAID SUMMARY 25 (table, "Latin America-Total").

languages by its acronym in Spanish, CIAP. Juridically CIAP is a limited-membership substitution of the Organization of American States (OAS), closely linked to the Economic and Social Council thereof, whose members, including the United States' representatives, represent their professional judgments rather than their governments. The assistance policy of the United States in the Johnson administration was to transfer to CIAP more and more decisionmaking power about American assistance. The Nixon administration continued this policy but, within a relatively short time after it took office, Latin American consensus showed a preference for new arrangements featuring representation of only the developing countries at the level of formulation of common policy and area goals and the maintenance of the assistance relationship with the United States through the OAS. Hints of this trend were seen earlier, when the Latin Americans showed reluctance to admit the United States to their negotiations on economic integration.³²

The instrumentality chosen by the Latin Americans for the formulation of their new consensus is called the Special Committee for Latin American Coordination (CECLA, in the sole, Spanish acronym). Its institutional history, with a long gap, goes back to the period of pre-United States involvement in Western Hemisphere development; but its revival is significantly related, in my opinion, to the theme of this lecture. CECLA and its output, the consensus of Vina del Mar,³³ relate to the United States through the Inter-American Economic and Social Council of the OAS. The CECLA consensus is clear evidence that the developing countries of the Western Hemisphere are seeking strength in unity in their dealings with the major external supplier (so far) of support to the development process in this hemisphere. This is a very important step. Although this first CECLA consensus is somewhat less scientific, and certainly less diplomatic, than CIAP reports have been—resembling somewhat, especially in the manner of its presentation to President Nixon, the politics of confrontation—it is a revealing document. CECLA's rise and role deserve careful attention; CECLA ought to be, and perhaps is being, nurtured by thoroughgoing acceptance by the United States. CECLA also merits careful attention

³² The reference is to meetings held at the ministerial level in 1967. These followed the June meeting of the Inter-American Economic and Social Council at Vina del Mar, Chile, itself a "follow-up" to the Western Hemisphere summit, note 15 *supra*. The summit meeting had established a timetable for integration between the Latin American Free Trade Association and the Central Common Market; the President of the United States had assured the Latins of United States adjustment assistance, despite the refusal of the Senate Foreign Relations Committee to support a requested presummit sense-of-the-Congress resolution committing the United States to such support.

³³ O.A.S. Doc. OEA/Ser. H/X.14/CIES/1403, at 5-20 app. I (1969).

elsewhere in the developing world; it may be a major response to the challenge of inequality in development.³⁴

III. NUCLEAR INEQUALITIES

It is irrelevant to choose on a scale of awfulness between an ever more crowded and environmentally degraded planet, riven by unrelieved people inequalities, and an earth dotted by fission-type atomic power plants and covert arsenals of nuclear weapons (or the ingredients for their manufacture). Just recently, after much effort and anguish, the Non-Proliferation Treaty³⁵ came into effect for some but not all states. The Partial Nuclear Test Ban Treaty³⁶ has had discernible effects on atmospheric testing, and the nuclear weapons limitations talks (SALT) are about to enter a second phase. Perhaps one should merely speak well of the men of good will who have tried so hard to give mankind control of the atom, hail their achievements, pause briefly to lament the failure of an early American proposal to internationalize all aspects of atomic power, and hope for the best or resign oneself to fate, depending on one's nature. But I cannot in conscience do this, especially in this symposium-over-time, the Roberts Memorial Lectures, because I have come to believe firmly that absolute inequality (some have all; most, nothing) between peoples is inevitably unstable. The atomic inequality is absolute under the Non-Proliferation Treaty, even taking into account the role and authority of the International Atomic Energy Agency, and all other international organizations and rules.

Absolute inequality as defined above always exists where the Have Nots are dependent upon the mere good will, generosity, or even the legal promises, of the Haves. It is obvious that this is the situation as to nuclear energy. The only potential equals to the Haves are those states that have refused to become bound to the existing nuclear conventions on testing and nonproliferation—or those that

³⁴ I regret that M. ETZIONI, *THE MAJORITY OF ONE: TOWARDS A THEORY OF REGIONAL COMPATABILITY* (1970), came off the presses too late to help me in the preparation of this Article. It is promising as to methodology and outlook. Chapters in *I THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* (C. Black & R. Falk eds. 1969), are also relevant. Some exceptionally fine work on the prospects for new regionalism is now being done by the Panel on Regionalism, American Society of International Law, under the direction of Professor Stephan A. Riesenfeld, who himself has already contributed two outstanding studies, tentatively being held for publication, to a Society compendium.

³⁵ Pending printing of the treaty in the United Nations Treaty Series, its text may be found in *AMERICAN SOCIETY OF INTERNATIONAL LAW, 7 INTERNATIONAL LEGAL MATERIALS*, No. 3, at 564 (1968). The treaty is profitably compared with Conf. of Non-Nuclear-Weapon States, Final Report, 23 U.N. GAOR U.N. Doc. A/7277 (1968), especially the Declaration of the Conference, *id.* 17-19, and particularly ¶ 5, expressing support for nuclear-weapon-free zones.

³⁶ Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, Aug. 5, 1963, [1963] 2 U.S.T. 1313, T.I.A.S. No. 5433, 480 U.N.T.S. 43.

might later break them. Worse, the de facto inequalities apply not only to weapons, but also to atomic fuel for the present fission-type power plants.

In other instances, inequalities in goods, services, and the quality of life can be reduced by creating new rights guaranteeing more equitable sharing. But the reduction of the nuclear inequality by this means is impossible. The nuclear inequality is not basically a scarcity inequality; it is an inequality based on the fear to share. If not erased, this inequality will be as corrosive and as conducive to redress by evasive or demagogic means as any other type of inequality between peoples.

But how to erase it? Only by universal, supranational control, or by absolute eradication of all nuclear advantages. Regionalism holds no promise here. There is no solution within the present nation-state system. This we must face. Here, then, should be fastened the minds and spirits of all of those who see things as they are, but who have not lost that most basic quality of life itself, the urge and the struggle to respond even to the most dire challenges. The unequal atom, peaceful³⁷ as well as bellicose, has become intolerable.

³⁷ Power from fusion reactors when available will not, it is said, present problems of radioactive contamination of air, land, and water or problems of waste disposal. As to the likelihood that the environmental threats of fission reactors have been seriously understated, see Hines, *Boost in Atomic Fuel Plants Increases Radiation Threat*, Philadelphia Inquirer, Apr. 21, 1970, at 37, cols. 3-5, stressing the conclusions of Drs. Gofman and Tamplin, who, though engaged by the Atomic Energy Commission, elected to report their alarming findings in November 1969, to a Senate Public Works Subcommittee. These scientists focused on levels of radioactivity. Other environmentalists have called attention to the dangers to ecological balance in semiclosed waters, such as Chesapeake Bay, that will follow increases in water temperature resulting from cooling of fission-type power plants now under construction.