International Economic Development Law Series

Development Law and International Finance

Second Edition

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Foreword

I am pleased to have been invited to contribute this foreword to a work which represents an important attempt to map the contours of the subject of development law by someone who combines the discipline of an academic with the insight of a practitioner actively engaged in the field. Although there is much in this area which is controversial, Rumu Sarkar's work manage to avoid the pitfalls of ideology which seem so often to beset writings on this subject.

The work begins with what the author has termed a "fin de siècle analysis" of trends affecting the milieu of development and the evolution of legal principles involved in this movement. Indeed, this stock-taking element is a constant feature of the book, being further represented by the author's notion of the "Janus Law Principle," emphasizing "the importance of looking backwards into the past of the developing country as well as ahead to into the future, like the Roman god, Janus." While, however, this is a work which sees the past—and *context* more generally: economical, sociological, philosophical—as an important foundation of the law relating to development, the work recommends itself primarily as a forward-looking attempt to examine the framework within which this law is evolving.

A key feature of this analysis is the link identified at the outset and reflected in the title of the work, namely, the connection between the law relating to development and that pertaining to international finance. It is in this context, in particular, that Ms. Sarkar addresses the issues in Part II of the monograph under the general heading of "International Financial Architecture"—namely, international borrowing and the problems of the debt crisis, the trends and implications of privatization as a development strategy, and the importance of emerging capital markets, both as concept and practical reality. This is where the meat of the subject lies.

Inevitably, in a work of this nature, which attempts to present a holistic view of a subject in a state of flux, there will be elements in the analysis that will occasion debate and dispute, both for what is said and for what is not. That is a good thing. The particular merit of the work lies in its view of the horizon and its ability to identify concrete landmarks thereon. There is bound to be debate about such matters as the New International Economic Order, the status of the "right" to development, the meaning of the notion that there is an "inchoate right to become a stakeholder in the development process," as well as many other significant concepts. This work will set the debates in context, particularly in view of the clarity of exposition that comes

from the fact that the author is writing about what she is engaged in on a day-to-day basis. The book is a valuable and welcome contribution to the scholarly literature in an increasingly important area of international and transnational law.

Professor Sir Elihu Lauterpacht CBE, QC
Cambridge
February 1999

Preface

The study of development law is a personal journey for me since it combines the disciplines of law and political science, the two subjects of inquiry that fascinate me the most. After being privileged to teach a course entitled, "Law and Development," at the Georgetown University Law Center for several years, certain overarching themes became more and more apparent to me. I realized that these issues deserved a fairly lengthy, coherent treatment which lay outside the confines of the course offering. Writing a book, although a serious undertaking, seemed to be the only logical step in the direction of fully exploring my current thoughts about the subject. Further, my hope was to transform my collective thoughts into a simplified and streamlined form that could be used in teaching the subject more effectively to my students.

Moreover, it was the fortuitous combination of my teaching along with the necessary practical field experience required by and developed through my former position as an attorney with the U.S. Agency for International Development (USAID) that fueled this effort. My objective, as I later came to realize, was to bring some cohesion and discipline to a fragmented and overly diverse topic. Over time, I, along with my students, had become more and more dissatisfied with using law review articles that varied widely in their topics, treatment of the subject, and points of view. My class lectures were the first time at which my students and I had the opportunity to discuss the theoretical framework and practical considerations that constituted the foundation of what I began to see as an emerging legal discipline.

However, describing the contours of an emerging legal discipline was, as I discovered, quite an undertaking, since it required that I define the subject matter, describe its contents, and persuade other academicians and legal practitioners that the subject is legitimately supported by substantive law principles. Chapter 2 is devoted to this effort and required extremely focused yet creative research and writing. I relied on the public international law origins of much of this subject matter and therefore divided the chapter into a discussion of parties, substantive legal principles, and establishing as well as enforcing legal norms. Rather predictably, I relied on U.S. constitutional law principles and federal case law whereever practicable in this attempt.

For the most part, this work is designed to establish a foundation of substantive law principles of development law and international finance, and it has been remarkably well-received to date. Comments and observations made by colleagues and others since the publication of the first edition of this text have been truly invaluable and have been incorporated in full, where

possible, in the current edition. Further, obvious deficiencies, such as the lack of discussion of Rule of Law programs and their impact, have been corrected by the addition of a new Chapter 3 since, at the time of the first writing, a sufficient empirical database for making an evaluation did not exist.

Further, I believe an explanation is required as to why I choose to formulate constitutional principles of development law at the outset rather than deriving the same principles and rules from the actual practice of development law. In the effort to define substantive principles of development law, I had little choice but to rely on a deductive approach (where general propositions are used to support specific conclusions) rather than on an inductive approach (where specific instances are used to derive general principles).

Generally speaking, the first approach forms the foundation of many civil law traditions, and the second approach is widely used in common law jurisdictions. As a common law practitioner, it would have been my preference to review case law, rather than case studies, in order to formulate (or at least suggest the formulation of) general principles of development law; however, this was not an option available to me since the requisite case law does not exist. Judicial and adjudicatory bodies (outside of trade-based tribunals) simply are not focused on development law–oriented questions. Therefore, I took the initiative to establish a rules-based framework of analysis in hopes that it will, in time, provide the underlying legal support to a more practical, case-driven methodology. The success of this attempt is, as yet, to be determined.

Perhaps the most interesting, sustained, and profound debates of the text have taken place in my classroom and have been initiated by my students, and I have been greatly enriched by their passionate commitment to the issues that this subject matter embraces. I have greatly valued their views on the subject, especially in relation to the theoretical notions that I have tried to impart to them. Through my teaching experience, I have learned the more "politically correct" application of the Socratic method, which is simply to call on the student who says nothing but whose face reveals the eagerness of his or her thoughts. (This is far more productive and less intimidating than calling on students by rote or by alphabetical order, where the effect, if not the purpose, is to demean or terrify.) Teaching has also provided me with the opportunity to apply the clinical method in the classroom by requiring students to negotiate complex and intensive in-class exercises, a requirement that they have later told me that they actually appreciated. (In-class exercises that I have used in the past have included hypothetical examples of housing guarantees, debt-for-nature swaps, and privatizations of state-owned enterprises, all of which succeeded beyond any expectations I may have had.)

This text has also provided me with a clear pedagogical tool that I have used to better understand and explain the theoretical and complex multidisciplinary background of the subject, and it is my hope that it provides the reader with the same opportunity. However, my true hope is that the ultimate end-user of the text will not be my students, other law professors, or development specialists but rather the policymakers in the developing world who might find that something written here guides them towards making disciplined and conscientious choices in the development law process. Perhaps it should also be noted here that this text is only the first part of the develop-

ment law story; the second part encompasses the transnational business transactions that form the bulk of the international legal practitioner's daily routine, which is the subject of a forthcoming work.

So, what exactly is the subject of development law and international finance? For most legal practitioners, the subject of development law is not well understood or well defined. In fact, since development law and international finance is generally not taught in law schools, nor is it the subject of continuing legal education courses, exposure to the subject for most legal practitioners tends to be limited. Further, there appear to be no agreed upon notions of what the subject is or should be comprised of. Development law, at least to most observers and commentators, seems to be a multidisciplinary mixture of certain technical aspects of international corporate practice overlaid with economics, political science, history, and sociology.

To begin with, "development" seems to be a choice—that is to say, a decision to view certain issues from the perspective of encouraging the economic, political, legal, and even the cultural development of Asia, Africa, Latin America, the Caribbean, and now Central and Eastern Europe along with Central Asia (i.e., the former Soviet Bloc). For most practitioners and theorists, however, the overall objectives of alleviating poverty and human suffering and of improving the human condition more generally are the desired end product of the development process.

Amartya Sen has posited that:

> Development can be seen, it is argued here, as a process of expanding the real freedoms that people enjoy. Focusing on human freedoms contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization.... If freedom is what development advances, then there is a major argument for concentrating on that overarching objective, rather than on some particular means, or some specially chosen list of instruments....
>
> Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states.... In [some] cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.[1]

Professor Sen's interdisciplinary approach heralds a fresh, new approach to questions of development generally. However, at this stage, it is doubtful that a final and binding definition of *development* and consequently of *development law* will be agreed upon by its practitioners or theorists. Suffice it to say that development law is designed to address complex issues of human endeavor and change and, even more broadly speaking, of creating the context for global change. In particular, development law is concerned with analyzing, implementing, and evaluating global legal change.

The subject of *Development Law and International Finance* has a new relevancy for both common law– and civil law–based legal practitioners who are

[1] A. Sen, *Development as Freedom* (Alfred A. Knopf, 1999), p. 3.

struggling to understand and compete in an increasingly globalized economy. The legal practice of most international law practitioners has been profoundly affected by these changes. Not only has the potential geographic reach of common law–based legal practitioners exploded, but the complexity of the legal questions they address has increased exponentially as well. Whereas, in the past, international law practice was usually confined to transactional work and related international litigation in Europe, Latin America, and certain parts of the Far East, this is no longer the case. Countries in previously unknown or inaccessible parts of the world from Kazahkstan to Mongolia to Vietnam have suddenly burst on the scene offering vibrant legal markets where none existed before.

The relations between developing countries or transitional economies (i.e., Eastern Europe and the former Soviet Union) and Western Europe and North America have taken a legal dimension that affects the international or general legal practitioner with an immediacy that did not exist before. And, perhaps for the first time, international lawyers are trying to grapple with the questions and challenges that are raised by the subject area of development law and international finance. Since the new legal markets that are opening up are not, generally speaking, in developing countries with compatible legal infrastructures, international legal practitioners are now being confronted with societies with radically different legal histories, institutions, and cultures. Further, these societies are themselves, in most cases, undergoing tremendous transformations and upheavals.

Although the scope and practice of development law and international finance may not yet be well-defined, the field has increasingly gained in importance and relevance for the international law practitioner. In recognition of this change, the following text offers a perspective on some of the legal issues and practice-oriented questions raised by a new and unprecedented global interdependence. This discussion is designed to give private international law practitioners, in particular, and public international law specialists, in general, an overview of development law and some insight into certain current trends and worldwide developments that have an important impact on international legal practice.

The following introduction gives some background on the theoretical underpinnings of development law and international finance. An understanding of the theoretical background of the subject is quite important, particularly since the impact of certain philosophies and assumptions are clearly felt in the policy framework and the development strategies pursued by both developed and developing societies.

The main discussion treats three separate but related aspects of development law and international finance. First, the text examines development law, particularly in the context of the policy framework of Rule of Law (ROL) programs. ROL programs can be catalysts for legal change, which can be systematized to create fundamental structural legal changes. ROL programs often address (and challenge) the most basic legal concepts and institutions within a developing society and provide a window of insight into the types of legal changes being contemplated (and actually instituted) by developing countries. In addition, the text outlines the contours of an emerging body of development law: constitutional principles, certain substantive principles of law, and the institutional framework in which development law is unfolding.

Secondly, the text examines the international financial architecture that has both private and public components. Private international transactions can act as a catalyst for initiating structural legal reform in the financial sector and may have many downstream implications. Further, the role of the state in financing development through international borrowing from private commercial and public multilateral banking sources will be examined. Sovereign borrowing practices of the past failed to yield tangible development results and contributed to the enormous debt crisis of the early- and mid-1980s, ultimately leading to the imposition of strict structural adjustment policies by the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD or the World Bank). The gradual withdrawal of the state from productive sectors of the economy through privatization mechanisms are critically reviewed, and the implications of this recent evolution in the role of the state will be addressed.

Two factors, namely the severe economic repercussions caused by an overreliance on short-term sovereign borrowing and the privatization of public sector enterprises, have resulted in a critical reconfiguration of the state's role in the development process. Indeed, developing states are beginning to rely more and more on private equity markets to finance their development needs. The implications of this, including the impact this might have on developed countries, will be explored later in the text. And, finally, the public international legal aspect of development law in determining whether there is a human right to development is also addressed.

Since the queries posed by the subject are broad, it would be remiss on my part not to advise the reader of the limitations of this text. This text examines the relationship of certain legal, historical, and philosophic ideas to one another. It is not intended to be used as a primer for international business transactions. Nor is this text intended to be a restatement of blackletter law on subjects such as bankruptcy law, secured transactions, or intellectual property law, as such subjects might affect relations between the developed and the developing world. This discussion is meant to put the dramatic legal changes that have taken place over the past few decades into perspective and to explore the relationships, if any, between these changes and examine their significance for the future.

Further, with regard to the methodology employed here, the subject matter of *Development Law and International Finance* is still in a formative stage and comprises a rather unorthodox legal study. In fact, the normal channels of discourse (e.g., case law that distills principles of law from court cases) are not easily available to apply to this type of analysis. Development law and international finance also intersects other disciplines such as economics and political theory, which makes legal analysis of the topic somewhat unwieldy in this respect. Empirical case studies have been used illustratively to show certain trends and to help draw certain conclusions; thus, much of this material is anecdotal in nature. Any shortcomings or inaccuracies in the analysis presented are the full responsibility of the author.

Acknowledgments

Once again, I owe my grateful and humble thanks to Professor Sir Elihu Lauterpacht, CBE, Q.C., for setting me on the right course so long ago when I was still his law student at Newnham College, Cambridge University, and for his kind words concerning this effort. Rereading his foreword is still a delight as it remains evergreen with possibilities. In addition, I am wholly indebted to him for his visionary support in suggesting that the work be submitted as a doctoral thesis, for which, much to my surprise, I received a Ph.D. (Cantab.) in 2000. To Baroness Onora O'Neill, principal of Newnham College, Cambridge University, for so kindly hosting me and mentoring me during the trying few days leading up to the viva (oral examination) at Trinity College, Cambridge. Professor Amartya Sen, master of Trinity College, Cambridge University, also has shown his steadfast support and enthusiasm for the subject generally and my continuing involvement in it specifically, and for this, I am deeply grateful.

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In addition, I wish to thank Andres Rigo for his thoughtful review of the first edition of the work as set forth in *Georgetown J. Int'l Affairs* (Summer/Fall 2000) at page 131, and for his helpful comments in urging me to expand the research base to include the role of Non-Governmental Organizations and advising me to address the new context of international environmental issues affecting the development process. And, I thank Jeffrey Sachs for his kind support of my work and for hosting me in promulgating these ideas to his students at the Center for International Development, Harvard University.

To Martha Hoff, former assistant dean at Georgetown University Law Center, I owe my sincere thanks for taking a leap of faith in welcoming me to the law classroom at Georgetown in 1995. This was the first step in a long journey leading to this work, as now revised. And to Charles H. Gustafson, associate dean at Georgetown University Law Center, I want to express my deep gratitude for his enduring faith in me. And most especially, I owe my sincere gratitude to Professor Don Wallace, Jr., Georgetown University Law Center, for his insightful comments on earlier drafts of this text and his unflagging support for all my ventures.

To Sofia Luina, my trusted law assistant, who has steadfastly endured all the many iterations of my ever evolving research parameters and exhibited inexhaustible patience in the process, I owe my sincere thanks. Douglas Ierley, my former student and law assistant, has also added invaluable contributions both by adding his own original research and by advising me on the readability of the text from the standpoint of student readers. And, I am very happy to have had the opportunity to have met all my many law students at Georgetown, whose ideas expressed in class and whose own experiences in the development law process have added invaluably to my own. I truly respect and value their experiences and, as my former students, they are the first wave of policymakers who have listened carefully to, absorbed, and informed the ideas expressed in this work. They sat through the lectures where I endeavored to share the experiences that have so moved me and so profoundly changed my view of the world. The perspectives offered by my students have also helped clarify my writing in order to make this text a better pedagogical tool, so that teaching this subject has been both simplified and streamlined.

Further, I wish to express my appreciation for the support and assistance in researching this work that I received from so many of my friends and colleagues at U.S. Agency for International Development, the World Bank and the International Monetary Fund. Their field experiences and observations added invaluably to my own. I especially owe so much to USAID since the work and the many adventurous travels I experienced through the agency were the beginning of a long and most rewarding personal and professional endeavor that culminated in this work. And finally, to my loving parents, my mother, who always believed in the vistas I created for myself, and my father, who, I believe much to his surprise, finally learned to accept in the end my choice of law rather than medicine.

The views expressed in this book are the author's personal views and do not necessarily reflect the policies or views of the Overseas Private Investment Corporation, the U.S. Agency for International Development, or the U.S. Government.

Washington, D.C.
March 2002

Abbreviations

AAEA	Association of Asian Election Authorities
AAfEA	Association of African Election Authorities
ACP	African-Caribbean-Pacific
ACT	Agreement on Textiles and Clothing
ADB	Asian Development Bank
ADR	Alternate Dispute Resolution
ADR	American Depository Receipts
AfDB	African Development Bank
AFP	Administradoras de Fondos de Pensiones
AMEX	American Stock Exchange
AOJ	Administration of Justice
ATRR	Allocated Transfer Risk Reserve
BAFECR	Bulgarian Association for Fair Elections and Civil Rights
BIS	Bank for International Settlements
CERDS	Charter of Economic Rights and Duties of States
CLS	Critical Legal Studies
CSRC	China Securities Regulatory Committee
CTAB	Capital Transfer Appellate Board
DFID	Department for International Development (UK Development Aid Agency)
DSB	Dispute Settlement Body of the World Trade Organization
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EAI	Enterprise for the Americas Initiative
EBRD	European Bank for Reconstruction and Development
EC	European Community
EEC	European Economic Community
EFM	Emergency Financing Mechanism
ESAF	Enhanced Structural Adjustment Facility
ESF	Exchange Stabilization Fund
ESOP	Employee Stock Ownership Plan
EU	European Union
EximBank	U.S. Export-Import Bank
FDI	Foreign Direct Investment
FPI	Foreign Portfolio Investment
G-7	Group of 7
G-8	Group of 8

GAO	U.S. General Accounting Office
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GNMA	Government National Mortgage Association (Ginnie Mae)
HIPC	Heavily Indebted Poor Countries
IBRD	International Bank for Reconstruction and Development (World Bank)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IDB	Inter-American Development Bank
IFC	International Finance Corporation
IFES	International Foundation for Elections Systems
IFI	International Financial Institution
IMF	International Monetary Fund
IPO	Initial Public Offering
JEXIM	Japan Export-Import Bank
LDC	Lesser Developed Country
LIBOR	London Interbank Offered Rate
LOI	Letter of Intent
M/EBO	Management/Employee Buy Out
MFN	Most-Favored Nation
MIGA	Multilateral Investment Guarantee Agency
NAFTA	North American Free Trade Agreement
NASDAQ	National Association of Securities Dealers Automated Quotation System
NCB	National Commercial Bank
NEP	New Economic Policy
NGO	Non-Governmental Organization
NIE	Newly Industrializing Economy
NIEO	New International Economic Order
NPP	National Progress Party (Mongolia)
NSE	India's National Stock Exchange
NYSE	New York Stock Exchange
OAS	Organization of American States
OAU	Organization of African Unity
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OPEC	Organization of Petroleum Exporting Countries
OPIC	Overseas Private Investment Corporation
OTC	Over-The-Counter
PEMEX	Petroleos Mexicanos
PRGF	Poverty Reduction and Growth Facility
PSEC	Philippine Securities Exchange Commission
PTF	Zambian Privatization Trust Fund
RASDAQ	Romanian Automated Stock Display and Quotation System

ROL	Rule of Law
RUF	Revolutionary United Front
SAL	Structural Adjustment Loan
SDR	Special Drawing Right
SEC	U.S. Securities and Exchange Commission
SECAL	Sectoral Adjustment Loan
SFA	Special Facility for Africa
SHSE	Shanghai Stock Exchange
SZSE	Shenzhen Stock Exchange
SIBOR	Singapore Interbank Offered Rate
SOE	State-Owned Enterprise
SPA	Special Programme of Assistance
SPA	Hungarian State Property Agency
SRO	Self-Regulatory Organizations
STAQ	Securities Trading Automated Quotation System
TRIMS	WTO Agreement on Trade Related Investment Measure
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
UCC	Uniform Commercial Code
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCITRAL	UN Commission on International Trade Law
UNCTAD	UN Conference on Trade and Development
UNDP	UN Development Programme
UNDRD	UN Declaration on the Right to Development
UNESCO	UN Education, Scientific, Cultural Organization
UNICEF	UN Children's Fund
UNIDROIT	International Institute for the Unification of Private Law
UNMIK	UN Interim Administration Mission in Kosovo
UNTAC	UN Transitional Authority in Cambodia
USAID	U.S. Agency for International Development
USG	U.S. Government
WTO	World Trade Organization
WW II	World War II
ZPA	Zambia Privatization Agency

Introduction

1. *FIN DE SIÈCLE* ANALYSIS

At the outset, there are certain historical trends that form a backdrop to the overall discussion that follows and that merit some discussion. It is appropriate to begin with a *fin de siècle* analysis since we have ended a momentous century and have begun a new millennium. This is a most propitious time to revisit and assess the historical and other implications of the past eventful and stressful century and to explore the lessons it may hold for the future that is already overtaking us.

First, the definitional changes that have taken place over the past decade may be somewhat confusing and misleading. For example, most readers are familiar with the phrase "Third World" as it refers to the developing world. "Third World" was coined from the use of the term *tiers état* in an article by Alfred Sauvy published in *L'Observateur* on August 14, 1952, referring to the marginalized poor in France prior to the French Revolution of 1789.[1] The Third World defies definition since both Gross Domestic Product (GDP) and per capita income are misleading indicators. Certain Arab countries, for example, have extremely high GDP levels and per capita figures that might actually disguise significant levels of poverty and deprivation for large segments of the population. Moreover, Third World countries generally do not have a set of unifying characteristics or a common history. Macedonia, Mali, and Mongolia, for example, can all be considered to be in the process of "developing," but they do not share any common bonds of history, geography, or ethnicity.

The "First World" is comprised of a fairly homogeneous group of European and North American nations, and Japan, Israel, Australia, New Zealand, and South Africa who fall outside the geographic confines of the First World. The G-7, composed of the United States, the United Kingdom, France, Germany, Italy, Canada and Japan, is often used as shorthand to refer to advanced, industrialized nations that are market-based, democratic societies.[2] Russia has been recently added as the eighth member in what is now known as the G-8.

The now-defunct "Second World" consisted of the Soviet Union, Eastern

[1] T. Lewellen, *Dependency and Development: An Introduction to the Third World* (1995), p. 3.

[2] See "The New International Economic Order and General Assembly Resolutions: The Debate over the Legal Effects of General Assembly Resolutions Revisited" (1985) 15 *Cal. W. Int'l L. J.* p. 648 n. 7.

Europe, and Central Asia or, in other words, the transitional economies of the former Soviet Bloc. Its members are now scrambling to join the First World, and for some countries, such as the Czech Republic, Slovenia, and the Baltic nations, this transition is more or less complete. For others, such as Albania, the transition will be more painstaking and the danger of slipping into the Third World category is still a real possibility. The transition of the Second World into the First World has important implications that will be explored later in this text. The Second World also included other socialist nations such as China, Cuba, Vietnam, and North Korea. However, the terminology of the First, Second and Third Worlds (and even of the "Fourth World" of nations mired in poverty, such as Bangladesh, or collapsed in a state of political chaos, such as Sierra Leone) has been largely discredited due to the demise of the so-called Second World.

The idea of "development" itself is problematic in this context since the designation of "less-developed" and "lesser-developed" countries (LDCs) implies that these nations are in the process of "becoming" and therefore have a somewhat reduced international status, an implication that is both patronizing and condescending. The developing world is also referred to as the Group of 77, a term that was coined in 1964. However, this is also a misleading term since, out of the roughly 180 states of the world, almost 120 can be considered to be "developing countries" or "transitional economies." Moreover, it could also be argued that China, India, Mexico, Brazil, South Korea, and Taiwan should be graduated from this status based on their large and expanding industrial bases.[3] Thus, the membership of the Group of 77 is always in flux.

Geography is sometimes introduced into the picture so that development is judged by the parameters of "East–West/North–South." The East–West dichotomy tends to reflect the cultural divide between the industrialized "West" and the non-industrialized, non-Western economies. However, since "East" encompasses more than just Asia and must, by definition, include Africa and Latin America (also located in the Western Hemisphere), the use of this terminology can be somewhat misleading. Moreover, this division has obvious flaws since Japan is a country in the Far East geographically but is a full member of Western-styled, democratic, market economies politically and economically.

Similarly, Australia and South Africa are in the "South" geographically but are recognized members of the "North" economically speaking. In addition, the ideologically based, neo-Marxist overtone of the "North–South" dichotomy is fairly obvious, and its legitimacy has waned in recent years. To add a further layer of complexity, Australia now wishes to be considered part of the Pacific Rim and politically now tends to identify more with its Asian neighbors than its European antecedents. Australia's actions make it clear that it is trying to join the "East Asian Tigers" led by Japan.

This configuration of Far Eastern states has also been referred to as the "flying geese" formation with Japan in the lead followed by the Newly Industrializing Economies (NIEs): i.e., the former Hong Kong, Taiwan, Singapore, and Thailand. South Korea, Indonesia, Malaysia, the Philippines, and

[3] Ibid., p. 647 n. 1.