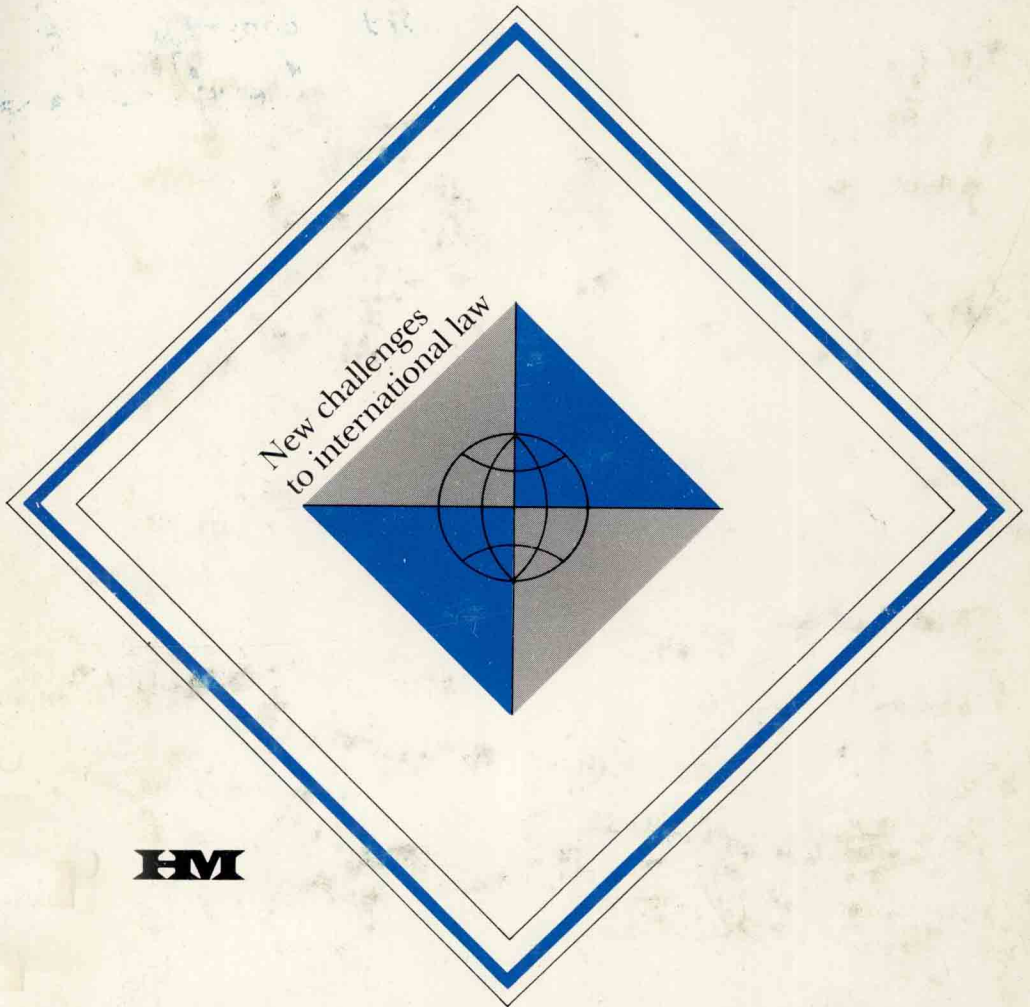


"There is perhaps no other subject so important at the present time." –
Andre Fontaine

Towards a new international economic order

Mohammed Bedjaoui



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New challenges to international law

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Preface

With this volume, Unesco is launching a new series entitled 'New Challenges to International Law', which has been planned as a contribution to the 'promotion of the study of the role of international law and of international organizations in the establishment of a peaceful world order', one of the objectives of the Organization's Medium-Term Plan.

The aim of the series is to encourage a critical look at international law to see how it can be better adapted to the demands of the contemporary world. This book, like all those to be published in the series, deals with a controversial issue; but the views expressed are, of course, those of the author alone and do not necessarily reflect the opinions of Unesco.

Unesco wishes to express its warmest thanks to His Excellency Mr Mohammed Bedjaoui, former Minister, Algerian Ambassador in Paris, member of the United Nations International Law Commission, and Associate of the International Law Institute, for agreeing to write the first volume. His reputation as a lawyer and his vast experience as a diplomat make it certain that his book will exert a great influence on the development of the role played by international law in transforming the structures of society. This, in the final analysis, is the ambition, both modest and excessive, that Unesco has set itself in accepting the new challenges posed to international law.

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Introduction

In ancient times, in Rome, that rigid society which then burst asunder, the plebeians wrung from the patricians the law known as 'The Twelve Tables'. In the same way, the proletarian nations are now trying to win the acceptance of the prosperous States for a new 'law of the five continents', even extending to a sixth area—the empire of the sea.

One must look beyond the logic, the consistency and the legitimacy of the new States' economic demands and see the dialectically inevitable nature of the profound change called for in international relations and institutions as a whole. The irresistibility which these demands derive from the 'natural order of things' clearly demonstrates their obvious necessity and may also, if one looks more closely, give some idea of their probable scale, their possible duration and their likely stages.

The overseas discoveries of the fifteenth and sixteenth centuries led to the shaping of an international law of appropriation. The invention of the steam-engine and the unleashing of the industrial revolution at the end of the eighteenth century gave rise to a system of international economic and political relations perfectly expressed in a colonial right of confiscation, and based on the supremacy of Europe, on the subjugation of peoples overseas, wiped from the international scene, and on the 'colonial pact' under which the colonies served as a reservoir of raw materials and an outlet for finished products. The decolonization of the last twenty years, which is not yet a spent force and which is still causing surprise by the profoundly novel consequences to which it is leading in the international sphere, is just as important a phenomenon and just as decisive a turning-point in the 'rules of the international game' as the major geographical discoveries of the fifteenth and sixteenth centuries or the constitution of the great colonial empires following on the industrial revolution.

The successive decolonizations of the 1960s undoubtedly marked a new and fruitful phase in the history of mankind. The forced renunciation of the colonial empires and the emergence of new actors on the international scene inevitably deprived, in different degrees and to a varying extent, the dominant States of their empires, i.e. of their economic, political and strategic props in the world. The shareout of the world had to give place, gradually but surely, to the world of sharing. This gave rise to considerable upheavals, both in world economic relations and in the international political and legal system.

The dominant States were very well aware of what was at stake in decolonization, which was why they resisted it to the bitter end. And in making a pretence of conceding what would otherwise have been wrenched from their grasp, they hoped to be in a better position to avoid the torpedoing of all their privileges. By granting independence in the nick of time in certain cases, some dominant States banked on retaining their advantages, or at least as many of them as possible. Innovations of varying authenticity in their political and economic relations with their former subjects served, and continue to serve, as 'delaying tactics' to retard the date of complete liberation.

This is not surprising, because although it swept like a hurricane through the worlds of politics and economics, decolonization is still new and insecure. Imperialism, on the contrary, despite the staggering blows it has received, still shows an extraordinary ability to 'co-opt', and amazing powers of adjustment. The economic order and the legal-political order, established long ago and now being challenged, took three centuries to extend their tentacles into all the vital sectors of the entire world. A new system of international relations cannot be substituted overnight. It took several decades before the demands of the Third World finally touched on the essential issue. Several more decades will certainly elapse before a new international legal order can be established.

The point to be emphasized, however, is this: international law, which is anything but immutable since it has a social function to fulfil, must inevitably be concerned with the changes occurring in our world. The bipolar or oligarchic world relies on an 'international right of confiscation', i.e. confiscation of the independence and sovereignty of satellite States. The multipolar world to be set up will involve, on the contrary, an 'international right of participation', i.e. participation by all States in the formulation and application of the rules governing the relations between them.

The gradual institution of a new economic and legal order is the aim to which the Third World countries are bending their efforts in order to protect their newly-won independence and sovereignty in the precarious circumstances of the present system of international relations, which is by no means freed from '*de facto* domination'. One

might wonder how those countries can achieve their object when the frailty of their unfledged independence and sovereignty still exposes them to the incursions of imperialism. The answer is that they have made two amazing discoveries, realizing firstly the strength conferred upon them by their joint action in world affairs, and secondly the vulnerability of the industrial countries in their dependence on the Third World's raw materials and energy.¹ The gunboat diplomacy still open to the imperialistic States is gradually being supplanted by a raw materials diplomacy, in which the developing countries are constantly becoming more proficient.

Those countries have now embarked upon a 'long march' on the road which is leading them to brand the bipolarity and the partitioning of the world that destroy the sovereign equality of States; to call in question an oligarchical system based on the exploitation of the greatest possible number of peoples; to appeal to the exploited nations to rally together and co-ordinate their activities; and to propose a new world-wide legal, economic and political order, based on the integrated development of the whole earth and on the right to progress of all peoples. The developing countries are aware that this rugged road, traced by the efforts of millions, is likely to be lost to sight times out of number before the objective is attained, but they cherish the conviction that through a dialectical process, everything in the world is being rebuilt, made and unmade, in a vast and prodigious battle against inequality. The stuff of law and international relations still bearing the imprint of the old pattern of inequality. Nevertheless, complex antagonistic forces, constantly at work, always at variance, despite short-lived victories, temporary defeats or momentary respites, are confronting each other more resolutely than ever in an incessant challenge constantly repeated.

But if we level off the short-term fluctuations of the graph representing the trend of these forces, and consider the long-term linear result expressing the steady progress of mankind, there is no escaping the conclusion that the advent of a new international economic order is inevitable. The question is whether present-day international law can help to accelerate the institution of such an order, and if so, how. This represents, in fine, a challenge by the projected new economic order to international law in the process of transformation, which makes it necessary to test the validity and efficacy of present legal standards and assess both their capacity to adjust to economic upheavals and their ability to influence such changes.

To assess this challenge to international law made by the new international economic order means gauging the probable impact of the former on the latter, and vice versa. Clearly, such an assessment

1. See Paul-Marc Henry, *La Force des Faibles*, Paris, Éditions Entente, 1975.

necessitates measuring the gap which separates present-day international law from the future system of standards entailed by the new international economic order. But to measure any distance, it is clearly necessary to locate the exact starting point and the place of arrival. This means making both a diagnosis and a prognosis. It is thus a question of first outlining what international law is like at present, analysing its current socio-economic function, and detailing its current state, situation and plans, and then of analysing the objectives of the new economic order, its implications and demands, in terms of their possible legal expression in the future.

However, these two tasks, which may be said to be those of the present study, do not fully describe its scope. Present international law and the new international economic order must be regarded as social phenomena which naturally react on each other in a dialectical way. But two problems immediately arise at this stage.

First, there is a problem of comparability. To establish the nature and degree of the reciprocal interaction of two social phenomena, it must first be ascertained that the two are comparable. Thus in the present instance, we have to measure the distance between the present international legal order and the future legal order necessitated by the establishment of the new economic order. The work necessary is thus reduced to the comparison of two orders, both legal, the first in existence, the second an extrapolation for the future.

The other problem relates to the nature of law. The law fulfils a specific social function—that of consolidating a specific situation. In this respect, it is essentially conservative. The question is then whether international law can be relied upon to serve as an instrument of change, an implement to hasten the advent of the new international economic order. In other words, does international law fulfil a passive function centred on the anticipated establishment of a new international economic order, at which time, and not before, it would translate all its achievements into legal terms? Or can international law play an active part and through its own capacity for development or through factors distinct from those arising out of the new international economic order, undergo gradual changes that would facilitate the advent of that new order?

Historians of all persuasions teach that social happenings are governed, not to say dictated, by the fundamental principle of interdependence. All developments are linked, interreact, and are ordered with perfect consistency. It is highly likely that in these circumstances, despite the purely conservative character of international law or its role as the protector of established situations, its development may become a 'contributing factor' to the 'long march' towards the institution of the new international economic order.

All the same, just as in algebra an equation cannot be solved if

one unknown can only be identified through another unknown, it does not, at first sight, seem possible to determine the future development of international law, either as an active agent or as a passive factor of the new international economic order, without first identifying the new order itself. It must not therefore be assumed, however, that gifts of prophecy are required (obviously beyond man's reach) to predict the exact nature of the new order and the time needed to establish it. Even were this possible despite man's natural deficiencies, it would not be necessary.

Our investigation cannot, indeed, be governed by such a prior condition as the precise determination of the exact outline of the new international economic order. For our approach, which must inevitably be more modest, it is both necessary and sufficient to make a rapid diagnosis of the present economic order and add a forecast of what it will be or might become, after weighing up the contradictory demands of the various groups of protagonists in the world and identifying the balance of power between them as expressed by their antagonistic relations. On this basis it should be possible, firstly, to determine the impact of these world-wide economic demands on the future of international law, and secondly, contrariwise, to draw up a 'legal strategy' for seeking ways and means by which international law could in turn contribute to the establishment of this new international economic order.

Even so, we shall give only brief examples here which take it for granted, as a working hypothesis, that everyone acknowledges the inadequacy of the old international economic and legal order and the need for a gradual substitution of a new economic and legal framework. This does not mean that general agreement on the need to reform the old order in any way implies convergent views on ways and means of bringing the changes about, nor even on the scale of those changes. These examples will show how one can legitimately speak at present of the poverty of the international order and the international order of poverty, but at the same time, one should not forget that the grave and tragic weaknesses of the liberal and neo-liberal economic and legal order have led, over the last two centuries, to prodigious feats in humanity's march towards progress. What has been achieved does, indeed, form part of the great human adventure—a 'many-splendoured thing', to quote Han Suyin (and Francis Thompson), but also one with terrifying shortcomings—which we must all undertake in our human condition.

In short, the aim of this present study is not to draw up detailed, precise legal rules, specially conceived to facilitate the advent of a new international economic order. This would be not only premature but impossible as we know nothing about this new economic order apart from its broad outlines and general trends. Our object here is simply

to determine the most suitable methods and modern means of ensuring that international law becomes an efficient instrument of progress in the service of that new order. In other words, it is not so much a matter of drawing up the required rules as of laying down the proper legal framework and the appropriate methods for formulating those rules. We shall therefore begin at an earlier stage by defining the 'production framework' rather than the actual production, the 'method of formulation' rather than the formulation itself. Our study will thus be reduced mainly to an investigation of ways and means of modernizing, firstly, the procedure for adopting international legal standards, and secondly, the procedure for the establishment of international institutions, with a view to enabling both standards and institutions to meet the new requirements of the world community and to form the basis for a new international economic order.

What, then, is meant by a 'new international economic order'? What observations and aspirations gave rise to the concept itself? What is the importance and significance of the current crisis? What obstacles stand in the way of the establishment of the new international economic order? What are the facts or the invariables as well as the dependent factors which reveal the pattern of the underlying currents and the power relationships, changing and recurring, on which movement towards new stages in humanity's progress depends? How can the new order finally be instituted? In particular, would an adaptation of the United Nations system constitute a necessary and sufficient condition for the establishment of the new order? All these questions are ones which need to be asked.¹

First of all, however, part one of the study will sketch the profile of the 'international order of poverty and the poverty of the international order' engendered by our amazing yet unhappy world, while part two will consider what 'the international law of development and the development of international law' might be.

1. See *Moving towards Change: Some Thoughts on the New International Economic Order* (collective work), Paris, Unesco, 1976.