

*The International
Law and Policy
of Human Welfare*

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The International Law and Policy of Human Welfare

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Foreword

Since the Second World War the academic community of international lawyers has passed through a succession of changing themes and crises. Immediately after the cessation of hostilities in 1945 an exhausted world began the task of constructing a greatly expanded global system of international organizations. For a brief time it seemed that this task would be directed chiefly at the reconstruction of shattered societies and economies, but by 1947 ideological tensions between East and West had drawn international lawyers into an increasing preoccupation with security concerns. The result was that the new world structure became an arena of ideological and political combat rather than a set of agencies intended to promote international harmony and cooperation in the overall interest of the world community.

Although several international lawyers of the post-war generation devoted much attention to the cause of human rights, the profession continued to be preoccupied with cold war tensions, especially in Europe and North America. The hopes for genuine improvements in human welfare remained low, limited by the atmosphere of political animosity. By 1960 or thereabouts, however, the ethical concerns of international lawyers were being redirected to the plight of newly independent states facing unprecedented problems of national development in a world of gross disparities. The growing interest by international lawyers in problems of development coincided with a realization that the nuclear powers and their allies were reaching the point of checkmate in the game of political chess which had dominated international affairs for over a decade. The non-alignment movement in the Third World reflected a genuine disillusionment with the relevance and utility of political and economic models in either of the warring camps and no doubt contributed to the lessening of tensions between them. Moreover, the magnitude and complexity of development problems in a shrinking world began to be seen as requiring massive infusions of aid from the industrially developed nations of both ideological persuasions. Soon, however, once the relative failure of international aid programmes had been perceived, the developing nations began to demand the participation of the developed states, as a matter of obligation, in the building of a new international order.

In the post-Vietnam period, the primary focus of most international lawyers has been on developmental issues which have commanded attention in an increasing number and variety of forums, forcing lawyers to work together with economists and other specialists in non-legal aspects of these issues. This trend is perhaps best evidenced in the worldwide involvement in the Third U.N. Conference on the Law of the Sea, but is also reflected in major conferences on housing, population, food production, crime control, environment, human rights, and other matters of critical concern to all societies. The international lawyer of the late 1970's has thus been brought into close and continuing contact with what for him is the largely uncharted territory of human needs. It might be said that this new bearing represents a final departure from the classically ordered world of international law with its limited and selective relevance to the everyday lives of individuals around the world.

What we attempt to do in this book, therefore, is to provide, chiefly for the benefit of international lawyers, a conspectus on the overlapping areas of human rights, national development, social welfare, and human needs. This study consists, then, of a collection of essays designed around the theme of "human welfare", as that concept is to be interpreted in the conditions of the late twentieth century. As we explain in some detail in the opening chapter, we intend the concept of human welfare to be construed in the fullest sense suggested by our understanding of "human development". The reference is, therefore, to all the psychic aspects of individual welfare, such as those normally encompassed under the international law of human rights, as well as to physical needs and aspirations now placed at the center of concern with the development of the new international order.

The theme of human development is not, of course, unknown in the behavioral and social sciences. Indeed, most specialists in the fields of political, economic and social development are aware of the interrelatedness of the concepts underlying the notion of human welfare. This was reflected, for example, in the Houston Declaration of the Aspen Institute's international conference on human needs of 1977. But only a few writers in international law have begun to explore the interface between the legal and non-legal aspects of human welfare in the world community. The more systematic treatments have been those of Roling, Jenks, Corbett, Friedmann and, more recently, McDougal, Lasswell and their associates. The present work is intended to continue and develop the theme of human needs in the literature of international law, exploring the potential range of inquiry by international lawyers in a vast and almost unmanageable field of concern to many disciplines.

This work consists of four parts. In the first, some of the central concepts and motivations underlying the international legal order,

particularly as it affects the physical and psychic aspects of human welfare or development, are explored in a series of wide-ranging essays. In the second, emphasis is placed on current issues concerning human dignity, including new as well as more familiar problems in the field of human rights. This is followed in the third part by studies in legal and economic aspects of national development, designed to bring up to date the most significant trends in the evolution of the new international economic order. The book concludes with a fourth part devoted to problems in the promotion of physical welfare, with special reference to recent international conferences of this kind sponsored by the United Nations. It is hoped that the cumulative effect of these essays will be a contribution to the organization of the field, which might be designated as the international law and policy of human welfare.

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Part One

Structure, Value and Process

