would reflect instead the principle of "self-determination" and national sovereignty over natural resources.

What I shall say about the influence of law and how nations behave under law is in focus on the contemporary scene. For familiarity and better understanding, the examples will be largely from the period since the Second World War. For my purposes, then, I assume a system which includes proliferating international organizations, the United Nations Charter, the outlawing of war, the advent of atomic weapons, ideological competition, and, more recently, the proliferation of states and the emergence of the Third World.

PART ONE
LAW AND INTERNATIONAL BEHAVIOR

Much apparent disagreement about the role of law in foreign affairs reflects differences in perspective. The lawyer may see what law there is and what law does; the critic may see only what law there is not and what law has not achieved. The lawyer may be talking about law broadly conceived, ubiquitous, essential, inherent in society, therefore also in international society. He is not differentiating among various forms and roles of law; he is not thinking of the desirability or effectiveness of any particular law; he is not concentrating on the ultimate purposes of law or asking how far law succeeds in meeting them. The critic of law may begin with the larger purposes, noticing primarily where they are not achieved, blaming the law for these failures. The law he sees is only the "spectacular," dramatic law, and he may blame abiding disorder on its ineffectiveness. He may especially object to attempts to deal with particular political problems by particular

forms of law which he considers undependable, even undesirable. Inevitably, perhaps, the respective preoccupations of lawyer and diplomat may bring them into some disagreement when each is compelled to look up to consider what interests the other.

The lawyer's perspective is more perceptive as regards the character, the content, the varieties of law; it is sometimes defective as to the uses of law, the purposes it serves, and whether, to what extent, how and why it achieves those purposes. Why do nations make law and conclude international agreements? What is the content and substance of the law which they make? How much order does law bring, how much freedom (anarchy?) does it leave? To what extent do nations observe the law and agreements they make? In what other ways might the law influence how governments behave? When nations observe law, why do they? And why, at other times, do they disregard their obligations? Where, at bottom, does law stand in relation to a nation's foreign policy?

One frequently encounters the view that international law is made by the powerful few to support their particular interests. Paradoxically, it is a common view also that the norms of international law are so widely disregarded as to be largely irrelevant to the behavior of nations. Some have even elevated this impression to a doctrine, questioning whether one may meaningfully speak of international norms, of their observance or violation. When nations do behave consistently with law, it is commonly seen as fortuitous: the law happened to coincide with what nations wished to do. But this coincidence is too frequent to be mere concidence. There are reasons why nations make law and conclude agreements, and why they make particular law; like law in many national societies, international law results from the complex interplay of varied forces in international politics. There are reasons why nations act in accordance with these undertakings. One can explain, too, why law is sometimes disregarded. Not unlike law in a

national society—and for reasons that are not dissimilar—international law is observed by nations as national policy, shared with other nations, in support of an orderly society.

one

THE ROLE OF LAW AND ITS LIMITATIONS

Those whose concern is law may not understand how others can question its significance for diplomacy. They conclude that the common criticisms of international law reflect a limited view of both international law and foreign policy, in which both are distorted—indeed, most law and most policy are overlooked.

Not surprisingly, when most of us think of American foreign policy since World War II, we tend to think of "containment of communism," cold war or détente, support for the United Nations, the Marshall Plan, NATO, intervention in Korea, Vietnam or the Dominican Republic, and near-intervention in Angola, the Cuban missile crisis, the Two-Chinas Policy, Secretary Kissinger's shuttle diplomacy in the Middle East and something similar and less successful in southern Africa and Cyprus. Earlier, we might have thought of the Good Neighbor Policy, the Monroe Doctrine, "manifest destiny," "no foreign entanglements." But the diplomat knows that, even in our tension-ridden times, foreign policy and

foreign relations are not all, or principally, drama and grand design. Foreign policy is the sum of all the attitudes reflected in myriads of relationships and numberless points of contact that one nation has with others, large and small. For a country like the United States it is the sum of all the attitudes revealed in thousands of telegrams daily between the Department of State (and other departments) and more than a hundred foreign missions, mostly about small subjects: a citizen claims an inheritance in a foreign land; a company wishes to do business abroad; an extradition treaty is negotiated; there is a request for economic aid or a research reactor; a head of state will come to visit; a public statement is explained, or explained away. Foreign policy also includes the attitudes enshrined in the Constitution, in legislative enactments, executive orders and regulations, judicial decisions, that have import for relations with other nations or their nationals. It includes even unofficial attitudes of peoples and individuals, of domestic companies, trade unions and institutions, their actions and reactions which affect relations with others. In largest part, then, foreign policy is routine, undramatic, uncontroversial, "uninteresting"—I do not say unimportant—aimed at achieving national ends usually through stability, order, good relations. Like good health, or a good marriage, it is mostly unnoted and taken for granted—unless the routine is interrupted.

THE VARIETIES OF INTERNATIONAL LAW

As for international law, much misunderstanding is due to a failure to recognize law where it exists. That failure may be due to a narrow conception of law generally. The layman tends to think of domestic law in terms of the traffic policeman, or judicial trials for the thief or murderer. But law is much more and quite different. I do not invoke any esoteric or eccentric definition of law when I say that in domestic society law includes the scheme and structure of government, and the institutions, forms, and procedures whereby a society carries on its daily activities; the concepts that underlie relations between government and individual and between individuals;

the status, rights, responsibilities, and obligations of individuals and incorporated and non-incorporated associations and other groups, the relations into which they enter and the consequences of these relations. Men establish families, employ one another, acquire possessions and trade them, make arrangements, join in groups for ill or good, help or hurt each other, with little thought to law and little awareness that there is law that is relevant. By law, society formalizes these relationships, creates new ones, legitimates some and forbids others, determines the content and consequences of relationships. The individual remains hardly or hazily aware that he is enmeshed and governed by "law"—laws of property, tort, contract, crimes, laws of marriage, divorce, family, inheritance, laws of employment, commerce, association; and that there are procedures and institutions and formalities which are ever there and maintain an order in society, although they may assert themselves only at critical points, when relations are established, or change, or break down.

In relations between nations, too, one tends to think of law as consisting of a few prohibitory rules (for instance, that a government may not arrest another's diplomats) or the law of the U.N. Charter prohibiting war. Readers may think of law as including major treaties, such as those of Utrecht, Vienna, Paris, or Versailles. But international law, too, is much more and quite different. Although there is no international "government," there is an international "society"; law includes the structure of that society, its institutions, forms, and procedures for daily activity, the assumptions on which the society is founded and the concepts which permeate it, the status, rights, responsibilities, obligations of the nations which comprise that society, the various relations between them, and the effects of those relations.* Through what we call

*I do not include here that which nations do merely from habit, custom, "convention." I refer to *law*, to behavior as to which there is—on the part of the actor, the victim, and others—a sense of obligation, and a sense of violation when it fails. Between law and non-law the line is, of course, sometimes uncertain. Compare, however, non-legally-binding but important political-moral undertakings like those in the Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1 August 1975), pp. 16–17, 237, below.

foreign policy, nations establish, maintain, change, or terminate myriads of relations; law—more or less primitive, more or less sophisticated—has developed to formalize these relationships, to regulate them, to determine their consequences. A major purpose of foreign policy for most nations at most times is to maintain international order so that they can pursue their national interests, foreign and domestic. That order depends on an "infrastructure" of agreed assumptions, practices, commitments, expectations, reliances. These too are international law, and they are reflected in all that governments do.

To move from the abstract, consider some of the "givens" of international relations. First, they are relations between nations (states).* The nation is the principal unit. All the forms of intercourse, all the institutions, all the terms even, depend on the existence of "nations." (One can conceive of a different society: in a centralized world government there would be no nations, no international relations, no "transnational law."[1]) That political society is based on the nation is not commonly seen as involving either policy or law; ordinarily, nationhood is the unspoken assumption of political life. But the nation ("state") is not only a political conception; it is also a fundamental legal construct with important consequences. Statehood—who is and shall be a state—has been one of the major political issues of our day. The legal concept of statehood is crucial, of course, when the character of an entity as a state is itself in issue. It figured in Soviet insistence on U.N. membership for Outer Mongolia, as well as in continued recognition by the United States of governments-in-exile for the Baltic republics incorporated

*While international society today recognizes other entities—intergovernmental and other international organizations (the United Nations, the International Committee of the Red Cross), national and multinational companies with major transnational activities, even individual human beings—these are normally of concern only when, and because, their actions and the effects of their actions spill over national boundaries. Even to the extent that the individual has become a "subject" of international law, it is *international law* he is a subject of. Even the new concern for the human rights of individuals finds expression to date only through treaties and practice between nations, or through organizations of nations or bodies created by nations. See Chapter 12.

by the U.S.S.R. It was raised when Palestine was partitioned and Israel created and underlies the recent claims of Palestinians to a state of their own. It was entangled in the question of Chinese representation in the United Nations and still bedevils the future of Taiwan. The "nation" has been in issue in differences over recognition of divided countries and their membership in international organizations—China, Korea, Vietnam, Germany. The legal concept and consequences of nationhood underlie the explosion of "self-determination" which ended Western colonialism and transformed the map of the world, and have troubled even the new nations, *e.g.*, Biafra, Bangladesh. It still deeply troubles Cyprus, and also Kashmir. It has given new significance to the problem of the "micro-state" or "mini-state."

Relations between nations generally begin with "housekeeping arrangements," including recognition and establishment of diplomatic relations. That these involve law (*e.g.*, in regard to recognition, sovereign and diplomatic immunities) is commonly known, but the importance of this law for foreign policy is commonly depreciated. In fact, this law is basic and indispensable, and taken for granted because it rarely breaks down. The newest of nations promptly adopts it and the most radical scrupulously observes it. The occasional exception confirms the obvious, that there would be no relations with a nation that regularly violated embassies and abused diplomats. There are also the special cases when "housekeeping" becomes important policy: whether to recognize Communist China and seat its representatives in the United Nations were major questions for many nations, and the United States did not resolve them for many troubling years. The importance of these questions depends on legal concepts of recognition (or U.N. representation), on legal definitions of "state" and "government"; it reflects, too, the failure of law to develop clear distinctions between accepting the effective existence of a government, "recognizing" a government, and maintaining relations with it. Law does not determine the policy of governments on these issues, but it directs whatever actions might be taken and limits the choices available to governments. The United States could not meaningfully recognize the Queen of England as the government of China; it could not

even continue indefinitely to insist that the government of China was Chiang Kai-shek; it could not recognize both the regime at Peking and that at Taipei as the government of China.

The relations of one nation with another, as soon as they begin, are permeated by basic legal concepts: nationality, national territory, property, torts, contracts, the rights and duties and responsibilities of states. These do not commonly figure in major policy doctrines, nor do they commonly occupy the attentions of diplomats. They too are taken for granted because they are rarely in issue. The concept of territory and territorial sovereignty is not prominent in foreign policy; but every foreign policy assumes the integrity and inviolability of the national territory, and any intentional violation would probably lead to major crisis. Territorial disputes are still with us, on several frontiers in Latin America and Africa, in Kashmir, between China and India, and China and Russia, over Gibraltar, in the Sahara, between Israel and its neighbors. Contemporary international relations were long troubled by other "territorial" issues turning on law: for example, the reach of the territorial sea, the continental shelf and coastal state authority for other purposes; innocent and less-than-innocent passage, and free transit through international straits; the right to broadcast inland, to dig for oil and gas, or to fish for food or pearls in coastal waters. Foreign policy takes for granted that nations observe the territorial airspace of others, but planes have been shot down in incidents leading to diplomatic tensions, to United Nations debates, to judicial proceedings.[2] The implications for foreign policy of the U-2 incident with the Soviet Union, in 1960, and of continued overflights of Cuba, are not yet exhausted.

Related to territoriality is the concept of internal sovereignty. Except as limited by international law or treaty, a nation is master in its own territory. That principle is fundamental, and commonly observed. Yet it is in issue whenever there is a claim that internal action violates international law. It figures in disputes about nationalization of alien properties and about violations of human rights. It is proclaimed by South Africa, and challenged by many nations, in regard to *apartheid*.

The concepts of property lie deep in international relations.

Property rights are taken for granted in all international trade and finance. When a vessel plies the seas, the assumption is that others will observe the international law prohibiting interference with free navigation, recognizing rights of ownership in property, forbidding torts against persons and property. The United States went to war in 1917, in part because it thought this law was being violated to its detriment.

Contemporary international relations have seen recurrent issues as to the law of the responsibility of states, particularly in regard to the treatment of aliens and their property. But even in times when nationalizations are not everyday occurrences, even when there are no accusations that governments are denying "justice" to aliens, the law on the treatment of foreign nationals pervades relations between nations. Because there is this law (and because it is largely observed), there is tourism and foreign investment; and consular activity and "diplomatic protection" are a common, friendly, continuous part of international intercourse.

Not least, by far, are particular prohibitions of the law deriving from the basic concepts, such as those designed to protect the independence of nations against various forms of intervention. Accusations of intervention are common fare; to refrain from "intervention" is a tenet of foreign policy for many nations.*

Law is also essential to foreign policy and to diplomacy in that it provides mechanisms, forms, and procedures by which nations maintain their relations, carry on trade and other forms of intercourse, resolve differences and disputes. There is international law in the establishment and operation of missions and in communications between governments, in the writing of contracts and other commercial paper, in oil concessions, in tariffs and customs practices, in the registry of vessels, the shipment of goods, the

* Intervention is an effort to bring influence to bear on other governments by particular means. Strictly, intervention is unlawful interference; what by definition constitutes intervention is unlawful. Strictly, too, intervention means dictatorial interference by force or threat of force, but the term is often used loosely for any impermissible interference or attempt to influence.

forms of payment, in all the intricacies of international trade and finance. There is law in and about the variety of international conferences. International organization—from the United Nations to the Universal Postal Union—involves legal concepts, and different organizations have contributed substantial law. For settling disputes, the law provides diplomats with claims commissions, arbitration bodies, mediators and conciliators, even courts.

For foreign policy, perhaps the most important legal mechanism is the international agreement, and the most important principle of international law is *pacta sunt servanda:* agreements shall be observed. This principle makes international relations possible. The mass of a nation's foreign relations involve innumerable agreements of different degrees of formality. The diplomat promotes, develops, negotiates, implements various understandings for various ends, from establishing diplomatic relations to trade, aid, allocation of resources, cultural exchange, common standards of weights and measures, to formal alliances affecting national security, cease-fire and disengagement, arms control, and a regime for outer space. The diplomat hardly thinks of these arrangements and understandings as involving law. He does assume that, if agreement is reached, it will probably be observed; if he did not, he would not bother to seek agreement. No doubt, he thinks that nations generally observe their undertakings because that is "done" in international society and because it is generally in the interest of nations to do so. That is law, the lawyer would say.

Some international agreements have particular political significance because they shape the character of international society; those from an earlier day—bearing names like Utrecht, Westphalia, Vienna, Versailles—determined nations and defined territories of today. Such arrangements involve international peace and stability, or the identity, security, integrity, and independence of nations: *e.g.*, treaties that confirmed the achievement of independence (say, by the United States from Great Britain, or by Indonesia from the Netherlands); the arrangements deriving from the Congress of Vienna, the Treaty of Versailles, the Yalta and Potsdam agreements; the agreement establishing French protection for Morocco,

and the agreement terminating that relation; the United Nations Charter, the North Atlantic Treaty; the Treaty of Constantinople establishing the regime of the Suez Canal; the agreements of the European Community. As we shall see, the legal character of these agreements may differ from that of other treaties, and surely they are treated differently in the foreign policies of nations. But nations have usually insisted on putting these arrangements in solemn legal form;* in maintaining them, they have invoked the principle of international law that agreements shall be observed. Even nations that wish to escape from such arrangements are usually compelled to invoke legal principles of escape—whether by reinterpreting the agreement, by attacking its original validity, or by invoking some principle of law to claim that it permits escape or is no longer valid or binding.

In our times, there flourishes a type of international agreement that has added new dimensions to foreign policy and international law.[3] Much of contemporary international law consists of new arrangements, often among large numbers of nations, to promote cooperation for some common aim. In this category one might place the various intergovernmental organizations and institutions, universal or regional—the United Nations, the World Bank and the Monetary Fund, the FAO, UPU, ITU and the IAEA, OECD, GATT, the International Coffee Agreement and UNCTAD, NATO and the European Economic Community, the OAS and OAU or the anticipated International Sea-bed Authority[4]—as well as bilateral aid agreements.† One might include, too, arrangements, not exclusively governmental, like the International Telecommunications Satellite Consortium (INTELSAT) or oil concessions.

*Sometimes they insisted on not putting them into formal legally-binding agreements in order to avoid legal consequences, as in the Final Act of the Conference on Security and Cooperation in Europe (Helsinki).

†Such "law of cooperation" is sometimes distinguished from the traditional international law of "abstention" that prescribes limits on the freedom of action of governments. The lawyer at least finds that he is struggling less with ordinary questions of treaty law but often with a new kind of international constitutional and administrative law.

These programs for cooperation figure prominently in the foreign policy of many nations. The political officers who develop and maintain these policies may not think of them as creating or involving law—until issues arise involving alleged violations or differences in the interpretation of agreements. But the law supports these arrangements even—or especially—when there are no issues, when they run as intended. The foreign policy involved in these arrangements depends on assumptions, habits, practices, and institutions that derive their vitality from their quality as law and international legal obligation.

Law reflected in the assumptions, concepts, institutions, and procedures of international society is not the kind of international law one commonly thinks about because it does not, on its face, direct governments how to behave. But, in fact, all law is intimately related to national behavior. Even that "submerged" law molds the policies of governments. The concept of the nation determines that the United States has relations with Canada, not with Quebec. The concept of territoriality means that the United States can do largely as it likes within the United States, but is sharply restricted in what it can do outside. There are clear prohibitions in the basic legal concepts, in the rights and duties they imply: territoriality, property, tort imply that the United States cannot, at will, invade or violate the territory or seize the property of another nation. Freedom of the seas means that one nation cannot prevent the vessels of others from going their way. Contracts and agreements are not to be broken. Even organizations for cooperative welfare, though commonly distinguished from traditional law of "abstention," impose obligations on members which they must "abstain" from violating: they may not interfere with the international mails; they must pay budget assessments to the FAO. These organizations have also promoted common procedures and minimum standards of national behavior, *e.g.*, in regard to labor, or the treatment of refugees, or basic human rights even for a nation's own citizens.

There is also the law which aims directly at controlling behavior. Governments may not arrest accredited diplomats or deny basic justice to foreign nationals. I have mentioned, and shall discuss, the

law forbidding intervention in the internal affairs of other nations. Extended consideration will be given to the provision in the Charter of the United Nations which outlaws war and the use of force.

International relations and foreign policy, then, depend on a legal order, operate in a legal framework, assume a host of legal principles and concepts which shape the policies of nations and limit national behavior. If one doubts the significance of this law, one need only imagine a world from which it were absent—approximately a situation in which all nations were perpetually in a state of war with each other. There would be no security of nations or stability of governments; territory and airspace would not be respected; vessels could navigate only at their constant peril; property—within or without any given territory—would be subject to arbitrary seizure; persons would have no protection of law or of diplomacy; agreements would not be made or observed; diplomatic relations would end; international trade would cease; international organizations and arrangements would disappear.

Those who would dismiss international law from foreign policy, the lawyer concludes, tend to misconceive both law and foreign policy. Those who do not see much role for law in foreign policy do not know where to look. Those who do not sense the law's significance are merely taking it for granted. Not unlike *le bourgeois gentilhomme*, who learned that he had been speaking prose all his life, the diplomat—says the lawyer—may be surprised to know that international law permeates his universe, that he uses it every day, that his life depends on it, that attention to the law, in Justice Holmes's phrase, may not be a duty but only a necessity.[5]

THE LIMITATIONS OF INTERNATIONAL LAW

The student of foreign affairs may grant, if the lawyer insists, that the law implied in international society gives some direction to national policies and places some limitations on how nations behave. But he remains skeptical of the influence of law as it is commonly and more narrowly conceived, of that law which seeks to control the conduct of nations within the framework of the society of nations. In particular, he questions whether nations really observe the important prohibitory norms of international law or really keep their important agreements. Governments may sometimes act consistently with norms or obligations, but, he insists, only when it is in their interest to do so; and it is their interest, not the law, which governs their behavior. Such skepticism in the diplomat and the policy-maker is sometimes reflected in the foreign policies they promulgate and carry out.

The tendency to dismiss international law reflects impressions sometimes summed up in the conclusion that it is not really law because international society is not really a society: the world of nations is a collection of sovereign states, not an effective body politic which can support effective law. In this judgment are subsumed a number of alleged weaknesses and inadequacies.

The society of nations has no effective law-making body or process. General law depends on consensus: in principle, new law, at least, cannot be imposed on any state; even old law cannot survive if enough states, or a few powerful and influential ones, reject it. New universal law, then, can come about only through long, gradual, uncertain "accretion" by practice and acquiescence, or through multilateral treaties difficult to negotiate and more difficult to get accepted. Law is also slow and difficult to clarify, or amend, or repeal. The law is therefore haphazard and static. As concerns customary law in particular, there is often uncertainty and little confidence as to what it is. The law is also inadequate, for many important actions and relations remain unregulated. There are important disorders—for example, the arms race or the oil embargo— which are not subject to law.[6] In the absence of special undertakings, nations may engage in economic warfare, may boycott, even starve each other. And law has not achieved a welfare society: there is no law requiring social and economic assistance by the very rich to the very poor, or providing community relief even to the starving.

Also lacking is an effective judiciary to clarify and develop the

law, to resolve disputes impartially, and to impel nations to observe the law. The International Court of Justice does not satisfy these needs. Its jurisdiction and procedures are starkly insufficient: jurisdiction requires the consent of the parties, and few consent to it; only a minority of nations have accepted the Court's compulsory jurisdiction, some of these with important reservations, the notorious "Connolly reservation" continues to make U.S. acceptance essentially illusory.[7] The Court's justice is slow, expensive, uncertain: even nations which can invoke the Court's compulsory jurisdiction are reluctant to do so. Nations still prefer the flexibility of diplomacy to the risks of third-party judgment. In the result, few issues of substantial significance to international order ever get to the Court. No one would claim that the Court has a major influence in international affairs.

The greatest deficiency, as many see it, is that international society lacks an executive authority with power to enforce the law. There is no police system whose pervasive presence might deter violation. The society does not consider violations to be crimes or violators criminals, and attaches no stigma which might itself discourage violation. Since nations cannot be made to observe rules and keep promises, they will not do so when they deem it in their interest not to do so.

To some, indeed, the realities of international society imply even more devastating limitations for international law.* In a society of sovereign states, in the absence of an effective legislature representing all the competing interests and able to accommodate them, nations must be free to pursue their interests, to work out reasonable accommodations with others. What is called for is the flexibility of diplomacy, not the strait jacket of law. In particular, there is no place for law where important political interests are at stake. Nations will not—and should not be expected to—submit important disputes to third-party decision in accordance with fixed law. To these critics there cannot be effective law against war or other uses of force, and nations should not be expected to observe any such

*I summarize here criticisms set forth and examined at length in the conclusion.

law when they desire change hard enough to fight for it. And other nations will not effectively enforce such "violations."

In sum, to many an observer, governments seem largely free to decide whether to agree to new law, whether to accept another nation's view of existing law, whether to comply with agreed law. International law, then, is voluntary and only hortatory. It must always yield to national interest. Surely, no nation will submit to law any questions involving its security or independence, even its power, prestige, influence. Inevitably, a diplomat holding these views will be reluctant to build policy on law he deems ineffective. He will think it unrealistic and dangerous to enact laws which will not be observed, to build institutions which will not be used, to base his government's policy on the expectation that other governments will observe law or agreement. Since other nations do not attend to law except when it is in their interest, the diplomat might not see why his government should do so at the sacrifice of important interests. He might be impatient with his lawyers who tell him that the government may not do what he would like to see done.

These depreciations of international law challenge much of what the international lawyer does. Indeed, some lawyers seem to despair for international law until there is world government or at least effective international organization. But most international lawyers are not dismayed. Unable to deny the limitations of international law, they insist that these are not critical, and they deny many of the alleged implications of these limitations. If they must admit that the cup of law is half-empty, they stress that it is half-full. They point to similar deficiencies in many domestic legal systems. They reject definitions (commonly associated with the legal philosopher John Austin) that deny the title of law to any but the command of a sovereign, enforceable and enforced as such.[8] They insist that despite inadequacies in legislative method, international law has grown and developed and changed. If international law is difficult to make, yet it is made; if its growth is slow, yet it grows. If there is no judiciary as effective as in some developed national systems, there is an International Court of Justice whose judgments and opinions, while few, are respected.[9] The inadequacies of the

judicial system are in some measure supplied by other bodies: international disputes are resolved and law is developed through a network of arbitrations by continuing or *ad hoc* tribunals. National courts help importantly to determine, clarify, develop international law.[10] Political bodies like the Security Council and the General Assembly of the United Nations also apply law, their actions and resolutions interpret and develop the law, their judgments help to deter violations in some measure. If there is no international executive to enforce international law, the United Nations has some enforcement powers and there is "horizontal enforcement" in the reactions of other nations. The gaps in substantive law are real and many and require continuing effort to fill them, but they do not vitiate the force and effect of the law that exists, in the international society that is.

Above all, the lawyer will insist, critics of international law ask and answer the wrong questions. What matters is not whether the international system has legislative, judicial, or executive branches, corresponding to those we have become accustomed to seek in a domestic society; what matters is whether international law is reflected in the policies of nations and in relations between nations. The question is not whether there is an effective legislature; it is whether there is law that responds and corresponds to the changing needs of a changing society. The question is not whether there is an effective judiciary, but whether disputes are resolved in an orderly fashion in accordance with international law. Most important, the question is not whether law is enforceable or even effectively enforced; rather, whether law is observed, whether it governs or influences behavior, whether international behavior reflects stability and order. The fact is, lawyers insist, that nations have accepted important limitations on their sovereignty, that they have observed these norms and undertakings, that the result has been substantial order in international relations.

In the end, the issues do not turn on theoretical answers to theoretical questions, or on unexamined impressions or assertions about the fate and influence of law in the chancelleries of nations. We

must examine as well as we can the role that law, in fact, plays in daily diplomacy, the extent to which law, in fact, affects the behavior of nations, the contribution which law, in fact, makes to order and welfare.