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## Reflections on Education in International Law in Africa

### Keywords

Education Law, International Law: History, Legal Education, Globalization

## REFLECTIONS ON EDUCATION IN INTERNATIONAL LAW IN AFRICA

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Any inquiry into the aims and purposes of teaching international law in Sub-Saharan Africa, and even into the extent to which this area of law is taught and its importance in African legal education, will confront an apparent general absence of specific consideration and gaps in goal-formulation relative to Africa and international law. The definition of these goals and objectives of legal education invariably draws in broader policy questions concerning African states and their participation in both the international legal process and in the African continental legal process. Discussions of these questions are limited *inter alia* by the important issues of vantage point for recommending policy decisions which will be explored initially. These are the necessary prelude to the discussion which follows on strategies of African legal education in international law, the current state of the art on the Continent, and the influence of U.S. aid.

At this point, important gaps in thinking about objectives of legal education for producing international lawyers are apparent. Such gaps are confronted by the need for Sub-Saharan Africa generally to produce more international lawyers, for reasons involving two major policy considerations: (1) the need for available international legal expertise to meet problems arising between African states and the outside world community; and (2) the need for similar training of lawyers to meet problems arising in Pan-African relationships. Equally important is the interaction between these two objectives. Both will be discussed here along with some projected ramifications for legal education in moving toward developing African perspectives on international law, all in the context of present trends and expectations for educating African lawyers and scholars. New African initiatives and potential give promise that this need for international lawyers will be met sometime in the not so distant future.

### *Vantage Point*

Since the early years of this century in the legal community of the United States, more recently in Britain,<sup>1</sup> and doubtless in other

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\* Assistant Professor of Law, Indiana University. I wish to thank my colleagues, Professors A.A. Fatouros and Roland Stanger for perceptive comments on earlier drafts of this essay, and to acknowledge the research assistance of Susan Driskill. Any errors are, of course, my own. I am appreciative also to the World Peace through Law Center for the opportunity to present an earlier version of this inquiry to the World Peace through Law Conference, Section on Legal Education, Abidjan, August 26-31, 1973.

1. See Stevens, *American Legal Education: Reflections in Light of OMROD*, 35 MODERN L. REV. 242 (1972).

countries as well, there has been an on-going debate over the degree to which legal education should have as its primary objective the *training* of students in "lawyer skills"—the techniques of moving a case through the courts—as against the objective of *educating* lawyers not only with the above skills but especially with the knowledge to mobilize the legal process to serve the cause of intelligent authoritative policy-making.<sup>2</sup> The controversy has traveled to Africa, sometimes in rather intense form.<sup>3</sup> A variant of this debate is central to an inquiry into education in international law in Africa,<sup>4</sup> an area that has been uncommonly muted up to this point. Here, the aim is to spotlight issues that appear ripe.

Upon first reflection it would seem sensible that the more industrialized, "developed," and internally specialized a particular society is, the more that society could be content with a compartmentalized system of legal education, i.e. educating lawyers in increasing depth to perform legal skills growing increasingly narrower in scope. Yet this seems not to be so in the United States, for at least two reasons: (1) lawyers (and therefore legal education) are inevitably concerned with policy-making issues by reason of the extensive interactions of community social processes with legal process;<sup>5</sup> and (2) lawyers emerged some time ago as the generalists of America to whom expectations of policy-making and dispute-resolving competence attach, even as somewhat more superficially they divide themselves into "specialties."<sup>6</sup> The specialties, however, continue to get more "generalized" in that each one of them tends to encompass a progressively wider scope of human behavior over time from its narrow beginnings, thus continuing to require the generalist lawyer's knowledge of *other* areas of the law and human behavior in order to successfully pursue the "specialty." The upshot may well be that specialization becomes increasingly unreal.

Not only are lawyers in the United States, and arguably in some

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2. A milestone inquiry in the voluminous literature on this topic, which retains its significance today, is Lasswell and McDougal, *Legal Education and Public Policy: Professional Training in the Public Interests*, 52 YALE L.J. 203 (1943) (reprinted, as cited here, in MCDUGAL & ASSOCIATES, *STUDIES IN WORLD PUBLIC ORDER* (1960), at 42-154).

3. See W.B. HARVEY, *LAW AND SOCIAL CHANGE IN GHANA* vii-xi, 369-371, 378-381 (1966).

4. See Proceedings, Conference on Legal Education in Africa, Addis Ababa, Oct. 20-24, at 4 (1968) [hereinafter cited as Proceedings].

5. Lasswell and McDougal, *supra* note 2, at 46-47.

6. *Id.* at 49-52. Corporate law is an example: in the United States the corporate form of organization with its accompanying legal problems has spread from the domain of entrepreneurs both upward into public and governmental corporations, and sideways into ghetto marketing cooperatives and rural shareholders cooperatives.

other countries, "concerned" with policy-making, but they become, if only through default, inevitably involved with decisions about the fundamental values of the society and their realization,<sup>7</sup> notwithstanding the attempts of many law schools to conceal such questions.<sup>8</sup> This is the situation in a society like the United States, whose basic outlines have been more or less in place for 200 years under the same constitution. Those recognized as the best and most influential lawyers tend to be those who have a keen appreciation for the interrelationship of law, social change, public order and other fundamental goals. Many of these lawyers were educated in those law schools that took the lead in orienting themselves towards exploring these societal interrelationships. Beginning in the 1920's, restrictive educational practices and curricula began to be battered by the winds of legal realism with its emphasis on process and existential and empirical verification of doctrine. This battering continues, to the extent that we can now hazard a suggestion that legal education in this "settled" country, with legal institutions and processes relatively continuous over time, has become, generally speaking, more policy and value-oriented.<sup>9</sup>

Let us turn now to African states as developing countries, with well-founded caution as to any implied comparisons with the United States. However else a "developing country" may be defined, it is clearly a country in the process of more or less rapid social change. Basic institutions are being restructured, and custom and tradition are being re-evaluated to determine their relevance to developmental progress and the country's needs. Fundamental social questions about the quality of life, the configuration and allocation of authority, the desired pattern of distribution of resources, and similar questions have sometimes been only recently settled, or often not yet settled at all. It would seem to follow, therefore, that in a developing society where proportionately fewer lawyers must do more work, those lawyers must be even more sensitive to the interrelationships among legal process, social change, public order, and human dignity than their rich-country counterparts, just to be able to meet on their merits the challenges facing them.<sup>10</sup>

This necessity of orientation is probably even more true for the international lawyers in African countries, for several reasons.<sup>11</sup> First, the decentralized nature of the international legal process requires

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7. *Id.* at 59-78.

8. *Id.* at 78-91.

9. For an implied critique of the restrictive aspects of even legal realism, see Lasswell & McDougal, *supra* note 2 at 42-59.

10. L.C.B. GOWER, *INDEPENDENT AFRICA: THE LEGAL PROFESSION* 102-03 (1967).

11. *Cf. id.* at 40.

earlier recourse by lawyers to "non-legal" (in the technical, procedural sense) considerations and decision-makers than would be true if operating in a more centralized "command" national legal system. Second, the international community itself is in the grip of intense social and public order changes, in substantial part due to the emergence of African and other third world countries.<sup>12</sup> Third, developing countries, especially relative to their economic needs for development and their struggle to maintain an adequate level of sovereignty, may have a more continuously intensive relationship with international organizations, particular foreign countries, and with the international community generally than might more industrialized, relatively self-sufficient nations. This has arguably been the case for all weak states since the 19th century. Modern developing countries attempt to mobilize, often collectively, international law and organizational resources to exercise influence against great powers and other states, in partial compensation for their lack of great power self-sufficiency and of effectively utilizable resources. Thus, relationships with selected sectors of the international community, e.g. the United Nations and through it, other states, are significant in maintaining and advancing third world interests and protecting the sovereignty of each state. Lastly, processes of social change in the international community and social change in individual nation-states intersect at key junctures, in ways favorable and unfavorable to the state, not the least of which is the intersection of domestic and international legal processes through, for example, national constitutions, or earlier, colonially-imposed legal arrangements.<sup>13</sup>

If the above observations are valid, then *one* goal of African legal education might be to produce international lawyers who can uphold their countries' interests, Africa's interests, and larger world community interests in the midst of these complex intersecting trends.<sup>14</sup> As subsequently discussed, the upholding of these interests is closely tied to the development of explicitly African perspectives on international law which reflect the special mixture of Pan-African and wider international considerations binding on the Continent. That goal might well be refined into an imperative, since these trends, and therefore the need for such lawyers, seem irreversible in the foreseeable future.

The question of goals raises the issue of the vantage points of those who inquire, and who consequently recommend policies on the objectives, strategies, resources and outcomes of African interna-

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12. See generally R.P. ANAND, *NEW STATES AND INTERNATIONAL LAW* (1972).

13. See generally McDougal, Lasswell & Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J. INT'L L. 188 (1968).

14. GOWER, *supra* note 10.

tional legal education. Scholar-observers from Africa, more intimate participants in her aspirations, legal processes and arrangements for legal education, have special responsibilities and insights not fully shared by those from other countries joined to Africa only by interest, concern, academic career, nor perhaps even by Afro-Americans joined by ties of blood. To persons from Africa fall the final decisions *to realize* those goals; we who perforce speak from an outside position forget this crucial truth at the peril of all. Notwithstanding these limitations, outside vantage points may be useful to those within to describe the shape of the forest so that the plenitude of trees gives neither false hope nor despair. Also, as the history of African legal education has shown, some outside resources may be necessary to realize these goals,<sup>15</sup> necessitating coordination among differing vantage points of diverse legal educators, and therefore putting a premium on clear and empathetic communication.

#### STRATEGIES OF AFRICAN LEGAL EDUCATION IN INTERNATIONAL LAW

##### *The Current State of International Legal Education*

To somewhat anticipate a conclusion from this discussion, the training of international lawyers in Africa seems to be either a non-starter and therefore a problem, or else a problem to which solutions might be underway but are so far largely buried by circumstances. If the training of adequate numbers of qualified international lawyers is taken as one possible objective of African legal education, substantial ambiguity arises in tracing the trends of inquiry in this area.

On October 20-24, 1968, the Conference on Legal Education in Africa was held in Addis Ababa to discuss objectives and strategies of producing African lawyers.<sup>16</sup> Participants included both academics (who predominated) and those holding official legal positions in African government; owing *inter alia* to difficulties of scheduling, Anglophonic Africa was more widely represented than the Francophonic states.<sup>17</sup> That Conference, a major top-level Africawide assembly in legal education, is notable for a more or less general omission of references to a need to train international lawyers in Africa. This was especially true regarding the main trends of discussion. However, there were *some* references to the desirability of lawyers in Africa. This was especially true regarding the main trends of discussion. However, there were *some* references to the desirability of lawyers

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15. I refer here primarily to the apparent necessity, now diminishing, for African lawyers to be trained abroad in their countries' initial post-independence years, and for the heavy expatriate staffing in many African law schools.

16. Proceedings, *supra* note 4.

17. States represented were: Somalia, the United States, Malawi, Tanzania, Cameroons, Egypt, Uganda, Zaire, Nigeria, Sudan, Kenya, Ghana, Faculty of Law-University of Botswana, Lesotho & Swaziland, Liberia, Zambia, Ethiopia.

being available to confront certain international problems, and these can be mentioned under two categories: (A) Pan-African relationships; and (B) relationships with the larger international community.

The references under (A) were closely linked with a clear Conference trend toward increasing regional cooperation among law schools to maximize resources, and toward increasing regional focus in legal education planning in regard to the availability of research materials, research priorities and the desirability of working towards unification of African national legislation in specific areas. These references were stronger and more numerous than those that referred to category (B) activities.

Thus the Minister of Justice from Ethiopia stated, "we should direct our efforts to the search for rules which can be applied through the whole Continent."<sup>18</sup> More specifically, Dr. Jacques Vanderlinden, Rapporteur of the Conference, discussed research needs towards unification of African law. He noted that the *national* differences among legal systems that were being asserted stemmed largely from the stresses of decolonization, but that such assertions conflict with Pan-African efforts in other fields and with a growing trend towards unification of laws at the international level. In this connection, comparative research to discover similarities in law is a possible pathway towards unification.<sup>19</sup> These sentiments were echoed in a more precise context by Recteur Mabika Kalinda of the National School of Zaire. His final priority in discussing research and publications priorities in African law, on a list of three was:

Comparative study on the pan-African level of a) traditional legal orders, especially the customary law of persons, property and obligations; b) study of the impact of acculturation of family and society in both urban and rural conditions.<sup>20</sup>

These proposals were closely followed by that of Professor Max Rheinstein to establish a Pan-African law research center to act as a clearing house for research done anywhere on the Continent in printed or unprinted form, needed because of the Continental scope of many African problems which require coordinated study. The Rheinstein proposal was subsequently adopted as one of eight proposals made by the Conference for Pan-African and regional cooperation among law schools, and was the nearest mention made to the formulation of objectives for international legal training in the context of such cooperation.<sup>21</sup> However, Dean Zaki Mustafa of the Faculty of Law, University of Khartoum, a strong advocate of regional law school cooperation, linked that concept with that of international

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18. Proceedings, *supra* note 4, at 9.

19. *Id.* at 97.

20. *Id.* at 117.



legal education in spelling out a proposal to expand existing limited cooperation among law faculties at Addis, Khartoum and Dar. He projected the benefits of such cooperation might include "establishing regional training programs in law, with special reference to such matters as Economic Development, Foreign Investment, some areas of International Law, etc."<sup>22</sup>

This connection returns us to category (B), the need to train international lawyers to deal with problems in African relationships with the outside international community. As was noted, there were a few such references over the course of the Conference, but they seemed to be almost peripheral asides and were not given the extensive consideration received by subjects such as the incorporation of customary law into statutory legislation. For example, in the course of a general discussion of goals of African legal education, Dean James Paul noted:

Lawyers are needed for . . . vital roles in the process of national development. . . . Development means expanded economic activity, and that means an increasing amount of contractual negotiations with foreign business concerns and foreign governments. . . .<sup>23</sup>

There was a passing notation in discussion of some movement of law school graduates into Ministries of Foreign Affairs.<sup>24</sup> Professor Harrison Dunning, in discussing possible new problem-areas for courses in organizing a law school curriculum, noted that one such problem-area might be "foreign assistance."<sup>25</sup> Further, Dean Mustafa proposed that law schools might give "service courses" to respond to the wish of government departments and business concerns to give members of their staffs legal training in a special field to raise their efficiency or to enable them to be promoted. A Special Diploma in Commercial Law was already being offered at the University of Khartoum. And a Diploma in International Law and Relations or a Course on the Legal Problems of Economic Development and Foreign Investment were examples of what might be done.<sup>26</sup>

However, in group discussion, the other side of this issue appeared. The general sentiment was that promotion criteria (for members of African law faculties) and publication priorities must be made more relevant to African legal development. In this connection, "[A]n elementary textbook on national contract law may be far more desirable than a not-specifically-African international law treatise."

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21. *Id.* at 101-102, 140-41.

22. *Id.* at Appendix, 26.

23. *Id.* at 14.

24. *Id.* at 60.

25. *Id.* at 66.

26. *Id.* at Appendix, 43.

tise, or even than field research that does not have currently relevant objectives."<sup>27</sup> Relatively little consideration then is being given at the Pan-African level to the goal of training international lawyers. Additionally, there is seemingly even less consideration of this subject by those formulating policy for the American aid process as it relates to legal education in Africa, a process with major inputs into African legal education at the Pan-African level.

The foregoing is not meant as a criticism of the 1968 Conference which reflected the priorities in legal education as expressed by those most directly involved, and seems an accurate indicator of trends of thinking on the Pan-African level about African legal education. However, this relative omission does indicate that formulating goals and objectives and then implementing strategies to produce international lawyers in sufficient quantity and quality to meet both Pan-African needs and national African state needs might be a task of some magnitude. Having said this, we must note that there remains considerable ambiguity about attitudes regarding international law training in Africa at a more local level.

In contrast to the implications of the Pan-African attitudes, a considerable amount of attention has been paid in individual African law schools to international law, at least in terms of courses in their curricula. Higher educational facilities in Africa have expanded greatly during the past decade and legal education has shared in this expansion. There are now 31 African universities with faculties of law, excluding the 12 in South Africa.<sup>28</sup> Of these, 24 offer international law or international organization courses in three year degree programs. Within this group 14 make at least one course in international law a requirement for graduation, while 14 offer one or more international law courses as electives. The subject-matter of these courses includes public international law, private international law, international institutions, international trade, and the law of foreign investment.<sup>29</sup>

The conclusion seems sensible that some degree of importance is attached to international legal training by individual deans and faculties throughout sub-Saharan Africa. These curriculum decisions may represent, at least in part, a local level response to a general Africa-wide need for international legal training and international lawyers, though it is uncertain how intensely this need is felt.<sup>30</sup> An

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27. *Id.* at 104.

28. Johnstone, *American Assistance to African Legal Education*, 46 *TULANE L. REV.* 657 (1972).

29. Compiled from J. BAINBRIDGE & T. WOOD *STUDY AND TEACHING OF LAW IN AFRICA* 181-342 (1972).

30. However, relevant also is the absence of data indicating whether the inclusion

accompanying partial reason for the presence of international law courses in curricula may be that they are holdovers from European-derived curricula. However this would seem a diminishing probability for law schools relatively long in existence.

*African International Legal Education and Outside Aid*

Most aid to African legal education from outside governments has been provided by former metropolitan European states, especially Britain and France, and by the United States.<sup>31</sup> Little aid has been provided by international organizations,<sup>32</sup> and this absence would seem to be an area for inquiry towards increasing available resources. The attitudes involved in donors' policies for providing such aid are germane to our discussion here, if only because of the often close interaction between those policies and the final local policies formulated that employ such aid. This inquiry will concentrate, with admitted selectivity, on aid from the United States as it relates to international legal education in Africa.

In a major article in 1972, Professor Quintin Johnstone argued generally that the focus of American aid to African legal education should change its emphasis from teaching to research.<sup>33</sup> It is noteworthy that this article, which includes a comprehensive review of aid programs and recommendations for future policies, makes virtually no reference to education in Africa in international law.<sup>34</sup>

The two references which do appear are passing and indirect.<sup>35</sup> The omission of substantive discussion of this topic may illustrate: (1) a lack of identification of international law as a manpower-training priority in African legal education by those involved in the American aid process; or (2) a covert rejection by the same decision-makers of a similar African-formulated priority. It is suggested, however, that such non-identification of international legal education as

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of international law courses in curricula across Africa is a trend that has gained or lost momentum since the Conference of 1968, since the above statistics were compiled as of 1972.

31. Johnstone, *supra* note 28, at 662.

32. *Id.* at 663.

33. Former Dean of the Faculty of Law, Haile Sellassie I University, Addis Ababa.

34. It is also noteworthy that the fairly comprehensive bibliography on African legal education that he sets out at the beginning of his article, *supra* note 28, at n.1, contains no reference to even one article about the teaching of international law in Africa. This lack, I believe, is in no way attributable to Professor Johnstone's scholarship but is an accurate reflection of the state of the current literature. Further, Professor Johnstone has wide experience in African legal education and has been a key participant in American aid to African legal education over the last decade. In this major review of trends, his questions and concerns would seem indicative of those of academics and decision makers in this area.

35. Johnstone, *supra* note 28, at 689, 691.

a possible priority might do a disservice to apparent needs of each African country and those of Continental Africa generally, as indicated in part by the above discussion of local law school curricula.

We can speculate that this absence connotes either a lack of identification of a real priority or a rejection of the same priority. Professor Johnstone is seemingly writing out of a primarily Anglophonic African experience.<sup>36</sup> The English tradition of providing international legal advice to government, as it has generally been transposed to Africa, is that such advice should be of a limited non-policy-making nature, and should flow from the Office of the Attorney-General, at least in principle, as part of his responsibility to advise all government ministries on legal problems. This tends to mean centralization of legal advice, actually and organizationally, and the provision of "technical" rather than more policy-oriented advice. This may be contrasted to an alternative system of providing to individual government ministries specialized legal advisers who become more involved with the policy concerns of their ministries, which is generally the American pattern.<sup>37</sup> There is some conflict within African governments over these alternatives. The impression is that the English tradition remains predominant in Anglophonic Africa, though undoubtedly being modified by individual governmental arrangements.

If the above is generally valid, it may follow as a consequence that the demand for foreign aid to develop specialized international legal talent would be perceived by the donor's aid officials as relatively slight. The demand instead would generally be for assistance in training *lawyers*, some of whom might eventually become involved in international legal matters. Further, the demand would be slight because international law needs, under this administrative system especially, tends to be seen as *competing*, in the context of a limited amount of legal talent, with domestic legal needs of demonstrated priority. Finally, an additional legacy of British colonial administration is the rotation of administrative personnel on an assumption of "generalists" competence, irrespective of subject area, and a consequent eschewing of the development of in-depth specialties, attitudes that dovetail with administrative expectations of centralized legal advice to the entire government from the Attorney-General. It is suggested that all of these factors taken together, plus others which doubtless exist, might combine to "bury" both African and donor governments' perceptions of a need for identifying international law-

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36. Language, distance, remnants of differing colonially-imposed cultures have created gaps in communication between Anglophonic and Francophonic Africa that remain wide enough, relative to legal education, to be troublesome.

37. See H. MERILLAT, *LEGAL ADVISERS AND FOREIGN AFFAIRS* 4-7, 19-22 (1964).

training as a *separate*, and not a *competing*, priority of African legal education. The former concept would imply developing a separate pool of lawyers to combat international legal problems, as opposed to pulling them from a general national pool of legal talent.

Even if aid policies are not involved, the impression is that the above factors would continue to constitute somewhat of a barrier within several Anglophonic African governments to designating the training of international lawyers as a separate priority drawn from a separate manpower pool. These factors may well be reinforced by aid programs, but their genesis would seem to lie in the colonial and recent history of each country. In this sense, donors' aid officials are merely sharing local perspectives about international lawyers.

#### AN OUTSIDER'S OBSERVATIONS OF AFRICAN NEEDS FOR ADDITIONAL INTERNATIONAL LAWYERS

It seems clear that African law schools are steadily becoming more and more "nationalized" with respect to their teaching personnel. In other words, more and more Africans are joining law faculties and fewer expatriates are to be found in the same positions. It also is apparently the case that those international law courses<sup>38</sup> offered in law curricula have been largely taught by expatriates.<sup>39</sup> To this extent, a first "need" for designating the production of international lawyers as a manpower-priority would seem to be that of ensuring enough future teachers of international law for present and evolving requirements, unless, that is, African governments are willing to carve out a significant "exception" to the Africanization of law faculties and continue to desire expatriates to teach these subjects. The latter would seem unlikely. This need for teachers and scholars would appear basic to meeting the other long-term needs of individual African states for internationally-trained lawyers.

To explore further needs, it is convenient to return to our earlier categorization of international legal problems differentiating those arising in relationship between individual African states and the extra-African world community, from such problems arising in a Pan-African context.

#### *The World Community*

In discussing the legal profession in Africa, Professor L.C.B. Gower has indicated that Africa has an urgent need for international lawyers, commensurately greater perhaps than that of industrialized countries, in regard to both the above categories.<sup>40</sup> The problem of international relations with the outside international community can

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38. Johnstone, *supra* note 28, at 674-75.

39. *See id.* at 665.

40. GOWER, *supra* note 10, at 40-41, 102-103.

be specifically discussed in terms of four areas. First, references at the 1968 Conference on African Legal Education to the need for lawyers to handle growing problems of foreign investment and contractual negotiations stemming from expanded economic activities with foreign business concerns and foreign governments have already been noted. More specifically, increasing state participation in entering foreign business enterprises, whether on a large scale, such as the Zambian copper industry nationalizations in 1969, or on a smaller scale, creates a need for international lawyers who are also expert in the areas where domestic corporate and financial regulations intersect international law, as well as for corporate lawyers knowledgeable in international legal process.<sup>41</sup> Additionally, international lawyers are needed, in conjunction with economists and other relevant specialists, to spearhead the drive to institute African control over a larger share of the invisible costs of African trade now largely in European and American hands, such as shipping insurance, not to mention to advise in the ongoing effort through UNCTAD, GATT, and other forums to gain African products the equitable share of the world's markets that now escapes them. Expectations are being generated through the O.A.U. on the pan-African level that common African negotiating positions should be established on these questions.<sup>42</sup> This latter would seem to imply programs of education in transnational law, dealing with a wide range of international and domestic legal expectations. Of crucial importance would be the adaptation and rewriting of educational materials (reflecting legal problems from elsewhere than Africa) to the circumstances and imperatives of the African constituency served by each educational center or law school.

Even following such adaptation, problems in the following areas might be predicted as generally pertinent to African circumstances: aliens in the context of the national legal system, including especially their access to economic activities and the choice of law problems arising therefrom; the intersection of the international legal process with domestic legal processes, including alternatives of outside states to protect within African states their individual access to economic activities and the choice of law problems arising therefrom; questions concerning the exhaustion of remedies, treaty interpretation, domestic jurisdiction; the development and validity of minimum international standards, especially regarding expropriation of alien property

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41. See Thomas, *Legal Education in Africa: With Special Reference to Zambia*, 22 NO. IRELAND LEGAL Q. 3, 22-23 (1971).

42. See, e.g., the O.A.U. *African Declaration on Co-operation, Development and Economic Independence*, CM/ST.11 (XXI) 1973, Abidjan, esp. at ¶¶ A.24, A.25, A.34, A.36, A.39, B.2, B.3 (iii, v, ix), C.3(i), C.4(i).

and breaches of concession agreements; questions concerning the validity of pleading customary international law before national courts; questions presented by international agreements under national law, and the promulgation of national legislation for transnational purposes on a reciprocal basis.

Other areas covered in such a program of study would include questions concerning the appearance of foreign sovereigns before local courts, including those of sovereign immunity and act of state, questions of practice and procedure such as the service of summons in foreign countries, the enforcement clauses, and procedures for obtaining evidence in foreign countries. Finally, of particular and increasing importance would be questions concerning the transnational reach of national economic regulation and criminal legislation, plus transnational reach of national economic regulation and criminal legislation, plus transnational aspects of income taxation including double taxation agreements, as well as questions of economic regulation through international organizations such as G.A.T.T., the I.M.F., the E.E.C., and UNCTAD.<sup>43</sup>

A second area, relative to African relationships with the outside world community, is the need for adequate numbers of international lawyers and supporting staff to ensure that African states have an equivalency of legal talent at the bargaining table in negotiations where international legal claims are useful to gain or preserve leverage. Usual sources of leverage in international negotiations include the traditional indicia of state power, such as large standing armies, a highly educated cohesive population, a rich and growing manufacturing economy, a highly efficient managerial sector, and long experience in international affairs and the use of power. When one nation party to bilateral negotiations lacks some or most of these usual sources of leverage, as is often the case of African states vis-a-vis rich industrialized countries or even the larger multinational corporations, the capacity of the weaker party to exercise leverage in such a situation tends to depend more on the wits in the heads of the negotiators and on their ability to quickly mobilize their personal skills

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43. The foregoing discussion relies heavily on Steiner & Vagts' excellent casebook, *MATERIALS ON TRANSNATIONAL LEGAL PROBLEMS* (1968). It and other similar texts could well serve as points of departure for devising curricula to inquire into problems of transnational law, but it must be emphasized that the content of such curricula will depend peculiarly on whether the curriculum is serving a *national* law faculty or an institution that is pan-national in orientation. To be most effective in producing lawyers and scholars with the most useful skills, the curriculum materials dealing with transnational problems must be prepared reflecting the current and projected categories of legal problems facing the governments and institutions whom the lawyers' products of the curriculum are most likely to serve.

of persuasion around agreed principles. In such a situation the skill of an international lawyer in identifying agreed principles and expectations binding on *both* sides, and effectively framing claims advantageous to his government around such principles becomes invaluable. The impression is that African states and organizations may yet be short in the numbers of such lawyers available.

A third area concerns the value of international lawyers advising on the maximum utilization for the needs of his country of resources available from international organizations, and simultaneously, advising on the most efficient route that his government may take to secure such resources. This latter is written having in mind the unfortunate competition for aid resources from international organizations (and state donors) that exists among developing countries.<sup>44</sup> With the increased multilateralization of aid resources through international organizations, these problems promise to grow in complexity. We may also again mention here the growing volume of trade negotiations, through UNCTAD, GATT and other bodies, especially the competition for major markets for African products. Further the drive to combat pollution and introduce ecology controls, symbolized by the recent Stockholm Conference, is now giving rise to a new group of international organizations, and these concerns promise to overlap and interact with those of aid, trade and more traditional development factors.<sup>45</sup> The frontier question of the utilization of resources from the oceans' floor, crucial especially for the majority of African states which do not sit on a coastline, is already generating proposals for organizational structures of varying jurisdiction in which African states must play an equitable role.<sup>46</sup> There is a new consciousness of the relationship of world monetary policy to the development of African and other third world states, and a consequent need for African expertise and for international lawyers skilled in financial matters to monitor and more effectively participate in these organizations, formerly the nearly exclusive domain of the rich countries, such as the International Monetary Fund.<sup>47</sup> And last, of continuing importance, there is the need for additional international lawyers to advise on mobilizing and protecting African interests in the United Nations General Assembly, Security Council and related agencies. The African Caucus in the Assembly in conjunction with the Afro-Asian bloc has been quite effective, but always more can be done, in line

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44. See generally Asher, *International Agencies and Economic Development: An Overview*, 22 INT'L ORG. 432 (1968).

45. See O.A.U. CM/Res (XIX) 1972.

46. See O.A.U. Resolution on the Law of the Sea, CM/Res. 291 (XIX) 1972; CM/Res. 238 (XVI) 1971.

47. See CM/Res 213 (XIV) 1971.



with previous observations on the need of African states to mobilize the international community. For all of the above tasks, one problem has been that the posting of an international lawyer abroad or his assignment at home exclusively to these tasks has created a pinch in manpower of scarce legal talent needed for other development-related assignments. The training of additional international lawyers would alleviate this pinch.

The reference to the General Assembly brings us to a fourth area: the advocacy and formation of doctrines and principles of international law favorable to African states. International lawyers, most likely those in law faculties in coordination with their counterparts in government, with an understanding of the law-formation processes in the international community (especially as this occurs in major international organizations), are needed to advise their governments on accelerating these processes in directions favorable to national development by recommending modification of international law principles to reflect African interests, as opposed to great power and European interests.<sup>48</sup> This modification represents a phenomenon already underway; the emergence of third world states as a group has had a visible impact on the international legal process.<sup>49</sup> Some evolution has occurred from stimuli largely African, such as in revising the doctrine of treaty succession by legitimizing a system of notification to other parties in order to give African states a leeway period to evaluate colonially-concluded treaties without the risk of being bound thereby in perpetuity, and with arguably diminished obligations thereunder during the evaluation period.

A more significant example concerns expectations of international protection of human rights, especially as such rights relate to the situations of apartheid in South Africa. Through a combination of actions over two decades in the International Court of Justice, the Security Council and the General Assembly principles of the protection of human rights were released from their bondage to that of domestic jurisdiction in Article 2(7) of the United Nations Charter, and finally joined to the responsibility of all states under the Charter to maintain international peace and security.<sup>50</sup> The consequent increase in legal leverage thus acquired for the protection of human rights in a racial context, both domestically and internationally, can be traced largely to African efforts. In this connection, an emerging

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48. See R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THRU THE POLITICAL ORGANS OF THE UNITED NATIONS*, 1963.

49. ANAND, *supra* note 12.

50. See generally, Bleicher, *The Legal Significance of Re-Citation of General Assembly Resolutions*, 63 AM. J. INT'L L. 444 (1969); McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1, (1968).

frontier appears from current African efforts to affect the amendment of the Geneva Conventions, during the forthcoming Diplomatic Conference on Humanitarian Law, in a manner most advantageous to the liberation movement. The O.A.U. has set in motion measures to identify African interests for that Conference.<sup>51</sup> Further, a major continuing objective would seem that of mobilizing similar strategies to achieve international economic equalization, a task requiring the detailed attention of African international lawyers.<sup>52</sup>

These five areas of need have confronted each African state since its independence, obviously in varying degrees, in its attempt to realize development objectives while maintaining a viable international posture. All African governments have recognized the general need for international legal advice and moved to acquire it, with varying degrees of success. However, capacities among them in this respect vary: from the government's international lawyers being able only to provide intelligence to their government about international legal trends, all the way up to the capacity to participate in meaningful recommendation, prescription, appraisal, and termination of significant international legal policies. The capacity of each African state and the extent to which each has adopted the easing of these needs as objectives to be implemented must be ascertained by detailed inquiries of each government, beyond the scope of this essay. It may be desirable, however, for each state or cooperating group of African states to develop through their international lawyers the greatest possible ability to affect the intelligence-gathering, recommending, prescribing, invoking, and application of policies in the international legal process, as well as to influence the authoritative appraisal of ongoing policies and the termination of those not in the best interests of Africa or the world community.

The need to develop such a capacity exists even under the most pessimistic appraisal of the potential for Pan-African cooperative action by sustained international strategies during the foreseeable future. If more optimism is allowed, this capacity along with a maximum of trans-African coordination would seem crucial in order to develop *African* positions on major international issues. The realism of such optimism, however, depends heavily on coordinating the realization of the five areas of need for international lawyers with policies of African legal education on both the Pan-African and the national levels, to which we now turn.

#### PAN AFRICAN CONSIDERATIONS

From the 1968 Conference was noted a growing Pan-African con-

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51. O.A.U. CM/Res. 307 (XXI) 1973.

52. See Richardson, *Speculations on the Relevance of International Law to the Needs of Black Southern Africa*, 1 UFAHAMU 22 (1970).

sciousness with respect to African legal education as manifested in proposals for projects to unify and harmonize bodies of national law, for comparative law studies useful as a basis for sharing legal solutions to development-related dilemmas, and for increased regional and continental cooperation in legal education and research. On that basis, a few additional observations are pertinent here.

The rationale for comparative law studies is generally that they will and have served as a basis to unify national legal rules in various subject-areas on a regional or continental basis, and as a basis on which African legal communities can share with each other legal strategies for similar problems.<sup>53</sup> Much of the push behind this move towards comparative law is provided by the Pan-African ideal that the differences on the Continent among nations should be minimized by developing similar legal responses to similar problems. These perceived similarities, in turn, are then available to African legal scholars and decision-makers to assist in developing an *African* position on crucial legal doctrines with transnational and international significance. One example would be the extent to which the act of state doctrine would be recognized as doctrine of deference within African national courts. Some distinction, for example, might ultimately wish to be made between act of state claims arising from transactions occurring in other African states, as against transactions from outside states. In any case, such African positions on these doctrinal questions, from a vantage point of relative unity, may be either coordinated with other views of the same questions in the world community, or used to confront them, or both. In this sense our two categories—African relationships with the international community and Pan-African relationships—merge.

The pursuit of this rationale, these similarities and this basis of unity would seem to require lawyers with a particular set of perspectives. It would be advantageous were he trained in international law, because the unrolling of this Pan-African scenario involves (1) transnational concerns—those problems that must be solved across state boundaries, and (2) international concerns of Africa as separate states and increasingly as a Continent—that is, the legal problems involved in maintaining Africa's world position. The same lawyer, however, would also need to be trained in comparative law research and have some knowledge of problems such as the relative advantages of pursuing a solution by concluding a treaty versus by legislating unification of laws.<sup>54</sup> The advantage conferred by identity of personnel in a context of overlapping objectives is another point at which Pan-African and international concerns merge. A few such

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53. Proceedings, *supra* note 4. And see GOWER, *supra* note 10, at 94-95.

54. Cf. *id.* at 40.

lawyers have undoubtedly appeared, some by training and some by accident plus their own initiative. To ensure sufficient talent to pursue Pan-African objectives, it would seem that their training should be an explicit priority.

Expectations of Pan-African legal cooperation generally, and implicit expectations of inter-African communication on matters of international law, are emerging from the Organization of African Unity. Arguably a political consensus on the importance of these kinds of cooperation is evolving which will buttress whatever institutional initiatives are taken in this area of legal education and research. The O.A.U. Council of Ministers has reaffirmed the importance of and the need for legal cooperation between African States, especially on the necessity of concluding a treaty or treaties on inter-African legal cooperation between member states. Consultation on this subject is currently underway, and a nine member committee of experts is studying the problem and drafting a convention. The impression is that the alacrity among member states in submitting suggestions on such a treaty could be greater.<sup>55</sup> Further, the idea of publishing an African Yearbook of International Law, unanimously welcomed by all member states, is under consideration in both the O.A.U. Secretariat and the Council of Ministers.<sup>56</sup>

There appear to be organizational initiatives, beyond those noted in connection with the 1968 Conference, being taken to establish research centers which would provide, *inter alia*, research facilities, university-government coordination facilities, and opportunities for problem-solving to African international lawyers. The Legal Research Center in Dar-es-Salaam (whose activities were suspended in 1970), the proposed West African Legal Research Center in Accra, the Law Development Center at Kampala, the Center of Islamic Legal Studies of Ahmadu Bello University, and the Center for Documentation and Research of the National School of Administration at Kinshasa all appear to focus on research on domestically-oriented problems of law and development and on possibilities of Pan-African cooperation in their solution.

On the other hand, the Institute of Advanced Legal Studies at the University of Lagos seems to offer more promise of providing a research capacity in international law.<sup>57</sup> It was founded subsequent to the 1964 Conference of Nigerian Law Teachers, with the aim of providing a single institute for postgraduate research and supervision which would be fed by the undergraduate Nigerian law schools and

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55. CM/Res. 107 (IX) 1967, CM/Res. 198 (XIII) 1969, CM/Res. 226 (XV) 1970.

56. CM/Res. 228 (XV) 1970.

57. BAINBRIDGE, *supra* note 29, at 100-107.

would be a joint enterprise of all the universities involved. The individual law schools would grant their own doctoral degrees, but the research would be done largely at the Institute where appropriate facilities, including an extensive library, would be centered. By-products of such an arrangement would include avoidance of duplication of library facilities on the advanced level and the bringing of the four Nigerian faculties of law into closer harmony. The establishment of the Institute was suspended by the Biafran War, but the Federal Government has now agreed to provide the necessary funds and opening is reported ready for late 1973 or early 1974. The program of the Institute is reportedly to conform to the original aims and purposes and will be interdisciplinary in approach.<sup>58</sup> It is significant that the Institute will most probably have a deliberately organized international law research capacity which could stimulate international legal studies at each of the law faculties.<sup>59</sup> Its interdisciplinary focus should facilitate the training of the international lawyer with comparative law skills necessary to integrate solutions to problems encompassing legal issues of both Pan-African and world community relationships. One question, however, is the realistic availability of these facilities to scholars from other parts of Africa.

A second recent initiative in international legal studies is the recent proposal by Dean Toye Barnard of the Louis Arthur Grimes School of Law, University of Liberia, Monrovia. Dean Barnard proposes the establishment of a Pan-African Research Institute of International Law, to be located in an African country (Liberia, perhaps) "and financed principally by all the African states where scholars could converge periodically either on sabbatical leaves or under a grant to pursue legal research in the area of International Law."<sup>60</sup> Similar to the Nigerian Institute of Advanced Legal Studies, the Institute here proposed would complement and not replace various national law schools, and would not only serve as a research center, but also provide technical services and advice to African governments

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58. *Id.* at 41-42.

59. This was indicated by remarks made by Chief Justice T.O. Elias of the Nigerian Supreme Court at the recent World Peace through Law Conference at Abidjan, Aug. 26-31, 1973. The Chief Justice was a principal initiator and supporter of the Institute. In the course of the same remarks he also indicated that the Organization of African Unity had by recent resolution endorsed the idea of an African research institute for international law, and that the international legal research capacity of the Institute was closely related to the spirit of that resolution. The text of the resolution is yet unavailable to this writer.

60. Barnard, *The African Challenge in International Legal Education* 13-14 (paper presented to the Panel on Legal Education in Africa, World Peace through Law Conference, Abidjan, Aug. 30, 1973, under the auspices of the Section of Legal Education).

when requested, in addition to serving as a source of information on education in international law to African states and to the wider international community.<sup>61</sup>

The Barnard proposal, if implemented, is wider in scope than the Nigerian Institute in that (1) it aims to serve the needs in this area of not one but several African states; and (2) it aims to serve not only the needs of scholars but also to provide technical assistance to several African governments for international legal problems as well as to provide information on legal education in the field. But, this proposal appears narrower in that that Institute is to concentrate on international legal studies as opposed to a focus including, e.g., comparative law and research towards legislative unification. However, such comparisons must be placed in context. The Nigerian Institute will almost certainly be in operation first and for that reason, plus the cumulative influence of the Nigerian Bar, may serve as a model for other similar institutes. Its practice may influence the procedures of the Liberian Institute and subsequently organized facilities elsewhere. We may recall from the 1968 Conference that there is already momentum towards Pan-African cooperation in establishing research arrangements to explore problems of comparative law, incorporation of customary law, conflicts of law and harmonization of legal procedural rules. The aims and arrangements, to the extent they are known, of the Nigerian Institute seem well within the flow of this momentum which implies (1) that there may be potential within the Institute to train scholars in combination international-transnational-comparative law specialties; and (2) that there may be some pressure on the directors of the Institute to admit scholars from a wider interstate pool than that provided by the four Nigerian law faculties, and that the Institute may in time respond affirmatively. On the other hand the Liberian Institute may well (1) begin or accelerate a trend towards specialized *international law* research institutes; but (2) also feel the pressure to expand its scope somewhat to produce scholars with, as above, international-transnational-comparative law combination specialties. The pre-existing Pan-African momentum in the area of legal education and research and resulting expectations ought to provide a substantial basis for cooperation between these two Institutes if such is desired.<sup>62</sup>

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61. *Id.* at 14-15.

62. The timetable for the realistic implementation of the Barnard proposal is unknown. A discussion at the World Peace through Law Conference between Chief Justice Elias and Dean Barnard, in which the writer was privileged to participate, indicated the real possibility of substantial cooperation between two such Institutes, with such a nexus then creating expectations of success and other supportive resources to establish additional institutes for research in international law elsewhere in Africa where feasible.

The lawyer-scholars produced by such institutes are also needed to advise in situations where the Pan-African ideal of interstate cooperation on a functional basis is already somewhat closer to actuality, as well as for problem-areas previously mentioned. Law school regional cooperation promises to be one such area insofar as joint international-comparative law curricular offerings are realized. Further, such lawyers are needed to advise African regional organizations of economic cooperation, such as the East African Community,<sup>63</sup> and to buttress the Organization of African Unity in terms of increasing the coordinating and support role that it is attempting to play relative to development problems across the Continent.

Finally, there is the emerging possibility of coordinating trends in African legal education towards international lawyers with various specialties with new Afro-American initiatives in the United States to use international law both in aid of the pursuit of liberation in South Africa and liberation in the United States. Substantial expectations exist, on several levels, with historical validity, that policy coordination and reciprocal inspiration between Afro-America and Black South Africa will increase rather than diminish in the near future.<sup>64</sup> And some American law schools are beginning to directly participate in the effort to enforce United Nations resolutions on South Africa.<sup>65</sup> This general direction would seem especially promising on a research basis, at least, for law faculties in those countries most directly involved in the South Africa struggle.<sup>66</sup>

### *Conclusion*

African legal education has a role to play in producing African lawyers trained in international and transnational law. It is suggested that this role could be larger than it appears at present in that, particularly, legal education priorities could be set and strategies mapped on national, regional and pan-African levels aimed at training such lawyers, quite possibly as an extension of other Pan-African-oriented legal education programs. This would complement and expand current local efforts in international law training, as illustrated by the widespread presence of such courses in law school curricula.

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63. See T. JACKSON, *GUIDE TO THE LEGAL PROFESSION IN EAST AFRICA* 83-84 (1970).

64. See generally Gwendolen Carter, *Black Initiatives for Change in Southern Africa* (The Eleventh Melville J. Herskovits Memorial Lecture, Centre of African Studies, Edinburgh University, March 9, 1973).

65. For instance, selected faculty and students at New York University Law School played a key initial role in the effort, ultimately unsuccessful, to block the importation of Rhodesian chrome ore into the United States in violation of Security Council Resolutions 232, 253, and 314. See *Diggs v. Schultz*, 470 F.2d 461 (D.C. Cir. 1972), *cert. denied*, 411 U.S. 931 (1972).

66. See Thomas, *supra* note 41, at 32.

Such an approach would seem to promise the training not only of African lawyers capable of *applying* international law to African circumstances, but who, more importantly, are capable of developing an *African standpoint* in the international legal process.