It is, in fact, a more reasonable way to view the simultaneous issuance of the bouncing check as fraudulent *payment, not as the fraudulent means of obtaining the loan or the goods,* for in most cases, the creditor would part with his money or goods even without a check being delivered to him simultaneously in payment. What really induces him to part with his money or goods is the promise or the commitment to fulfill the obligation, which is the very essence of a contractual obligation. Hence, what consists of the defraudation, even in the simultaneous delivery of the bouncing check, is really the payment for the goods in a fraudulent manner, not in the contracting of the obligation as was so narrowly intimated in the Lilius case. It is thus more accurate to say that the simultaneously-issued check is, in reality, in payment of the obligation, not the means to create it, and therefore, in no different juridical situation as one issued in payment of a pre-existing debt or obligation.

FEATURE ARTICLE*

ADDRESS BY THE RT. HON. RICHARD WILBERFORCE, C.M.G., O.B.E.,

Presiding Law Lord of the British House of Lords and of the Privy Council, and Chairman of the Executive Council, International Law Association (ILA)

Five years ago the I.L.A. celebrated its centenary, and held a special centenary conference. Three themes were chosen for that Conference: Conflicts between States, Liberty of the Individual, Protection of the Environment. These themes were thought to reflect people's desire for three fundamental things: Peace, Freedom and the Quality of life.

Some thought, and said at that time, that the choice of these themes was over-ambitious. How can a small private body of private lawyers attempt to find a solution to the great problems of the world? Such things are for summit meetings, for resolutions of the United Nations, for decisions by the International Court of Justice or for grand conferences such as Stockholm or U.N.C.L.O.S.

We reflect this feeling by asking the President of the the I.C.J. (International Court of Justice) and the President of the Assembly of the U.N. to address us. If I have any part to play, it is to try to place the I.L.A. in this great balance sheet.

Before doing so directly, I would like to attempt to estimate the task of lawyers, in particular of international lawyers, in this scenario.

One often hears it asked: When some great problem, cataclysm or holocaust occurs, what use is international law? Why can't international law prevent what has happened? The massacre at Kohlwezi, the wreck of the Torrey Canyon (followed, before the oil of the Torrey Canyon had evaporated, by the Amoco-Cadiz), some flagrant act of international terrorism, some conspicuous violation of human rights — what use is the law and its institutions if it cannot prevent these things? One does not expect the law to be particularly foreseeing. One accepts with resignation that the horse has generally escaped before the law arrives with the keys. But one attack on an airport tends to be

*From August 27 to September 2, 1978, the Philippines was privileged to host the 58th conference of the International Law Association. This was the first time that the Philippines was given this honor in the entire 105 years of the existence of the ILA, a prestigious organization of lawyers and experts in the field of international law. It is therefore but fitting that this issue of the Journal features the text of the address of Lord Wilberforce given on such conference. Lord Wilberforce's speech deals with the role and responsibility of lawyers in reshaping international law and order, a topic which should be of interest to law students and lawyers alike. The text of this address was solicited by Marius Corpus, LL.B. '79. For this opportunity to publish Lord Wilberforce's speech, the Journal staff would like to thank Prof. Enrique P. Syquia, the current and first Filipino President of the ILA.

followed by a similar attack of the same patttern; and after the Torrey Canyon they had ten years to prevent the same coasts being defiled. Why is the law so ineffective? Isn't self-help the answer — Entebbe style?

To this, international law has an answer, or part of one.

Take hijacking. Lawyers have met — and I personally have been among them — in conferences at Tokyo, Hague, and Montreal and devised a series of conventions, as well drafted as these instruments can be, to stop hijacking of aircraft. President Carter has announced at the Bonn Summit an agreement among the leading aviation nations to cut off flights to those countries which do not co-operate in anti-hijack action.

As regards terrorism, you have the European Convention with its firm alternative — "aut punire ant dedere" — punish or extradite.

Take pollution. In 1954 there had been the London Convention on Pollution of the Sea by Oil — amended in 1962 so as to require an oil record book to be kept. The Torrey Canyon was followed in 1969 by an IMCO Convention relating to intervention on the High Seas in cases of oil pollution casualties. In 1972 there was the London Oil Dumping Convention in which 80 nations participated. In 1978, you have an agreement doubling the amount of international money available as compensation.

As to the environment — after the U.N. had made its declaration of strategy for the second Development Decade, you had 26 principles adopted in Stockholm with the consensus of 110 States, and so on, not forgetting lawyers' work on Human Rights. So, say the lawyers: "We have done our stuff. It's not our fault if in an imperfect world these things go on. There have been improvements. That there haven't been more is the fault of politicians, scientists, technologists, and of weakness in law enforcement.

This is the lawyers' answer, and it's not a bad one — but it's only half an answer. I want to suggest that lawyers have wider responsibility for the state of the world, in which we in the I.L.A. have perhaps a particular role.

Let us remember that the present structure of the world society is lawyer made. Its concepts are lawyer devised. Let me give a few examples.

Sovereignty. This was unknown in the Greek and Roman world. It is a concept devised by lawyers in the 19th century with the rise and increase of nation-States. Then someone devised the powerful slogan: "The power of a sovereign is incapable of legal limitation." This was fine when there were only a few recognized Christian States

to which the lawyers all belonged, all speaking the same language. It comes under strain when you have 150 with far from the same cultures and ideas. It suffers extraordinary distortions; not only do you find nations claiming a sovereign right to exploit their own resources (whatever effect this profligacy may have on the rest of the world), but one meets claims that nations have a sovereign right to have other nations assist their development. Nineteenth century professors would never have anticipated that. Sovereignty brings with it another legal doctrine — that of Domestic Jurisdiction, the doctrine that there are matters falling within the domestic jurisdiction of States with which other States have no right to interfere. This creates an insoluble dilemma in matters of human rights — one principle being that human rights since the Universal Declaration are of international concern; the other being that how a State treats its own subjects is a matter of exclusively domestic concern. Note in passing that this doctrine of domestic concern has no place in the E.E.C. (European Economic Community) — and the dilemma I have mentioned does not exist there. Two allied concepts are: That of "sovereign immunity", again a Western invention, which is now being used by nations generally as a technique for denying compliance with obligations. Originally, a means of protecting a weaker state against action by stronger interests, it has now become an impediment in international trade. The second is that of the "political offense," or "political crime", which gets into the law of extradition and which prevents terrorists from being extradited if they can claim that their crime was political.

In the Law of the Sea, there is a particularly interesting example of lawyers' work. The concept of "the continental shelf" was put into legal form in the convention of 1958 — taking into consideration the 200-meters depth and the exploitability test. Then comes the doctrine of the "natural prolongation" of the coastal shore propounded by the International Court. This then engenders the disastrous claim (the word "disastrous" is personal, but also meant) to the E.E.Z., (Exclusive Economic Zone) a step by step approach based each time on legal concept, justified supposedly by legal theory.

Lastly, Human Rights. Whoever it was that devised this concept, it is certainly lawyers who gave it body and flesh in the great international instruments and covenants. But this example well shows the weakness of the legal mind. It is strong in definition and in devising formulas, but weak in procuring enforcement — that needs imagination which is not invariably a legal quality. Imagination too is needed to relate the western conception of human rights to developing countries. This they have not yet done.

Other legal structures I could mention. One is "non-discrimination" — a principle devised by lawyers in the interest of powerful developed states. We are only now beginning to see that discrimination — the

opposite — is necessary to meet the needs of developing peoples. This indeed was recognized by the G.A.T.T. which had some articles recognizing discrimination and preference for developing states. But in come the lawyers again who devised escape clauses which greatly reduced the effect of these articles.

For all these items of legal architecture, lawyers must take responsibility for their incompleteness, their distortion, their misuse. And it is our business as lawyers of the future to correct them.

The general method of correction can be described as injection of the conscience element. Take first the seabed question. At present, there is a confrontation between the lawyers' construction of the E.E.Z. and the more political idea of the "common heritage". I believe that imaginative lawyers can find a way out of this by grafting the one idea on the other. Every exercise of sovereign rights over the E.E.Z. should be made subject of a recognition that mankind too, as well as the coastal state, has its heritage in this E.E.Z. and not merely in the seabed outside it, and lawyers should try to draft a text which gives effect to this idea. The Nepalese have put forward a draft which shows that this can be done.

Then take sovereignty. As lawyers of the future should we not try to fertilize transnational movements and transnational jurisprudence? The individual, unrecognized in the 19th century as a subject of international law, becomes more significant each decade in the 20th. We ought to favour movements which increase his influence. (Note how President Carter suggests he should have access to the International Court). One way in which this can be done — and one very relevant to us is through private associations. There is no doubt that an immense contribution to the international legal order can be made by participating in them. Most thinking people are associated in one or more of these: there are now at least 2,000 N.G.O. recognized and used by U.N. Of course we think first of the 13 bodies formed in the last quarter of the 19th century to reduce conflicts — remember this was our No. 1 theme in 1973 — including the I.L.A., the Institute and our offspring I.M.C.O. We think second of humanitarian law, with its unique institution in the International Committee of the Red Cross which has legal status. I think third — because I am President of it — of the Anti-Slavery Society, an expert transnational pressure group within the U.N., and the I.L.O. which can claim to have brought about fundamental advances in the international protection of human rights. And similarly Amnesty International. These are all directions, and there are many more in which individuals, acting in private associations, can do more than states do.

Third, we may think of International Arbitration — a vital unifying force in economic and commercial matters, a bridge between East

and West, developed and developing countries. An indispensable tool in the working out of development programmes. The I.L.A., I believe, ought to maintain and indeed increase its interest in these activities.

Finally, and I am still speaking of matters in which international lawyers and private associations can play a decisive part, there is Human Rights. But what may still in spite of that remain interesting and central, is: what the Human Rights movement most needs, in my belief, is internationalization. At present, so far from uniting mankind as the drafters of the Universal Declaration of Human Rights thought in 1948, it has become a divisive force, a source of recrimination and conflict. We know that the definitions of Human Rights are Western in origin and largely Western in expression. The definition, and in particular the method by which they can be given effect to, require restatement now in wider and more flexible terms, particularly to meet the needs of developing countries, and to fit in with aid programmes. Greater freedom must march hand in hand with the raising of living standards, the removal of poverty and starvation, the spread of a better life. What has been called the rising tide of expectations should carry with it, as well as material progress, a desire for meaningful and relevant political and economic rights. So, instead of policies which deny resources to States where actions are judged reprehensible, there should be a constructive use of resources to aid Human Rights — the positive rather than the negative approach.

Any constructive programme in this area needs the creation of a new kind of lawyer which at present hardly exists. In this, I gladly follow up what General Romulo said in his speech yesterday. If we are to work in a new international economic order, we need development lawyers — lawyers who can do more than work out formulas, lawyers who can work with people of other disciplines, agriculturists, engineers, technicians,to bring developing countries — which at present have, naturally, not much interest in the Human Rights Movement which they regard as a rich country's luxury — with that movement, and to bring it forward from inherited European law to something which can reflect their own contribution to international legal thought. These are the lawyers with a conscience — I would add though, with a trained conscience. The task of these lawyers is to rework old formulas inherited from the past in terms of the three worlds we live in; never in future to put out a new formula which a conscience leaning toward those worlds cannot accept.

I believe that the I.L.A. as an association of non-political individuals can, to a surprisingly large extent, bring an influence to bear on those three great matters which it selected as themes for its centenary. Incidentally, let us not forget that we have our men in the United Nations, in its agencies, in the I.C.J., in the International Law Commission, in the Commission for Human Rights, on the UNCLOS.

We have brought I.L.A. to the Far East in the interest of cross-fertilization. We know that new ideas are needed in the subjects as briefly mentioned — the environment, sovereignty, the law of international trade, the use of seas and the seabed, and human rights. We need new approaches, new philosophies, new ideals. We shall get from this richly individualist part of the world.

RECENT SUPREME COURT DOCTRINES

Compiled By:

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and

DANTE MIGUEL V. CADIZ, LI. B. '81

AGGRAVATING CIRCUMSTANCES

Where the purpose of the accused in going to the house of his mother-in-law was to sleep with his wife, not to kill her, the crime of parricide was not committed with evident premeditation.

Abuse of superior strength cannot be appreciated in this case for the reason that the said circumstance is inherent in the crime of parricide where the husband kills the wife. It is generally accepted that the husband is physically stronger than the wife.

Nocturnity cannot also be appreciated, although the crime was committed at night, because night-time was not specially sought by the offender, or taken advantage of by him to facilitate the commission of the crime or to insure its consummation with a minimum of resistance from the inmates of the house.

The mere fact that the victim of the crime is a woman is not in itself sufficient to support the contention that there is present the aggravating circumstance of insult or disrespect to sex. It is necessary to prove the specific fact or circumstance, other than that the victim is a woman, showing insult or disregard of sex in order that it may be aggravating.

But the aggravating circumstance of dwelling is present since the crime was committed in the house occupied by his estranged wife, other than the conjugal home. Unlawful entry is also present since the accused admittedly destroyed the glass blades or jalousies of a window in gaining entry into the house. (People v. Galapia, G.R. No. L-39303-05, August 1, 1978)

The generic aggravating circumstance of "aid of armed men" should not be applied in this case, considering that appellants, as well as