THE DECADE OF INTERNATIONAL LAW:
IDEALIST DREAM OR REALIST PERSPECTIVE?

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"Ours is the faith that removes mountains, for our cause is that of humanity.” ***

1. IDEALISM AND REALISM IN THE SCIENCE OF INTERNATIONAL LAW

Written in the direct aftermath of the two Hague Peace Conferences of 1899 and 1907, the above quoted words are an illustration of a firm idealistic belief in the future role of international law. They were expressed by Oppenheim in 1908, at a time when the results of the two Peace Conferences were, to say the least, disputed. In the general public opinion, disappointment about the outcome prevailed. International lawyers, however, mostly regarded it as a first step in a ‘progressive development’ of international law. The fact that it proved impossible, for instance, to create a permanent Court of Arbitral Justice, one of the aims of the second Conference, did not lessen Oppenheim’s positive attitude: “The science of international law has a great future to look forward to.” 1 A future in which idealism would be an essential element:

Our method must certainly be the positive method, but it can successfully be applied only by those workers who are imbued with the idealistic outlook on life and matters. He who believes that the essential characteristic of law is the policeman who protects it is not properly fit to work at the science of international law [...] We require men possessed of that idealism [...]. 2

With the advantage of hindsight knowledge, the idealism of that time is often regarded as unrealistic and has been rejected as a viable approach to world order problems in favour of a more ‘realist’ approach, based on power politics. However,

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1. Id..
2. Id. at 355-356.

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the vision of a world order governed by law, in which disputes are to be settled by peaceful means, did not vanish. It remained a guiding light for many international lawyers, but it was reflected in state practice only to a limited degree, as the record of twentieth century history shows. The creation of the League of Nations, the Permanent Court of International Justice and their respective successors, the United Nations and the International Court of Justice, certainly was inspired by idealism. However, vital questions of war and peace and economic prosperity essentially remained within the realm of inter-state politics. The individual interests of the states concerned mattered more than the lofty ideals of these (and other) international organizations.

About one year ago, in November 1989, the idea of holding a Third Hague Peace Conference in 1999 came to life with the proclamation of the Decade of International Law by the UN General Assembly. A valid question that arises in this respect concerns the motives of states in doing so. Are states really concerned about the strengthening of the role of international law and the functioning of the International Court of Justice? Or, are they only after short-term political gain, in which expressing the ideal of a peaceful world governed by the rule of law is nothing more than just a tool. Why would states be willing to undertake in the 1990s what they have neglected to a large extent in the past decades? In other words, how do we assess the political credibility of the initiative?

The questions can be put in perspective by referring to a distinction made by Röling. He distinguishes between two different attitudes of states to international law: a (traditional) nationalist attitude and a community oriented attitude. According to Röling, the traditional attitude is concerned with the question: How can the law of nations be applied to the benefit of my state? This attitude, of course, has a great influence on the position a state takes with regard to the progressive development of international law and its interpretation. The other approach poses the question: How can international law serve the interest of the world community? Can it be used to further the peace between states, to improve the situation of those who are living under conditions of inhuman poverty and to protect the natural environment? This attitude leads to a different approach regarding the form and content international law should take.

Even though it may appear so, these two perspectives are, in the end, not necessarily irreconcilable, and should not be regarded as such, for both aim at serving the interests of people. The increasing global interdependence between human communities, whether represented by a state or not, in economic, ecological, military

or other matters, makes a strict separation between the two increasingly difficult. With Röling, it can be said that the traditional approach starts from a short-term perspective, whereas the other takes a longer term perspective. It should be seen as a challenging task for the science of international law to try to bring these ‘extremes’ closer to each other.

Whether this was the aim of the initiators of the Decade of International Law should not occupy us for too long. International lawyers should take up the challenge and make proposals that will help states to leave behind their traditionally reluctant attitude towards the rule of international law. The time is ripe, as it seems that the perspective for success has increased drastically in the last couple of years.

If the 1990s are to become a decade of international law, the 1980s should, in retrospect, be characterized as the ‘decade of realistic transition’. The ‘end of the Cold War’ and the promising developments within the Conference on Security and Cooperation in Europe (CSCE), the unification of the two Germanies, the united stand of the world community against Iraq’s aggression, the perspectives on the abolition of apartheid in South Africa have closed off some of the dead end roads in the international political maze. On the basis of a realistic assessment of the facts and under the pressure of popular resistance, a number of governments have refrained from stubbornly holding on to power with the help of force. In many cases they have given it up, or at least started a dialogue with yesterdays arch-enemy.

Here we touch upon the core of the developments of the 1980s. Some of the potential sources of international conflict have been removed from the international stage, not as a result of a solution of the problem, but mainly as a result of changes in the ideological perspective from which these problems were approached. This, in no way, means that the existing problems in the world have been solved or that they will soon be solved. Neither does it mean that no new sources of conflict might arise. Conflicts will certainly emerge; in a situation of increasing interdependence probably even more than in the past. It only means that the conflicts will be dealt with in a different way, as the basic philosophy which forms a prerequisite for successful conflict resolution, has changed fundamentally. No longer does the irreconcilability of the ideologies of socialism and capitalism preclude finding a common basis for conflict resolution.

Whether this basic philosophy will be ‘liberal democracy’, as claimed by Fukuyama in his much debated article The End of History, or some other ideology, is not our main concern here. Nevertheless, Fukuyama’s outspoken opinion in this matter may help us to identify some of the issues that are relevant for the strengthening of international law. His view on international affairs in the ‘post-historical’ period is dominated by what he calls the ‘common marketization’ of international relations and the diminution of the likelihood of large-scale international conflict. If we accept,

for the sake of argument, that liberal democracy has indeed become the main world ideology, we need to investigate the foundation on which its stability over a longer period can be build, to see if it can help us in assessing the role of international law.

A brief look at some of the liberal democratic societies, like the United States and most countries in Western Europe, discloses immediately the fundamental role of law, mostly based on a written constitution. Furthermore, as case in point, the common market of the European Community can be mentioned. The ruling of the Court of the European Communities that the Community constitutes a new legal order that limits the sovereignty of its member states, is essential in this respect. Law has become the basis for the success of the process of integration in Western Europe. From these examples we may deduce that, if liberal democracy has become the dominant global ideology, characterized by increasing ‘common marketization’ of global relations, the essential role of international law can no longer be neglected.

From a different perspective, this stabilizing role of international law can be further illustrated. According to, for instance, Niklas Luhmann’s sociological theory of law, law can be regarded as providing a structure on which actors in a community can rely in their expectations about the behaviour of other actors. Moreover, it provides a basis for the interpretation and assessment of this behaviour. A very important function of law in this perspective is not, as one would be inclined to think, the determination of an actor’s own behaviour, but the provision of a touchstone for the assessment of the behaviour of others. This provides the necessary feeling of security on which normal relations between subjects of law can be based.

Transferred to the realm of international relations, this sociological view can be useful. The security of states, has, until now, been largely based on military security alliances, which in turn were mostly based on ideological antagonism. The period since the Second World War has been a period of great stability, not in last instance as a result of the bi-polarity in international power relations. The assessment of the (expected) behaviour of the opponent was made relatively simple in a situation in which the Soviet Union and the United States held each other hostage by threatening with complete nuclear destruction. The ‘end of the Cold War’, however, has removed this basis for stability. Alternatives have to be developed as man needs a (mental) framework that enables him to reduce the complexity of the world in which he lives and to perceive it as comprehensible and controllable.

7. Cf., Fukuyama, supra note 5, at 5: “The state that emerges at the end of history is liberal insofar as it recognizes and protects through a system of law man’s universal right to freedom, and democratic insofar as it exists only with the consent of the governed.”
One can, as for example Mearsheimer does, propose to re-establish the stable situation by a further proliferation of nuclear weapons. This offers a rather gloomy picture of a world of threat and fear; a world that we would prefer to avoid.

An alternative would be the acceptance of a greater role of law in international affairs. There is no reason to expect that law in the international arena cannot have the same function as it has in the domestic realm.

For smaller states, such as the Netherlands, the rule of international law has already performed the function of a guiding objective in a complex and antagonistic world, at least to the extent possible within a military alliance based on ideological confrontation. Moreover, it is no surprise, that the initiative for the Decade of International Law was taken by the smaller member states of the Movement of Non-Aligned Countries.

With respect to the most important actors on the world stage, it can be observed that, in the present Gulf-crisis, they, with the obvious exception of Iraq, are trying to play the game within the limits posed by international law. The same behaviour could already be observed in the Iran - Iraq war during the 1980s, where international law was the main yard-stick for the behaviour of non-belligerents.

The question that remains after these brief reflections on the role of international law, is whether in the present world situation, the UN Decade of International Law provides a viable arena for a serious assessment of the rules and procedures of international law and for attempts to enhance the commitment of states to comply with the rule of law and to subject their actions to (compulsory) procedures that are designed to make optimal use of international law. We hope that during the activities in the context of the Decade of International Law idealism and realism will be combined, for without idealism we lack the imagination necessary for designing tailor-made solutions for unresolved problems and without realism we will not be able to see the problems in the right perspective.

In the following sections, we will turn to a more comprehensive introduction of the Decade and the contribution that this issue of the Leiden Journal of International Law hopes to make to it.

2. THE DECADE OF INTERNATIONAL LAW: ORIGIN, CHARACTER AND REACTIONS

On December 17, 1989 the General Assembly of the United Nations adopted Resolution 44/23 in which it proclaimed the 1990s ‘Decade of International Law’. The idea for such a decade had officially been launched five months earlier, on June

29, 1989, at a Ministerial Meeting of the Non-Aligned Movement held in The Hague to commemorate the ninetyeth birthday of the First Hague Peace Conference. In the Declaration issued at the end of this meeting, the United Nations General Assembly was requested to proclaim the Decade.11 The proposal included the suggestion to hold Third (Hague) Peace Conference at the end of the Decade, in 1999. With the adoption of GA Resolution 44/23, the United Nations has taken over the initiative, and an open ended working group of the Sixth (legal) Committee of the Assembly will soon present its recommendations.

According to operative Paragraph 2 of Resolution 44/23, the main purpose of the Decade is as follows:

a. To promote the acceptance of and respect for the principles of international law.
b. To promote means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice.
c. To encourage the progressive development of international law and its codification.
d. To encourage the teaching, study, dissemination and wider appreciation of international law.

As can be seen, the objectives of the Decade are couched in very general terms. In addition to this, the wide margin of appreciation for states created by the use of the words “to promote” and “to encourage”, make it very hard to get a clear-cut picture of what actions states should actually take during the Decade. Thus, the proclamation of the Decade is nothing more than an invitation to participate in a general debate about the role international law has played in the past, and should play in the future.

A justified concern of critics regarding this wide approach to the Decade could be that such a general debate would lead to nothing but a discussion full of rhetoric and good intentions in which concrete commitments are avoided. However, these critics might be silenced by pointing out that such a wide approach to the nature of the debate gives full freedom as to the direction of the studies and discussions.

Here a distinction between state and non-state entities should be made. A discussion dominated by states and/or inter-state organizations is very susceptible to short-term political interest of states and state representatives. Although actual decision making is impossible without these actors, states must be stimulated to adopt policies that move beyond these short-term perspectives. An essential role in this could be played by non-state entities, ranging from non-governmental organizations like the International Law Association (ILA) and the International Commission of Jurists, to international commercial organizations and private individuals who invoke international law before domestic courts or put pressure on governments to

comply with international standards. The activities of organizations like Charta '77 in Czechoslovakia and of dissidents like the late Professor Andrei Sacharov in the Soviet Union demonstrate the indispensable role that private initiative plays in keeping alive the awareness of the fundamental role of international law in our contemporary society. It is as important as the role of, for example, the ILA in proposing specific rules of international law.

Pursuant to operative Paragraph 3 of GA Resolution 44/23, the Secretary-General of the United Nations has requested member states, international bodies and non-governmental organizations to present him with their views on the programme of action to be taken during the Decade, including the possibility of holding a third international peace conference. On September 12, 1990, the Secretary-General presented his report containing the first reactions. On September 21, and October 8, two addenda were added.

In general, the proclamation of the Decade was welcomed by all states, international organizations, and non-governmental organizations that have responded to the request of the Secretary-General to supply him with their views. The prevailing tone of the reactions is that the programme for the Decade should be “generally acceptable, well defined and action orientated”. Furthermore it should be “concrete and realistic and should not cause duplication of work of existing organs”. The decision by the General Assembly to establish an open-ended working group within the Sixth Committee to elaborate a plan of action was also generally supported. Some states even considered that the working group should continue to operate throughout the Decade.

Noteworthy is that the reaction of the group of Western states (The United States of America, Canada and Ireland, on behalf of the twelve members of the European Community, Australia and Finland on behalf of the Nordic Countries) is of a much more reserved nature than the reactions by, for instance, the Soviet Union, China, Libya, Cuba, Bulgaria and Yugoslavia. The Western states are generally reluctant to commit themselves to a third peace conference at the end of the Decade and would like to avoid starting off the Decade with too high expectations. The twelve members of the European Community consider it useful that there be a mid-term review of the programme to assess how it is progressing.

A different approach is followed by the Soviet Union and China, who are less hesitant, and state that a third peace conference in which a new convention on the peaceful settlement of disputes could be adopted, might be the proper way to meaningfully end the Decade and enter the twenty-first century.

With respect to first goal of the Decade, as worded in part a of operative Paragraph 2 of Resolution 44/23, the following remarks were made. Problems with regard to the identification, implementation and further elaboration of the basic principles of international law should be solved. Furthermore, a need for new principles, concerning for instance, the environment, the problems of the developing countries, the huge gap between rich and poor countries, drug trafficking and international terrorism was expressed. The implementation of the principles of international law should be improved as should the monitoring of the behaviour of states. The attitude of states towards international law and their usage thereof, should be subject of international discussion, both at governmental and intergovernmental levels. Other comments pointed out the need for strengthening the respect for existing principles, in particular, pacta sunt servanda. A general call was made to all states to ratify and implement the already existing multilateral treaties with regard to human rights, humanitarian law, the prevention and suppression of international terrorism and the protection of the environment. In this respect, it was suggested that the procedures for the negotiations of treaties be reviewed and assessed in order to make consensus on the contents of a convention more likely. Some states proposed that promoting national courts to apply rules of international law, would be an effective way to enhance acceptance of and respect for these international standards.

The second aim of the Decade, "to promote means and methods for the peaceful settlement of disputes between States [...]"14, should, in the view of most states, constitute a major activity of the Decade.

The proposal to negotiate an international convention on the peaceful settlement of disputes received ample support. The convention should include ways of conflict detection and prevention, fact-finding, negotiation, reporting to United Nations organs, third-party adjudication and improvement of compliance with binding decisions. Special attention should, in the view of Bulgaria, be paid to procedures and mechanisms for the preventing and settling of disputes involving the environment, particularly transboundary pollution.

The prevailing view of many states was that the means of dispute settlement envisaged in the system of the United Nations should be further exploited. The role that the Secretary-General of the United Nations could play in the settlement of international conflicts should receive "further encouragement".15 Furthermore, the work of the Security Council should be enhanced. In this respect, the role of this organ in Gulf Crisis is encouraging. The principal judicial organ of the United Nations, the International Court of Justice should, in the eyes of most states, play a more dominant role in international dispute settlement. Suggestions were made to include provisions

for resorting to the Court in more treaties; to appeal to all states to withdraw reservations on treaty provisions granting jurisdiction to the Court; to stimulate acceptance by states of the compulsory jurisdiction of the Court under Article 36(2) of the Statute; to convey a conference during the Decade in which the jurisdiction and the functioning of the Court should be discussed; to strengthen the role of the Court with respect to verification of and compliance with legal instruments; to find ways of increasing the use made of the advisory opinion procedure; and finally to initiate a programme of internships and fellowships at the Court.

With regard to the encouraging of the progressive development of international law and its codification, the third aim of the Decade, a clear message was sent to the Secretary General: duplication of the work undertaken by other forums, should be avoided. The role of the International Law Commission and the Sixth Committee of the General Assembly should be strengthened and it was suggested to re-evaluate the role of international law in the context of an increasingly interdependent world. Progressive development was considered important in the following fields: international criminal law, the new international economic order, the "right to food" as a human right, minority rights, the elimination of weapons of mass destruction, the development of children and youth, the global environment in relation with the interests of developing countries and finally, maritime law.

The final objective of the Decade, the teaching, study, dissemination and wider appreciation of international law was extensively elaborated upon by the United States of America. The government of the United States proposes that an effort should be made to develop model curriculums and materials for the teaching of international law at primary and secondary levels of education. Many states feel that the observance of the Decade should involve the public at large, and not only state-representatives and professors of international law. With the help of seminars, symposia, training courses and lectures this could be achieved.

3. THE CONTRIBUTIONS TO THIS ISSUE

The Leiden Journal of International Law hopes to make a contribution to the implementation of the fourth objective of Resolution 44/23 by presenting the views of ten authors with varying background and orientation. These authors deal with some of the many aspects that are related to the question of enhancing the rule of international law and strengthening international peaceful dispute settlement. In line

17. See also for the same proposal I. Oppenheim, supra note 1, at 323-324: "[The rudiments of international law] ought also to be taught in all secondary schools, and the teachers of history are the proper persons who could best undertake [this] [...] If the public knew something about the merits of the case concerned they would frequently look upon the matter more cooly and in a more impartial way, and it would be easier for the governments to consent to arbitration."
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with the policy of the Journal, we have invited not only established experts, but also those who still have to earn a position between them.

Considering the general nature of the topic, we realized that it would be very difficult to present a consistent picture from which it would be possible to draw clear-cut conclusions as to the direction the discussion in the Decade should take. Nevertheless, to our surprise, the various contributors had more in common than we had expected and, therefore, we are convinced that the reader will not be completely lost in a labyrinth of opinions, although the specific subjects of the contributions vary considerably.

Most contributions not only elaborate upon of existing procedures for rule making or dispute settlement and, on the basis of this, indicate some areas where there would be room for 'progressive development', but also make appropriate recommendations.

Professor Sucharitkul, in his article on the role of the International Law Commission (ILC) in the Decade of International Law, deals with some general aspects of the codification and progressive development of the rules of international law. These rules, of course, form the foundation for a more elaborate framework for dispute settlement, which will be discussed in subsequent articles. He provides an assessment, decade by decade, of both the achievements and the shortcomings of the ILC. As a former member of the ILC he realistically illustrates the problems the ILC has faced during the four decades of its existence, among others, the brain-drain from the ILC to the International Court of Justice and the difficulty of finding persons of recognized competence to replace them, the politicization of the Commission and the failure of the General Assembly to reelect some of its key members. Nevertheless, Professor Sucharitkul has great confidence in the role of the Commission in the Decade of International Law, provided that further improvements in the (method) of work of the Commission are made. In his opinion, improvement of the law is a prerequisite for the success of proposals for improvement in international adjudication.

In the second article, Mr. Quintana discusses such a proposal, namely the unsuccessful attempt by member states of the Non-Aligned Movement to include in the Hague Declaration of the Ministers of Foreign Affairs of the Non-Aligned Movement of June 29, 1989, a passage that would initiate a diplomatic goodwill mission aimed at the wider acceptance of compulsory jurisdiction of the ICJ. This is a recent illustration of the unceasing, but until now unfortunately unsuccessful attempts undertaken throughout this century to come to a true world court with universal jurisdiction. It might serve as a warning against too much optimism, that even such a fairly non-committing initiative remained stillborn.

This article is followed by the contribution by Professor Sohn on a new comprehensive treaty for the settlement of international disputes. To begin with, he stresses the need to analyze ideas contained in existing conventions ("Good ideas should not be lost [...]. If an agreement on them could have been reached once,
perhaps some of them deserve another try") and to use new models for dispute settlement as have been developed, inter alia, in international trade matters. In addition to this, Professor Sohn suggests a number of innovative optional clauses that would lower the threshold of recourse to the ICJ. These could be included in the new treaty. It is evident from his contribution that he does not expect that a general acceptance of the compulsory jurisdiction of the ICJ is within immediate reach. This should not imply that the preparations for drafting a preliminary document to be discussed at the end of the Decade should not be promptly undertaken. However, it seems of equal importance to work, at the same time, on the improvement of alternative and probably less comprehensive means. Most of the other articles in this issue deal with these more specific approaches.

It goes without saying that all developments in this context are dependent on changes in the attitudes of states. As the 1980s have been the decade of change in Central and Eastern Europe, we thought it appropriate to include a contribution by a Soviet scholar in which some aspects of the changes in the Soviet attitude with respect to the science of international law and its role in international affairs are illustrated. Dr. Shinkaretskaya presents a brief overview of the historical development of the science of international law in the Soviet Union, especially with respect to third-party dispute settlement, and concludes that these changes do not yet amount to a fundamental change in practice. However, it is concluded that the more active role of the Soviet Union with regard to peaceful dispute settlement, at least provides the necessary prerequisite for such change.

The role of domestic in the implementation of international legal standards is an important indication of the attitude of states to international law. Two contributions, by Professor Falk and Professor Schermers respectively, deal with this issue from two completely different perspectives. Professor Falk focusses on the role of US courts with respect to war/peace issues in the context of the foreign policy of the United States. He argues that the arguments used for judicial restraints in these matters are, at least, objectionable. It is in his view highly desirable to continue to assert international law challenges in the courtroom as one of the efforts of making international law more effective. Professor Schermers’ contribution focusses on the role of domestic courts in Western Europe. He rejects Falk’s mission with respect to foreign policy issues; in stead, he focusses on the application of treaty law through individuals challenging in domestic court national acts or statutes that infringe these treaties. On the basis of a brief survey of Western European experience with respect to the balance that has to be struck between the role of the judiciary as primarily the applicant of national law at one extreme position and as the applicant of justice - including justice on the ground of international law- at the other end of the continuum, he concludes that with respect to treaty law, in general, treaties in Western Europe have priority over domestic legislation. A major problem that remains is the direct effect of the treaty rules that is needed in order to enable individuals to invoke
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international rules before national courts. The European Communities have taken the
lead in the creation of a treaty based legal community in which individuals have such
rights. Its positive experience might serve as an example for other treaty based orders.

This article is followed by four articles on dispute settlement procedures in more
specific fields of international law, respectively on human rights, arms control,
international trade and outer space. The first two articles, by Professor Kooijmans and
Dr. Myjer, highlight, inter alia, important developments in the context of the
Conference on Security and Cooperation in Europe (CSCE).

Professor Kooijmans notes that relations between states have often been strained
by human rights related issues. He points out that, although various procedures exist
for solving such disputes between states, they are hardly used because states do not
consider them suitable. The new supervisory mechanism, created within the
(predominantly non-legal) framework of the CSCE, seems to offer a new perspective
for settling inter-state disputes concerning human rights. However, Professor
Kooijmans expects that this mechanism will become victim of the same political
constraints that undermined, to a large extent, other inter-state dispute settlement
mechanisms in this field. He concludes that, within the framework of the CSCE, a
non-governmental, permanent committee should be established with fact-finding
and reporting powers, as a most suitable completion of the dispute settlement
mechanism consisting of inter-state complaints and individual complaints. Unfortunately, the CSCE states, meeting in Copenhagen in June last year, did not
accept two proposals to this end.

The article by Myjer is not limited to a discussion of dispute settlement in a narrow
sense, but covers the broad topic of juridification and standardization of norms in the
CSCE process in general, and with respect to arms control in particular. He discusses
the political and legal nature of the CSCE obligations and the effect of this on the
machinery for supervision, verification and dispute settlement. Shaped after the
supervisory mechanism in the human dimension of the CSCE, as is discussed by
Kooijmans, he proposes the establishment of an arms control supervisory procedure,
leading, ultimately, to mandatory third-party involvement. The ICJ is mentioned in
this context, but Myjer expects more of an arbitral procedure within the involvement
of the Permanent Court of International Arbitration or of an institution structured like
the International Centre for the Settlement of Investment Disputes (ICSID).

Although, in practice, ICSID has not become an institution were many investment
conflicts are settled, it nevertheless seems to inspire the legal imagination of
international lawyers. The last two articles both refer to ICSID as a model for future
development of dispute settlement procedures. Both arrive at this conclusion on the
basis of the contention that disputes in international trade law and in the law of outer
space can no longer be regarded as governing pure inter-state interests.

Dr. Ostrihansky provides a brief account of the development of dispute settlement
mechanisms within GATT, including the new developments that occurred during the
The issue is discussed along the dichotomy adjudication - conciliation. The conclusion is that, taking into account the fact that GATT law is not directly applicable in domestic legal orders, the choice for an adjudicatory approach during the present Uruguay Round is probably not a very good one. In order to provoke a shift in the discussion, away from this dichotomy, Ostrihansky argues that most of the disputes within GATT are not genuinely of an inter-state character, but between a state and a foreign private enterprise or person. The Washington Convention on the Settlement of Investments Disputes Between States and Nationals of Other States of 1965, therefore, would constitute a valuable example of a new line that could be pursued. The fact that this Convention provides for a choice between conciliation and arbitration forms an additional argument. The idea of establishing a ‘Centre for the Settlement of Trade Disputes’ deserves to receive serious attention during the Decade of International Law.

Finally, also in the article by Dr. Van Traa-Engelman the usefulness of the ICSID model for settlement of disputes concerning the application of international space law to commercial activities by private persons is mentioned. Such mechanism would constitute a valuable addition to the ILA draft Convention on the Settlement of Space Law Disputes which focusses on inter-state disputes. This draft convention, clearly influenced by the provisions on dispute settlement in the 1982 UN Convention on the Law of the Sea, is extensively discussed by Van Traa-Engelman on the basis of an assessment of the dispute settlement provisions in the main instruments of international space law.

4. THE SETTING OF A STAGE

The coming decade will be a happy one for international lawyers. It not only brings us the centenary of the First Hague Peace Conference, but also, inter alia, the fiftieth anniversary of the signing of the Charter of the United Nations and the Statute of the International Court of Justice. Will future historians judge the happiness of this decade by the amount of receptions and parties held to commemorate these important events, or by detecting an improvement in the development of the international legal order resulting from concrete actions by states? The answer to this question is to a large extent dependent on the success of the Decade of International Law that has been so solemnly proclaimed by the world community through the General Assembly of the United Nations.

The reactions of many states to the request by the Secretary-General to supply him with their views on the programme of action for the Decade, warrant a reasonable degree of optimism, even though these answers are, as yet, only words. The general tone of the reactions is one that requires realism, consensus, and an action oriented approach. One can wonder if the aura of idealistic dreams, which has, in the eyes of many, always surrounded international law, has evolved into a new kind of realism,
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fed by a broadly based consensus between states. We have, contrary to Oppenheim, a large number of examples in which the science of international law has actually worked in guiding states' behaviour and in the resolution of serious conflicts. We know now that what many contemporaries of Oppenheim may have considered unrealistic, actually works.

However, there certainly is no time to sit back and enjoy the fruits of the labour of the past. On the contrary, what has been built up slowly during a long period of time, should be expanded and improved. The contributors to this special issue have, one by one, presented an assessment of the current system of international law; some have gone further than that and have made specific proposals for improvement. Noteworthy is the fact that all authors tend to seek their improvements in a smaller and often more specialized context, much more than the states, mentioned in the report of the Secretary-General, are inclined to. States seem to think in terms of ‘a universal convention on the peaceful settlement of disputes’ and ‘strengthening the role of the World Court’, whereas the contributors to this issue talk of ‘the role of domestic courts’, developments in the contexts of the Conference on Security and Cooperation in Europe and the settlement of arms control, trade or space law disputes.

These different approaches carry in them seeds of a stalemate situation, in which states devote much attention to universal rhetoric and neglect the small scale opportunities for subject-related or functionally-oriented initiatives suggested by scientists and practitioners of international law. It is the role of the science of international law to continue with presenting new ideas and perspectives, not only in order to induce change in the attitude of states, but also with the intention to convince the 'man in the street' that international law has a role to play in a more peaceful world order. The best way of promoting international law is to show the beneficial effect a sound international legal order has on daily life. We hope that during the Decade of International Law real efforts will be undertaken in this respect. One conclusion that can be drawn from the contributions to this issue is the importance of the role of private initiative in a better implementation of international law. Increasing the possibilities for individuals or non-governmental organizations, whether of a public or commercial character, to claim respect for the rule of international law before national courts, international arbitral bodies or a non-judicial committee of independent experts, should form one of the main objectives of a Third Hague Peace Conference. An innovative discussion in the context of the Decade should not focus on the failures of the past, for example the disappointing record of acceptance of the compulsory jurisdiction of the ICJ, but on building further along lines that have proved successful.