Malvina Halberstam* asked Professor Paust whether his citation to the 1865 Attorney General Opinion reflected his thinking on whether Congress had the power to transgress international law. Professor Paust noted that the question implicated the venerable last-in-time rule and the four exceptions to the doctrine. Owing to time constraints, Professor Paust referred Professor Halberstam, and those interested in the audience, to a forthcoming article he had authored on that subject.12

David J. Bederman**
Reporter

ENVIRONMENT, ECONOMIC DEVELOPMENT AND HUMAN RIGHTS: A TRIANGULAR RELATIONSHIP?

The panel was convened at 8:30 a.m., April 21, 1988, by its Chair, Robert E. Lutz.***

Remarks by Robert E. Lutz

The topic of this panel, "Environment, Economic Development and Human Rights: A Triangular Relationship?", suggests a skepticism about the relationship among the three subjects—particularly their international legal linkages. This skepticism is borne out by one's review of legal developments in each subject area, which tend to recognize parallel relationships between one area and another but generally prescribe no integrated relationship among the three. For example, various international legal instruments have indicated that there are legal relationships between environmental concerns and economic development. The Declaration of the Stockholm Conference on the Human Environment, as one such instrument, specifies the importance of having environmentally sustainable development. There is also the example of the linkage between economic development and human rights. The right to develop as a human right has been articulated in a number of General Assembly resolutions, and there also have been proposals that states should not give development aid to governments that violate human rights. There is also the relationship, perhaps less evident in international agreements and resolutions, between human rights and the right to a clean and healthy environment. The recent report of the World Commission on the Environment, however, proposed this very relationship as a principle. Principle One of the proposed principles states: "All human beings have the right to an environment adequate for their health and well-being."

Along with legal development involving these paired relationships, there is the obvious relationship among the environment, economic development and human rights that occurs with global problems involving the shared concerns of health, safety and individual well-being. It is certainly reasonable to claim that development is about

*Professor of Law, Cardozo School of Law, Yeshiva University.
**Law Clerk to the Hon. Charles E. Wiggins, Circuit Court of the United States for the Ninth Circuit.
***Professor of Law, Southwestern University School of Law.
improving the quality of life and, therefore, inappropriate development is development inconsistent with basic human rights. It is further reasonable to claim that development at the expense of environmental quality is detrimental to our human condition.

The study of the relationship among these three subject areas is a complex and multidimensional one that today is certainly embryonic. Nevertheless, many of the legal issues raised by the global problems of technology development, population growth, desertification, famine, global warming, ozone depletion, deforestation, nuclear proliferation, and the miserable poverty besetting a large percentage of our world are arguably at the intersection of the more legally developed areas of environment, economic development and human rights. Since many of these problems threaten our very existence, they deserve greater attention by the international legal community.

The purpose of convening this panel, composed of such eminent participants, is to commence the discussion regarding the extent to which a legal relationship might exist, if a relationship exists at all. By exploring the conceptual dimensions of this topic and by examining the relationship in practice, we hope to advance the discussion.

The panel has been organized with several aspects of this purported relationship in mind so as to focus our discussion. Ibrahim Shihata will address the topic from the perspective of the international developer, the development banks. In recent years, these international institutions frequently have been the target of criticism for development that can violate human rights and harm the environment. David Wirth, who has been one of the critics, assesses the question from the environmental perspective. Philip Alston will discuss human rights and the role of international organizations. Stephen McCaffrey discusses the international lawmaking process and its relevance to the topic by analyzing the extent to which the special circumstances of developing countries are taken into account in the current efforts of the International Law Commission to codify and develop progressively the international law concerning the environment. Finally, Representative John Porter observes the relationship in practice by discussing possible municipal law approaches, particularly the “debt-for-nature swaps” he has proposed in Congress.

**REMARKS BY IBRAHIM SHIHATA**

A few years ago the director of Amnesty International suggested that the International Bank for Reconstruction and Development (World Bank) should not make loans to countries whose human rights violations were documented by Amnesty International. He got a negative answer from the Bank’s management at that time. The Bank made a similar response in the 1960s when the U.N. General Assembly asked the Bank not to lend to Portugal and South Africa due to their records of colonialism and apartheid, respectively.

In both cases the manner and circumstances in which the questions were posed to the Bank to a great extent determined the narrowness of the answer received. But, in fact, the whole work of the World Bank, and for the same reasons, of other development finance institutions, can be seen as an exercise in the promotion of human rights. That is what I would like to explain briefly today.

The environment, economic development, and human rights are indeed closely interrelated. They may be seen, and increasingly they are seen, as different aspects of the same basic concern. Experience has shown, sometimes at a high cost, that bal-

---

*Vice President and General Counsel, International Bank for Reconstruction and Development. Mr. Shihata spoke in his individual capacity.