THE RIGHT HONOURABLE LORD MANCE*

A significant area of my practice at the bar was in the field of commercial contract law. But I have to say that it involved very little examination of the fundamental areas announced by Part I and on which the later Parts of today's conference will focus. They were either simply taken for granted or non-existent. English lawyers interested themselves in an almost academic way in deciding substantive disputes. On the bench I am happy to have considerably greater exposure to these problems through the Council of Europe, whose Consultative Council of Judges (the CCJE) in Strasbourg I presently chair.

It is true that there have always been jurisdictional issues, which the Brussels/Lugano Conventions in their early years did little to stem. Claimants have tended to want to sue in England, while defendants have tended to want to avoid this! Issues of independence (which we discuss in Part II of the programme) may sometimes have had something to do with this in the case of some foreign judiciaries. But they did not impinge directly on English legal practice. Enforcement (discussed in Part III) was also a much neglected area. People had to litigate in the hope of finding assets against which to execute, until Lord Denning introduced the *Mareva* injunction (or now freezing order) to give teeth to litigation.[1] Money also moved less easily around the world a few decades ago, so perhaps the risk of dissipation was anyway less. Arbitration, the subject of Part IV, always played an important part in London legal life, but mediation or ADR is a very new phenomenon.

The opening up of Eastern Europe and the obvious developmental problems in other parts of the world have meant, rightly, that far more attention is paid today to such subjects. We realize that economic development depends on trustworthy and efficient legal systems. This causes us to examine the conditions under which judges are appointed and act, the adequacy of the funding, buildings and equipment with which they operate, the extent to which they continue to be treated and behave like official functionaries, rather than independent officers, the extent to which their poor conditions may expose them to temptation, or to which their behaviour and connections may create obstacles to their acting truly independently. The work done by the Council of Europe and other institutions such as the World Bank in identifying and improving standards relating to independence, funding, ethics and training cannot be undervalued. It is a truism that it is not just by identifying and seeking to resolve problems in developing countries that better standards and better observance of the rule of law is possible. Developed countries can and must contribute – for example by recognizing the evils of, and taking measures to prevent, corrupt dealings between their citizens and companies and those of developing countries.

---

* House of Lords, England and Wales. Opening remarks at the conference on 5 December 2003.

[1] *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 (CA).

In the field covered by Part III, we see the same determination by the European Union and Council of Europe and other bodies to develop common principles and approaches to control matters such as the applicable law (the Rome Convention) and enforcement (Brussels/Lugano Convention now the Regulation 44/2001). I am delighted to have the opportunity to hear and meet Professor Catherine Kessedjian, having read her reports, when she was at the Hague Conference on Private International Law, on the subject of a possible worldwide jurisdiction and judgments convention, a project which has since been limited (even if not necessarily permanently) to a project to investigate the possibility of a worldwide choice of jurisdiction and enforcement convention mirroring the New York Convention applicable to arbitration.

Lastly, we see under Part IV huge efforts being made to educate and introduce other dispute-resolving procedures. This is not just because legal systems are overloaded or inefficient – that would be to undervalue the true worth of ADR. Any adversarial system has itself the major potential disadvantage that the solution is imposed from outside. Systems of ADR leading to a consensual resolution of disputes restore to litigants a freedom of action and decision. This can not only promote continuing relationships, where feasible but can avoid the embittered dissatisfaction and further disputes that so often result from an adverse judgment. Chief Justice Yavkolev and I had the pleasure of meeting last week in Strasbourg at a conference on this subject which the Consultative Council of European Judges organized for judges from all over the wider Europe.