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The United Nations Seventh Special Session: Proposals for a New World Economic Order

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NOTES

THE UNITED NATIONS SEVENTH SPECIAL SESSION: PROPOSALS FOR A NEW WORLD ECONOMIC ORDER

I. Introduction

In September 1975 the United Nations held a special session, only the seventh in the organization's history, on global economic problems. The issue precipitating the special session was the call for a new international economic order by the world's developing nations. Since the oil crisis of 1973, the United Nations has become the arena for dispute between the world's wealthy nations and its poor nations, and bloc against bloc confrontations are commonplace. It is clear that action must be taken soon, not only if we are to distribute more equitably the world's wealth, but also if we are to avert armed confrontation between developed and developing nations. This paper analyzes elements of the global economics and social issues that underlie the conflict and that were discussed at the Seventh Special Session. The scope of debate on a new economic order is vast, as it must be since every nation of the world is affected by it. There are no partial solutions, and short term remedies will only complicate future problems. At the very least, we hope this paper illustrates the magnitude and intricacy of the challenge before us.

A. *The Interdependence of Nations*

In December 1973 the OPEC nations raised the price of crude oil, thereby wreaking havoc with the economies of the industrialized nations and dealing a crippling blow to the budding economies of most developing nations. The oil price increase made the concept of the world's economic interdependence a vital part of any rational viewpoint of the state of the world. The interdependence of nations has since become the propelling idea, the *sine qua non*[1] behind attempts to retool the international economic order. Economic interdependence of nations is a necessary predicate for policy in today's world. To speak of interdependence as an all-pervading condition of economic life affecting all nations in ap-

1. Address by Ivor Richard, British Ambassador to the United Nations, Dec. 12, 1974, summarized in N.Y. Times, Dec. 13, 1974, § 1, at 10, col. 5.

proximately the same way, however, creates a myth of interdependence[2] that overlooks the more complicated realities of the economic interplay of nations. This myth threatens to beguile interested parties into simplistic panaceas for complex problems and unrealistic hopes for what is sure to be a protracted snd intricate debate on the future shape of the world economic system.

Interdependence, as the term is currently used, signifies a world in which sovereign states can no longer provide for their fundamental needs without relying on materials, technology, or capital from other nations. Because resources (human, material, and financial) are limited, the manner in which a nation attempts to satisfy its needs necessarily impacts on the needs and policies of other nations. Oil provides a good example. The industrialized nations require oil to fuel their economies, the oil exporting states depend on oil for the revenues needed to develop their countries, and the non-oil exporting developing nations want oil to build their own economies. The world's oil supply is finite, however, and it is rapidly being depleted,[3] which creates the problem of uniform interest in the same dwindling supply of oil. The oil price increase and resulting crisis and world-wide depression showed the magnitude of interdependence but it was not a satisfactory way of dealing with the problem of balancing nations' competing interests in the wise use of essential natural resources. Besides bringing long overdue attention to the self-destructiveness of wanton energy use, the oil crisis revealed the pervasive overlap of essential interests in an interdependent world. This is a world where sovereign states will, and must, vigorously defend their essential interests to retain whatever sovereignty can be said to remain taking into account that the destiny of all nations is dependent on decisions taken outside national borders. In economic dealings of a magnitude implied by the debate on a new economic order, therefore, no policy maker can afford to overlook that a nation's fundamental concerns are at stake and they must be "taken into account just as much as those of other countries whose interests are different."[4] Third World rhetoric often challenges, but appears to take no ac-

2. Waltz, *The Myth of National Interdependence*, in THE INTERNATIONAL CORPORATION 204 (C. Kindleberger ed. 1970).

3. In 1973, proven resources of oil amounted to nearly 90 billion tons, or 67 billion barrels, which at the 1972 rate of consumption of about 2.5 billion tons per day would last thirty-seven years. M. MESAROVIC & E. PESTEL, MANKIND AT THE TURNING POINT 174 (1974) [hereinafter cited as MESAROVIC & PESTEL].

4. Address by Ivor Richard, *supra* note 1.

count of, the developed world's interests in the current debate. Because any new order requires the full participation of the developed nations, interdependence from the vantage point of the developing world must give credence to and deal reasonably with the developed world's needs. In turn, the developed world must realize that developing nations have an important hand in future global development, thereby compelling respect for legitimate Third World development goals.

One observer has called for a "world survival bargain"[5] in which both developing and wealthy countries recognize each other's respective needs. For the developing world these needs would include access to markets at stable and remunerative prices, access to technology, management skills, investment capital, and access to a fairer share of the decision-making in international institutions such as the World Bank. The developed world would require access to energy and other raw materials at stable, fair prices. This global pact would also necessitate that the developed nations conserve energy, food, and raw materials in exchange for the developing world's commitment to cut back on suicidal demographic, agricultural, and environmental practices. Note that interdependence in this sense is not necessarily motivated by humanitarian impulses, but rather from objective self-interest which requires changes in the world economic system in order to prevent future chaos for both developed and developing nations.

Interdependence in terms of fundamental needs and of an economic partnership does not, however, give a completely accurate picture of the state of interdependence as it presently exists. First, also at work today is a force present throughout the twentieth century—nationalism[6]—the struggle by many developing nations to achieve full statehood. This must inevitably conflict with goals of interdependency, which depreciate the value of sovereignty. Secondly, few primary commodities command the power of oil, possessed by only a handful of developing nations; interdependence propelled by mutual self-interest becomes less of a possibility when the industrialized world does not need what the developing

5. Address by Professor Richard Gardner to the World Food Conference, Nov. 10, 1974, summarized in N.Y. Times, Nov. 14, 1974, § 1, at 1, col. 7.

6. The Third World's actions as of late are often referred to as a form of "economic nationalism," a striving for economic independence. That characterization is too narrow. Like many other nations of the world during the twentieth century, developing nations are pursuing nationalist goals of which economics is only a part.

nations can offer.[7] Thirdly, the developing nations are net importers of raw materials,[8] and that fact dispels the neat view of interdependence as a balance between industrial nations needing primary commodities and developing countries needing manufactured goods. Finally, if confrontation between developing and developed nations were to preclude a constructive dialogue on both parties' problems, there is little doubt that the developed nations could do without the developing world more readily than the developing world could handle its problems without the aid of the industrialized nations. The degree of world interdependence varies depending on what nations one is describing and what issues one seeks to resolve. While rational and organic, as opposed to uncontrolled, economic growth[9] and development of all the world's nations require recognition of global interdependence, the present state of interdependence rarely joins relatively equal bargaining parties in arms-length dealings.

There is disturbing evidence, however, that if the present day reality of partial interdependence prevails over attempts to redistribute the world's resources and wealth, then certain problems that could have been solved will become unsolvable. Many states and generations of people will be beyond hope of even minimum development levels, and eventually the developed world will be subjected to an increasingly hostile and chaotic environment that will seriously threaten its own existence.[10] It is axiomatic that nations act primarily out of self-interest; but how a nation *perceives* its interests is the crucial determinant for action. Thus global interdependence as a predicate for policy may not appear to be in the developed world's self-interest now, except in isolated

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7. It is clear, however, that developed nations are becoming increasingly dependent on raw materials from developing nations. Today, the United States imports from 50 to 100% of essential minerals, *e.g.*, tin, bauxite, nickel, and manganese, from less developed countries. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, (March, 1976). By the year 2000, the National Materials Policy Commission has estimated the United States will depend on imports for more than 80% of essential raw materials, including oil. MESAROVIC & PESTEL 84.

8. N.Y. Times, May 28, 1975, § 1, at 36, col. 1.

9. For a discussion of the concept of organic growth see MESAROVIC & PESTEL 1-9.

10. *Id.*, *passim*. Interdependence makes many international operations vulnerable to these potential disruptions. For example, air traffic, pipelines, electronic communications, and the passage of vessels through places like Malacca, Gibraltar, and Panama all require a passive acquiescence by local countries that can no longer be taken for granted. *See* Cleveland, *Our Coming Foreign Policy Crisis*, 216 SAT. REV., Sept. 6, 1975, at 10.

cases such as oil. That perception, however, works well only for the immediate future because the more logical, far-reaching perception of self-interest necessitates the acceptance of interdependence as the growing world condition. Efforts to reduce the disparities between the economic conditions of the rich nations and the poor nations, therefore, must arise out of a realistic appraisal of the extent of today's interdependence. This appraisal must recognize that powerful voices are not to be heard on both sides of the issues. It must also reflect an understanding that short-term expediency, by both developing and developed worlds, will produce a snowballing of future problems. As the Second Report to the Club of Rome concluded, the only alternatives to global cooperation are "division and conflict, hate and destruction."[11]

B. *Structure of the Third World*

Although commonly thought of and described as a monolithic bloc, the developing world comprises well over one hundred nations at varying levels of political, social, and economic development that interact more like a caucus than a bloc. This loose network poses problems both for the developing world, which has rarely managed to come up with a unified set of demands, and for the equally diversified developed world in its attempts to formulate a coherent plan of action in response to the call for a new economic order. Indeed, several Third World representatives have charged that the United States, by vilifying the OPEC states as acting contrary to most developing countries' interests through oil pricing policies, is trying to intensify the divisions in the developing world to avoid confrontations with a solid front.[12]

Economic Disparity.—As a whole, developing nations have 70 per cent of the world's population who must survive on 30 per cent of the world's total income.[13] Approximately thirty of these developing nations, the so-called world "basket-cases," are almost entirely dependent on foreign assistance for survival because they are caught in a suicidal pattern of soaring birth rates, inadequate food production, and stagnant economic development. With an aggregate population of one billion and an average annual per capita income of less than $200, the poorest countries face a particularly

11. MESAROVIC & PESTEL 157.
12. N.Y. Times, Dec. 19, 1975, § 1, at 4, col. 6.
13. *Id.*, Sept. 4, 1975, § 1, at 14, col. 3.

bleak future despite massive World Bank loans.[14] As private and public investment capital tighten, these least creditworthy nations have experienced more difficulty in obtaining loans.[15]

The middle income countries of the developed world have brighter prospects with gross population of 725 million, annual per capita income at $400, and a 4.5 per cent growth of real per capita income from 1969 to 1973.[16] High oil prices, inflation, and a decrease in the quantity of exports, however, have done severe damage to the gains of the middle income countries.[17] The economic differences in the developing world create a situation replete with conflict. For example, which group of countries is to receive the reduced amounts of direct foreign aid[18] or private capital from the industrialized states? The basket-case countries, which are threatened by massive domestic turmoil, need the capital desperately, but gigantic problems overshadow the amount of money available. The middle income countries have less need for scarce foreign aid but greater likelihood of beneficial use. Unity in the developing world is doubtful when certain of its members cannot survive without massive assistance, other middle income members must devote all their efforts to self-improvement, and the OPEC members bank in petrodollars.

Political Disparity.—The developing world also contains numerous political and ideological systems. Capitalistic, socialist, and semi-feudal societies, almost all with authoritarian or military regimes, and some states well aligned with either Moscow or Peking, come under the rubric of developing world. In dealing with this

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14. *Id.*, Aug. 24, 1975, III, at 13, col. 1. An excellent chart displaying the economic and social make-up of the world's nations, including figures on per capita income, balance of payments, infant mortality rates, and life expectancy can be found in N.Y. Times, Sept. 28, 1975, IV, at 3, col. 1. The United Nations currently lists thirty-two countries as the most seriously affected by economic difficulties. In Africa, the countries are: the Cameroons, the Central African Republic, Chad, Dahomey, Ethiopia, Ghana, Guinea, the Ivory Coast, Kenya, Lesotho, Madagascar, Mali, Mauritania, Niger, Sierra Leone, Somalia, Sudan, Tanzania, Upper Volta, and Senegal. The countries in Latin America are: Haiti, Honduras, El Salvador, and Guyana. Other countries are: Bangladesh, India, Cambodia, Laos, Pakistan, Sri Lanka, Yemen, and Southern Yemen.

15. *Cf.* Wall St. J., Jan. 29, 1976, at 6, col. 4.

16. N.Y. Times, Aug. 24, 1975, III, at 13, col. 1.

17. *Continuity and Change: Development at Mid-Decade*, U.N. Doc. ST/ESA/25 (1975) [hereinafter cited as *Continuity and Change*].

18. Foreign aid has dropped from .52% of the GNP of industrialized nations in 1960 to .32% in 1975. N.Y. Times, Sept. 28, 1975, IV, at 3, col. 1. For further discussion of foreign aid see text *infra*.

welter of systems, the developed nations face considerable pressure to help their ideological friends and to oppose their foes,[19] thereby undercutting any attempt to conduct a policy based on economic interdependence which transcends political differences. Within the developing world itself, political and economic differences have generated conflict, particularly between the Arab states and the black African nations.

This conflict contains several issues that exemplify the illusory nature of the concept of a monolithic developing world storming the developed world.[20] The African nations, like most developing countries, fear that the Arab states' enormous wealth will mean growing influence over Africa, especially since African economies were devastated by the oil price increase and because the African states need OPEC foreign aid. At the same time, African states feel abused by the exorbitant oil profits taken by the Arab countries. Another key point of contention has been Arab support for the Moslem Eritrean rebels. Arab support of rebel forces only heightens the sense of insecurity felt by all the African nations as they struggle to overcome tribalism. Also, Africa has traditionally maintained a close relationship with Israel, a relationship now broken due to Arab pressure, thereby damaging African relations with the United States. The conflict between black Africans and the Arabs has grown to the point that at the eleventh meeting of the African Development Bank, no new president was elected because the candidates were a Libyan and a Ghanian, and the factions could reach no compromise.[21] Despite talk of global interdependence and a new economic order, therefore, it remains to be seen whether the developing world itself will not degenerate into bloc against bloc confrontation, as the power and wealth of the Arab states creates an expanding sphere of Arab influence in the Third World.[22]

19. Thus, the United States has initiated a policy of linking foreign aid to favorable votes in the United Nations. For example, development to Tanzia and Ghana was postponed because of their votes condemning Israel and opposing the United States position on Korea, while Malawi and the Ivory Coast received additional aid for votes favorable to the United States. N.Y. Times, Jan. 9, 1976, § 1, at 1, col. 1.

20. *See* Viorst, *Arabs v. Africans*, NEW REPUBLIC, May 24, 1975, at 9.

21. N.Y. Times, May 12, 1975, § 1, at 3, col. 5.

22. The OPEC states are also becoming major aid donors to developing nations. They accounted for about one-sixth of the official development aid to poor countries in 1974. N.Y. Times, Apr. 19, 1975, § 1, at 3, col. 1. Some OPEC states have developed plans to soften the impact of high oil prices on poorer nations.

Common Characteristics.—An analysis of the Third World must, however, take into account the common ground which does exist among developing nations. Most of the developing nations are former colonies, and many of them retain the cultural bonds formed as a result of being colonized by either the same country or by culturally similar countries, thereby making communication easier and cooperation more likely than in culturally dissimilar countries. More important for the impact on the Seventh Special Session, the former colonies share the ideological outlook that the developed nations as former colonial powers owe the developing world a debt after a long period of exploitation. This viewpoint explains in large part the self-righteous rhetoric commonly heard in the United Nations and underlies the demand for an outright transfer of real sources (*i.e.* money) from the industrialized nations to the developing nations. Because of this historical perspective as exploited underlings in the world order, developing nations have the view that international law, international institutions (including the United Nations), and the international economic system are creations of the industrialized world designed to protect the developed world's interests while offering the developing world no opportunity for development and making no concessions to developing nations' interests.

Thus, the developing world is apt to unify on an issue like the appropriate measure of compensation for expropriation,[23] which

For example, Venezuela assists Latin American countries in the following ways: (1) by selling oil for 50% cash, the balance of the purchase price being treated as a long term loan; (2) by reimbursing other oil exporting nations for oil sent to Latin American countries, the recipient nation accepting the oil as a long term loan; and (3) by giving direct foreign aid. N.Y. Times, Sept. 15, 1975, § 1, at 27, col. 7. For poorer African countries, Arab nations have created a $200 million fund to offset high oil prices. N.Y. Times, Jan. 15, 1975, § 1, at 1, col. 2. By implicit agreement the OPEC states will join industrialized countries in establishing new aid programs within current international institutions, such as the Trilateral Commission's proposal of a $3 billion transfer of real resources to developing nations through the World Bank. N.Y. Times, Dec. 27, 1975, § 1, at 3, col. 3. Latest figures, however, show that the OPEC states, like Western Nations, are beginning to cut back on planned aid programs. Wall St. J., Jan. 29, 1976, at 10, col. 5.

23. Developing nations have long contested the traditional standard of "adequate, effective, and prompt" compensation for expropriation claims. *See* W. BISHOP, INTERNATIONAL LAW 851-901 (3d ed. 1971). In the Charter of Economic Rights and Duties of States, adopted by the United Nations General Assembly Dec. 12, 1974, art. 2(2)(c) states that "appropriate" compensation should be paid in case of expropriation. G.A. Res. 3281, 29 U.N. GAOR, at 50, U.N. Doc. A/C.2/L.1475/Rev. 1 (1974).

involves questions of international law arguably imposed on the developing world, and which conjures up the past exploitation of Third World resources by the colonial powers that now must make retribution. With the realization that they are for the most part subordinates in the diplomatic world, possessing no leverage against the industrial powers acting unilaterally, the developing nations display their unity most outwardly in the United Nations, the chosen forum for concerted action. Over fifteen years ago former Secretary-General Dag Hammerskjold commented that:

> The United Nations has increasingly become the main platform—and the main protector of the interests—of those many nations who feel themselves strong as members of the international family but who are weak in isolation. Thus, an increasing number of nations have come to look to the United Nations for leadership and support in ways somewhat different from those natural in the light of traditional international diplomacy. They look to the Organization as a spokesman and as an agent for principles which give them strength in an international concert in which other voices can mobilize all the weight of armed force, wealth, an historical role and that influence which is the other side of a special responsibility for peace and security.[24]

While the United Nations has become an increasingly hostile and irritating forum for the United States, one should not overestimate the practical effects of unity in the United Nations because of the rising decibel level therein. A Third World bloc may pass resolutions inimical to developed countries' interests, but real world results depend on diplomatic negotiations conducted for the most part outside the United Nations. In these negotiations the fractionalizing tendencies among the developing nations usually preclude unified proposals.[25]

The Third World groupings in the United Nations trace their spiritual roots to the 1955 Bandung Conference of African and Asian States. The Conference produced a Resolution on Economic Cooperation[26] stressing the urgency of economic development and,

24. *"The Positive Role of the United Nations in a Split World,"* Introduction to the Fifteenth Annual Report of the Secretary-General to the General Assembly, 7 U.N. REV. 22, at 27 (Oct. 1960).

25. A unified stance by developing nations can have major impact on whether tangible results are gained, as illustrated by bloc formed by the developing nations at the Lome Convention between the Common Market and forty-six developing nations. *See* Longworth, *Europe and the "New Working Class,"* 216 SAT. REV. Sept. 6, 1975, at 12.

26. A summary of the Resolution and a description of the Conference can be found in 10 KEESINGS CONTEMPORARY ARCHIVES 14183.

among other recurring themes, proposed a stabilization of international prices through bilateral and multilateral arrangements. More recently, Prime Minister Nehru of India and President Tito of Yugoslavia led the "non-Aligned Movement"—a political alignment of developing, non-Western nations taking an independent position between the Western and the Socialist countries.[27] Current reference to Third World organization most often centers on the Group of 77, a grouping originally designed to deal exclusively with economic problems that now numbers well over one hundred nations. The Group of 77 has almost completely merged with the Non-Aligned Movement on economic issues. The structure of the Third World, with a unitary facade under the rubric of the Group of 77, yet composed of nations at various stages of development with different prospects for the future and often possessed of contradictory objectives, points up the magnitude of the task of forging a genuinely new international economic order.

II. Problems and Proposals: The Seventh Special Session

The developing nations came forth with no new proposals at the Seventh Special Session; their ideas had been developed and well publicized in earlier General Assembly Resolutions, the Programme of Action on the Establishment of a New International Economic Order,[28] and the Charter of Economic Rights and Duties of States,[29] and in a series of preparatory meetings for the Seventh Special Session.[30] To put these ideas into proper perspective, it is important to recognize the subtle changes that have occurred since the 1960's in the outlook of the developing nations toward the development process. Earlier outlooks on economic growth placed

27. The industrialized countries are often referred to as the "First World," the socialist countries as the "Second World." The "Third World" is middle income developing countries, while the poorest nations comprise the "Fourth World." For a listing of states under this formation see Steele, *To Have and Have Not*, NEWSWEEK Sept. 15, 1975, at 37.

28. *Programme of Action on the Establishment of a New International Economic Order*, U.N. Doc. A/RES/3202 (S-VI) (1974) [hereinafter cited as *Programme of Action*].

29. *Charter of Economic Rights and Duties of States*, *supra* note 23.

30. The most important of these were: the Conference of Developing Countries on Raw Materials in Dakar, February 3-8, 1975; the Second Ministerial Meeting of the Group of 77 in Algeria, February 15-18, 1975; the Heads of State Conference of The Organization of Petroleum Exporting Countries (OPEC), in Algeria, March 3-6, 1975; and the Third Ministerial Meeting of the Coordination Bureau of Non-Aligned Countries in Havana, March 17-19, 1975.

great faith in industrialization as the *deus ex machina* of the developing world. Unfortunately, industrial projects, which nations sought without due regard for a particular industry's effects on a country's cultural, sociological, and economic make-up, not only failed to solve problems of underdevelopment, but often generated even more difficulties for the host country.[31]

A more sophisticated view of development has begun to evolve in the developing countries. Industrialization is still the "centrepiece"[32] of the process, but this process is far too complex to allow a narrow focus on statistical leaps in national income. Thus, economic growth cannot take place without the building of the necessary infrastructure—*e.g.*, roads, harbors, adequate housing, and facilities for sudden increases in population around industrial centers. Also, industrialization is not synonymous with economic growth; rather, the growth of agriculture critically determines the rate at which industrialization can proceed.[33] Furthermore, industrialization has social costs such as pollution or cultural dislocation that may not outweigh the benefits a country receives from it. To succeed, modernization must reach into the minute details of a social structure;[34] into education, health, and family life. Understanding this pervasiveness of modernization unavoidably affects the developing nations approach to economic relations with the developed nations, which have an important influence on the changes that occur within a developing nation.

III. Commodity Prices

Because more than 80 per cent of developing countries' foreign exchange earnings comes from the sale of primary commodities,[35] the recurrent, volatile swings in commodity prices in the world

31. *Industrial Development Survey*, U.N. Doc. ID/CONF. 3/2 (1975) [hereinafter cited as *Industrial Development Survey*].

32. *Continuity and Change*, *supra* note 17.

33. *Industrial Development Survey*, *supra* note 31, at 217.

34. The depth and complexity of change is exemplified in efforts to curb population growth in developing countries, a clear prerequisite for development. Declines in birth rates largely depend on sufficient transformation of social and economic institutions to assure parents that many children are not necessary for their own security in later life and to persuade them that a smaller population will actually benefit them and their children. *See* Kuznets, *Population and Development in Perspective*, U.N. Doc. E/CONF.60/CBP/7 (1974).

35. Beside oil, the major exports of the Third World are: copper, bauxite, coffee, tin, rubber, cocoa, lead, and zinc. N.Y. Times, Dec. 17, 1975, § 1, at 14, col. 3.

market[36] have a pernicious effect on attempts to achieve stable growth in developing countries' economies. In addition to price fluctuations the inflation of recent years has reduced developing nations' terms of trade, the amount of goods developing countries can purchase with earnings from exports.[37] World price movements, therefore, have worsened the economic situations of most of the developing world (oil exporting states have obviously benefited from the price rise in oil), especially since the end of 1973.

A. *Cartels*

The developing nations have put forth several proposals aimed at remedying the problems of commodity price swings and decreased terms of trade. Spurred by the success of OPEC, producer cartels have been urged for all major primary commodities to bring pressure upon the importing nations and to achieve some control over commodity prices. The Programme of Action states that all efforts should be made to "facilitate the functioning and further the aims of producers' associations,"[38] and article 5 of the Charter of Economic Rights proclaims the right of all states "to associate in organizations of primary commodity producers. . . ." Since few commodities command the power of oil[39] producer cartels in less essential products will not approach the success of OPEC in driving up prices without destroying demand. The existence of producer blocs, without due regard for consumers' interests, also raises the spectre of increased confrontation between the developed and developing world instead of increased cooperation and interdependence. Furthermore, since developing nations are net importers of primary commodities, exorbitant price increases by irresponsible producer groups would surely damage the economies of many developing nations. Producer associations may create unified pressure against the developed states, but to achieve long term success

36. For example, in early 1974, copper sold on the world market for more than $3,000/ton; in 1975 the price was $1,000/ton. *Id.*

37. In 1960, twenty-five tons of raw rubber produced in a developing nation could buy six tractors, whereas in 1975, that same quantity of rubber could buy only two tractors. N.Y. Times, Oct. 13, 1975, § 1, at 14, col. 1. *See also Continuity and Change*, *supra* note 17. One study, however, concluded that developing nations had not suffered long term unfavorable price movements. N.Y. Times, May 28, 1975, § 1, at 19, col. 1.

38. *Programme of Action*, *supra* note 28, at § I.1.(c).

39. See note 7 *supra*, and accompanying text.

in price stabilization and increases in real income the consumer must play an important role.[40]

B. *Price Indexation*

One of the most controversial Third World proposals has been price indexation. Under this proposal the prices paid for products exported by developing nations would be set by reference to the prices paid for products imported by developing nations to avoid deterioration in the Third World's terms of trade. The developed nations, especially the United States, have protested for ideological as well as economic reasons against the wholesale intrusion into the workings of the free market system that price indexation would entail.[41] Administratively, price indexing the entire import-export trade between the developed and developing nations would be a bureaucrat's nightmare. While an interdependent system demands a "just and equitable relationship"[42] between the prices of raw materials and primary commodities exported by developing nations and the prices of goods imported by them in order to satisfy both the developing and developed nations' trading interests, the focus should be on arrangements which guarantee the availability of those key items without an across-the-board indexing scheme that would likely be unworkable and would encounter profound opposition from the developed nations. Moreover, price indexation might boomerang against the poorest nations, which would pay more for both raw materials and manufactured goods, and the scheme conceivably could dry up the demand for many primary products if sold at artificially high prices.

C. *Commodity Agreements*

More realistic proposals for achievement of stability in the com-

40. Article 6 of the Charter of Economic Rights and Duties, *supra* note 23, does provide that:

> It is the duty of States to contribute to the development of international trade of goods, particularly by means of arrangements and by the conclusion of long term multinational commodity agreements, where appropriate taking into account the interests of *producers and consumers*. (Emphasis added).

41. Secretary of the Treasury William Simon and the Treasury Department have been particularly strident opponents of any sort of interference with the free market. N.Y. Times, May 29, 1975, § 1, at 1, col. 4; *Id.*, May 30, 1975, § 1, at 31, col. 5; *Id.*, June 4, 1975, § 1, at 44, col. 2.

42. *Programme of Action*, *supra* note 28, at § I.1.(D).

modity market revolve around commodity agreements[43] and the use of buffer stocks that could be released on the market in times of shortage to hold prices down and then be replenished when demand is lower to keep prices up, with the theoretical result that wide fluctuations in price would be avoided. Commodity agreements, stabilizing both prices and supplies, with ceilings as well as floors, have already been negotiated for coffee, cocoa, and tin, with mixed results.[44] For example, the International Coffee Organization, consisting of sixty-three coffee growing and importing nations, reached agreements in 1963 and 1968 on five year pacts which stabilized world coffee prices for eight years until 1971. Thereafter, spiraling prices and a temporary shortage made producers reluctant to negotiate a new pact without higher price ranges. Consumers, on the other hand, wanted more coffee at lower prices, thereby causing a stalemate in the negotiations that has yet to be resolved.[45]

Critics of the product-by-product piecemeal approach to commodity agreements have cited the disagreements between consumers and producers on price levels and ranges, the failure of producers to agree on market sharing formulas, and the difficulty in financing buffer stocks as drawbacks to the approach.[46] The United Nations Conference on Trade and Development (UNCTAD)[47]—the United Nations agency whose *raison d'etre* is the promotion of development in the Third World—has devised an "integrated program for commodities" that would involve negotiations on ten key commodities[48] in unison. The UNCTAD Secretariat has pointed

43. *Id.* § I.3.(A) (iii) calls for the "[e]xpeditious formulation of commodity agreements where appropriate, in order to regulate as necessary and to stabilize the world's markets for raw materials and primary commodities."

44. For a discussion of the nature of and differences in various commodity agreements see E. STEIN & P. HAY, LAW AND INSTITUTIONS IN THE ATLANTIC AREA 272-84 (1967).

45. N.Y. Times, Nov. 3, 1975, § 1, at 11, col. 7. *See* Bilder, *The International Coffee Agreement: A Case History in Negotiation*, 28 LAW & CONTEMP. PROB. 28 (1963).

46. *A New United Nations Structure for Global Economic Cooperation*, Annex II, U.N. Doc. E/AC.62/9 (1975) [hereinafter cited as *New United Nations Structure*].

47. UNCTAD was established in December 1964 as a result of pressure from an alliance of developing and Communist countries in order to counterbalance Western influence in the United Nations through this agency dedicated to problems of the poorer nations. Since 1964, UNCTAD has convened two full scale conferences on development problems.

48. Cocoa, coffee, copper, cotton, sisal, jute, rubber, sugar, tea, and tin.

out that the multi-commodity approach allows nations to balance concessions made on one commodity against advantages won on another and eliminates the problem of financing multiple buffer stocks by using only one fund (estimated at $3 billion) to buy and sell all the commodities.[49] This proposal was an important item on the agenda when the UNCTAD conference met in May 1976 in Nairobi, and some of the debate was among the developing nations themselves, regarding what products get on the negotiating list, revealing the fundamental difficulty with across-the-board commodity pacts. To be sure, each developing nation wants its products on the list, but some commodities are too perishable to stockpile effectively or too costly to finance. Once again, one can observe the division within the Third World resulting from conflicting national self-interest and differing economic realities.[50] Finally, commodity agreements may not aid the neediest countries even if they function properly because a rich nation, like the United States, which exports cotton, phosphates, and paper pulp, may well profit depending on what commodities the agreements comprise.

IV. TARIFF BARRIERS

The preamble to the General Agreement on Tariffs and Trade (GATT) states:

> Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods. . . .[51]

For the developing nations, however, where standards of living are often below "any rational definition of human decency,"[52] where massive unemployment is rampant, where real income has diminished, and where economies have been stagnant for many years,

49. Wall St. J., Mar. 9, 1976, at 34, col. 1.

50. At a conference held in Manila in February 1976 ministers from the Group of 77 were unable to agree on a list of products. The Third World nations reluctance to form the solid front necessary to compel action by the developed nations is a persistent problem. *See* note 25 *supra* and accompanying text.

51. General Agreement on Tariffs and Trade (GATT), 61 Stat. A3 (pts. 5 & 6) (1947), T.I.A.S. No. 1700.

52. World Bank President Robert McNamara quoted in Steele, *To Have and Have Not*, NEWSWEEK Sept. 15, 1975, at 37.

tariffs persist as obstacles to the industrialization and diversification of their economies and are perceived as devices used to keep developing nations in the lower strata of the world economic system. Affecting this view of trade barriers, article 14 of the Charter of Economic Rights and Duties of States[53] supports the "expansion and liberalization" of world trade and specifies that:

> . . . [s]tates shall take measures aimed at securing additional benefits for the international trade of developing countries so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, the acceleration of the rate of growth of their trade, taking into account their development needs, an improvement in the possibilities for these countries to participate in the expansion of world trade and a balance more favorable to developing countries in the sharing of advantages resulting from this expansion, through . . . a substantial improvement in the conditions of access for the products of interest to the developing countries . . .[54]

The developing nations have been dissatisfied with the operation of GATT because, despite provisions in the agreement which create loopholes for the developing countries,[55] tariff bargaining is seen as grossly unequal when entered into between rich, powerful nations and poor, weak ones. They are also dissatisfied because the reciprocal trade policy which underlies GATT tends to keep the developing nations in primary production since, without tariff walls to protect nascent industry, the industrialized countries' more efficiently produced goods compete more effectively in local markets while tariffs on manufactured goods from developing nations frustrate their efforts to build up an export trade in something other than primary commodities. The developing nations concede that they have received some benefits from GATT negotiations but contend that the benefits have only been the byproducts of negotiations between the major industrial powers that do not reflect any change in policy toward the problems of the developing nations nor any attempt to use tariff policy to improve

53. G.A. Res. 3281, 29 U.N. GAOR, at 50, U.N. Doc. A/C.2/L.1475/Rev. 1 (1974).

54. *Id.* at 53.

55. Art. XVIII contains a host of provisions aimed at using tariff policies to assist development, including the use of import restrictions to protect local industry from some of the responsibilities set by GATT and borne by developed states, but the article has been of little practical importance. E. STEIN & P. HAY, LAW AND INSTITUTIONS IN THE ATLANTIC AREA 270 (1967).

the status of the developing nations in world trade.[56]

A case in point for the contention that tariff policy has not been used to aid developing nations is the effect of the Kennedy Round of tariffs on developing nations' exports. The Kennedy Round replaced the practice of negotiating tariff arrangements product by product with an across-the-board or linear tariff reduction of about 50 per cent.[57] Although the industrialized nations faced lower tariff barriers as a result, and applauded linear cuts as liberalizing world trade, the developing nations found that the cuts had often left higher tariff barriers on their products than on products from the industrialized countries, thereby reducing their competitiveness in foreign markets. In fact, the effective tariff rate on all products was higher for the developing nations than for the rest of the world.[58] Facing further linear cuts at the ongoing Tokyo Round of tariff negotiations,[59] the developing nations are making tariff policies a key element in talks on restructuring global economies.

For years, the developing nations through UNCTAD fought for, and finally achieved, a generalized system of preferences (GSP)[60] whereby manufactured and semi-manufactured goods from developing nations receive low import duties on a non-reciprocal basis. Despite the effort which went into effectuation of the GSP, only a few of the better-off developing nations, which already have manu-

56. J. INGRAM, INTERNATIONAL ECONOMIC PROBLEMS 95-97 (1966).

57. Statement by E. Wyndlham White, Director General, General Agreement on Tariffs and Trade, May 15, 1967, GATT/990 (May 17, 1967). For general background see Note, *United States Participation in the General Agreement on Tariffs and Trade*, 61 COLUM. L. REV. 505 (1961).

58. The tariff rate for developing countries was 22.6%, while for the world as a whole the rate was 11.1%. Pre-Kennedy Round, effective tariff rates were 33% for developing nations compared to 19.2% for the entire world. *Industrial Development Survey*, *supra* note 31, at 60.

59. *Cf.* Wall St. J., Feb. 26, 1976, at 32, col. 1.

60. Art. 18 of the Charter of Economic Rights and Duties of States, *supra* note 23 provides:

> Developed countries should extend, improve, and enlarge the system of generalized non-reciprocal and non-discriminatory tariff preferences to the developing countries consistent with the relevant agreed conclusions and relevant decisions as adopted on this subject, in the framework of the competent international organizations.

Art. 19 states a similar idea:

> With a view to accelerating the economic growth of developing countries and bridging the economic gap between developed and developing countries, developed countries should grant generalized preferential, non-reciprocal and non-discriminatory treatment to developing countries in those fields of international economic co-operation where it may be feasible.

facturing industries, benefit from it.[61] Of course, the developing nations will continue to press for tariff reductions or at least no increase in existing tariff rates, no mean feat since protectionist sentiment is on the rise in domestically troubled industrialized countries.[62] But lowering tariffs does little to aid the developing nations without other measures, such as increased aid for industrial projects and easier financing terms, by which industry can develop in the Third World.

V. Debt Problems

The problems of developing nations discussed above—erratic commodity prices, reliance on primary products, the slow pace of industrialization—have contributed to acute balance of payment deficits and heavy debt in most developing nations.[63] The monetary problems of the developing world endanger the entire development process and reveal profound weaknesses in the developing nations' economies. Heavy deficits, in both trade and balance of payments, show the dependence of the developing nations on manufactured imports from developed nations which in turn eat up foreign exchange earnings desperately needed for development. Concurrently, the deterioration in the Third World's terms of trade[64] results in fewer purchases with those foreign exchange earnings. In the past, foreign aid might have helped short-term deficits and might have paved the way for long-term relief if a developing nation used the money to diversify and expand its economy. But the amount of foreign aid from the industrialized nations has decreased[65] because of domestic economic problems, including the industrial nations' own balance of payment difficulties. It has also decreased because of doubts as to the efficacy of foreign aid, which induces dependence on industrialized nations during the development process, and the political pressure in the aid-giving countries

61. *Industrial Development Survey*, *supra* note 31, at 62-70 confirms the view that the debate over the GSP outweighed its resulting significance for developing nations.

62. Wall St. J., Feb. 26, 1976, at 32, col. 1.

63. The non-oil exporting developing countries had a trade deficit in 1975 of $35 billion. Accumulated foreign debt rose to $120 billion. One-half of all new foreign aid and eleven cents of every dollar earned must go to interest payments. Wall St. J., Jan. 29, 1976, at 6, col. 4; N.Y. Times, Oct. 13, 1975, § 1, at 14, col. 1; *Id.*, Sept. 19, 1975, § 1, at 1, col. 7.

64. *See* note 37 *supra* and accompanying text.

65. *See* note 18 *supra* and accompanying text.

to get tangible foreign policy benefits from foreign aid, which has generally not occurred. The developing nations must also repay massive loans, often with interest rates as high as 25 per cent. The diminution in the creditworthiness of many developing nations which may cut off badly needed finance capital has been alluded to above. The crisis in development financing, therefore, produces a vicious cycle in which developing nations desperately need money which is not forthcoming, thereby retarding development and increasing the need for money just to avoid slipping backward in the development process.

To meet these problems, the developing countries have called for stepped up foreign aid programs in the industrial countries, with a target figure of .7 per cent of the gross national product by 1975.[66] That figure was not met as direct foreign aid was only .32 per cent of the industrialized countries' GNP in 1975. Implicit in the Third World's demand for an expanded flow of money from the industrialized states is the premise that the developed countries, as former colonial powers, should indemnify the Third World for past exploitation. The industrial states will not likely predicate aid policy on a sense of guilt; surely, a better argument would emphasize the beneficial effects of strong trading partners that offer expanded markets for industrialized countries' goods, and help allocate resources more efficiently and increase world stability.[67] Foreign aid, dependent as it is on the vagaries of domestic politics and economics, is, therefore, likely to remain an important element in the foreign policies of the industrialized states and in the demands of the developing nations.

As to debt problems, the Programme of Action calls for "debt renegotiation on a case-by-case basis with a view to concluding agreements on debt cancellation, moratorium, rescheduling or interest subsidization."[68] While the existing, massive debt problems deserve immediate attention, any debt rearrangements must take into account the future need for capital. Not only must the debtor country's development prospects be scrutinized to come up with

66. *International Development Strategy for the Second United Nations Development Decade* G.A. Res. 2626 (XXV), at 42, U.N. Doc. ST/ECA/39 (1970).

67. The *Bureau for Public Affairs, U.S. Dep't of State*, (March 1976) publication stressed that the United States seeks from the developing countries "markets for the products of U.S. enterprises . . . and opportunities for mutually productive and profitable investment of capital and technology. The best markets for U.S. products are to be found in countries with a rapid rate of development."

68. *Programme of Action*, *supra* note 28, at § II.2.(g).

realistic proposals, but also creditors' interests must be respected in order to preserve a nation's creditworthiness. Because a developing nation is likely to have several creditors—other nations, the World Bank, the IMF, and private lendors—debt reorganization proceedings must be multilateral to insure that all creditors receive fair and equal treatment. Any plan worked out should be a flexible one, with provisions for periodic review to guard against unforeseen changes in the parties' status.[69]

International financial institutions, such as the World Bank and the International Monetary Fund, clearly must change if developing nations are to have a more effective voice in the international economic system. Nationals from Third World states are needed in senior staff positions in order to temper any action with the consideration of its effect on the Third World and its interests. Of course, the interests of all developing nations do not cut the same way on any given issue, but these senior officials' qualifications should include a far-sighted, non-partisan view of development. The developing nations' voting share in the World Bank must increase for an effective increase in power.[70] Since the collapse of the IMF, occurring when the United States took the dollar off the gold standard for currency exchange,[71] the developing nations' currencies have reflected their economies' weakness on the world money markets. The developing nations have called for exchange certainty through the resurrection of the IMF, but, this time, with the exchange standard based on "special drawing rights" (SDR) against exchange reserves.[72] Developing nations would be allocated

69. For a comprehensive review of Third World debt problems see *Debt Problems of Developing Countries*, U.N. Doc. TD/B/545/Rev. 1 (1975).

70. Currently, the Part I countries, the principal donors, in the World Bank have 64.3% of the voting power. Non-OPEC developing countries represent 31%, but even this portion is likely to erode with future capital contributions by the Part I and OPEC states. *New United Nations Structure*, *supra* note 46.

71. By ending the convertibility of United States dollars into gold, President Nixon effectively removed the basis by which currencies were valued under the IMF, therefore making it impossible to arrive at a logical rate of exchange. *See* H. PIGUET, THE U.S. BALANCE OF PAYMENTS AND INTERNATIONAL MONETARY RESERVES (American Enterprise Inst. for Public Policy Research Feb. 1966); Gold, *The International Monetary Fund and International Law* (IMF 1965).

72. *See Programme of Action*, *supra* note 28, at § II.1.(C). It calls for extensive reform of the international monetary system. Special drawing rights (SDR) would be based on a fixed allocation of IMF currency reserves for each member currency. SDRs could be changed yearly on the basis of a country's real growth to take into account development progress or to spur development if needed. *See also* Ad Hoc Group, Report, *The Role of Multilateral Financial Institutions in Promoting Integration Among Developing Countries*, U.N. Doc. TD/B/531 (1974).

additional SDR's. In the short term, or until the IMF is functional again, the developing nations have urged the creation of special facilities within the IMF that would enable developing nations to carry through their presently required currency adjustments.[73] In considering Third World demands for an expanded role, one must acknowledge that international financial institutions are not apolitical institutions, and they do reflect the power positions of their members.[74] In seeking to increase their voice in these institutions, the developing nations are depending on the recent recognition of their increased leverage in world economics to produce tangible gains. Whether those gains are made will be critical to development prospects in the Third World because current monetary problems inhibit the development process, and the flow of development financing must continue and increase if progress is to be made.

VI. Multinational Corporations

A. *Areas of Tension*

Given the current state of the world, where economics is an increasing power source frequently posing serious threats to a nation's essential interests, it is easy to see why multinational corporations, with their great size, mobility, and impact on a nation's economy,[75] have become a controversial issue in the debate on a new economic order. In the developing countries, multinational corporations often control three important elements in the development process: technology, finance capital, and the marketing and dissemination of ideas.[76] The chances of conflict with a host

73. *New United Nations Structure, supra* note 46.

74. *See* Baumgartner & Burns, *The Structuring of International Economic Relations,* 19 (2) Int. Studies Q. 126 (June, 1975); Baldwin, *The International Bank in Political Perspective,* 18 World Pol. 68 (Oct. 1965).

75. The multinationals' role in the world economy is shown by the fact that in 1971 each of the top ten multinationals produced more than $3 billion worth of goods and services, more than the GNP of over 80 countries. The international production from all multinationals were $330 billion whereas the total export trade of the market economies in 1971 was only $310 billion. *The Multinational Corporation in World Development,* U.N. Doc. ST/ECA/190 (1971) [hereinafter cited as *Multinational Corporation*].

76. R. Barnet & R. Muller, Global Reach 146 (1974) [hereinafter cited as Barnet & Muller]. Of course, most of the transnational enterprise activity occurs in developed countries, with only a few developing nations (*e.g.*, India, Brazil, Mexico, Nigeria) possessing a stock of direct foreign investment of more than $1 billion. *Multinational Corporation, supra* note 75. Because direct foreign

government, therefore, are great as the corporation's interests and its goals may not fit into the nation's development objectives. For the local population, the multinational corporation might represent a new form of colonialism and exploitation,[77] and, with nationalism on the rise in the Third World, the presence of foreign interests in key sectors of society such as mining and manufacturing has explosive potential. The multinational corporation also generates political controversy between states. For example, how much authority does a corporation's home country retain over its far-flung subsidiaries, or, how should the corporation's profits be calculated for tax purposes? The reports of widespread bribery between corporations and corrupt government officials can tumble a government and ruin a corporation. At the extreme, the multinational corporation may actually attempt to control internal political affairs for its own advantage, thereby causing an unavoidable confrontation between the host and home countries. However, because the developing nations need the massive shifts of capital, technology, and entrepreneurship that the multinational corporations can provide, transnational enterprises will continue to play a major part in development. The great challenge ahead will be the formulation of policies which attract direct foreign investment yet satisfy development goals.

Just as the conception of the development process has changed from the simplistic notion that adding a few industries and pumping up the GNP meant development to the realization that the development process is a much more painstaking overhaul of an entire society, developing nations have begun to change their policies regarding direct foreign investment. They emphasize greater selectivity in choosing areas where foreign investment is welcomed, with increasing national participation in the ownership of the foreign enterprise. In order to make the multinational corporation more responsive to the needs of the development process,[78] those nations are demanding a larger say in local management of the corporation. Thus, the Programme of Action states that transnational corporations should "conform to the national development

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investment is concentrated in only a few areas, it cannot replace foreign aid and other methods of development financing in the development process of the entire Third World.

77. Quite naturally, businessmen chafe at the fact that their activities are often attacked more for symbolic reasons than for any concrete harm done to the country. *See* Wall St. J., Feb. 13, 1976, at 8, col. 3.

78. *Industrial Development Survey, supra* note 31, at 20.

plans and objectives of developing nations."[79] Article 2 of the Charter of Economic Rights gives each state the right to regulate and to supervise the activities of transnational corporations within its national jurisdiction.[80]

Historically, developing nations have long subjected foreign businesses to some regulation.[81] If the foreign investment were in raw materials, in which the state invariably held title, then negotiations were necessary to effectuate the transfer of the natural resources to the foreign enterprise. Raw material production entailed the use of and control over large expanses of territory, creating the need for ports and roads and facilities for shifting labor populations in which the state had an inherent interest. Often, the developing nation had unsophisticated or perhaps no corporate tax laws or labor laws, and agreements between corporation and state were necessary to fill the gaps in the legal infrastructure. But the interaction between state and corporation, while always present, has taken on a new dimension wherein developing nations no longer are content to qualify the rights of foreign businessmen but seek to *control* their activities for national purposes.[82]

Indeed, the structure and operational system of most present-day multinationals make their powers difficult to harness for developed as well as developing countries. To begin with, the term "multinational corporation" is a misnomer since there is no longer a single corporate entity at work, but rather a network of subsidiary corporations located around the world, all contributing to the welfare of the whole. The genius of the multinational enterprise is

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79. *Programme of Action, supra* note 28, at § V(B).

80. Art. 2 of the Charter states in relevant part that every state has the right:

> To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules, and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State.

See also International Development Strategy for the Second United Nations Development Decade *supra* note 66, which spells out the objectives of developing countries vis-a-vis multinational corporations.

81. *See* Vernon, *The Future of the Multinational Enterprise*, in THE INTERNATIONAL CORPORATION 373 (C. Kindelberger ed. 1970).

82. *Report of the Group of Eminent Persons, the Impact of Multinational Corporations on Development and on International Relations* 61 U.N. Doc.

its ability to tap financial, physical, and human resources from around the world and combine them in economically feasible and commercially profitable ventures and its capacity to develop new technology and skills and to integrate them into new product and financial markets. A world plagued by lopsided distribution of resources badly needs such talents, but the multinationals' skills do not per se lead to development or to a more equitable distribution of the world's wealth. If the term "corporation" does not adequately capture the vast network of operations comprising the transnational enterprise, then the term "multinational" misstates the organizational flow of today's global companies. These companies have not evolved into international entities whose ownership, management, and objectives are truly global.[83] A recent study found that 80 per cent of the affiliates of United States parent corporations, and 75 per cent of United Kingdom affiliates, are either wholly owned or majority controlled by the parent with only a slight increase in the proportions of minority ownership.[84] Important management positions almost exclusively belong to nationals of the parent corporation. Rather than size creating a decentralization movement, the multinational is becoming increasingly centralized, with the subordination of the subsidiaries' interests to those of the enterprise as a whole as directed by world headquarters. This centralization of the multinational corporation makes for tension with a host developing country whose government will not take readily to the idea of the local affiliate subordinating local interests for the good of the corporate whole. Furthermore, since the host government seeks more control over the multinational, yet practically exercises effective power only over the local affiliate, placement of the decision-making process in world headquarters frustrates the host government's attempts to make local industry more responsive to development needs.

The conflict between development goals and the multinationals' goals inheres in the process that animates the multinational corporation in its movement abroad. Multinationals operate in extremely oligopolistic markets,[85] characterized by a high degree of

E/5500/REV.1 (ST/ESA/6) (1974) [hereinafter cited as *Report of the Group of Eminent Persons*].

83. For discussion of the organizational structure of the multinational see BARNET & MULLER *supra* note 76; *Multinational Corporation, supra* note 75; Vagts, *The Multinational Enterprise: A New Challenge for Transnational Law*, 83 HARV.L. REV. 739 (1970) [hereinafter cited as Vagts].

84. *Multinational Corporation, supra* note 75, at 11.

85. *See* Vernon, *supra* note 81, for an excellent analysis of the relationship

interdependence among sellers which promotes coordination among rival firms rather than competitiveness, and imitation rather than initiative. Thus, it follows that the multinational often decides to move abroad not because of a bold vision but for defensive purposes. For example, a corporation may prefer to serve a foreign market through exports and avoid the problems of dealing in a foreign country, under foreign laws, with foreign labor, but the emergence of a local rival in the foreign market or heightened import restraints may force the company to move abroad to protect its foreign market. A company's search for raw materials may be precipitated by a straightforward need for cheaper raw materials, but it can also be a defensive move to control and multiply sources of supply, since suppliers of raw materials can put processors at their mercy in times of short supply. The long range consequences of oligopoly cast doubt over the grandiose rhetoric of many multinationals proclaiming their efficiencies as the solution to the economic inequality of the world. Once technological skills become more widely dispersed, through licensing agreements, expiration of patents, increased local training and education, and as more competitors enter the marketplace, multinationals may be faced with inefficiencies of scale and obsolescent industrial processes. The multinational is unlikely to adapt its operation willingly to a nation's development goals if those changes put it at even a slight disadvantage vis-a-vis the other companies in the market. Thus, the oligopolistic market in which multinationals operate, by encouraging the status quo rather than change, undermines their effectiveness as engines of development in the Third World.[86]

Another characteristic of multinationals that conflicts with the development process is the role of global profit maximization in the formulation of corporate policy. Of course, profits may not be the sole motivation of the transnational enterprise, but profit will inevitably operate as a constraint, a bottom line of action, eliminating options otherwise thought appropriate.[87] With this narrow range of economic motivation, a course of action favorable for development usually gives way to policies that do not threaten the global profit scheme. This conflict has become apparent in the multinational corporations' prevalent use of capital intensive tech-

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between the oligopolistic market and the activities of the multinational corporations. For a general discussion of oligopoly see P. AREEDA, ANTITRUST ANALYSIS: PROBLEMS, TEXT, CASES 224-41 (2d ed. 1974).

86. *See* Vernon, *supra* note 81, at 380-84.

87. Vagts, *supra* note 83.

nology, which gives consistent quality control, avoids the human problems of a large labor force, and perhaps minimizes costs and increases competitiveness on the global market.[88] But developing countries often benefit more from an intermediate technology[89] that employs a greater number of workers, thereby offering some relief from massive unemployment, and giving a large population base usable skills essential for future industrial growth. The use of sophisticated technology, on the other hand, often creates a skilled elite whose skills will be of little value should the multinational enterprise leave the country with its sophisticated machinery. Furthermore, the relatively high wages of the elite may cause social friction that outweighs the benefits of a few better paid workers. Finally, sophisticated machines may not mesh well with the local culture, whereas an intermediate technology may allow culturally ingrained work patterns to be used more efficiently, increasing productivity while retaining cultural identity.[90]

Because global profit maximization does not mean the maximization of each subsidiary's profits but rather the greatest overall profit for the entire enterprise, multinationals have used transfer pricing to increase global profits at the expense of the local subsidiary and the host country.[91] Through manipulation of the cost to each subsidiary of necessary increments of production, the parent corporation can control the profit level of each affiliate to a large degree. Profits can be shifted to countries where low tax rates prevail or where the percentage of foreign ownership is small. The

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88. *The Acquisition of Technology from Multinational Corporations by Developing Countries*, U.N. Doc. ST/ESA/12 (1974).

89. *Industrial Development Survey*, *supra* note 31, at 351, defines the appropriate technology for developing countries as that which would "produce in an optimum manner, the kind, quality, and uniformity of products suitable for the requirements of local and export markets, with the lowest possible utilization of capital and skill and the highest possible use of labour and materials available locally." For example, in Indonesia the use of intermediate technology permitted the employment of twice as many workers as automated plants, and the most labor-intensive plants employed ten times as many workers for the same output. *The Acquisition of Technology from Multinational Corporations by Developing Countries*, *supra* note 88, at 3. And despite the popular notion of multinationals bridging the technological gap, the cost to developing countries, through payments on patents, licenses, trademarks, and know-how, amounted to more than one-half of the flow of direct foreign investment to those nations, *Multinational Corporation*, *supra* note 75, at 50. See note 104 *infra* on Mexican legislation concerning the transfer of technology.

90. *See generally* E. SCHUMACHER, SMALL IS BEAUTIFUL (1973).

91. *See Report of the Group of Eminent Persons*, *supra* note 82.

local affiliates' profits may be decreased to hold down wage demands or to minimize the risks of expropriation. Transfer pricing and global profit maximization run counter to the needs of the host country and its expectations of how the multinational corporation will aid the development process. The host state, and every other interested state, want a large tax base[92] since the funds are crucial to the expansion of the economy. By paying artificially high prices or by selling at artificially low prices, the affiliate can aggravate the host country's balance of payment difficulties and erode foreign exchange reserves. Local capital sources may be driven out by the small return on their investment, thereby permitting the parent corporation to increase its control over the subsidiary. In sum, pricing policies and the repatriation of profits[93] to the parent corporation or to another affiliate may alter the preconceived notion that direct foreign investment creates a flow of necessary capital into the country in favor of a view that a capital outflow is occurring. Thus tension between the multinational and the host country will only increase to the detriment of future efforts to find satisfactory ways of meeting both parties' expectations.

The tension between the goals of development and the multinational corporation's objectives easily spreads into conflict with the home country that can jeopardize relations between the industrialized and developing worlds. Expropriation is the most visible example, bringing the home state into a posture of protecting nationals' property and often forcing the home state to take steps that are detrimental to the offending nation's development efforts, such as cutting off foreign aid.[94] The huge multinational

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92. Note the United States INT. REV. CODE OF 1954 § 482, dealing with transfer pricing and the interrelation between parent and subsidiary corporations.

93. From 1960-1968, 79% of subsidiaries' profits were taken out of Latin America. BARNET & MULLER, *supra* note 76.

94. Before July 1, 1971, in a United States Department of State survey, 71% of investment disputes involved formal expropriation or nationalization compared to only 22% in the following two-year period. In this later period, almost 80% of the disputes involved host government coercion on United States investors to divest themselves of all or part of their holding or to renegotiate the terms of the investment to provide the host government with a greater share of earnings. Salzman, *How to Reduce and Manage the Political Risks of Investment in Less Developed Countries*, in GLOBAL COMPANIES 90 (G. Ball ed. 1975) [hereinafter cited as Salzman]. The author suggests four reasons why the host country benefits more from greater local participation than from expropriation: (1) the enterprise is denied a prima facie claim to compensation; (2) settlement terms are generally favorable to the host; (3) unfavorable publicity for the host is avoided; (4) the host achieves greater flexibility in bargaining with the company.

corporation, with its network of relations around the world, may in fact adopt a strategy to prevent nationalization, as Kennecott Copper did in Chile,[95] that entails building up a global alliance of major consumers, creditors, and governments which threaten to disrupt the host country's economic life if attempts are made to nationalize the industry. The expropriation issue tends to create overt tension between governments, but more subtle antagonisms swirl around the multinational corporations' operations. We alluded earlier to the problems of coordination among interested nations in the taxation of multinationals and the question of how far the home state's jurisdiction extends over the multinational.[96] Another problem area concerns the corporation's outright enlistment of home state aid if a dispute with the host country arises. Home states have countered with the use of the so-called "Calvo Clause"[97] which, if included in a contract with a multinational, binds the subsidiary to settle any controversy according to host country laws and in the host country forums without resort to the home government for protection and support.

B. *Restructuring Relations*

The realization that the transnational enterprises' objectives may not only conflict with the development process, but also contribute to a developing nation's problems, is only a first step; there remains the task of structuring new relationships that better serve the development process without stifling the investment process.[98] Some fundamental points must govern this restructuring. First,

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95. BARNET & MULLER, *supra* note 76, at 85.

96. In this respect, the United States has been aggressive in ignoring the corporate veil of the subsidiaries especially in antitrust actions to reach a foreign, parent corporation. Intermountain Ford Tractor Sales Co. v. Massey Fergusen Ltd., 210 F. Supp. 930 (D. Utah 1962), *aff'd* 325 F.2d 713 (10th Cir. 1963); United States v. Watchmakers of Switzerland Info. Center, 133 F. Supp. 40 (S.D.N.Y. 1955); *See* Vagts, *supra* note 83.

97. Named for an Argentine jurist, Carlos Calvo (1824-1906). United States v. United Mexican States, United States-Mexican Claims Commission, 1926, opinions of Commissioners under the Convention concluded Sept. 8, 1923, between the United States and Mexico, 4 U.N.R.I.A.A. 26 (Calvo Clause upheld), is the leading arbitral decision on the Calvo Clause.

98. A wide spectrum of views exists on foreign investment in developing countries. *See* Kindleberger, *The Multinational Corporation in a World of Militant Developing Countries*, in GLOBAL COMPANIES 70 (G. Ball ed. 1975). Likewise there are several models for governmental regulation of the multinational corporation. *See* Tharp, *Transnational Enterprises and International Regulation: A Survey of Various Approaches in International Organizations*, 30 INT'L ORG. 47 (1976).

each nation must decide these matters for itself, according to its own culture, its own economic system, and its own political structure.[99] Although the nation-state is decried as anachronistic and cumbersome,[100] the rising tide of nationalism in the Third World is convincing evidence that sovereign statehood is and will be a difficult concept to transcend, and interference in a country's domestic affairs by foreign nations or corporations will only make the attainment of global cooperation guided by mutual self-interest more difficult. Secondly, the multinational corporation's role in development must be kept in perspective. Multinationals, though powerful agents of change, occupy only limited positions in any society's economic and social life;[101] consequently, it is absurd to castigate multinationals for all of a society's woes, and it is dangerous to expect that a satisfactory working arrangement with the multinational corporations will remake a society. Development requires much more. Finally, we have spoken of the complexities inherent in the development process. A nation must define and make clear its development goals, both short and long-term, and it must apply these principles consistently in order to deal wisely and effectively with transnational enterprises and with foreign nations. Of course, development plans may fall far short of what is actually accomplished or circumstances may change necessitating revisions in development priorities. Flexibility, therefore, must underlie any agreement if long range plans are to conform to the realities of a country's development progress.

Multilateral Agreements.—A comprehensive international treaty is needed[102] to coordinate the often conflicting interests of

99. Art. 1 of the Charter of Economic Rights and Duties of States provides: "Every State has the sovereign and inalienable right to choose its economic system as well as its political, social, and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever."

100. See, for example, the interview with British historian Arnold Toynbee, who feels that the transnational enterprise fills a vacuum in global economics created by the inability of sovereign states to deal with the requirements imposed by an interdependent world. Toynbee, *Are Businessmen Creating Pax Romana?*, FORBES, Apr. 15, 1974, at 68.

101. The bulk of domestic production of most developing countries originates in agriculture and service industries, where the multinational corporation plays only a limited role. *Multinational Corporation, supra* note 74.

102. *Programme of Action, supra* note 28, at § V calls for an international code of conduct; many observers from developed nations have agreed. *See* Rostow, Nye & Ball, *The Need for International Arrangements*, in GLOBAL COMPANIES 156 (G. Ball ed. 1975). We are not speaking here of merely a code of good behavior such

multinational corporations, host governments, and home governments. Through this international compact, signatory states and corporations could work out agreements on current problems such as jurisdiction over subsidiaries and taxation of multinationals. A forum for periodic review and negotiations could be designated to deal with unforeseen problems. Bilateral negotiations are inadequate for the consistent and coherent treatment of global shifts of capital, technology, and management skills. Instead of facing the tedious, haphazard, and perhaps corrupt process of these negotiations every time new foreign markets are sought, multinational corporations would benefit by a commonly agreed-upon set of general operating principles such as the extent of permissible involvement in local political affairs and the duties owed to states in which multinationals operate. In return for acceptance of these duties by multinationals, states would almost certainly have to agree to fair compensation in case of expropriation. Inevitably, an international treaty could only serve as a superstructure for a nation's dealings with multinationals, since individual signatory states would require different corporate behaviors in different areas such as appropriate technology and the kinds of products put into the local market. The treaty, therefore, could specify which types of problems would be left to bilateral negotiations.

Instead of reacting to disputes with destructive confrontations, a grievance machinery, for example an international arbitration panel under the auspices of the United Nations composed of representatives from all parties, would decide controversies and make damage awards if necessary. An international treaty on multinationals, therefore, provides the best long-term mechanism for the harmonization of the various parties' interests and the efficient allocation of the multinational corporations' talents.

While the advantages of an international treaty are manifest, its creation is not yet in sight. Nevertheless, alternatives are available which can improve the relationship between the multinational corporations and the developing nations. Bilateral and perhaps multilateral treaties covering only one issue, *i.e.* taxation of multinationals, currently stand a more realistic chance of negotiation than a comprehensive, international treaty and this approach would enable nations to attack the most pressing mutual problems first. This method may be necessary to pave the way for a more general-

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as the INTERNATIONAL CHAMBER OF COMMERCE, GUIDELINES FOR INTERNATIONAL INVESTMENT (Paris 1972) but rather a formal, international agreement.

ized agreement, but a piecemeal attack of the problems of multinationals has drawbacks. By dealing with only a narrow aspect of the multinationals' operations, the negotiating process leaves little room for compromise among different issues; a country in a strong bargaining position could, in a series of relatively narrow agreements, consistently achieve the results most beneficial to it without a trade-off in areas of less concern. In bilateral negotiations between a major industrial power like the United States and a developing nation, which may be dependent on foreign aid and cooperation from the developed states, the problem would be acute. The result may be that the developing nation will not find itself in any better position as a result of the treaty. For the developing nations, therefore, multilateral efforts would be more advantageous, especially if the participating nations could bargain from a unified stance that would increase the likelihood of arms-length dealings and a fair agreement. The piecemeal approach may also result in a bundle of agreements which conflict and overlap as among the different parties to different agreements, forcing the countries and the multinationals to adopt different practices depending on what corporation and what nations were involved in a given situation. Once again, the multilateral approach would prevent these kinds of problems and would offer more consistent guidelines for action.

Pre-investment Agreements.—Since the treaty approach cannot take into account all the myriad differences among various countries, it is necessary for developing nations to negotiate in advance with multinational corporations the rights and duties of each party[103] in conjunction with a consistently applied set of development policies. Through this approach the developing nation can diminish the detrimental effects that multinational corporations can have on a society if they are allowed to pursue their own objectives, unconcerned with the conflicts between those objectives and the development process. The multinational corporation would also benefit by a clear statement of its obligations, thereby avoiding later confrontations when the corporation has already invested millions of dollars into a project. The agreement could cover a range of subjects, from the level of technology used by the multinational,[104] to the profit levels maintained in the local subsid-

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103. *See generally, Report of the Group of Eminent Persons, supra* note 82.

104. A recent Mexican law is illustrative of a trend toward prior restraints on the multinational corporation in the area of technology via legislation. The thrust of this legislation is given in this official description:

iary, to the amount of compensation to be paid in case of expropriation.

Naturally, a pre-investment agreement between a multinational corporation and a developing nation entails a complex negotiating process. If a one-sided or unfair agreement is produced, future breaches may result with the consequence of increasing the acrimonious relations between the parties. It is imperative, therefore, that developing nations increase their bargaining strength to insure arms-length dealings with multinationals. This requires in part a sufficient supply of data and relevant information about such things as the prospective investor's own financial condition, market conditions in the host country and abroad, and technological developments. The country must, therefore, create its own institutions which would compile and analyze data relevant to the investment and development processes. An international clearinghouse of information could also be established, possibly under the auspices of the United Nations, that would keep track of global developments for use by all interested parties. The developing nations must also improve their bargaining skills; too often past negotiations between multinationals and developing nations have either fallen apart or produced lopsided agreements because of alleged overreacting by the multinationals' lawyers. Developing nations must, therefore, develop their own expert negotiators, either through improved educational facilities in the home country

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> Contracts shall not be approved when they refer to technology freely available in the country; when the price or counter service is out of proportion to the technology acquired or constitutes an unwarranted or excessive burden on the country's economy; when they restrict the research or technological development of the purchase; when they permit the technology supplier to interfere in the management of the purchaser company or oblige it to use, on a permanent basis, the person appointed by the supplier; when they establish the obligation to purchase inputs from the supplier only or to sell the goods produced by the technology importer exclusively to the supplier company; when they prohibit or restrict the export of goods in a way contrary to the country's interest; when they limit the size of production or impose prices on domestic production or on exports by the purchase; when they prohibit the use of complementary technology; when they oblige the importer to sign exclusive sales or representation contracts with the supplier company covering the national territory; when they establish excessively long terms of enforcement, which in no case may exceed a 10-year obligation on the importer company; or when they provide that claims arising from the interpretation or fulfillment of such contracts are to be submitted to the jurisdiction of foreign courts.

GOVERNMENT OF MEXICO, LAW ON THE TRANSFER OF TECHNOLOGY AND THE USE AND EXPLOITATION OF PATENTS AND TRADEMARKS, *forward* at 4.

or through foreign training. In the interim, the developing nation should consider retention of an outside law firm or one of several advisory groups, such as the Harvard University Advisory Group, designed to aid developing countries in negotiations with foreign investors. It has been suggested that the United Nations actively help host countries in the negotiation stage,[105] but a too-close alignment with any one side of the process threatens to destroy the United Nations as a harmonizing force in world affairs. A better approach for the United Nations would be to act in an advisory capacity for either side of the negotiating process since by helping both parties bridge the gaps between them to achieve a fair agreement, the United Nations will not only aid in the development process but enhance its own image as a forum dedicated to human progress and not to partisan causes. As an example, the United Nations has developed model contracts for foreign investment that should serve as valuable reference points for contract negotiations and should make it more difficult for one side to overreach the other through one-sided contract provisions.[106]

The parties' bargaining strengths in a given negotiation, however, will necessarily depend upon many factors, and every situation requires careful analysis because the multinational corporation will not invest in a country which interferes too much in its operation. Thus, the degree to which a corporation needs a country's raw materials or wants to utilize its potential markets or the developing nation's need for technology or employment are critical determinants of how far each side can go in its demands. The vagaries of the negotiating process illustrate the shortcomings of a case-by-case approach to the regulation of direct foreign investment. Negotiating investment contracts individually is cumbersome and expensive. Because every situation varies, the case-by-case negotiation may not produce an efficient development program.

Regional Groups.—A promising alternative to the case-by-case negotiating process is the formation of regional groupings of nations wherein stronger bargaining units are created as well as enlarged markets for the multinational corporations. A current example is the Andean Common Market (ANCOM), comprising Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela. This regional grouping has propounded the Andean Investment Code[107] to

105. *Report of the Group of Eminent Persons, supra* note 82, at 38.
106. *Id.*, at 40.
107. Decision No. 24, Dec. 31, 1970 as amended by Decisions Nos. 37, June

regulate foreign investment. In exchange for access to ANCOM's large free market, the Code imposes a series of price restraints upon direct foreign investment. The Code classifies the equity of any foreign operation seeking to enter ANCOM by its degree of foreign ownership, and a "phase-out" provision requires disinvestment, via sale of stock to individuals or to the state, by existing foreign ownership to minority levels over a period of time to maintain the benefits of the free trade area.[108] Certain sectors (*e.g.*, petrochemicals and metal fabrication) are closed altogether to foreign investment.[109] The Code also regulates the multinational corporation's repatriation of invested capital and remittance of profits to the parent company,[110] limits the outflow of technology through controls on patents, trademarks, and technological know-how,[111] and makes or anticipates changes in ANCOM's corporate and tax laws.[112]

Regional groups not only create strong bargaining units which are more apt to strike a deal with multinationals that promotes development, but the union of several nations permits an aggregation of investment incentives. The group can offer attractive markets for multinationals while avoiding cutthroat competition among the countries to formulate the most alluring investment package.[113] The regional grouping allows an entire area to develop pursuant to commonly arrived-at goals and avoids the tension laden situation of one country sprinting to new economic levels and higher standards of living while its neighbors languish in poverty.

24, 1971 and 37-A, July 17, 1971, of the Commission of the Cartagena Agreement, Andean Foreign Investment Code, text at 11 INT'L LEG. MAT. 126 (1972). For an analysis of ANCOM see Oliver, *The Andean Foreign Investment Code: A New Phase in the Quest for Normative Order as to Direct Foreign Investment*, 66 AM. J. INT'L L. 763 (1972).

108. *Id.* Art. 1 defines a "national enterprise" as one with more than 80% of national investors; a "mixed enterprise" as between 51% and 80% nationally owned; a "foreign enterprise" as one with less than 51% national investors or, if a higher percentage, one which does not reflect such national ownership in its technical, financial, administrative and commercial management. Art. 27 provides that the benefits of ANCOM shall be enjoyed only by national or mixed enterprises of the Member Countries and by foreign enterprises in the process of becoming national or mixed. Art. 28 limits these benefits to those completing the process of becoming a national or mixed enterprise within three years.

109. *Id.* Ch. III, arts. 38-44.

110. *Id.* Ch. I, arts. 7-16.

111. *Id.* Ch. I, arts. 19-26.

112. *Id.* Ch. IV, arts. 45, 47.

113. *Multinational Corporation*, *supra* note 75.

At the same time, the regional program blocks a multinational corporation from pulling out of one country because of antagonisms with the host government and moving to a nearby state.

Despite the promise for harmonizing both development and multinationals' objectives, the success of regional groups such as ANCOM is still an open question. A fundamental problem is whether the imposition of prior restraints will deter private investors from entering the region, thereby causing the loss of needed capital and technology. Under the ANCOM scheme, it is not yet clear whether multinationals will forego the benefits of a free trade area in order to retain complete ownership or majority control of affiliates in the region. Finally, any common market requires continuous cooperation among the member states and effective administration of common programs; the break-up of the regional group by the pursuit of conflicting national objectives will destroy the common agreements with multinationals, subjecting the corporations to national rules not bargained for in the original agreement.

While ANCOM remains a promising, if unproven, vehicle for changing the relationship between multinationals and developing states, it is well to note that the ANCOM countries are in the Third World's upper strata, with only Bolivia poor enough to be characterized as a "middle-income" country.[114] Because ANCOM started from a relatively strong economic base, it is in a position, as an attractive investment area, to make more demands than a regional group of lower income countries. Similarly, this group can forego investments that conflict too greatly with development goals, whereas poorer nations may be more willing to compromise development for needed investment. The very fact that the ANCOM nations are at roughly equivalent stages of development helps a common program to function smoothly because national interests are more likely to be similar in those nations than in a region where countries of vastly different wealth attempt to coalesce despite dissimilar interests, needs, and objectives. Therefore, despite ANCOM's potential for effective regulation of foreign investment, the regional grouping is neither a workable arrangement nor an effective way of regulating multinationals for all developing countries.[115]

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114. Of the six, Ecuador and Venezuela are oil exporting states, while Chile, Colombia, and Peru are considered higher income countries.

115. The Association of Southeast Asian Nations (ASEAN) was formed nine years ago with Singapore, Malaysia, Thailand, the Phillipines, and Indonesia.

Phase-Out Programs.—Host governments acting unilaterally have used several methods to align multinationals more closely with the development process. Like ANCOM, many countries are considering provisions in the original agreement with foreign investors that call for a gradual phasing out of foreign control until ownership rests in local interests or in the state.[116] Apart from aforementioned concerns about prior restraints affecting the level of foreign investment, this pre-arranged transfer of ownership is likely to be most acceptable in industries that give a quick return on the initial investment and that entail relatively small risks, so that an investor does not take the chance of losing control before profits are possible. Two major concerns of the host country must be the availability of efficient management once the parent's personnel have departed and the availability of sufficient capital. By taking control prematurely and turning a well-run, profitable organization into a chauvanistic failure, host owners will likely generate tension among groups such as workers, other industries dependent on their product, and political elements looking to attack the incumbent's policies, thereby doing serious damage to a nation's economy. If the gradual phase-out of ownership process works well and takes hold in many host countries, however, the present-day multinationals' conduct will undergo profound changes. Local affiliates will no longer be cogs in a vast machine, sacrificing their economic welfare for the good of the whole. The centralized operation of multinationals will be shattered into freer wheeling local corporations, more intent on making a profit for themselves than for the parent corporation. The transfer of ownership process, therefore, will not be accomplished easily, no matter how fair the original deal, because powerful corporate entities have fundamental interests at stake.

In conjunction with phase-out programs or as an attempt to open up foreign subsidiaries to local participation, several countries require the local affiliate to float shares on local stock exchanges.[117] Because of the narrow capital market in most developing nations, however, often only a few powerful local interests will accumulate

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The countries have little in common, and disputes have usually taken precedence over cooperation with the result that little has been accomplished. Wall St. J., Feb. 25, 1976, at 13, col. 2.

116. Mexico, for example, requires the transfer of at least 51% of corporate stock to Mexican nationals in exchange for certain concessions. *See* Creel, *Mexicanization: A Case of Creeping Expropriation*, 22 Sw. L.J. 281 (1968).

117. *E.g.*, Brazil, Chile, Colombia, Jamaica, and Mexico.

that stock, therefore nullifying any large-scale local participation.[118] The presence of a few local participants will not affect corporate policy[119] and may create a backlash of local resentment over a small elite prospering along with a multinational corporation that is perceived as exploiting the host country. A possible solution to the problem of narrow capital markets and to the related problem of local owners possessing sufficient capital to run a newly acquired affiliate is the creation of a development finance corporation which could provide financing for local enterprises, both as competition for multinationals' subsidiaries and as a vehicle to effectuate phase-outs of foreign ownership.[120]

Joint Venture.—A traditional alternative to complete local ownership has been the joint venture, with the multinational corporation joining with local partners on a given project. In addition to the familiar problems of a narrow capital base and the conflicting objectives of the partners, the joint venture has not had great success because the partners are usually of such disparate economic strength that the venture may not result in the hoped-for union of foreign and domestic interests but either an imposition of the multinationals' desires or a complete breakdown in the relationship with the inevitable failure of the project.[121] The joint venture works better when the multinational seeks to actually put its products into the local market; the local partner can then contribute needed understanding of the local market and, by identifying the product with local interests, can help it to penetrate the market. Another promising area for joint ventures is in the extractive industries since the vital interests at stake and the mere presence of foreigners on large tracts of territory will require local participation to insure protection of the state's inherent interest in its resources.

Management Contracts.—Another mode of interaction with the multinational enterprise purports to gain the benefits of the corporations without ever allowing foreign ownership.[122] The management contract permits the foreign interests to operate the local

118. *Multinational Corporation, supra* note 75.

119. This is especially so in the multinational corporations in which stockholders rarely exercise any discernable influence on operations. *See* Vagts, *supra* note 83.

120. *Multinational Corporation, supra* note 75.

121. *See generally* Salzman, *supra* note 94.

122. *See Acquisition of Technology from Multinational Corporations by Devloping Countries,* 57 U.N. ESCOR U.N. Doc. ST/ESA/12 (1974), for an analysis of the various, alternative means of dealing with foreign investment.

enterprise but not own it. This arrangement benefits the host country by giving continuity of management to the operation and by supplying technical skills and advice, while training local counterparts for an eventual takeover of management. The plan's drawbacks, however, are serious. Rarely will a foreign firm be satisfied simply with the sale of its machinery, technology, and management skills without a stake in the success of the operation. While the supplying firm may lack incentive for aggressive management and careful training of local managers, the use of a managing firm other than the one which created the technology and built the factory raises doubts as to the outside firm's competence in adequately running the operation. Management contracts, therefore, require an ideal combination of the many component parts making up an investment project to function well.

Turn-Key Operation.—An alternative to the management contract is the turn-key operation, in which the host investor or state contracts for the building of a plant to completion, with the running of the firm left to local personnel from the outset. The same lack of incentive for the building firm plagues this idea, with the added liability that many developing nations, especially the least developed, will not have sufficient numbers of expert personnel to adequately run the plant. The great advantages of the turn-key proposal is that the developing nation can tailor the plant specifications to its needs and run it in its own manner. It is clear, therefore, that many models exist for the creation of the new relationship between multinational corporations and developing nations; the solutions, or lack of them, to current problems will surely be among the most explosive issues in the debate on a new economic order.

VII. Conclusion

By calling for a new economic order, the developing nations have implicitly recognized that development is not a process amenable to simplistic, short-term measures but requires long-term reform of the international economic system in order to distribute the world's wealth more equitably, to effect profound changes in the interaction among nations, and to provide well-thought-out and efficiently administered development priorities domestically. The web of problems faced by most developing nations demands action in many areas, and we have touched here on some of the easier problems, ones which pose at least arguable alternatives. Other problems, such as food shortages and population booms, will take generations to bring under control, if solutions are possible at all.

For the developing nations, unity is essential to compel action by the developed nations, but all nations must pass into a system based on the recognition that mutual self-interest requires cooperation and the reworking of global economics if we are to avoid global chaos.

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