# *Towards a New International Economic Order*

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## Introduction

There appears to be a widespread conviction at the present time that the international economic order which developed in the immediate post-war years has changed so fundamentally in recent years that the rules for the conduct of international economic relations which were accepted as desirable thirty years ago, and the institutions which were created to ensure the observance of these rules, have become in large measure irrelevant or even harmful in the contemporary world.

It is not difficult to understand the basis for this opinion. The three great economic institutions which were established in the nineteen forties—the I.M.F., the World Bank and the GATT—were all created by people who had been actively involved in the financial and trading problems of the nineteen thirties, and whose over-riding concern was to prevent a return to the conditions which had prevailed in that decade. Given the predominant position of the United States at that time, the analysis of the evils to be avoided which came to be expressed in the rules of the new institutions was basically that which commended itself to the officials on the Potomac. On the financial side, it was regarded as essential to ensure the stability of currencies, and to avoid the occurrence of competitive devaluations and restrictions on payment. On the trade side, the critical matters were the restoration of non-discriminatory trading through agreement on most-favoured-nation treatment, the obliteration or at least freezing of the existing preferential systems, and the proscription of quantitative restrictions on imports and exports. The World Bank was envisaged primarily as an instrument to aid in post-war reconstruction, but the need was also foreseen even then for a body which could help to mobilise resources for the economic development of the under-developed regions of the world.

Thirty years later, the Bretton Woods-Havana system gives the appearance to many of being in ruins. In the case of the I.M.F., the 1970s have seen the abandonment by major trading countries of fixed rates in favour of floating rates, and the emergence of arrangements under which certain countries have undertaken to maintain stable rates against one another but not against third countries. The GATT finds itself operating in a world in which, as a consequence of the proliferation of customs unions, free trade areas and new preferential systems, most-favoured-nation trading is the exception rather than the rule, and in which ingenious new protective devices prevent access to markets as effectively as did the prohibited quantitative restrictions. On the operative side also, GATT is frequently criticised for its alleged inability to tackle effectively problems of agricultural trade and the special trade problems of developing countries. The World Bank is less often made the target of attack than the other two institutions, since its resources have been used extensively in recent years for the benefit of the developing countries (which are the most vocal critics of the I.M.F. and GATT) and it has been able to make soft loans to such countries through its affiliate, the International Development Association, on the basis of the periodic replenishment of its funds by individual countries.

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Even the severest critics of the post-war system would not attempt to deny that the order it introduced into international economic relation was a major factor in the vast expansion in world trade and in direct foreign investment which characterised the 1950s and 1960s. But they do lay two charges against it. The first is that the transformations which have taken place in these relations in recent years, largely as a result of the very success of the I.M.F., I.B.R.D. and GATT, have produced a world vastly different from that for the needs of which these institutions were created, and in which their rules are largely irrelevant. The second is that the Bretton Woods-Havana system was devised basically by and in the interest of the industrialised countries of the West, and that it must be fundamentally refashioned so as to be more responsive to the urgent needs of the developing countries.

It is not intended to examine in this paper the validity of these charges. The object is rather to outline some changes upon which the developing countries are placing particular emphasis in order to achieve what they term the New International Economic Order.[1]

It should first be observed that the developing countries have left no doubt about what they think should be done. Since 1964 they have had a permanent international body, UNCTAD, which serves as a forum for the expression of their ideas and objectives. In the UNCTAD resolutions, in declarations which have been inspired by UNCTAD, including in particular the General Assembly Resolution in May 1974 on the Declaration and Programme of Action on the Establishment of a New International Economic Order, and in December 1974 on a Charter of Economic Rights and Duties of States, and in declarations and programmes of action which have been adopted by the Group of 77, including most recently the Manila Declaration and Programme of Action adopted in February 1976, they have set out a large number of principles which they insist should be recognised by all countries, and they have detailed measures which they urge to be implemented in their favour.

It will obviously not be possible within the confines of an article to examine in any detail the principles which are asserted as the basis for the New International Order, and the measures which are propounded as the necessary means to achieve it. The object is rather to outline the issues which seem to be of particular legal and commercial significance, and the effect which the demand for change by the developing countries is having on the present structure of international economic law and relations.

## The Status of the Instruments Establishing the New International Economic Order

It is natural to begin consideration of the New International Economic Order with the Declaration adopted without a vote at the Tenth Special Session of the General Assembly on 1 May 1974, which concludes with the assertion that it shall be "one of the most important bases of economic relations between all people and all nations".

The Declaration lists some twelve principles which are to be the basis for the new international economic order. It is possible to group them broadly into three categories. First, there are those which assert the sovereign equality and

1. For a general discussion of this topic and more generally of the trade problems of the developing countries, see the writer's book on International Trade Law. The account in this article attempts to avoid repetition of the material covered in that book, while carrying the record of events forward till the Fourth UNCTAD in June 1976.

independence of States. Secondly, there are those which proclaim the duty of co-operation among all States, and in particular the duty of developed States to assist developing countries. And thirdly, there are principles which are relevant to particular kinds of economic activity or to particular trading difficulties of the developing countries.

Both in the Declaration and in the Programme of Action which was designed to ensure its application there are explicit references to the need for adoption of the charter which was then in the drafting stage. When finally adopted, this set out some fifteen principles which were to govern economic as well as political and other relations among states, and thirty four articles on the economic rights and duties of States and on common responsibilities towards the international community. It would be a tedious and not very rewarding exercise to compare the formulations in the Charter with those in the Declarations. But it is important to know what it was that the Declaration and the Charter were attempting to do.

One model which the draftsmen of these documents had before them was General Assembly Resolution 2625 (xxv), adopted in October 1970, which set out a Declaration on Principles of International Law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (referred to generally as the "friendly relations declaration"). This resolution expressed the unanimous opinion of States members of the United Nations on seven principles expressed in the Charter of the United Nations. Its main significance for the draftsmen of the later documents was that it covered a number of matters which are incorporated in these documents. But the friendly relations declaration was essentially designed to clarify certain basic concepts in an existing document, rather than to lay the foundations for a new order. It was not the purpose of the later documents to define existing relationships; the whole object on the contrary was to point the way for the future. For this purpose, a more appropriate model was that provided by the Universal Declaration of Human Rights, where the aim was not so much to interpret the charter obligations as to give them more substance and effect. It is not surprising that those who advocated adoption of the charter should have referred frequently to it as designed to serve as the counterpart in the field of economic relations to the Universal Declaration in the area of human rights.

There was one further thing that the sponsors of the Charter attempted to do, namely to obtain acceptance of its principles as rules of international law. The President of Mexico, Mr. Echeverria, in proposing the Charter at the Third UNCTAD in 1972, stated this explicitly:

> "We must strengthen the precarious legal foundations of the international economy. A just order and stable world will not be possible until we create obligations and rights which protect the weaker states. Let us take economic co-operation out of the realm of goodwill and put it into the realm of law. Let us transfer the concrete principles of solidarity among men to the area of relations among countries."

Throughout the period prior to the adoption of the Charter, there were frequent references to the determination of its sponsors that it would have a juridical character. It was only at the final stage that references in the preamble to the Charter to its effect in codifying and developing rules for the establishment of the new international economic order was deleted. Nevertheless, there can be little doubt that many States, particularly developing countries, will claim that the provisions of the Charter have legal effect. So much was indeed asserted immediately by the representative of Argentina, who stated in explanation of the vote he was about to cast in favour of the Charter that it was "an instrument of economic international law".

The Australian position in relation to General Assembly resolutions is that, except in the case of resolutions appropriating expenses of the United Nations among members under Article 17(2) of the Charter, they are purely of a recommendatory nature and do not have legally binding effect.[2] Accordingly though Australia voted in favour of the Charter, its support cannot be taken as implying acceptance of the Charter as creative or declaratory of legal rights and obligations. In its interpretative statement on the Charter, Australia declared:

> "In the future this resolution may come to have a significant part in the development of international economic law. While it cannot create law by itself it may help to determine or influence the opinio iuris and may influence States in determining what their practice should be in the light of international law."

Some other developed countries were not prepared to go even so far as that. Canada (which abstained in the vote on the Charter) considered that the document could not be considered as a basis for the evolution of international law in the controversial areas where the Charter did not gain general acceptance.[3] Those countries which voted against the Charter have made it clear that in their opinion it is totally ineffectual to change the present rules of international law or to point the way for their future development.

**Principles of the New International Economic Order**

The Declaration puts at the head of the principles upon which the new international economic order is to be founded the "sovereign equality of States, self-determination of all peoples, inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of their States". It adds to this "the right of every country to adopt the economic and social system that it deems to be the most appropriate for its own development and not to be subjected to discrimination of any kind as a result"

The assertion of the principles of sovereign equality, territorial integrity and non-intervention was not contentious either in the Declaration or in the Charter. But the formulation of the right of a State to exercise full sovereignity over its natural resources, to regulate transnational corporations and to expropriate foreign property was a matter of great controversy in the Declaration and in the Charter. It is discussed in more detail later in this article. There was also an unsuccessful attempt made by thirteen Group B countries to add a clause to a provision in the Charter that "every State has the right to engage in international trade and other forms of economic co-operation irrespective of any difference in political, economic and social system. No State shall be subjected to discrimination of any kind based solely on such differences". They sought to explain this last clause to mean that States in similar situations should not be given different treatment. The proposed amendment to this provision was linked with one (also unsuccessful) which would have qualified the rule in the Charter that international trade should be conducted on the basis of an exchange of most-favoured-nation treatment. It was sought to express this in the form that "in the pursuit of their trading relations States may, as a general rule, exchange most-favoured-nation treatment through bilateral or multilateral arrangements". In their view, the exchange of most-favoured-nation treatment would generally be an appropriate basis for international trade relations; but the

2. See Harry: Australia's Commitments under the United Nations Charter, in O'Connell (ed): International Law in Australia (1966) p.65.
3. See the explanatory statement by Canada, reproduced in document A/PV 2315.

establishment of such a basis was for the States concerned to work out in each instance between themselves through the negotiation of either bilateral or multilateral arrangements. The Group B countries no doubt had in mind the difficulties in agreeing in principle to extend most-favoured-nation treatment to the centrally planned economy countries when they sought this amendment.[4]

Recognition of the economic sovereignty of each State is one basic concept in the New International Economic Order. Another is the responsibility (specified in Article 9 of the Charter) for all States to cooperate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries. The duty to co-operate is spelled out in a number of articles, including Article 11 (co-operation to improve the efficiency of international organisations); Article 13 (co-operation in technology and the transfer of technology); Article 14 (co-operation in the expansion and liberalisation of world trade); and Article 17 (co-operation for development).

Certain articles express rights and duties of all states; others state obligations which fall upon the developed countries or upon the developing countries. It is tempting for critics of the Charter to say (as some have) that it consists of a list of rights of developing countries and duties of the developed countries; but such criticism is neither fair nor reasonable. It is arguable that it would be in the best interests of the developing countries that recognition of the fact that responsibility for the development of each country rests primarily upon itself should not simply have been relegated to a preambular paragraph, but should have received detailed treatment in the operative parts of the resolution. The only obligations imposed specifically on developing countries in the Charter are to endeavour to promote the expansion of their mutual trade, and to "give due attention to the possibility of expanding their trade with socialist countries, by granting to these countries conditions for trade not inferior to these granted normally to the developed market economy countries".[4] But it would be unrealistic to expect that in documents expressive of the objectives of the developing countries, the assertion of their claims for the introduction of measures in their favour by the developed countries should not be the central and almost exclusive feature.

## Sovereignty over Natural Resources and Foreign Investment

The subject of permanent sovereignty over natural resources had figured in a host of General Assembly resolutions before it arose against for consideration in the Declaration on the Establishment of a New International Order and in the Charter of Economic Rights and Duties of States.[5] It is instructive to compare the formulation of the principles contained in the General Assembly resolution of 1962[6] with those expressed in the 1974 resolutions. Article 2(1) of the Charter states that each state has and shall freely exercise full permanent

4. For an outline of these difficulties, see International Trade Law at pp. 210-213. The Charter did not seek to impose any duties specifically on the socialist Countries of Eastern Europe, but at the Fourth UNCTAD a recommendation was adopted that these countries increase their economic assistance to developing countries, reduce tariff barriers and increase their imports from developing countries.
5. Including resolutions 1803(xvii) of 14 December 1962; 2158(xxi) of 25 November 1966; 2386 (xxiii) of 19 November 1968; 2625(xxv) of 24 October 1970; 2692(xxv) of 11 December 1970; 3016(xxvii) of 18 December 1972; and 3171(xxviii) of 17 December 1973.
6. This is analysed fully in Gess: Permanent Sovereignty over Natural Resources (1964) 13-1. C.L.Q. 398.

sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities. Similarly, Article 4(e) of the Declaration asserts that the new international economic order should be founded on full respect for the principle of full permanent sovereignty of every State over its natural resources and all economic activities. The 1962 resolutions seem to speak much the same language in preambular paragraphs which refer to recommendations that the sovereign rights of every State to dispose of its wealth and its wealth and its natural resources should be respected, and that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States. But when the implications of the recognition of the right to full sovereignty over natural resources are spelled out, it will be immediately apparent that there has been a major shift. This is particularly so in respect to the crucial matter of the right of expropriation.

The 1962 resolution begins with a statement of the grounds which justify the expropriation of property: "Nationalisation, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognised as overriding purely individual or private interests, both domestic and foreign." This text clearly recognised that the right of expropriation was not unqualified. But in the Charter, it is simply asserted that each State has the right to nationalize, expropriate or transfer ownership of foreign property. As there is no reference to the grounds upon which expropriation may be made, it must be assumed that the intention is that the nationalising State alone is to be the sole judge of the circumstances in which nationalisation is to take place.

On the question of compensation, the 1974 Declaration is silent. But the Charter is quite explicit: "Upon nationalisation of foreign property, appropriate compensation should be paid by the State adopting such measure, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States in accordance with the principle of free choice of means.[7]

The contrast with the formulation of the 1962 resolution is striking. This provides that in case of nationalisation, expropriation or requisitioning, "the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication". The structure and language of the

7. This accords with General Assembly Resolution 3171(xxviii) of 17 December 1973, which affirmed that the application of the principle of nationalisation carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each State carrying out such measures. Surprisingly this resolution was adopted by a vote of 108 in favour (including Australia), with 16 abstentions, and only one against (United Kingdom).

Charter provision are manifestly modelled upon that in the 1962 resolution, and the divergencies are made obvious: the jettisoning of any reference to international law as a factor in determining the compensation payable; the replacement of a requirement that national jurisdiction be exhausted unless the parties had agreed otherwise by one making it the final arbiter unless the States concerned agreed otherwise; and the limitation of international arbitration to disputes between States.

An amendment to the charter provision was submitted by a number of developed market economy countries (including Australia). This would have recognised that each State had the right to nationalize, expropriate or requisition foreign property for a public purpose, provided that just compensation in the light of all relevant circumstances was paid, and to require that its national jurisdiction be exhausted in any case where the treatment of foreign investment or compensation therefor was in controversy, unless otherwise agreed by the parties. This amendment was however rejected. Though Australia voted in favour of the Charter, it made an interpretative statement on the expropriation provision in which it expressed the view that any act of nationalisation should be accompanied by the payment of just compensation, without undue delay, to be determined where necessary through recourse to internationally agreed dispute settlement procedures.

The topic of sovereignty over natural resources is intimately linked with that of transnational corporations, since these are major vehicles for foreign investment in projects involving natural resources. It is natural therefore that the Charter's article on sovereignty over natural resources should not only assert the principle of full permanent sovereignty over natural resources, but should also insist that each State has the right (a) 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; (b) 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; and (c) to nationalize foreign property. It also issues an injunction that transnational corporations shall not intervene in the internal affairs of a host State.

The main forum at present for discussion of the issues raised by the activities of transnational corporations is the United Nations Commission on Transnational Corporations, a body created in 1974 by ECOSOC.[8] But, in typical U.N. fashion, other bodies within and without the formal U.N. system have attempted to define principles or suggest activities relevant to the work of the Commission. Thus at the Fourth UNCTAD, the developing countries submitted a resolution on transnational corporations and the expansion of trade in manufactures and semi-manufactures, which recommended that action be taken at national, regional and international levels to achieve a reorientation in the activities of transnational corporations towards more complete manufacture in developing countries and towards further processing of raw materials. It also urged that specific rules should be developed to control restrictive business practices of transnational corporations likely to affect adversely the import and export trade of developing countries in manufactures and semi-manufactures.[9]

8. See Rubin: Reflections concerning the United Nations Commission on Transnational Corporations (1976) 70 A.J.I.L. 73.
9. This was adopted by vote 80-0-16 (most developed market economy countries including Australia).

The concern of the developing countries to assert their sovereignty over their natural resources and their right to require that activities of foreign enterprises within their territories be fully subject to their control, is of course readily understandable in the light of instances (not all of them remote in time) of interference both of these enterprises and their home governments in the internal affairs of the host countries. At the same time, the formulation of their position on foreign investment emphasises exclusively the asserted rights of the host country, in a way which can only be regarded as hostile to the interests of foreign investors and capital-exporting countries. For the economic development of the developing countries, the movement of capital and of business skills from the developed countries to those countries is of crucial importance, and the transnational corporation will be the principal machine by which any such movement is effected. Any prospect that such enterprises or their home governments will adhere to a "Code of Good Conduct" will ultimately be dependent upon acceptance by host governments of certain commitments in relation to foreign enterprises. These would include a commitment to extend to foreign-controlled enterprises in their territories treatment no less favourable than that accorded in like situations to domestic enterprises,[10] and one relating to the protection of their property rights. Foreign investment must be attracted as well as controlled. Unfortunately, the Charter provision is devoted exclusively to the aspect of control. It is an urgent matter to balance it in a way which will take account of the interests of the capital exporting as well as capital importing countries.

**Transfer of Technology**

This topic is obviously closely related to the preceding. The economic growth of the developing countries is heavily dependent upon access to the technology which is possessed by the industrialised countries and in particular by their transnational corporations. Since 1971, UNCTAD has been involved in the implementation of a comprehensive programme of work in the field of transfer of technology to developing countries.[11] The specific objectives currently being sought are specified in the 1974 Programme of Action on the Establishment of a New International Economic Order. At the top of the list it inserts a claim that all efforts should be made to formulate an international code of conduct for the transfer of technology corresponding to needs and conditions prevalent in developing countries.

The views of the developing countries in relation to the proposed code of conduct were detailed in the Manila Declaration. It was asserted that in order to facilitate and increase the international flow of all forms of technology under favourable terms and conditions, to eliminate restrictive and unfair practices affecting technology transactions, and to strengthen the natural technological capabilities of all countries, a multilateral legally binding instrument was the only way of efficiently regulating transfers of technology, taking into consideration the particular needs of the developing countries. It was therefore proposed

10. Compare the Declaration on International Investment and Multinational Enterprises adopted by the OECD on 22 June 1976. The United States reservation to the 1974 Declaration stated its view that multinational corporations must act as good corporate citizens of the States in which they operate, and that multinational corporations are subject to the regulation and supervision of the countries in which they operate, but such regulation and supervision must be non-discriminatory and otherwise conform to the norms of international law.
11. See Transfer of Technology, an UNCTAD View (1972) 6 J.W.T.L. 252.

that a conference should be called during 1977 under the auspices of UNCTAD to establish such a code of conduct on transfer of technology.

For the industrialised countries, the mandatory character of the proposed code was unacceptable. Eventually at the Fourth UNCTAD consensus was reached on a resolution which recommended that work on drafting an international code of conduct for the transfer of technology be entrusted to an open-ended international group of experts, which would be free to formulate draft provisions ranging from mandatory to optional, without prejudice to the final decision on the legal character of the code of conduct, and that a United Nations Conference to be held by the end of 1977 should negotiate on the draft prepared by the group of experts and should take all decisions necessary for the adoption of the final document, including the decision on its legal character. This resolution suffices to enable work to proceed on the formulation of a code of conduct for the transfer of technology, while deferring to a later day the legal character of the code.

A further resolution on transfer to technology which is of particular interest to lawyers is that relating to revision of the Paris Convention for the Protection of Industrial Property. The General Assembly resolved in September 1975 that "international conventions on patents and trademarks should be reviewed and revised, to meet, in particular, the special needs of the developing countries, in order that these conventions might become more satisfactory instruments for aiding developing countries in the transfer and the development of technology. National patent systems should without delay, be brought into line with the international patent system in its revised form". The revision of the Paris Convention is currently being carried on by a W.I.P.O. Ad Hoc Group of Governmental Experts. The UNCTAD resolution emphasises such matters as the need to promote an effective transfer of technology to the developing countries under fair and reasonable terms and conditions; the insertion of more adequate provisions to avoid abuses of patent rights; the introduction of forms of protection of inventions other than traditional patents (such as inventors' certificates, industrial development patents, and technology transfer patents); and the need for technical assistance to developing countries in the field of industrial property.

The concern of the developing countries to reduce their technological dependence and to eliminate practices which limit the transfer of technology to them is fully justified. A rapid increase in the flow of technological knowledge from the industrialised to the developing countries is essential for an improvement in their rate of economic growth. But that flow must be of technology which is suited to their needs and absorptive capacity and it must be on fair terms. This is an area in which international co-operation is both feasible and desirable, and it is encouraging to see this is being recognised. The call by the developing countries for the establishment of appropriate institutional structures in developing countries both at the country level and in co-operation among themselves, and for effective co-operation from the developed countries and co-ordinated action by international organisations, has received full support from the developed countries. It should be noted that the institutional structures will include the establishment of regional centres which will be concerned in the exchange of information on sources of technology, the development of training programmes and the preparation of model contracts for licensing arrangements, while co-operation from developed countries will include action to control restrictive business practices which directly limit the transfer of technology to developing countries.

**An Integrated Commodity Programme**

The major initiative which has been taken within UNCTAD since the successful implementation in 1971 of a general system of preferences has been the development of an integrated programme for commodities. In the 1974 documents—the Declaration, Programme of Action, and Charter—commodity problems figure prominently, as they inevitably must in view of the heavy dependence of developing countries on exports of commodities for their foreign exchange requirements. The statements in these documents of the objectives being sought in the commodity field covered matters which had been to the forefront in UNCTAD deliberations over the past decade—including improved access to markets, the negotiation of commodity agreements, improved compensatory finance, limitations of new investment to produce synthetic materials and substitutes, and the establishment of general principles for pricing policy for commodity exports. The two matters which received particular emphasis were the role of producers' associations and the link between prices and those of manufactured goods. The preparation of an over-all integrated programme for a comprehensive range of commodities of export interest to developing countries was indeed included as an element in the Programme of Action, but it was probably envisaged by most U.N. members as simply involving a continuation or expansion of the programme in respect to some sixteen commodities which had been initiated at the Second UNCTAD.

The emphasis on producers' associations and on the link between prices obviously was a reflection of the particular circumstances which had affected commodity trade in the early nineteen seventies. The Declaration and Programme of Action were adopted at a special session of the General Assembly convened for the exclusive purpose of discussing economic and development questions. The specific reason for calling the special session was the deterioration in the economic situation of a large number of developing countries as a result of a sharp increase in the prices of essential imports of food, fertilisers, energy products, capital goods, equipment and services. Advocacy of the establishment of a link between the prices of primary commodities and manufactures was prompted by the view that this would serve to halt the adverse movement in the terms of trade of the developing countries. The support for producers' associations was stimulated by the success of the OPEC countries late in 1973 in trebling the price of crude oil within a few months.

Both these proposals were unacceptable to the industrialised countries. The United States in particular referred scathingly to the "impractical proposals to establish artificial and fixed price relationships between prices of exports and imports of developing countries",[12] while others contented themselves with the assertion that the establishment of a financial link between the prices of exported goods and those of imported products in the developing countries would be difficult to achieve.

The objection to producers' associations went beyond the practicability of the proposals. In the Programme of Action, it is stated that all efforts should be made "to facilitate the functioning and to further the aims of producers' associations, including their joint marketing arrangements, orderly commodity trading, improvement in export income of producing developing countries and in their terms of trade, and substained growth of the world economy for the benefit of all". This formulation is recast in the Charter so as to give recognition

12. Reservations by the U.S. at the Sixth Special Session of the General Assembly, reproduced in (1974) 13 I.L.M. at p.747.

to the right of States to form producers' associations. It provides that all States have the right to associate in organisations of primary commodity producers, and that all States have the duty to respect that right by refraining from applying economic and political measures that would limit it. To the major industrialised countries this clause is seen as an attempt to sanction the establishment of producer cartels. It was precisely to prevent their establishment that in the trading rules adopted after the war, it was stipulated that intergovernmental agreements which involved the regulation of production or quantitative controls of exports of a primary commodity or the regulation of price could be entered into only after a commodity conference had been called at which producing and consuming countries were entitled to be equally represented. If a country which is a contracting party to the GATT imposes quantitative restrictions on exports of a particular commodity as part of an "orderly commodity trading" arrangement with the other producing countries, its action will infringe Article XI of the GATT. The fact that its action may be consistent with a General Assembly resolution will provide no answer to a complaint by an affected country of infringement of GATT obligations.

It should be observed, however, that it is not contrary to GATT obligations for a contracting party to be a member of a producers' association. It is declared in Article XX (h) that nothing in GATT prevents the adoption or enforcement by any contracting party of measures undertaken in pursuance of obligations under an inter-governmental commodity agreement negotiated at a commodity conference of producers and consumers. But producers' associations may lead to action beneficial to producers which contravenes no article of the GATT. This would be so, for example, of arrangements between producers for the exchange of information, or for the better organisation of commodity markets.

By the time when the Ministeral Meeting of the Group of 77 was held in Manila late in January 1976, the emphasis on the role of producers' associations had become much more muted. The Manila Programme of Action was content merely to note that certain measures proposed to achieve the objectives of the integrated programme for commodities "could be reinforced by stimulation and promotion of action by producers' associations and by the adoption of measures designed to promote and increase trade in commodities among developing countries". The matter of the price link was carried over into the integrated programme. It was to the elaboration of this programme that most attention was devoted, and it was unquestionably the key issue before the fourth session of UNCTAD in Nairobi in May 1976.

The proposals for an integrated programme for commodities were initiated by the UNCTAD secretariat,[13] and supported enthusiastically at the Manilla meeting. In the Manila Programme of Action, the integrated programme for commodities is defined as a programme of global action designed to improve and establish new structures in international trade in commodities of interest to the developing countries. Essentially the aim of the programme was to stabilise trade in commodities identified as being of particular interest to developing countries and to support commodity prices at levels which in real terms were remunerative and just to producers and equitable to consumers. The proposal involved several basic elements, including the setting up of international commodity stocking arrangements, the establishment of a common fund for the financing of international commodity stocks, indexing the price of commodities exported by developing countries to the prices of manufactures imported from developed countries, and the enlargement of compensatory financing facilities

13. For an outline of the secretarial proposals, see International Trade Law at p.49.

It also involved a crucial issue of policy, namely whether an "integrated approach" as opposed to a "commodity by commodity approach" was feasible in dealing with commodity problems.

It was around the topic of establishment of a common fund to finance commodity buffer stocks, that most controversy developed in the course of the Fourth UNCTAD. The developed market economy countries were far from united on the issue. Some indicated willingness to contribute to a common fund if its establishment was judged useful as a means for implementing solutions for individual commodities; some questioned whether a common fund could attract additional resources on cheaper terms or whether it would be the most desirable approach to the stabilization of commodity trade; others were openly hostile to the proposal. The Conference came close to a breakdown over the issue; but in its closing hours, agreement was reached on a compromise solution. This was expressed in the following two clauses—

(a) to achieve the objectives of an Integrated Programme for Commodities, it is agreed to establish a common fund for the financing of international commodity stocks, co-ordinated national stocks, or other necessary measures within the framework of commodity arrangements.
(b) It is agreed that an ad hoc inter-governmental group shall be established within UNCTAD to start on 1 September 1976 negotiations on the modalities for the establishment of the common fund. These negotiations should be concluded by the end of 1977.

It would appear from this that agreement was reached on the principle that a common fund should be established, but that all details—including objectives of the fund, financing needs, sources of finance, mode of operations, decision-making and fund management—have been left to further negotiations and decision. The observation in the preamble to the resolution that "there are differences of views as to the objectives and modalities of a common fund" states in a very mild way the wide divergence of opinions manifested at the Conference. It is interesting to note that the United States made a statement on the commodity resolution in which it said that since there may be advantages in linking the financial resources of individual buffer stocks, it would participate in a preparatory meeting to examine whether further arrangements for the financing of buffer stocks, including common funding, were desirable, and that it would decide on its participation in a negotiating conference after the outcome of the preparatory discussions was known. The issue of establishment of a common fund is obviously far from settled.

The matter of indexation of prices was dealt with in a clause which recorded an agreement to take measures, in the context of international commodity arrangements, where appropriate in the light of the characteristics and problems of each commodity and the special needs of the developing countries, for the "establishment of pricing arrangements, in particular negotiated price ranges, which would be reviewed and revised periodically, taking into account, inter alia, prices of imported manufactured goods from developed countries, the cost of production, changes in exchange rates of currencies and the rate of world inflation, and levels of production and consumption". Obviously this amounts to something far less than full indexation. Prices of imported manufactures are simply to be taken into account in the periodic revision of pricing provisions in particular commodity agreements; there is no link asserted between prices of manufactures and of commodities. Nevertheless three developed countries—the United Kingdom, the Federal Republic of Germany and the United States—reiterated their reservations regarding indexation of prices in statements upon the commodity resolution.

In addition to the agreement on negotiations on the common fund, the Conference agreed that preparatory meetings for international negotiations on individual products would be convened over the period 1 September 1976 to 28 February 1977. These meetings would propose measures and techniques to achieve the objectives of the Integrated Programme, determine the resulting financial requirements and recommend appropriate follow-up action. As soon as possible after the completion of each preparatory meeting, commodity negotiating conferences are to be convened by the Secretary-General of UNCTAD.

If one compares the terms of the commodity resolution with the commodity provisions in the 1974 documents on a New International Economic Order, it will be immediately apparent that one has passed from a world of general conceptions to one of specific proposals. It will also be evident that there is no close relationship between the conceptions and the proposals. There are of course a number of recurring themes which will be found in all UNCTAD discussions of commodity problems, and these will be found both in the 1974 documents and in the 1976 resolution. But the spirit and content of the two are quite different. It was therefore possible for countries which had voted against the Charter to accept the 1976 resolution. The statement on the resolution by the Federal Republic of Germany was able to point out that "in joining the consensus, we have not now post factum agreed to what has been called the New International Economic Order or to its basic documents. Rather, we have agreed to some practical steps designed to improve the structures of the world economy". The real value of the Conference was that it extended to some extent the area of agreement on commodity problems between the developed and developing countries. The documents on the New International Economic Order are essentially a statement of the objectives and principles which the developing countries would wish to see accepted. The 1976 resolution represents the consensus of the international community on what is presently acceptable. It is not surprising that this falls short of the ideals set in the 1974 documents. It is, however, remarkable how little relevance these documents seem to have to the consensus reached at the Fourth UNCTAD.

### The International Monetary System and Development Finance

The Charter states (in Article 10) a principle that all States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic financial and monetary problems, inter alia through the appropriate international organisations in accordance with their existing and evolving rules, and to share equitably in the benefits resulting therefrom.

The right of all States to participate fully in making decisions on the international monetary system is a central theme in the Programme of Action. This states as an objective the full and effective participation of developing countries in all phases of decision-making for the formulation of an equitable and durable monetary system and adequate participation of developing countries in all bodies entrusted with this reform and, particularly, in the Board of Governors of the I.M.F. It also lists as an urgent measure more effective participation by developing countries, whether recipients or contributors, in the competent organs of the I.B.R.D. and I.D.A., through the establishment of a more equitable pattern of voting rights.

The dissatisfaction of the developing countries with the present international

monetary system which is reflected in these provisions relates to three matters: the lack of universality of the membership of the I.M.F. and I.B.R.D.; the system of weighted votes within these institutions; and the development of restricted groups which have exercised immense influence in international monetary matters. Lack of universality is important, but is not something which is attributable to the intransigence of the institutions. If one takes into consideration only the case of the I.M.F., it will be evident that there has been a great growth in membership till it now includes nearly 130 countries. Membership is not available to countries other than those which accepted original membership as of right; it is open only at such times and in accordance with such terms as may be prescribed by the Fund. But the non-participation by most centrally planned economy countries of Europe is a result of their own decision not to join or to withdraw from the institution. If applications are made to join the Fund, the only criteria it applies are that it must be satisfied that the applicant is in full charge of its external affairs and that all the obligations of the Articles can be observed.[14] It could scarcely require less than this. The weighted voting system is, however, understandibly an object of concern.[15] The principle adopted in the U.N. General Assembly that each state has equal voting rights was not accepted in the drafting of the I.M.F., except to the extent that all members have an equal number of basic votes. Further votes are weighted according to quota in recognition of the fact that members belong to a financial institution and have made varying contributions to its resources. It has been pointed out in an official commentary that in the drafting of the I.M.F. Articles and in legislative discussions of their acceptability, relative voting strengths, possible blocs, and possible alignments on particular issues were a major prooccupation.[16] It is not surprising that the major contributors to the Fund's resources should be unwilling to accept any system under which the overwhelming numerical superiority of members of the Group of 77 could be used to decide fundamental issues of the Fund's operations; and it is equally obvious why the developing countries are unhappy about a system where effective voting power is concentrated in a small number of industrialised countries.[17] The predominant position of these countries was reinforced by their membership of the Group of Ten (only recently expanded to be a Group to Twenty), whose meetings to discuss international monetary problems provided a forum which, it was widely noted, tended to usurp the position of the Board of Directors of the I.M.F.[18] It was for these reasons that the developing countries asserted strongly at the Fourth UNCTAD that the authority of the I.M.F. in international monetary negotiations and decisions should be increased and the role of restricted and unrepresentative groups reduced.

Closely linked with the question of decision-making is that of the size of quotas. Early in 1975 agreement was reached that quotas were to be increased by 33.6% and the financial strength of the major oil exporters was manifested in a decision that their quotas were to be doubled. At Nairobi, the Group B

14. See Horsefield (ed): The I.M.F. 1945-1965, Vol.II, at p.514.
15. For the operation of the system, see Gold: Weighted Voting Power, in 1974 A.J.I.L. 686. Five countries (U.S.A., U.K., West Germany, France and Japan) held over 40% of voting power in the I.M.F., with the U.S.A. alone holding 20%.
16. See Horsefield op. cit., at p.516.
17. The expert committee of 25 appointed in pursuance of a resolution of the 29th Session of the General Assembly in December 1972 to study and propose change in the economic sections of the United Nations system has recommended the revision of the I.M.F. and I.B.R.D. voting rights.
18. See Tew: International Monetary Co-Operation, 9th ed., at p.209.

countries referred with satisfaction to the fact that the recent decisions of the I.M.F. with respect to quota increases of its members had responded in particular to the emergence of new economic influence on the part of certain developing countries, increasing by this their participation in the decision-making process in the international monetary system, while retaining the relative position of the other developing countries. They were able also to refer to other recent I.M.F. developments of benefit to the developing countries, including the expansion and improvement of the compensatory financing facility which had been introduced in 1963 and the establishment of a Trust Fund to provide concessional balance of payments assistance for the poorer developing countries.

Both the Group B countries and the Group of 77 were agreed on the need for better international surveillance of international liquidity and for making the special drawing right the principal reserve asset in the international monetary system. The call by the developing countries that the I.M.F. Articles should provide for a link between S.D.R. allocations and additional development finance, (which repeated one made in the 1974 Programme of Action,) was answered by reference by Group B countries to a General Assembly Resolution adopted at the Seventh Special Session in September 1975, which affirmed that the establishment of a link between S.D.R.s' and development assistance should form part of the consideration by the I.M.F. of the creation of new S.D.R. as and when they are created according to the needs of international liquidity.[19]

The transfer of real resources to developing countries has naturally been to the forefront in all fora concerned with the problems of the developing countries. Draft resolutions on this matter were submitted at the Fourth UNCTAD, but were referred to its Trade and Development Board. It should be recalled that the General Assembly Resolution which designated the 1970s the Second Development Decade asserted that real G.N.P. in the developing countries should average a growth rate of 6% annually, and that, to this end, there should, during the decade, be annual net transfers of external resources equivalent to 1% of the G.N.P.s of donor countries, of which at least 70% should be official development assistance. The prospect that these goals will be achieved looks decidedly bleak at present.

Of more significance at that session was the debt problem of developing countries. An UNCTAD report stated that the external indebtedness of developing countries had risen from $9 billion at the end of 1956 to $119 billion (for the non-oil-exporting developing countries) at the end of 1973. As the cost of their imports rose faster than the revenues from their exports, their overall payments deficit jumped from $12 billion in 1973 to $45 billion in 1975. The Manila Declaration had urged that the official debts of the least developed, the developing land-locked and the developing island countries should be cancelled, and that other most seriously affected countries should, as a minimum, have their debt-service payments on official debts waived. It also proposed that payments of the commercial debts of developing countries should be rescheduled over a period of at least 25 years, and that a conference of creditor and debtor countries should be convened in 1976 to determine appropriate ways of implementing the principles and guidelines on the renegotiation of official and commercial debts to be reached at the Fourth UNCTAD.

19. The question of the link between S.D.R.s and development assistance was one of the most contentious items at the special session. The essential issue was whether S.D.R.s should be allocated to developing countries for development purposes as well as for liquidity needs. The traditional approach to the I.M.F. has been to make its resources available only to provide temporary assistance to a country in balance of payments difficulties.

In the view of the creditor countries, a conference is an inappropriate means for taking action to ease debts; the correct procedure is rather negotiation with individual countries. Though the debt problem was second only to the integrated commodity programme in the attention it received at the Fourth UNCTAD, the resolution on this matter merely recorded the agreement of developed countries to respond in a multilateral framework by quick and constructive consideration of individual requests, and asked international bodies to look at features which could provide guidance in future operations relating to debt problems as a basis for dealing flexibly with individual cases. It is understood the debt problem will be taken up later in the year in that mini-UNCTAD, the Conference on International Economic Co-operation.

## Conclusion

The General Assembly Resolutions adopted in 1974 which form the constituent documents for the new International Economic Order represent neither an initial statement of the aspirations of the developing countries nor a final formulation of their claims. They should be regarded simply as statements which reflect the matters which particularly concerned the developing countries in the very difficult circumstances in which so many of them found themselves in that year. The fact that some of these issues were less prominent in the Manila Declaration and at the Fourth UNCTAD in 1976, and that other issues had emerged as priority concerns, merely evidences the changing nature of the international economic environment and the mutations in opinions by developing countries as to what is desirable at any particular period and how it may best be attained.

Underlying all these shifts in emphasis and tactics is, however, an unyielding conviction that the present structure of international economic relations must be refashioned so as to improve the position of the Third World Nations. This requires a restructuring of world trade in commodities, in manufactures and in invisibles. It requires also the transfer to the developing countries of real resources for development and of technological skills. The transformation of the financial institutions so as to be more responsive to the needs and interests of the developing countries is also a basic objective. The enormous difficulty in obtaining a consensus on significant changes in the present structure has led often to the passage of resolutions couched in the language of deliberate confrontation. It is pointless to refer petulantly to the tyranny of the majority. The developing countries will, and must, use such strength as they have to promote change in directions they consider necessary. But change will come only to the extent that the developed countries are persuaded that their co-operation is necessary and feasible. Unrealistic demands will never secure such co-operation, and may easily be counter-productive. There are many ways in which the present international economic order is outmoded, inefficient and unjust. The constituent instruments of the New International Order are an important statement of the views of the poor countries as to how it should be transformed. It is easy to be critical of some of the proposals; but change in the direction of a structural reformation in the world trading and financial system so as to alleviate the present unfortunate situation of so many countries is imperative. It would be highly revealing and instructive if the developed countries, or some of them, were to set forth in a comprehensive way similar to that adopted by the developing countries their views of the manner in which the international trade and payments system should be reformed so as to produce a new and more just international economic order.