Maryland Journal of International Law

Volume 1 | Issue 1 Article 8

From the Energy Crisis to the Concept of an Economic Heritage of Mankind: Guidelines for Reorganizing the International Economic System

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FROM THE ENERGY CRISIS TO THE CONCEPT OF AN ECONOMIC HERITAGE OF MANKIND: GUIDELINES FOR REORGANIZING THE INTERNATIONAL ECONOMIC SYSTEM

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Many problems have shaken the international economic system in recent years. These problems have demonstrated the inadequacy of that system to meet the need of the contemporary international community in its complex political, social, cultural, and economic dimensions. The ups and downs of the monetary crisis, for example, have altered international trade; the energy crisis showed the enormity of the problem. Still more significant is the unstable relationship between different economic blocks, and the most unsatisfactory treatment that the problems of developing countries have received, both of which threaten to project the current partial, sectorial or transitory crisis into a generalized disruption of unpredictable consequences.

Historically, the reaction to these problems has been to seek partial solutions. Solutions have been *ad hoc* and limited to the sector in which the problem arose. Examples of this approach are (1) the creation of special drawing rights which was limited to solving problems of liquidity and pressures in the balance of payments;[1] (2) the initiatives to reform the international monetary system which bore no obvious relationship to reform of the system of international trade;[2] (3) the reform of the GATT, which was apparently aimed at strengthening the already dominant position of developed countries;[3] and (4) the establishment of a preference mechanism which was based on the mistaken belief that it would solve the problems and needs of developing countries.[4]

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[1] For the background on the creation of special drawing rights and their objectives, *see* J. GOLD, SPECIAL DRAWING RIGHTS: CHARACTER AND USE (IMF Pamphlet No. 13, 2d ed. 1970).

[2] Concerning the need for a close relationship between monetary and trade negotiations, *see* G. Erb, *New Trade and Monetary Systems*, THE UNITED STATES AND THE DEVELOPING WORLD: AGENDA FOR ACTION 31-34 (1973) (hereinafter cited as AGENDA). Developing countries have continually insisted on such a relationship, *see, e.g.*, the "Quito Appraisal," Latin America and International Development Strategy: First Regional Appraisal, 55 U.N. ECOSOC, Supp. 8, Vol. 1, at 89, U.N. Doc. E/5275 E/CN.12/958/Rev. 1 (1973), particularly the sections approved by ECOSOC Res. 320(XV). *Id.* at 88.

[3] Developing countries have noted that the multilateral trade negotiations of 1973 have not been adequately directed to their problems. *See*, ECOSOC Res. 326(XV). *Id.* at 129.

[4] Although the systems of preferences enacted by the EC, Japan and the United States (the new U.S. law may be found in Trade Act of 1974, §§ 501-505, 88 Stat. 2066) represent positive steps toward encouragement of the export of manufactures and semi-manufactures by developing countries, additional measures are also required for them to make full use of the potentialities of preferential systems. *See* AGENDA, *supra* note 2, at 35-37.

Whatever value these mechanisms might have, the fact that they were conceived as partial solutions accounts for their inability to solve the basic problems of the international economic system as a whole. The most basic problems are caused by the underlying economic principles of the Bretton Woods agreements and the economic scheme of the nineteenth century. These principles and their corresponding legal instruments have lost their *raison d'etre* and their operational effectiveness, and will eventually lose their legitimacy in an international community which is radically different from that from which they arose. Therefore, any permanent solution must be global. In particular, it must provide for full participation by developing countries whose presence is the fundamental change in the international community.

The purpose of this study is to examine the causes of obsolescence of the present international system and to suggest a basis upon which a general reform of the international economy might eventually rest.

1. *The outcome of uncontrolled economic freedom*

The basic principle which guided the classic economic structure, as established in the nineteenth century, was a free market and the international division of labor, implemented by means of the most-favoured-nation treaty.[5] Theoretically, identical or equivalent advantages would derive from this system for all countries, as determined by comparative advantages, freedom of competition, equal access to markets, and nondiscrimination. However, theory was strongly contradicted by practice.

The classic system entirely disregarded the fact that different levels of development meant a different capacity to take advantage of international markets.

While countries that were industrially, politically, and militarily powerful had every advantage in international markets, beginning with free access to raw materials and culminating with ample placement of industrial goods, other countries with little or no industrialization were limited to a flow of trade, the terms of which could become more unfavorable with every passing year, and which would be of little significance as a stimulus to their domestic development. The well-known phenomenon today in international trade of developing countries acting as suppliers of raw materials to developed countries and importers of industrial goods therefrom has resulted in a re-

[5] For an analysis of the operation of the most-favored-nation clause in the classic system with particular reference to Latin America, *see generally*, AMERICA LATINA Y LA CLAUSULA DE LA NACION MAS FAVORECIDA (F. Orrego Vicuna ed. 1972).

lationship which is formally different but substantially identical to that which existed under colonial domination.[6]

Several factors reinforced this relationship. One of them was the belief that raw materials, including the resources of the sea, were inexhaustible; this caused them to be assigned reduced values, and seriously depressed prices. Another factor was that the developing countries seldom accurately perceived the consequences of the relationship's operation.[7] Developed countries, however, clearly perceived the advantages and disadvantages involved. This is evidenced by the fact that they originally industrialized while protecting their national economies. Only when these economies matured did they then adhere to the rules of free trade in order to assure their position in the international economic system.[8] This perception greatly helped them to direct and influence the operation of the market, thereby insuring favorable conditions for their prosperity.

In short, the working of the system of uncontrolled economic freedom generated entirely different results for industrialized and developing countries. The industrialized countries were guaranteed freedom of access to raw materials, either by means of their own policies of foreign investment or by means of the simple purchase of the only goods that developing countries were in a position to produce, all of it at minimum prices. At the same time, the nondiscriminatory placement of their industrial production in the international market was also guaranteed, either by means of the protection granted by most-favored-nation clauses or, when required, by force of arms. For developing countries, the system meant the impossibility of creating an efficient industrial base of their own. Furthermore, the system failed to guarantee the developing nations nondiscriminatory access to the markets of industrialized countries since in practice these countries were free to enact discriminatory procedures and mechanisms even regarding certain raw materials in which they had little interest.

The outcome of this process was an enormous concentration of wealth and economic power in industrialized countries, as well

[6] In 1969, commodities represented 23.2% of the exports of developed market economy countries while manufactures represented 76.9% of total exports. For developing countries, these figures are reversed: commodities represented 76.2% of exports and manufactures constituted 23.8%. For socialist countries, these figures were 35.7% and 64.3% respectively. *Id.* at 127.

[7] However, a unique effort in this area was the Bello Clause, which strived to establish a system of regional preferences among Latin American countries, the advantages of which would not be enjoyed by third countries. It was an initiative which failed. *See*, F. Orrego Vicuna, *Estudio sobre la clausula Bello y la crisis de la solidaridad latinoamericana en el siglo XIX*, in AMERICA LATINA Y LA CLAUSULA DE LA NACION MAS FAVORECIDA 33-95 (F. Orrego Vicuna ed. 1972).

[8] *E.g.*, the United States only accepted unconditional most-favored-nation clauses in 1923; *see* the instructions of Secretary of State Hughes to the U.S. diplomatic corps, 5 HACKWORTH 272 (1943).

as the creation and progressive enlargement of the gap, which continues to widen, between them and developing countries.[9] Such a result is inevitable when powerful and weak parties are brought into a scheme of free competition, or, in other words, when parties which are economically unequal have their rights and obligations measured by equal legal standards. For this reason, when a state builds its national economic system upon freedom of competition, it always introduces corrective mechanisms directed to prevent adverse effects which otherwise would affect the low-income groups of that society.[10] However, none of these corrective mechanisms exist in the international economic system and their absence has been one of the causes of the present economic crisis.

2. *Bretton Woods: The Procedural Changes*

The Bretton Woods agreements were the first attempt to reorganize the international economic system. Their principal concern was to reestablish the operation of the international economy following the serious damage inflicted upon it by World War II. Emphasis was placed on reconstruction, particularly with regard to the industrialized countries affected by the war. Having reconstruction as its principal purpose, the Bretton Woods agreements never really questioned the foundations of the international economic system, but were based upon principles originating in the Nineteenth Century and were thereby inspired by the needs of the developed countries.[11]

The principal change with regard to the scheme prevailing before the war was only procedural: the creation of multilateral mechanisms and institutions, which contrasted with the bilateral techniques used in the pre-war period.[12] If the meaning of the new mechanisms is examined aside from procedural aspects, one

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[9] The following figures are demonstrative of this gap:

	Developing countries	*Developed countries*
Gross product per capita	$230	$3,085
Population (millions)	1,850	664
Literacy	40%	97%
Protein consumption (grams per person)	54/day	97/day
Calorie consumption	2,180/day	3,030/day
Life expectancy	52 yrs.	71 yrs.
Infant mortality (deaths per 1,000 live births)	110	21
Per capita power consumption (KWH per person per year)	220	5,140

Figures are from AGENDA, *supra* note 2, at 123.

[10] Among such mechanisms, the following may be mentioned as examples: social legislation to protect the weak from the powerful by application of unequal legal standards to parties which are also economically unequal; prohibition of restrictive or discriminatory commercial practices; and, the basic requirement of social coexistence, progressive redistribution of income to avoid concentration of wealth and to satisfy elementary dictates of social justice.

[11] J. JACKSON, WORLD TRADE AND THE LAW OF GATT, at 37, 39 (1969).

[12] In addition, multilateral negotiations reduced the opportunities of third country beneficiaries of most-favored-nation clauses to freely take advantage of the concessions granted in bilateral agreements. *Id.* at 40.

realizes that the earlier situation was retained unchanged. First, these mechanisms ensure the dominant position of industrialized countries in the conduct of the system, both at the political level and at the economic level, e.g., the voting arrangements in the United Nations Security Council or decision-making in the International Monetary Fund and in the World Bank.[13] Second, the nondiscriminatory access of industrial goods to the world market is strengthened by the multilateral guarantee of the most-favored-nation clause in the GATT and other tariff arrangements. Third, the access to raw materials also continues unchanged,[14] with important flows of investment securing the supply.[15]

The situation of developing countries in the system deteriorated. Prices and conditions of trade in raw materials became less favorable to developing countries while prices of industrial goods rose.[16] Developing countries seeking access to world markets for their production faced discrimination created not only by non-tariff barriers but also by the multilateral nature of the GATT.[17] Within the GATT developing countries have been kept in a peripheral position since they neither produce nor consume the principal goods subject to tariff negotiations, and they also do not enjoy the power of effective retaliation to prevent the application of discriminatory measures.[18] Freedom of competition was neither subject to corrections directed to prevent adverse effects upon developing countries, nor was it tempered by any effort to provide redistribution of income at the international level. International aid conformed to a concept of charity rather than to a significant policy of stimulating development, and it was often dispensed for political purposes; in any event, it was insufficient.[19]

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[13] This results not only in the concentration of decision-making power in developed countries, but also in concrete economic consequences. An example is that developing countries have only obtained 25% of the special drawing rights assigned to the members of the International Monetary Fund, a proportion determined by their shares in this organization.

[14] One of the principal objectives of the Atlantic Charter of August, 1941, that marked the beginning of the postwar system, was ". . . to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade in the raw materials of the world which are needed for the economic prosperity." J. JACKSON, *supra* note 10, at 38.

[15] The direct foreign investments of the United States in extractive activities increased from 5.020 million dollars in 1951 to 15.212 million dollars in 1961; by 1971, they had reached 30.978 million dollars. This represents a 203% increase for the 1951-1961 period, and a 104% increase for the 1961-1971 period. *See* Lincoln Gordon, *Multinational Corporations and the Less Developed Countries*, in DUSSELDORF CONFERENCE ON THE INTERNATIONAL CONTROL OF INVESTMENT 81 (1973).

[16] On the problems affecting the trade of developing countries, *see generally* H. JOHNSON, ECONOMIC POLICIES TOWARD LESS DEVELOPED COUNTRIES (1967).

[17] *Id.* at 78-110.

[18] C. Lafer, *El GATT, la clausula de la nacion mas favorecida y America Latina*, AMERICA LATINA Y LA CLAUSULA DE LA NACION MAS FAVORECIDA 123-148 (F. Orrego Vicuna ed. 1972). This study also demonstrates that the incorporation of Part IV in the GATT has, in practice, had no influence whatsoever in the situation of developing countries.

[19] The net flow of official assistance from all developed, market-economy countries for development has continuously decreased as measured by percentages of the gross national product. In 1961, it represented 0.53%; in 1971, it only represented 0.35%. AGENDA, *supra* note 2, at 159.

The only mechanism of the postwar system which to some extent was concerned with the situation of developing countries, the Havana Charter and the proposed International Trade Organization, never came into being.[20]

The economic system described above inevitably led to a crisis caused in part by the developing countries' search to achieve equitable participation in the international economic order. Before examining further the stance which the Third World has taken, some efforts which have sought to organize specific sectors of the international economic system on grounds different from the classic system will be examined.

3. *The Search for Alternative Principles*

The twentieth century has witnessed a number of efforts directed at organizing given sectors upon principles different from those which inspired the traditional economic system. Some of the new mechanisms have departed from the rules of market economies, while others have introduced differential treatment in accordance with the various levels of economic development of the parties involved.

State Trading

State trading was the first of the mechanisms to be applied. Strictly speaking, such trading was not intended to regulate international economic relations, but to organize the national economy on the basis of state monopoly, whether total or partial. However, since its effects were to close a given market and prevent the free play of competition, it necessarily had strong repercussions upon the development of international economic relations, particularly with regard to the impossibility of applying the most-favored-nation clause within that market. For this reason, countries that practice state trading normally have organized their international transactions on a barter basis. A consequence of this policy has generally been the nonparticipation of these countries in post war multilateral mechanisms.

State trading has not provided solutions to the problems of developing countries. A barter relationship, based on identical treatment for the parties, prevents developing countries from obtaining the preferential treatment required by their lesser

[20] The Havana Charter contained several chapters referring to "Employment and Economic Activity," "Economic Development and Reconstruction," "Practices of Restrictive Negotiations," and "Intergovernmental Agreements on Basic Products" that GATT has omitted. Proposals by Chile, Cuba, Brazil and India were directed to include a chapter on cartels and regulation of services. Brazil and India also advocated strict control over quantitative restrictions. C Lafer, *supra* note 18, at 124-130.

degree of economic development.[21] Also, state trading does not guarantee nondiscriminatory access for products from developing countries into state controlled markets—in essence, it is a discriminatory instrument.[22] Furthermore, the operations of state-owned enterprises in world markets display little or no difference with those of multinational corporations (MNCs).[23]

For the above reasons, state trading is not an alternative that might overcome the substantive problems arising from the international economic system, even though in given cases it may, to some extent, improve the bargaining position of developing countries, e.g., by allowing a more efficient utilization of their purchasing power.[24]

Commodity Agreements

To a degree, commodity agreements tend to bypass the principle of freedom of competition and the laws of supply and demand, while introducing some new approaches. These agreements involve limited institutionalization in which both producers and consumers of a given commodity meet in an effort to satisfy their respective interests. A degree of planning is introduced for this purpose, particularly with regard to volumes of production and prices.[25] Although, in theory, such agreements should be mutually beneficial, realizing stable prices for producers and regular supply for consumer countries, these results have seldom been attained, particularly with respect to prices. The reasons for failure are different with each agreement. In the case of the International Coffee Agreement,[26] for example, the market is characterized by overproduction and underconsumption, tending to depress prices. Since the product is not one of vital interest for consumer countries, they are able to enjoy an advantageous position from which they can control the operation of the system. In a context of pure supply and demand, results would have probably been worse, but this should not suggest that the agreement might be considered as a permanent

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[21] F. O. Vicuna, *El Comercio de Estado: Alternativa de la clausula de la nacion mas favorecida en la estructuracion del comercio internacional?*, ENSAYOS SOBRE DERECHO INTERNACIONAL ECONOMICO Volume II (F. O. Vicuna ed.).

[22] In 1970, the exports of developing countries to socialist countries represented only 5.8% of their total exports. AGENDA, *supra* note 2, at 130.

[23] During the discussions of Resolution 1721(LIII) of the United Nations Economic and Social Council that called for the appointment of a group of experts to study the role of multinational corporations, it was indicated that such study should not be limited to the case of private corporations, but should also cover the public bodies operating in developing countries. U.N. ECOSOC at 3, U.N. Doc. E/AC. 6/SR. 586 (1972) (Intervention by Mexican delegate, M. Munos Laredo).

[24] F. Paolillo, *El Comercio de Estado: Alternativa posible de la clausula de la nacion mas favorecida en la estructuracion del comercio internacional*, ENSAYOS SOBRE DERECHO INTERNACIONAL ECONOMICO (F. O. Vicuna ed.).

[25] On commodity agreements and other efforts of price stabilization, *see* H. JOHNSON, *supra* note 16, at 136-162.

[26] C. Lafer, *El Convenio Internacional del Cafe*, DERECHO DE LA INTEGRACION 111-135 (1973).

solution. In other cases, such as that of the Wheat Agreement,[27] although the original approach tended to depart from supply and demand, developments have moved it towards greater freedom in the market. This has occurred because it was to the advantage of developed countries, some of which are also major wheat producers.[28]

Experience with commodity agreements reveals that they temper the impact of the classic system, but cannot adequately cope with its deficiencies. However, even assuming that such agreements might constitute a feasible alternative, the problem of their sectorial nature would still remain; *i.e.*, even though economic relations between developed and developing countries might reach a perfect balance sector by sector, this would not be a sufficient solution, for the developed countries would still enjoy a dominant position over the whole, while a developing country would be restricted to only the specific sector imposed by its status as a monoproducer. Hence, the approach of any serious reorganization necessarily has to be global.

Trade Preferences

The third principal mechanism that has introduced new principles is that of trade preferences.[29] The most outstanding characteristic of preferences is the recognition, as a basic principle, of differential treatment in accordance with the degree of economic development. Through the use of trade preferences less developed nations are no longer subject in their trade to the same rules applicable to industrialized countries. Industrialized countries consent to be discriminated against in order to allow special treatment for the industrial exports of developing countries. The economic inequality of the parties is regulated by legal standards that are also unequal and to the benefit of the weaker party, which will have its competitive capacity increased thereby. This alone is an important development when compared with the most-favored-nation clause, since the latter, as explained above, subjects the parties to identical legal treatment in disregard of their different levels of development.

To the extent that the developed country will be paying a higher price than that which otherwise would have been paid in a scheme of free competition, preferences allow the social investment needed to produce a given good to move from the de-

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[27] F. Paolillo, *Los acuerdos internacionales sobre el trigo,* ENSAYOS SOBRE DERECHO INTERNACIONAL ECONOMICO (F. O. Vicuna ed.).

[28] Recently the United States has opted out of two other agreements oriented to regulate price problems of sugar and cocoa. *See* AGENDA, *supra* note 2, at 37.

[29] For a useful analysis of preferences in the perspective of the regulation of international trade, *see* G. Verbit, *Preferences and the Public Law of International Trade: The End of the Most-Favored-Nation Treatment,* INTERNATIONAL TRADE AGREEMENTS, 19-84 (1969).

veloping country to the developed country granting the preference and accomplishing a degree of redistribution of income at the international level.[30] This is fundamentally different from the system of "infant industry" protection, which was the greatest concession allowed by the classic system to aid the industrialization of developing areas, because the social investment is not entirely borne by the developing country itself.[31]

Notwithstanding the importance of these principles, preferences have not brought about a profound modification of the international economic system. Their transitory scope does not allow them to be considered as a permanent solution, and few developing countries will be able to take full advantage of them.[32] Also, the system does nothing to alter the trend toward higher prices for industrial goods which developing countries must always import. The benefits arising from trade preferences may be seriously eroded by continuing price increases of goods from developed countries. Furthermore, the impact of foreign investment policies on preference schemes must also be weighed, particularly in light of the opportunities they may offer to MNCs.[33] If, in addition, problems such as reciprocal preferences, discrimination by regional blocks or by sectors, and the fact that the controlling power of the system continues to be strongly concentrated in developed countries, are all taken into account, it is clear that preferences are still far from being a perfect solution.[34]

Although none of the three mechanisms discussed above has satisfactorily coped with the deficiencies of the classic system, they have nonetheless introduced valuable principles into the field, which if inserted in the proper framework, might become important parts of a more lasting solution. All these principles share a common departure from the scheme of unrestricted free competition; but while some of them emphasize the conciliation of the interest of producers and consumers by means of the regulation of the market, others emphasize a different treatment for different degrees of development, as well as the international redistribution of income. There are, moreover, two fundamental factors which also point to the need for a general reorganization

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[30] *Id.* 32-33.

[31] H. JOHNSON, *supra* note 16, at 181.

[32] For this reason, it has been proposed that the scheme of preferences be accompanied by other additional measures directed to increase the competitive capacity of developing countries. *See* AGENDA, *supra* note 2, at 36.

[33] Preferences may determine a transfer of industrial production from developed to developing countries in order to take advantage of the greater margin of competitiveness enjoyed by the benefited country; such transfers are greatly facilitated by the international mobility of capital, technology, and management capacity. *See* JOHNSON, *supra* note 16, at 194-195.

[34] For an examination of the arguments related to the advantages and disadvantages of preferences, *see id.* at 164-206.

of the present international economic order: the impact of multinational corporations in the traditional system, and the pressure of a third world organized as a group.

4. *The Multinational Corporations: The Classic System Questioned by Developed Countries*

The classic economic system gave birth to MNCs which have attained a high degree of development during the post war period under the Bretton Woods agreements. Favorable conditions for their development were provided, on the one hand, by the principles of a free international market and of unrestricted freedom of competition, and, on the other hand, by spectacular increases in foreign private investment, which were the consequence of the enormous concentration of capital that developed countries obtained through the benefits arising from the operation of that system.[35]

MNCs have clearly been faithful to the principles supporting the classic system: (1) they operate in the international market in accordance with the rules of comparative advantage and international division of labor, (2) they are based on and require free movement of capital, goods, and services, (3) they guarantee the nondiscriminatory access of industrial goods and technology to the international market, and (4) they have also assured, in many cases, the free access by developed countries to the raw materials of the developing world.

However, as MNCs developed, the magnitude of their impact on the very same international system was startling. The enormous volume of trade, investment and production concentrated in their hands,[36] in addition to operating with great flexibility in many countries,[37] not only transformed them into powerful economic forces, but also facilitated the process leading toward the achievement of autonomy from the nation-state.[38] Even though the different components of the MNCs might be

[35] Between 1960 and 1971, the book value of the direct foreign investments of the United States rose from 33 to 86 billion dollars; Great Britain doubled its investments, 12 to 24 billion dollars; Japan increased its investments by 15 times, 300 million to 4.5 billion dollars; Germany had an increase of ten times. United Nations: Multinational Corporations in World Development, U.N. Doc. ST/ECA/190, at 8 (1973).

[36] International production, that is, the production subject to foreign control or decision, has been estimated for 1971 to have been 330 billion dollars, and according to other calculations, it could be as high as 450 billion dollars; in any case, it is already larger than the total exports of market economy countries which reached 310 billion dollars. *Id.* 14. It has also been estimated that in the 1980's, 75% of world trade and industrial production will be concentrated in the hands of 300 multinational corporations. Vagts, *The Global Corporation and International Law*, 6 JOURNAL OF INTERNATIONAL LAW AND ECONOMICS 249 (1972).

[37] The United States and Western Europe have 7.276 parent corporations, with a minimum of 27.300 subsidiaries abroad. 3.357 parent companies have subsidiaries in one foreign country; 3.241 have subsidiaries in 2-9 countries; 501 have subsidiaries in 10-19 countries; and 177 have subsidiaries in 20 or more countries. U.N. Doc. ST/ECA/190, *supra* note 35, at 121.

[38] *See generally* R. VERNON, SOVEREIGNTY AT BAY: THE MULTINATIONAL SPREAD OF U.S. ENTERPRISES (1971).

physically located in given countries, the corporation as a whole has come to be guided by its own interests and policies, often different from those of the states in which it operates.

In many cases, the MNC's international mobility has allowed it to work simultaneously in different markets as a producer and as a consumer. It may produce raw materials in a developing country and consume them in a developed country, always applying the principle of comparative advantage although it would be no longer measured in terms of the interest of one country *vis a vis* another, but in terms of the strategy of production of a single entity. This has allowed the MNC to work either in conjunction with the interests of developed or developing countries, as dictated by its own interests in a given situation.[39] Other factors, such as technological development, transfer pricing, or restrictions imposed by the MNC on the local activities of its components, reveal that this unitary structure has surpassed traditional political frontiers.[40] However great might have been the impact of this phenomenon in developing countries, it has been even greater in developed countries, for the size of their markets, their consuming capacity and their abundance of capital constitute the natural framework for the action of entities the size of MNCs.

In the developed countries questioning of the merits of the international division of labor and of the uncontrolled freedom of the international market has begun in response to among other things: 1) realization of the difficulties, and occasionally the impossibility, of controlling the operations of MNCs, 2) the effects of foreign investments on developed countries' balance of payments situations, 3) rivalry between the industrial capacity of developed countries and that which developed country corporations have built abroad, 4) effects on domestic labor forces of MNCs' recourse to cheaper labor abroad, 5) negative trade balances, 6) speculative dealings by MNCs in national currencies, 7) complication of international political relations due to the policies of MNCs in foreign countries, 8) the menace posed by the energy crisis to the survival of developed countries as industrial societies, and 9) the performance of the major oil companies during the energy crisis.[41] The reaction of developed countries is still in its initial stages. So far it has mainly consisted of measures to protect the balance of payments, and other supporting actions in related areas. Also, numerous pro-

[39] The effects of multinational activities on international trade have been major, *see* U.N. Doc. ST/ECA/190, *supra* note 35 at 63-64.
[40] *Id.* 39.
[41] For a summary of the problems provoked by multinational corporations in their home countries, *see id.* at 56-57.

posals have been put forward concerning extraterritorial application of regulations, corporate behavior codes, disclosure of information, procedures for consultation and negotiation, and other initiatives, none of which has gone to the heart of the problem.[42] In fact, the dimensions of the problem only recently have begun to be appreciated, and there are no clear approaches yet on how to solve it.

Attention has been primarily directed at the MNCs, and they have been blamed for all of the adverse effects arising from the international economic system. However, such an approach is both limited and unjust. As was stated above, MNCs have been faithful to the principles of the classic system, and have perfected their operations within it. Therefore, the solution is not to control solely what is a manifestation of the problem, but to deal with the problem itself, *i.e.*, to reorganize the principles which guide that system, so that not only a single manifestation such as the MNC will come under control, but to insure that a large number of other undesirable phenomena will be prevented. In any case, the impact of MNCs has provoked the first efforts of developed countries to come to terms with some of the deficiencies of the classic system.

5. *The Consolidation of the Third World: The Power to Press Claims*

The postwar period also has witnessed a gradual acquaintance of developing countries with the real meaning of the international economic system. The first systematic efforts to correct the disadvantages of developing countries were formulated at the Havana Charter discussions.[43] What in the beginning was the position of a limited number of countries from Latin America and Asia gradually became the common conception of a large amalgam of countries which gained independence as a result of decolonization. Also, claims originally relating only to specific problems of international trade gradually encompassed the whole of commercial policies, foreign investment, maritime resources, and many other fields, leading to an overall questioning of the international economic system.

The process of institutional consolidation of the Third World has significantly accelerated in the last decade. Through the first joint actions in the United Nations General Assembly, characterized more by an intuitive approach than by the evidence of analysis, up to the first UNCTAD Conference, where coherent

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[42] For an examination of the different proposals in this field, *see* F. O. Orrego, *El control de las empresas multinacionales*, FORO INTERNACIONAL 106-128 (1973).
[43] C. Lafer, *supra* note 19.

pressure emerged, including a number of important experiences such as the nonaligned meetings, the Group of 77, or regional actions, the Third World became more self-aware and acquired a degree of ability to develop common and sustained positions.[44]

Notwithstanding growing coordination, the Third World is still far from constituting an homogenous group, nor is it capable of pursuing unified policies. The different levels of development within the Third World, in which the gap between the poor and the prosperous developing countries is greater than the one between the latter and developed countries, the often competitive interests which Third World countries have as producers, and the differences in political and cultural systems all tend to disperse both action and strategy. This explains why, beyond broad basic principles, the Third World has not yet reached an agreement on how to organize and implement their specific claims, except in given sectors.

It is a mistake to conclude from the foregoing, however, that the diversity of the Third World is stronger than its tendencies toward unification. This has been the erroneous judgment of developed countries, which have followed the strategy of disregarding the claims of the Third World by either not discussing problems or, when forced to discussion, ignoring the resulting recommendations, confident that 1) elements of disagreement among Third World states would reduce the effectiveness of their claims, and 2) that bilateral or regional agreements would always be possible to cope with the specific problems involving the interests of developed countries.[45] Such a strategy can succeed in the short-term, but will not be effective in the medium or long-term, for the position of the Third World has become more radical as a consequence of having failed to obtain satisfactory solutions with regard to any of its basic claims. If, e.g., a comparison is drawn between the first formulations before the General Assembly, those before UNCTAD I, and those of more recent nonaligned conferences, the evolution is clearly apparent. Similar trends are also present in other areas, such as foreign investments or the law of the sea.

Dissension in the Third World is real, but more real is the clear understanding of the problems inherent in the international economic system, and in particular, of the fact that the system has only granted developing countries a peripheral role which does not take their needs into account. This conviction has turned

[44] F. H. Paolillo, *La Estrategia del tercer mundo: Apuntes sobre la solidaridad de los paises en desarrollo en su lucha internacional por reivindicaciones economicas*, ENSAYOS SOBRE DERECHO INTERNACIONAL ECONOMICO Volume II (F. O. Vicuna ed.).

[45] The negative votes and abstentions of developed countries with regard to General Principles and Special Principles in UNCTAD I is a sufficient demonstration of this point. *See* charts in JOHNSON, *supra* note 16, at 252-253.

into a common Third World philosophy and as such is applied in all circumstances. This appreciation of common problems explains a permanent conceptual unity which, even though still limited to basic guidelines, is sufficiently strong to persevere despite damage done to Third World unity by dissension and competition among the developing countries.

Controlling Raw Materials

Until recently, the strategy of the Third World had emphasized the pressing of claims to obtain certain concessions from developed countries. These claims were generally passive and related to nondiscriminatory access to developed country markets and to fair prices; Third World strategy did not utilize the developing countries' own economic potential to strengthen their position in the international system. During the 1960's, as a consequence of not having their formulations considered, the development began what could be called active claims. This later period is characterized by a Third World which has learned to take advantage of its own strength, not relying any longer on what developed countries might voluntarily concede, but adopting those measures considered appropriate to attain desired goals.

Recognizing that much of the economic wealth of the Third World is in its raw materials, the active strategy naturally was concentrated in securing their control. Factors such as the weight of the Third World's enormous population and its impact on the world political scene greatly helped this strategy to attain considerable effectiveness. The major move of the Third World has been to no longer allow free access by developed countries to its raw materials on terms imposed under the classic economic system. This decision was actually not the result of a previous arrangement between Third World countries, but emerged spontaneously and simultaneously in different places. In some cases this has been implemented by means of legislation regulating foreign investments, in other cases, by means of ensuring state participation, and, in extreme cases, by means of direct or indirect nationalization.[46] In any event, it is clear that the present access of developed countries to raw materials is subject to many more conditions and controls than during the early postwar period. This is a tendency which certainly will accelerate in coming years.

Still more significant is the tendency of developing countries to control the whole of the sources of supply of a given raw ma-

[46] The list of expropriations and other measures that have affected American properties abroad is a demonstration of this tendency. Between 1960 and 1971, 34 countries applied measures of this kind: 9 in Latin America, 15 in Africa, 5 in the Middle East, and 5 in Asia. *See Report on Nationalization, Expropriation, and other Taking of U.S. and certain Foreign Property since 1960*, 11 INT'L LEGAL MAT. 84-118 (1972).

terial by means of producers' agreements. Among the several producers' agreements that have been concluded,[47] certainly the best known is the Organization of Petroleum Exporting Countries (OPEC), which has taken advantage of the peculiar conditions of the oil market—underproduction and overconsumption—and has marked a turning point in the evolution of Third World strategy. This development reveals the difference between the period of passive claims and that of active claims. While in the initial period OPEC strove for better prices and conditions of exploitation through negotiations with multinational oil corporations,[48] in the later period it has proceeded to independently implement measures deemed appropriate for attaining its desired goals. The result not only demonstrated the feasibility of regulating production and increasing earnings, but also demonstrated the economic vulnerability of developed countries.

The paradox arising from the experience with producers' agreements is that they are also products of the classic economic system, with its principles of freedom of competition, supply and demand, and absence of restrictions. The only difference is that in this instance, and perhaps for the first time, the dominant position has been exercised by developing countries. The formation of a producers' agreement is equivalent to the creation of a cartel, of the same kind which for years was organized by the producers of industrial goods taking advantage of the absence of international controls.[49] Price increases are the result of an unbalanced supply and demand, which does not differ from the traditional techniques employed many times by developed countries. The discrimination in the access to product is also equivalent to the traditional discrimination suffered by the exports of the third world. The political utilization of the situation also does not lack precedent. It is even possible to observe that the overall results of the process are identical to those generated in the classic system: the concentration of enormous amounts of capital and wealth in the hands of the beneficiary having the dominant position,[50] coupled with the gradual deterioration of the position of the trading counterpart.

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[47] For a summary description of the principal producers agreements, *see* H. BACHMANN, THE EXTERNAL RELATIONS OF LESS-DEVELOPED COUNTRIES 252-253 (1968).

[48] For a chronology of negotiations, *see* I. M. Paul, *La Organizacion de Paises Exportadores de Petroleo (OPEP)*, ENSAYOS SOBRE DERECHO INTERNACIONAL ECONOMICO Volume II (F. O. Vicuna ed.).

[49] On cartels and other restrictive business practices, *see* Restrictive Business Practices in Relation to the Trade and Development of Developing Countries, U.N. Doc. TD/B/C.2/119 (1973).

[50] The World Bank has estimated that at a market price of $8 per barrel of oil, the member countries of OPEC will reach an income of 85 billion dollars in 1974. This figure is particularly impressive when contrasted with the total earnings of developing countries, excluding oil countries, which reached only 47.4 billion dollars from exports of goods and services. It has also been estimated that by 1980, the OPEC income could reach 150-200 billion dollars which would be equivalent to one-half of the present total exports of developed countries. International Bank for Reconstruction and Development (World Bank), *Prospects for the Developing Countries*, (Report No. 477, July, 1974).

On the other hand, it is also curious to observe that the reactions to this process, when practiced by raw materials producers, are identical to those in the classic system, but the roles of the parties are reversed. The goal of producing countries has been to reach bilateral agreements with consumers, a technique which allows the former to accrue major benefits.[51] It should be noted that this was the system prevailing until Bretton Woods, and to a significant extent is still operating. In contrast, the countries affected by the scheme have been forced to harmonize their actions for joint defense. This is a strategy for which unified action has been difficult to achieve.[52] At least in the specific sector covered by a producers' agreement, the Third World has learned from developed countries how to obtain maximum benefits from the classic system; and the developed countries are learning from the Third World the strategy of pressing claims.

Although it is true that the impact of OPEC has to a large extent been due to the particular characteristics of the oil market and the energy structure of developed countries, the influence of the general strategy of the Third World should not be underestimated. It is clearly possible that this experience will be repeated in all those sectors in which the Third World controls raw materials vital to developed country interests. As an example, a few developing countries control all or a great percentage of the supply of bauxite, copper, tin, and natural rubber.[53] The list could be lengthened since most developed countries are net importers of minerals.[54] It is also possible to foresee the creation of intersectorial agreements between competing producers of different raw materials. For example, a cartel of copper and bauxite producers could control the market for all major electrical conductors. Eventually, the scheme could cover the spectrum of all raw materials.[55]

The control of raw materials by the Third World has fundamentally altered the operation of the classic economic system, for

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[51] An example of this tendency can be found in the warning given by the Oil Minister of Saudi Arabia, Zaki Yamani, to Japan, about the serious problems which Japan could encounter if it sought a plan of common action with other consuming countries rather than pursue a bilateral agreement. The Washington Post, January 29, 1974, at 1, col. 8.

[52] An example of this difficulty was the display of cautious attitudes of many participating countries, particularly France, exhibited at the Washington Energy Conference held by the U.S. Government on February 11-13, 1974. The Washington Post, February 14, 1974, at 6, col. 1.

[53] A conference of the five major producers of bauxite, Guinea, Australia, Guyana, Jamaica, and Surinam, was convened by Guinea in February, 1974. Four countries control 80% of the world's copper supplies, and are organized in the Inter-Governmental Council of Copper Exporting Countries (CIPEC). Two countries control 70% of the supply of the world's tin, and four countries control one-half of the production of natural rubber. The Washington Post, January 14, 1974, at 1, col. 6.

[54] The United States has a deficit of 6 billion dollars a year in the import of minerals. *Id. It is estimated that in 1985, the United States will import all of its chromium, cobalt,* manganese, and tin, as well as high percentages of aluminum, iron, nickel, and other minerals. AGENDA, *supra* note 2, at 137.

[55] For an examination of the principal trends in this area, *see* AGENDA, *supra* note 2, at 13-14.

it no longer assures free access to such products, one of the basic objectives of the international division of labor. To the same extent, the mobility of foreign investments has also been affected. Therefore, the questioning of the classic system by developing countries has had tangible results. In turn, such results have been possible because of a profound change of circumstances: raw materials which for many years were considered inexhaustible, abundant and cheap, are now in short supply and are consequently more expensive.

However, these recent developments are still far from offering solutions to the many problems affecting developing countries. At best, they involve a relative improvement in the specfic area of raw materials pricing. Even this benefit is problematic, for as the abuse by developed countries of the classic system generated phenomena that now are beginning to affect them adversely, an overcapitalization upon the present situation by developing countries could lead to counter-productive effects, an example of which would be a world recession provoked by the price of oil.

The pressure from the Third World has been sufficiently sustained and intense in order to create conditions appropriate for consideration of reorganization of the international economic system on grounds that will respond to the legitimate needs of both developing and developed countries. Also, this pressure, and in particular the energy crisis, has put developed countries in a position to appreciate more clearly the inadequacies of the classic system, which, together with the problem of MNCs, has demonstrated that the situation has sufficiently matured for states to proceed to reorganization of the international economic system.

6. *The Outlines of a World Economic Crisis*

The problems and tendencies examined above reveal that the classic system is no longer capable of fulfilling the needs of developed or developing countries. The former do not enjoy at present the freedom of access to raw materials enjoyed in the past and the prices of these raw materials have been increased. The comparative advantage of producing industrial goods has, to some extent, been diminished. A consequence of this is that the international division of labor no longer necessarily determines a permanent flow of wealth to developed countries, and a growing amount of earnings must be used to buy the commodities of the Third World. The nondiscriminatory access of industrial goods to the international market has partially lost its effect as a net generator of income. Also, many of the benefits of the classic system tend to be concentrated in MNCs which, in many cases, can no longer be entirely identified with the interests of their countries of origin. It would certainly be an exaggeration to state that all of these results are presently felt generally or that they are absolute, but it is nonetheless true that trends and practical examples do point in this direction.

Developing countries certainly remain disadvantaged: partially due to the inequitable structure inherited from the classic system and to the fact that the improvement recently attained in the prices of raw materials only satisfies one of the many problems affecting them. It is difficult to predict the degree of stability or permanence of even these improvements when the enormous capacity for technological development of developed countries is taken into consideration.

Therefore, a number of problems in need of solution are always present. The most important of these problems are: the price of industrial goods which developing countries must import, the access of developing country production to developed markets, the restrictive practices of MNCs and state corporations, the absence of international income redistribution coupled with the tendency of developed countries to restrict bilateral and multilateral aid, and what in general has been described as the peripheral international role of developing countries.

These complex problems explain the many minor crises unfolding within the international economic system, all of which are manifestations of the general crisis underlying the entire process, determined by the inadequacy of the principles of the classic system as applied to contemporary reality. The response which still prevails is to search for partial and *ad hoc* solutions with regard to each individual crisis. For example, the problem of MNCs is approached without any reference to the causes from which it originates: or the energy crisis is approached by seeking an agreement between producers and consumers in that specific sector with no reference to its causes, which are more profound and general and certainly exceed the framework of that individual sector.

This partial approach only aggravates the situation, and postpones a lasting solution. In fact, even if one assumes, as an example, that a mutually satisfactory agreement is reached by the parties involved in the energy crisis, it certainly does not prevent the problem from arising repeatedly in other sectors. Assurance of the prosperity of a limited number of producing countries has little influence on the overall problem affecting the Third World or on the producers of other raw materials. On the other hand, sectorial agreements would always allow the control by developed countries of the aggregate of sectors forming the international economic system, since, as indicated above, developing countries can only operate in the specific sector imposed by their individual circumstance as a monoproducer. The problem of equitable participation in the direction of the system would not be solved: this is one of the basic needs determined by contemporary reality. A similar situation is found in the case of "solutions" directed toward creation of bilateral agreements between developed countries and developing countries which produce vitally needed raw materials, in which the former offer to industrialize the latter in return for a guaranteed supply.[56] The contribution of such agreements to a general solution is nil. Even should this scheme be carried to a regional scale, the same problems would still remain, with the aggravating factor that the operational capacity of the Third World would be seriously impaired, for it would mean its division into blocks linked to one or more developed countries on the top.

It is therefore appropriate to insist on a global arrangement, particularly if regional solutions would prevent multi-regional, sectorial, or inter-sectorial agreements of producers. The bilateral or regional approach could perhaps be conceived of as a transitory stage in the process leading to a global reorganization, for it would be unrealistic to request that developing countries refrain from any arrangement in the meantime, but the final objective must necessarily be a global scheme. It is possible to conclude, therefore, that since the crisis affecting the international economic system is generalized, the solution must, as the sole alternative to secure stability and permanence, be of an identical nature. This approach assumes that the international community is willing to search for rational solutions which exclude the argument for the use of force and retaliation by developed countries, an argument which is not improbable if peaceful solutions are not found in the short-term, even though such methods would mean the beginning of a similarly generalized confrontation between developed and developing countries.

7. *Towards the Concept of an Economic Heritage of Mankind*

Any attempted reorganization must seek a solution to the recently manifested problems of the interdependent international community. The most basic need, of course, is to halt the developing countries' decline into progressive impoverishment while developed countries increase their prosperity. This should be a

[56] Japan has entered into several agreements with oil producing countries of the Middle East which provide for the export of different industrial products. The Washington Post, February 3, 1974, at A5, col. 1. France has concluded agreements with Libya which eventually may involve projects totalling up to 5 billion dollars. The Washington Post, February 15, 1974, at A26, col. 3.

fundamental principle of peaceful social coexistence. In rescuing the developing countries, a world economic system must accord them equitable participation in that system.

The freedom of competition upon which the classic system was based is incapable of securing balance between developed and developing countries not because the principle as such is inappropriate, but because it has never been fully applied in practice. To assure the existence of fair competition, the abolition of all kinds of restrictive practices is initially required, but the classic system did not do this. Competition also requires that a dominant position not be abused, but in the classic system developed countries and MNCs used and abused their dominant position. Above all, fair competition requires a special protection for those who, by virtue of their weakness, are not in a position to resist the overwhelming economic power of developed countries. This dictates preferential treatment and not formal legal equality. Furthermore, competition requires two basic indispensable measures: 1) nondiscriminatory access to supplies and markets, to secure equal opportunities, and 2) redistribution of income to prevent concentration of economic power, and to guarantee a basic income for low-income groups. These requirements, which were not met under the classic system, must become the guideline for reorganization of the international economic system within a generally competitive framework.

The resources and wealth of the international community can no longer be considered or administered as the property of the powerful; it is necessary to advance to a stage in which they are conceived of as the *economic heritage of mankind* in which all nations may have rights and also obligations within a framework which recognizes the legitimate needs and aspirations of all nations.[57] This concept of the economic heritage of mankind could be based on the following minimum standards and principles:

(i) *Nondiscriminatory Access.* A principle of nondiscriminatory access would secure for developed countries the raw materials necessary for their industries, but there would no longer be "free" access. Instead, access would be based on *equality of opportunities,* with due regard being paid to the availability of commodities. Thereby, in addition to preventing the economic abuse of supplier nations, future embargoes would also be prevented. The developing countries would also be afforded non-

[57] A precedent of great importance in this sense is the Declaration of Principles approved by Resolution 2749 (XXV) of the U.N. General Assembly, declaring that the sea-bed and ocean floor beyond the limits of national jurisdiction is the "common heritage of mankind."

discriminatory access to the markets of developed countries for their production. This access, guaranteed within a scheme of preferential treatment which would account for varying degrees of development, would reasonably enable developing countries to compete economically on an international scale. It would also be necessary to develop a price balance scheme which would guarantee equitable treatment for all states.

(ii) *Prevention of Adverse Effects.* Restrictive practices of MNCs and state corporations, governments, and others should be prevented and punished regardless of whether they originate in developed or developing countries. Such practices would be allowed, however, if they were legitimate responses to a need for economic protection of a country or a group of countries. Abuse of a dominant position also would be prevented or punished. More importantly, the above principles also would be directed to prevent a given measure, even though legal, from resulting in adverse effects for the economy of one, several, or all countries, according to their economic capacity. Thus, e.g., if the excessive price increase of a given product, not responding to a manipulation but to a situation of scarcity, would result in a strong deterioration of the balance of payments of a country which cannot reasonably afford it, the principle would operate to attempt to solve the problem.[58] However, it is necessary that the producer should not be affected to an unreasonable degree. The same function would be performed in cases of abnormal decrease in prices, serious monetary fluctuations, or other circumstances capable of having major impact on economic stability.

(iii) *The Redistribution of International Income.* The key mechanism of a new economic system should be the redistribution of income in given proportions of the benefit obtained. As indicated above, this is the only possible manner by which to guarantee that there will not be an excessive concentration of international economic power and that low income groups will attain a minimum income. This is the best possible guarantee for international stability and justice. Although trade preferences involve some degree of redistribution, the amount is very small; nor is international aid sufficient, even assuming that developed countries would transfer 1% of their gross national product to developing countries.

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[58] Figures from the World Bank indicate that in 1972, developing countries paid 900 million dollars for their imports of oil; in 1973, the cost increased to 2.3 billion dollars; in 1974, it will reach 11.6 billion dollars; and it is estimated that in 1980, these figures may be anywhere between 25-38 billion dollars. The impact of this situation on the balance of payments is enormous, since in 1970, the total foreign exchange receipts of developing countries, excluding oil exporting countries, only reached 66.9 billion dollars including all exports of goods and services, official and private flows, transfer of payments, credit lines, and special drawing rights. *Supra* note 51.

It is therefore necessary to establish an international tax system, which in an appropriate manner would tax the income derived internationally and from other sources on a progressive scale.[59] An international fund should be created to channel this redistribution. This system would apply to all nations proportionately, thus insuring that if great amounts of capital and wealth would be concentrated in the hands of some developing countries, the other developing countries would benefit from a reasonable redistribution, which should at least cover excess profits.[60]

(iv) *Institutionalization.* The application of all of these principles will require the creation of the necessary institutions for their administration and supervision. However, there is no need for enormous bureaucratic machinery. A body with a large capacity for verification and analysis, accompanied by a system of adequate sanctions would be sufficient. States themselves would report activities contrary to the principles of the system to an administrative mechanism. A general obligation to disclose information should be established, and the mechanism should be granted the powers necessary to request and obtain such information. None of these features would prevent the operation of a broad procedure for consultation and negotiation between the parties involved, although the creation of a mechanism for genuine impartial settlement of economic disputes should also be considered. Eventually, these institutions could be entrusted with the function of verifying the compatibility of foreign investments submitted to it with the principles mentioned above, particularly with regard to the conditions of contracts. Qualifying investments would be granted either a guarantee of inexpropriability or international insurance covering certain risks.

Many of these functions, including that of income redistribution, could be performed by international organizations created at Bretton Woods which would be reorganized in accordance with the new international economic system, as well as other existing agencies with the appropriate technical expertise. However, an imperative for the proper functioning of the system is that developing countries be accorded equitable participation in the institutional and decision-making mechanisms, for otherwise the system will continue under the exclusive control of developed country interests.

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[59] For several proposals related to partial tax schemes, *see* J. W. Howe and M. Weiss, *New Financial Resources for the Poor Countries*, AGENDA, *supra* note 2, at 54-55.

[60] The Shah of Iran has suggested that the income obtained by oil producing countries which cannot be utilized in those countries, should be made available to an international bank for aid to developing countries. Interview by DER SPIEGEL, reported in The Washington Post, February 3, 1974, at C1, col. 5.

Conclusion

The evolution of international society has a close relationship to the past evolution of national societies. The industrial revolution of the Nineteenth Century, which generated enormous prosperity, also created strong social tensions as a result of the inadequate redistribution of income, the concentration of economic power, and the lack of protection of the weaker sectors. The only alternative to social chaos, violent confrontation, and repression was the adoption of standards of social justice, protective legislation, social security and income redistribution. Those states which chose the latter alternative advanced to even greater levels of prosperity and stability. The present choices before international society are similar. The concept of the economic heritage of mankind represents a viable option for the introduction of standards of international social justice into the world economic system, not as an inflexible tool, but as a minimum and mutually acceptable pattern for action. This proposal may strike some readers as utopian, but in any case, it is preferable to experiment than to risk the collapse of the present system, with ominous consequences for the preservation of peace and world order.