UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/39/504/Add.1
23 October 1984

ORIGINAL: ENGLISH

Thirty-ninth session
Agenda item 120

PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

Report of the Secretary-General

Addendum

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PREFACE

1. On 13 January 1984, the General Assembly adopted resolution 38/128, entitled "Progressive development of the principles and norms of international law relating to the new international economic order."

2. By paragraph 1 of this resolution, the General Assembly requested the United Nations Institute for Training and Research (UNITAR) "to continue preparing the third and final phase of the analytical study" on the topic which figures in the title of the resolution "and to complete it in time for the Secretary-General to submit it to the General Assembly at its thirty-ninth session." By paragraph 2 of the resolution, the Assembly requested UNITAR to prepare an outline and summary of the study in order to facilitate debate.

3. It will be recalled that this resolution is the last in a series of four resolutions of the General Assembly addressed to UNITAR on this item. By resolution A/35/166 of 15 December 1980, the General Assembly first assigned to UNITAR the task of preparing "an analytical study ... on the progressive development of the principles and norms of international law relating to the new international economic order." Thereafter, by its resolutions A/36/107, A/37/103, and lastly said resolution A/38/128, the General Assembly extended, in each instance, the mandate of UNITAR to complete the analytical study.

4. It will be further recalled that at the thirty-seventh session of the General Assembly UNITAR submitted a progress report, contained in document A/37/409, and papers on three principles relating to the new international economic order (NIEO):

(a) Preferential treatment for developing countries;

(b) Stabilization of export earnings of developing countries;

(c) Permanent sovereignty over natural resources.

These, together with analytical appendices of texts of relevant instruments, are contained in document UNITAR/DS/5 (15 August 1982).

5. At the thirty-eighth session of the General Assembly, UNITAR submitted a further progress report, contained in document A/38/366, and papers on three more principles relating to the new international economic order:

(a) The right of every State to benefit from science and technology;

(b) Entitlement of developing countries to development assistance;

(c) Common heritage of mankind.

These, together with analytical appendices of texts of relevant instruments, are contained in document UNITAR/DS/6 (12 October 1983).

6. Document UNITAR/DS/6 also contains the analytical compilation of texts of instruments relevant to the principle of "Participatory equality of developing countries in international economic relations." The analytical paper on this principle, however, was deferred for submission to the General Assembly at its current (thirty-ninth) session. This analytical paper is now being submitted to the General Assembly under document number UNITAR/DS/6/Add. 1, as an addendum to the aforementioned document UNITAR/DS/6 of 12 October 1983.

7. The present document contains the outline, summary and final analytical study called for by General Assembly resolution 38/128 (see paragraphs 1-2 above). These are denominated, respectively, Annexes I, II and III to the report of the Secretary-General (document A/39/504). Additionally, this document contains, in Annex IV thereof, the report of UNITAR, detailing the work done by the Institute in connection with this agenda item.

8. As indicated in its cover page, the present document should be read in conjunction with the report of the Secretary-General under agenda item 120, General Assembly, thirty-ninth session, document A/39/504.

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(submitted pursuant to paragraph 2 of General Assembly Resolution A/38/128 of 13 January 1984)

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ANNEX II

Summary of the analytical study

(submitted pursuant to paragraph 2 of General Assembly Resolution A/38/128 of 13 January 1984)

I. INTRODUCTION

1. Following an introductory section which contains definitions of the terms in the title of the report, namely, the "New International Economic Order" ("NIEO"), "principles and norms of international law" and "progressive development," the analytical study addresses the question of whether the relevant principles and norms can stand as valid normative propositions, in isolation as well as in relation to each other. This "intrinsic" test as regards the integration of the principles and norms in question in the existing corpus of international law is the focus of the remainder of the study and consists of an analytical examination of their various components (content analysis).

II. CONTENT ANALYSIS OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

2. The study proceeds from the premise that all the relevant principles and norms derive from and revolve around two of the most fundamental principles of contemporary international law: sovereign equality and the duty to co-operate, whose salient features are analyzed.

A. Sovereign Equality

3. Three of the "principles and norms of international law relating to the NIEO" are identified as clearly being within the ambit of the principle of sovereign equality: the right of States freely to choose their economic system, permanent sovereignty by States over their natural wealth and resources, and the principle of participatory equality of developing countries in international economic relations.

1. The right of States to choose their economic system

4. Based, inter alia, on provisions of the Declaration on Principles of International Law concerning Friendly Relations and the Charter of Economic Rights and Duties of States, it is concluded that the scope of this principle covers the right of every State to: choose the model of its development; choose the forms of organization of its foreign economic relations; participate in subregional, regional and interregional co-operation; and even the right to associate in organizations of primary commodity producers.

5. It is further concluded that the principle mandates abstention from interference with the exercise of the rights within its purview (this injunction being a reaffirmation of the general principle of non-intervention), and proscribes reprisals or retaliatory measures directed against the free exercise of such rights.

2. Permanent sovereignty over natural resources

6. It is posited that there is no room for disagreement as regards the broad enunciation of this principle (as distinguished from the modalities of its application) in that it affirms general principles of international law, in particular those of sovereignty and territorial jurisdiction in their application

(in the sense of plenary, permanent and inalienable control) to the natural wealth and resources of the State and to its economic domain in general.

(a) Control of foreign investment

7. The study contrasts General Assembly Resolution 1803 of 1962 with the Charter of Economic Rights and Duties of States of 1974 and finds that both affirm the right of the State to regulate foreign investment according to its own objectives. The Charter sets a more emphatic tone in, inter alia, spelling out that the State shall not be compelled to grant preferential treatment to foreign investment. Though the Resolution specifies that foreign investment shall be governed by the terms of the relevant authorization of the recipient State, by national legislation, international law and the principle of pacta sunt servanda, it does not shed light on the extent and nature of the impact of the last two on national legislation. The reference to pacta sunt servanda can not elevate agreements between States and private parties to the rank of international agreements or render them impervious to change, nor can its mere absence (as is the case with the Charter) preclude application of that fundamental principle where appropriate. Similarly, mere omission of reference to international law from the Charter does not foreclose its application if such application is otherwise warranted. Thus, in this area, the difference between the two instruments is basically a question of different emphasis rather than different content.

8. The additional element included in the Charter of Economic Rights and Duties of States with regard to regulation of the activities of transnational corporations is found to be a natural corollary of the power of the State, while the duty on all States that it prescribes to co-operate in order to ensure compliance by these entities with the laws of the host State,

as well as their non-intervention in its internal affairs, is found to be a logical extension of the principle of sovereign equality, though it partakes more of the contemporary international law of co-operation rather than the traditional scheme of the international law of co-existence.

(b) Nationalization

9. The study finds that analysis of the normative content of the provisions of the major international instruments relative to nationalization reveals four main elements, as follows:

(i) Purpose of the nationalization

10. Though the relevant instruments (General Assembly Resolution 1803, the Charter of Economic Rights and Duties of States and the Declaration on the Establishment of a New International Economic Order) run the gamut from specifying that nationalization of the property of foreigners must "be based on grounds of public utility, security or the national interest" to implying that exercise by a State of a right to nationalize is completely discretionary, the study concludes that, as long as the State invokes a public interest, it is hardly conceivable that such a determination can be contested by another entity. Therefore, the requirement that nationalization be sustainable in terms of public interest, in and of itself, is virtually meaningless in practice even if it is tenable in principle.

11. It is however in the context of the rationale underlying the nationalization that the question of discriminatory and retaliatory nationalizations (commonly viewed to be violative of international law) arises. The conclusion is reached, however, that even if the nationalization affects only one particular nationality, it can not be considered delictual as long as it can be explained in terms of the entire economic situation and is not exclusively related to the specific nationality of the owner of the subject property. In the latter case,

the taking of the property in question would amount to retaliatory nationalization unless it were to qualify as a legitimate act of reprisal under international law.

(ii) Compensation

12. Two of the four elements presented by the issue of nationalization have a direct bearing on the question of compensation, and in particular on what constitutes "appropriate" compensation,and are, therefore, examined in this context in the study as set forth below.

a. Applicable law

13. After examining the relevant provisions of General Assembly resolution 1803 and the Charter of Economic Rights and Duties of States and finding that where they differ is with regard to the standard by which compensation for nationalization is to be judged to be "appropriate" or not, the study takes the position that, even if (seeing that the Charter puts all the emphasis on the national law of the nationalizing State) only the national standard applies substantively, international law will continue to govern the "due process" aspect of the application of national law.

b. Meaning of "appropriate" compensation

14. The study differentiates, in the first instance, between fair or appropriate compensation for "lawful" nationalization and "reparation" for damages sustained as a result of a wrongful act of nationalization (to wit, one violative of a specific treaty obligation). It is then noted that, with regard to compensation for "lawful" nationalization, the term "appropriate," which is used in both General Assembly resolution 1803 and the Charter of Economic Rights and Duties of States, remains undefined. The study rejects the proposition that "appropriate" is tantamount to "adequate, prompt and effective" compensation,

rather than this being one of its possible, and disputable, interpretations. It is considered, for example, that by referring only to the national standard in this connection, the Charter of Economic Rights and Duties of States (not to mention the Declaration on the Establishment of a New International Economic Order) is supportive of an alternative interpretation, albeit inconclusively.

15. Real consensus as to the meaning of the term "appropriate" is not reflected in State practice either. If the provisions of some recent bilateral treaties bear in favour of a strict construction of this adjective (strict, that is, from the perspective of the nationalizing State), this is undercut, inter alia, by the fact that the capital importing States which are parties to such treaties had little choice in terms of leverage but to acquiesce to them. Also such treaties have to be weighed against the widespread post-war practice of partial global settlements; and their significance in this context is offset by the contrary unified stand of the Third World in multilateral fora. Similarly, relevant commercial arbitrations of recent have produced inconclusive results. Therefore, the delineation of the normative content of the requirement of "appropriate" compensation remains one of the most important tasks of the progressive development of international law in this area.

c. Forum for settlement of disputes

16. Resolution of the question of appropriate compensation in concrete cases is very much related to this, the last element of the issue of compensation, that is, it is largely dependent on the forum to which resort is had. Examination of the relevant instruments reveals general agreement on this aspect, namely that national jurisdiction should be exhausted, and that recourse to international or internationalized procedures is a matter of agreement and depends on the consent of the State or States concerned.

(c) Legal consequences of the principle of permanent sovereignty

17. The study points out that the obligation of non-intervention with the free exercise of the faculty of sovereignty over resources is a fundamental characteristic in general of the obligations arising from the principle of sovereign equality and comprising the framework of the international law of co-existence, though, in certain circumstances , this law can also impose positive obligations, as is the case with the principle next examined.

3. The principle of participatory equality of developing countries in international economic relations

18. The study notes that the final aim of the NIEO, hence of all the principles of international law relating to it, is to achieve a greater degree of substantive equality in the international community. The principle under consideration in this section is a direct application of sovereign equality, even more akin to sovereignty than to equality, as the non-participation of an entity in decisions directly affecting it negates its sovereignty and self-determination. It is pointed out, however, that as a normative proposition, participation faces a serious legal problem owing to the uninstitutionalized character of the process of international decision-making. This is why the principle finds its application basically in international economic organizations. The question here is analytically divided into two aspects: access to the process of decision-making and weight in this process. It is then shown that, though obviously equality applies to access, so far as weight is concerned, the relevant legal instruments require only that participation be full and effective.

19. Though the principle is formulated in general terms, debates have focused on the IMF. For not only is the voting in the IMF weighted (as is the case in functional international

organizations in general), but in practice the decision-making has passed completely out of the hands of the Fund and into those of the Group of Ten. This is contrasted with the situation in deliberative organs such as the General Assembly or UNCTAD, where the "one State, one vote" rule has been tempered to accommodate the interests of the minority through such devices as "consensus" and varying the scale of group representation in non-plenary organs. Such accommodating efforts towards a more balanced decision-making process have been timidly tried, but have not altered in any significant way the formal or a fortiori the informal balance of voting power in the Bretton Woods institutions, particularly the IMF.

20. It is suggested that what is needed as a minimum first step is to bring back the process of decision-making into the IMF. In terms of reform, the need is for a more balanced "power-sharing" formula which would not reflect exclusively either sheer economic power or the sheer weight of numbers, but would take into account all the interests present. This type of a formula has been attempted in the most recently established functional international economic organizations, such as the Common Fund for Commodities and the International Sea-bed Authority, but has yet to find its way into the older ones. As such a balance is necessarily delicate, it has to be specifically tailored to each situation or context. And it is through following such an approach in devising the institutional components of the other principles studied in the report that the principle of full and effective participation in decision-making can be honored in their implementation.

B. The Duty to Co-operate

21. The traditional system of the international law of co-existence advanced and evolved into the international law of co-operation, associating States into co-operative action to achieve common ends, the while charging them with positive

obligations of commission. In contrast to abstention from interference that characterizes a scheme of co-existence, the co-operative scheme of law necessitates taking into account the actual situation of States and apportioning and adjusting their rights and obligations accordingly. Therefore, it needs more of an institutional infrastructure than mere self-regulatory mechanisms. Noting that the Charter of the United Nations lists international co-operation as one of its major purposes, and judging from the obligatory tone in this regard of the relevant international instruments promulgated during the past decade, the study takes the view that there is on the legal level a general duty upon States to co-operate, beyond the express obligations undertaken to that effect by States in the United Nations Charter and other international agreements.

22. The remainder of the principles and norms examined are found to revolve around, as well as amplify, the duty to co-operate. It is observed, however, that their capacity does not reach beyond defining the objectives inherent in them so as to delineate the extent and ways and means of their realization. In addition to defining in general the objective sought, they do, however, impose a duty on States to negotiate with a view to charting more precisely the targets to be reached as well as the ways and means to be employed towards those ends.

1. The principle of preferential treatment for developing countries

23. The study examines the broad rationale for the principle, its most concrete and comprehensive application in the form of the Generalized System of Preferences (GSP), and its enunciation in the relevant instruments. Its main constituent parts are then scrutinized: the preferential or differential aspect; the non-reciprocal or unilateral concessionary element; the generalized nature of the preferential treatment which bespeaks of uniformity of the content of the preferences, universality in their respective scope of application and permanency as regards

their alignment with and within the international economic system (as opposed to ad hoc variable bilateral arrangements based on quid pro quo); and the non-discriminatory component which calls for equality of treatment among the developing countries. It is concluded that the preferential and non-reciprocal elements of the principle have coalesced, but that the generalized and non-discriminatory elements (that is, the structural components on which they are dependent) have yet to crystallize.

2. The principle of stabilization of export earnings of developing countries

24. As to the background of this principle, it is noted that, for historical reasons, developing countries have specialized in the production of raw materials (commodities) for export, that the international commodity markets are characterized by a high degree of instability in the short run, and by an adverse trend of the terms of trade of these commodities against the industrialized goods imported by the developing countries in the long run. Commodity agreements, which are the traditional tool of stabilization of these markets through export quotas or buffer stocks,proved hard to conclude, especially within the framework of UNCTAD which endeavors to make them a tool not only of stabilization but also of development through the reversal of the secular adverse movement of the terms of trade, the aim being to achieve a kind of indexation (hence of stabilization) not only of the price of commodities but of the real income of developing countries from commodity exports. As commodity agreements proved difficult to conclude, other means were sought to achieve, even more directly, the same ends, including compensatory financing of shortfalls in commodity export proceeds. Two such schemes exist: one (in three variations: STABEX, SYSMIN and the Protocol on ACP Sugar) within the Lomé Conventions; the other, the Compensatory Financing Facility (CFF) within the IMF. There is also an important "Proposal for a Complementary Facility for Commodity Related Shortfalls in Export Earnings" within

UNCTAD.

25. It is pointed out that the relevant instruments formulate the principle by reference to existing schemes. Comparison of these leads to identification of a few traits of a general normative proposition concerning compensatory financing:

(a) Compensatory financing applies only to developing countries. It is thus a special application of the principle of preferential treatment.

(b) Though usually it is formulated in terms of export proceeds in general, in fact it is limited to shortfalls in commodity export proceeds.

(c) It is generally a loan covering less than the total amount of the shortfall but no less than half of it. This is why, though it comes close to partial ex post facto indexation, it is not real indexation, as the loan has to be repaid (with a few exceptions in favour of the least developed countries). Compensatory financing is thus a remedial corrective action intervening after the fact to alleviate the hardships caused by the workings of the market forces, but without tampering with such workings. And as is the case with some of the other relevant principles, it is not a self-contained principle, but needs specific schemes in order to be operational.

3. The principle of the right of every State to benefit from science and technology

26. After delving into the background of this principle (including the strategic importance of technology in the process of development), and discussing the relevant instruments, the study gives an exposition of the contents of the principle, pointing out that (a) its general aim is to ensure for developing countries access to the achievements of modern science and technology and (b) it addresses the means by which this end is to be attained. From a normative point of view, the latter are

grouped in two clusters:

(a) A positive obligation on developed countries and international organizations to provide assistance to developing countries encompassing: greater flow of information as to technological possibilities and choices, through wider dissemination ; technical assistance in the establishment and strengthening of their scientific and technological infrastructures and the fostering of an endogenous technological base; allocating more R and D activities to problems of primary concern to developing countries;

(b) An international legal regulation of technological transactions in order to ensure fair, equitable and mutually beneficial terms.

27. The study lists the salient aspects of the monopolistic/oligopolistic features of the industrial property market, the disparities in bargaining power between the would-be transferors and beneficiaries of scientific and technological achievements, and underscores that the objective is to redress the existing imbalance by (a) a requirement of greater transparency in the industrial property market; (b) the imposition of standards to govern individual transactions; and (c) preferential treatment for developing countries (and more so for the least developed among them), inter alia in national and international regulation of industrial property.

28. The study deals with the main problems besetting the negotiations on the seventh revision of the Paris Convention for the Protection of Industrial Property and on the Code of Conduct on the Transfer of Technology, and with the divergence in the negotiating positions of the developed and developing countries, which center chiefly on the attempts to re-equilibrate the initial basic rules covering the workings of the industrial property market (rather than with the assistance and preferential treatment aspects). Central to these diffi-

culties is the fact that technological transfers involve at least one private party in the majority of cases. Therefore, any meaningful international regulation will have to be adopted into municipal law in order to be effective, and thus needs to delimit not only the parameters, but also to some measure the substantive content, of the national regulation. But developed Western countries take a restrictive view as to the extent to which they can regulate the activities of economic agents within their jurisdiction, hence of the positive obligation to legislate and as regards the control they consider feasible to assume on the international level.

29. It is noted that the technical orientation of this principle, especially as regards its involvement with questions of national regulation, accounts for the fact that the institutional element in relation to it (especially in other than its assistance facet) is less developed than is the case with the other principles revolving around the duty to co-operate.

4. The principle of entitlement of developing countries to development assistance

30. It is noted at the outset that the continuous flow of assistance from all developed countries and from international organizations over a protracted period of time gives rise to expectations and induces reliance on the part of the developing countries. However, though each developed country devotes some resources each year to development assistance, and each developing country receives each year from diverse sources a certain amount of assistance and may rely on it, it is not yet legally possible to postulate the existence of a direct legal link in the form of an obligation upon the former corresponding to a legal right in favour of the latter. The international law of co-operation provides a more suitable framework for such a set-up where the right or entitlement, based on need, would

be vis-a-vis the international community at large, the same as with the obligation based on solidarity and capacity. But this would require that not only the content of the right and obligation be specified, but also the parties with regard to them and the legal relations deriving therefrom, as well as the institutional arrangements relating them to each other.

31. An overview is given of the efforts made as of 1960 (all building on Articles 55 and 56 of the United Nations Charter) at specifying the content of the obligation to assist as a charge on the developed countries by setting standards of achievement which were progressively refined as to the volume of the aid (1 per cent of GNP), its composition (0.7 per cent of GNP in ODA), and terms (softer loans,"untied"financial assistance); and as regards directing an increasing proportion through multilateral channels, i.e. increasing institutionalization. It is taken into account, however, that these targets, though subscribed to by developed countries, are not accepted by them as a matter of legal obligation and that, in practice, there has been some regression lately. The strongest resistance has been to the demand for greater multilateralization, which is however necessary in order to transform the normative substance from the subjective level of particular arrangements to the objective one of a general principle of the international law of co-operation.

32. The study relates this reluctance on the part of the developed nations to the continuous search for direct or autonomous resources for the international community, which would allow it to give effect to the principle without depending on government appropriations. One such source can be the revenue from the exploitation of the resources of spacial areas considered part of "the common heritage of mankind," the United Nations Law of the Sea Convention of 1982 providing the first major practical example of this possibility. Moreover, for two decades, there have been proposals to establish a "link" between the creation

of new financial liquidities (e.g. SDRs) and development financing, as part of a general reform of the international monetary system. Other ideas include the levy of a "global development tax on international trade."

33. The study cites the example of the Lomé Conventions in the context of the question of institutionalization with regard to development assistance. It also raises the point that, if we understand the principle involved here as not merely relating to assistance but aiming to increase the financial flows to developing countries, then its normative content would include not only the prescription of multilateralization, but also a greater effort at revising the relevant operational rules of existing institutions in order to best promote this objective.

5. The principle of the common heritage of mankind

34. The study examines the fact that this principle, relating to the use of the international commons, has found specific application in the multilateral regimes established and envisioned for the sea-bed beyond national jurisdiction and for outer space. The analysis given of its normative content reveals four components or sub-principles:

(a) The principle of "non-exclusive" use, hence "non-appropriation." This is the old res communis doctrine which is absorbed by this principle, but qualified and complemented by its other components;

(b) The regulation and control of the use of the common heritage. Res communis implies the regulation of access to its object and its use (that it be non-discriminatory, hence, non-exclusive). But it divorces itself from the result of this use, and is thus an application of the liberal laissez faire doctrine. By contrast, the principle of common heritage extends above and beyond to encompass the regulation of the use itself (this is why it calls also for institutions), in order to make

sure that the outcome of the use conforms to what is the finality of the principle and which constitutes its third component;

(c) The equitable sharing of benefits deriving from the use of the common heritage by all the members of the community, whether they are themselves in a position to use the common heritage or not. Moreover, the sharing and distribution of benefits is canalized through multilateral institutions, which provides the international community with the autonomous resources needed for development financing, by means of the application of a preferential scale favouring developing countries;

(d) The principle of the exclusively peaceful use of the common heritage. It is a logical consequence of the elaboration of these regimes within the United Nations to require that they be compatible with the purposes and principles of the Charter.

35. It is noted that even the six States which refused to sign the United Nations Law of the Sea Convention of 1982 and enacted national legislation allowing entities within their jurisdiction to explore and exploit the resources of the "International Area" in disregard of the regulatory and institutional regime of the Convention (a regime which is not yet elaborated in the context of outer space), have recognized the principle of the equitable sharing of benefits by providing for earmarking part of the proceeds for assistance purposes. It can thus be said that the principle as a normative proposition is generally accepted in its broad lines, though not in all its components.

36. Consideration is given to the fact that the application of the principle to the sea-bed beyond national jurisdiction and to outer space was made possible when the exploitation of their resources was about to become feasible, and thus the need for regulation was no longer a moot question, while at the same time no appropriation claims had yet been made with regard to the relevant area. The conclusion is voiced that it is under such conditions that the extension of the principle to other

spacial areas seems probable.

III. CONCLUSIONS AND RECOMMENDATIONS

37. The study offers the conclusion that the normative propositions articulated through the principles examined are in good part generally accepted, but that the degree of general acceptance varies or wanes when it comes to specific conditions, modalities, cases of application or derogation. It is pointed out in this connection that it is not an easy task to chart the course of the normative process in international law and that, in fact, the boundaries of positive law can not always be clearly defined. Furthermore, though concreteness of content is central to the legal evolution of principles, some degree of indeterminacy is inevitable in all cases.

38. The principles dealt with in the study and the NIEO itself, it is suggested, can be viewed as collectively constituting for developing countries "a right to development," parallel, in the economic domain, to self-determination on the political level. It is posited that such a right is necessary for the realization of the precepts of justice and equality of peoples which are enshrined in the Charter of the United Nations; and more concretely, such a right is a prerequisite for the implementation of the human rights attaching to the individual.

39. The study concludes with the recommendation that the process of progressive development of the relevant principles and norms continue so as to complete their elaboration. In that regard, it is suggested that consideration be given to entrusting the task of furthering this progressive development to either (a) an intergovernmental working group within the framework of the Sixth Committee, backed by a support unit, or (b) a Commission with appropriate machinery and expert resources.

ANNEX III

Analytical study

CONTENTS

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I. INTRODUCTION

1. A logical starting point for this report is to define the three terms in the title of the item before the General Assembly, namely the "New International Economic Order" (NIEO), "the principles and norms of international law" and "progressive development," and briefly to explore how they relate to each other.

A. The NIEO

2. The NIEO consists of a bundle of economic objectives and policy measures, which can be classified in a few clusters, each addressing itself to a major area in North-South economic relations (but also with strong implications as to South-South relations): the question of stabilizing commodity prices at an equitable level; the question of changing the international division of labour in order to give a greater opportunity for industrialization to the less developed countries and a greater share in international trade to their industrial or manufactured products; the question of transfer of technology; the question of redirecting the monetary and financial flows in a manner more compatible with the imperative of development; the question of the rational and equitable use of the international commons, etc.

3. The measures are either of an economic-legal content (such as the integrated commodity programme, the generalized preference scheme, the fixing of targets for public aid, the codes of conduct for multinationals and the transfer of technology) or of a political-legal nature aiming at strengthening the weight of less developed countries in the international economic system, such as the reaffirmation and extension of the principle of permanent sovereignty over natural wealth and resources and the claim for full and effective participation in international economic decision-making, etc.

4. This NIEO, which is meant to be a blue print (what the French call "un projet de société") for the international community, is, however, neither completely new, nor purely economic, nor exclusively confined to North-South relations. Indeed, the bundle of objectives and policy measures that were proclaimed by the Sixth Special Session of the General Assembly in 1974, as constituting the essence of the NIEO, have been on the international agenda since the first United Nations Conference on Trade and Development in 1964, though reformulated in the light of ten years of experience and intellectual maturation. What was new then in the NIEO was not so much its contents as the context in which it was proclaimed, coming as it was in the wake of the so-called energy crisis of 1973, which triggered, or at least greatly heightened the awareness of the developed countries as to the all-prevasive factor of interdependence.

5. Nor, to repeat, is the NIEO purely economic, for it has obvious political and social implications as well. Similarly, though most of the objectives and policy measures of the NIEO are formulated in terms of North-South relations, they have important implications for, and their success depends in good measure on, South-South relations (or, in other words, on the progress of "economic cooperation among developing countries").

B. The role of law in the establishment of the NIEO

6. A vast blue print for the international community such as the NIEO cannot be brought about at once by a single decision or act. For even if the international community disposed of a legislative machinery in the proper sense of the term, it would have been quite impossible to effectuate such a fundamental transformation of society by one piece of legislation alone; and even if it were attempted (after what would have to be lengthy and intricate negotiations within the legislative body), it would still be a long progressive process to have it

translated from "law on the book" to "living law".

7. In the present conditions of the international community, the NIEO can only be realized progressively through a multitude of negotiations in various fora, and through the behaviour and practice of States and other international economic agents.

8. Such negotiations, practice and behaviour inexorably call, and build, on existing legal principles and norms. But at the same time, they develop them as well as give rise to new ones, in their pursuit of their final objective: the establishment of a NIEO. Or, looking at the situation from the perspective of the end result, the NIEO presupposes, and would inevitably secrete, if followed, a set of organizing legal principles (and norms).

C. Principles and norms of international law

9. What do we mean by "principles" and "norms" of internal law which figure in the title of the item? These are very current terms, which convey a very general meaning, though with an infinite range of nuances.

10. "Norm" means in current language "standard; pattern; type" (Concise Oxford Dictionary), evoking what is "normal," hence expected, in a certain situation. But in law, it has a more precise meaning, though it is rarely explicitly circumscribed.

11. In the North Sea Continental Shelf Cases, the International Court of Justice (ICJ) states, as one condition for a treaty provision to pass into customary law, "that the provision concerned should, at all events potentially, be of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law,"1/and the Court reveals in its analysis of the provision there at hand that the

"norm-creating" character depends on the clear definition and delimitation of the prescribed, i.e. obligatory behaviour, which would be negated if the provision (or the proposition) leaves too many open ends, to the point of rendering such prescribed behaviour unidentifiable.

12. This concept of "norm" as identifiable legally prescribed behaviour tallies with that of Kelsen, whose "pure theory of law" is largely responsible for the actual currency of the term in legal writings.2/ For Kelsen, however, a legal norm does not have to have any degree of generality. It can address one, a limited number, or the generality of situations.

13. The term "principle" of international law, by contrast, conveys a sense of generality (and even sometimes hierarchical superiority). But here again, the term is used with different shades of meaning. Apart from the very special context (and meaning) of the "general principles of law recognized by the civilized nations" of Article 38, paragraph 1(c), of the Statute of the ICJ, the term "principle" is used sometimes to indicate that it carries one of the basic or fundamental norms of the international legal system (e.g., the prohibition of the use of force), or a norm which is well established and deeply entrenched, to the point of becoming axiomatic (e.g., freedom of the high seas or the consensual basis of arbitral and judicial jurisdiction).

14. Very frequently, however, the term is used to describe a norm of a general nature and scope, which stands at the logical apex of other more specific norms (i.e. the principle itself can be arrived at, or constructed logically from, the specific norms; but also certain specific norms can be deduced from the principle).

15. In most cases, the current formulation of a principle is not a self-contained normative proposition, to the point sometimes of being reduced to a mere term or label for a con-

cept, such as sovereignty, equality or self-defense. 3/

16. The normative statements or propositions defining the scope (i.e. cases), conditions and modalities of application of the principle, as well as the exceptions or derogations therefrom, are provided by the more specific norms or rules, which are logically structured or brought together by the principles.

17. In other words, general principles are rarely self-sufficient, and have to be complemented usually by more specific norms and rules, to which they in turn provide a rationale and a direction.

18. It is difficult in using the term "principles" to avoid straddling the different meanings, which are not contradictory and can (but need not) all be true of certain principles such as those of "sovereign equality" or "pacta sunt servanda."

D. Progressive development

19. Article 15 of the Statute of the International Law Commission (ILC) distinguishes the "progressive development of international law" from its "codification" by the degree of maturity of the normative substance from which they proceed. The former deals with "subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States," in relation to which progressive development consists of providing or complementing the normative substance; the latter deals with "fields where there already has been extensive State practice, precedent and doctrine," in which codification consists merely of "the more precise formulation or systematization" of already existing norms. Though, very early in its work, the ILC abandoned this distinction, having found it unworkable in practice, theoretically, it remains relevant.

20. In a wider sense - perhaps that intended in the title of the item - "progressive development" refers to the evolution not only of the substance of the norms, but also of their legal status, i.e. their progress towards being generally accepted as law. This last aspect brings up the question of relating the principles and norms here under consideration to the sources of international law; especially as most of the legal instruments proclaiming these principles and norms, or purporting to develop them or elaborate their content, are of an ambiguous or controversial legal nature, i.e. from the perspective of being generally accepted in themselves as constituting a "source of international law."

21. This is particularly true of the resolutions of the General Assembly of the United Nations (which constitute the bulk of the instruments dealing with the NIEO), over whose legal status opinions have radically differed, ranging from considering them as a new and fertile source of law (or as "instant custom") to denying them anything beyond their formal status according to the UN Charter as mere recommendations (with the exception of a few special types of resolutions). But all would now probably agree that the legal significance of these resolutions can go beyond their formal status, though they might not agree on the import of this significance.

22. Indeed, one has to distinguish the formalistic status of the resolution as such from the legal significance of its normative contents. This means that, unlike the case of a treaty (or a piece of internal legislation), the legal weight of the normative contents of a resolution does not derive only from the legal instrument which encases them, but has also to be sought outside or beyond it.

23. Three indices can help us gauge the real value or weight of the contents of a resolution beyond its formal status as a recommendation and chart its progress towards be-

coming part of the corpus juris of international law. The first is the circumstances surrounding the adoption of the resolution, and in particular the degree of consensus obtaining over its contents. The second is the degree of concreteness of these contents, and whether they are specific enough (by themselves or in addition to those of prior related resolutions) to become operational as law, i.e. as identifiable prescribed behaviour. The third is the existence (and effectiveness) of follow-up mechanism generating a continuous pressure for compliance. 4/

24. The convergence of these three indices in a specific situation makes for (or enhances the probability of) the observance of the normative content of the instrument,i.e. makes for its transformation into an effective pattern of behaviour, hence for the emergence of a feeling of obligation; in other words, for the emergence of the two elements of custom.

25. Needless to say, these indices are interrelated. Where the degree of consensus is low, the degree of concreteness is usually also low; whence the practice of papering-over documents (resolutions or even treaties) in the absence of real consensus or agreement, a practice which produces vague or incomprehensible language, untranslatable into a normative proposition (i.e., an identifiable prescribed behaviour). In such cases, States are reluctant to establish follow-up mechanisms; and even if such mechanisms were to come into being, they would not be able to function adequately, as the behaviour prescribed by the particular proposition would not be sufficiently defined, hence identifiable, for its observance to be effectively monitored or enhanced through them.

26. In this perspective, the "progressive development" of legal principles and norms through General Assembly resolutions, in the sense of consolidating their legal status (unlike what obtains in the case of a treaty or internal legislation,.where

legal status is instantaneously attached to norms once the legal act or instrument bearing them is consummated or enacted), is a cumulative process. It is the distillation of the total effect of successive resolutions on the same subject-matter, through the aggregation of the "value-added" of each resolution, whether in terms of greater concensus (or erosion of opposition) on the content, or greater concretization of this content. In this respect, the follow-up does not consist only in monitoring compliance with a complete normative proposition (especially where the identifiable prescribed behaviour is not merely an abstention, but is an action to be undertaken, as with most of the obligations attaching to the duty to co-operate as we shall see below); but it consists also in overseeing and reporting on progress in work or negotiations aiming at completing or elaborating more concrete sets of normative propositions (such as codes of conduct in certain areas).

27. It is only through such a dynamic and behavioural approach, it is submitted, that one can fully gauge the tasks and prospects of the "progressive development" of each of the principles and norms of international law relating to the NIEO, both by identifying the gaps to be filled in its normative elaboration, and by assessing its position on the scale of legality, and more particularly in relation to the point at which it integrates into the corpus juris of international law.

II. CONTENT ANALYSIS OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NIEO

28. The "principles and norms of international law relating to the NIEO," which are studied in this report, are both those which are called upon in the international negotiations, practice and behaviour relating to the different items of the NIEO, as well as those which are called for by the objectives and

policy measures of the NIEO.

29. In other words, they are both the existing principles and norms of international law as they apply or are extended and developed to apply to the NIEO, and the new principles and norms of international law which are needed to complete the legal environment necessary for the establishment and the maintenance of the NIEO.

30. They provide yet another interesting example of law grappling with social reality. But in seeking an adequate legal response to new social needs or demands, law does not start from scratch, but builds on its own foundations (here the general principles of international law), by enlarging their scope and adding to their substance through applying (i.e. extending and adapting) them to new situations, and eventually complementing them with new rules.

31. Thus, to the bundle of economic objectives and policy measures constituting the NIEO which is in process, corresponds a bundle of principles and norms of international law which is equally in process. But if the bundle as a whole is in process, the legal status of its components varies widely, ranging from well established principles (and norms) of international law, via their extension and development, to norms which are yet to be established or recognized de lege lata.

32. Before turning to the question of the legal status of these principles and norms, however, it is necessary to subject them first to the "intrinsic" test of whether they can stand as valid normative propositions, in isolation as well as in relation to each other, and whether they can be integrated in the existing corpus of general international law. Such content analysis or legal feasibility study with regard to the relevant principles and norms is a necessary preliminary task which has to be performed before they can be subjected to the "extrinsic" test of their legal status, namely the degree of their general

acceptance as law.

33. The "principles and norms of international law relating to the New International Economic Order," which were identified by UNITAR and endorsed by the General Assembly, are the following:

(a) Preferential treatment for developing countries;

(b) Stabilization of export earnings of developing countries;

(c) Permanent sovereignty over natural resources;

(d) Right of every State to benefit from science and technology;

(e) Entitlement of developing countries to development assistance;

(f) Participatory equality of developing countries in international economic relations;

(g) Common heritage of mankind.

34. Considered against the background of general international law, it is apparent that all these principles and norms derive from and revolve around two of its most fundamental principles, namely sovereign equality and the duty to co-operate, of which tney elaborate the scope and substance in their application to international economic relations.

35. The examination of the principles and norms of international law relating to the NIEO in their relation to these two fundamental principles is a convenient and logical method of subjecting them to the "intrinsic" test of how they stand as valid normative propositions, how they relate to each other, and how they fit in the existing corpus of general international law.

A. Sovereign equality

36. Sovereign equality appears as the first principle of the Charter of the United Nations (Article 2, paragraph 1). And though the Charter clause represents an innovation in its formulation, this is not true of its content, for it is no more than the amalgamation of sovereignty and equality, the two pillars of classical international law which preceded the UN Charter and were accepted by it. It is a structural principle in the sense that it lays down the foundations, and thus determines the structure, of the present international legal system which emerged (with the Peace of Westphalia in 1648) in the wake of the wars of religion in Europe.

37. This legal system had to govern relations between antagonistic legal entities, and had in consequence to gloss over the sources of their antagonism. It thus postulates a horizontal international structure where no hierarchy prevails: where States are sovereign both in the sense of exercising exclusive power over their territory and subjects (internal sovereignty), and in the sense of depending on no higher authority on the international sphere (external sovereignty or independence), and accordingly are considered legally equal on the international level, regardless of size, wealth, religious or ideological affiliation.

38. It is a legal system which limits itself to regulating the modalities of coexistence between these sovereign and legally presumed equal entities that are States, by imposing on them essentially passive obligations of abstention. This is why Wolfgang Friedman calls it "the international law of coexistence" (in contrast to "the international law of co-operation," which will be discussed later). 5/

39. This formal and abstract construction of the principle (especially of its "equality" component) is reflected in the travaux préparatoires of the UN Charter. According to a state-

ment of Committee I/1 (which was approved in Commission and in Plenary at San Francisco), sovereign equality includes the following elements:

> "(1) that states are juridically equal;
>
> "(2) that each state enjoys the rights inherent in full sovereignty;
>
> "(3) that the personality of the state is respected, as well as its territorial integrity and political independence;
>
> "(4) that the state should, under international order, comply faithfully with its international duties and obligations." 6/

40. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 7/ reproduces the same list, merely adding to it one item which is of particular interest to the subject of this report, and which reads:

> "(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems."

41. Another proposed component, the right of States to the free disposal of their natural wealth and resources (or permanent sovereignty over natural resources), 8/ narrowly failed to achieve consensus, not because of resistance to the principle as such, but for failure to agree on its formulation. There was also a proposal for adding yet another item, the right of States to participate in the solution of international problems affecting their legitimate interests. 9/ But this question was at that time too wound up with the controversy over universal participation in multilateral treaties and international organizations to achieve consensus (though this controversy was since then solved in the sense of universal

participation).

42. Two of the "principles and norms of international law relating to the NIEO" identified by UNITAR and the General Assembly are clearly within the ambit of the principle of sovereign equality, namely permanent sovereignty over natural wealth and resources and participatory equality. But before examining them, it may be useful to review briefly the additional component put forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States: the right of States freely to choose their economic system, which is of evident relevance to the subject.

1. The right of States to choose their economic system

43. This right is the most direct and non-controversial emanation or application of the principle of sovereign equality in the economic field.

44. Not only does it appear in the Declaration on Principles of International Law concerning Friendly Relations as we have noted,10/ but it is also reiterated in the Declaration on the Establishment of a New International Economic Order (paragraph 4(d)),11/ as well as in article 1 of the Charter of Economic Rights and Duties of States,12/ which provides:

> "Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever."

45. Though other provisions of the Charter of Economic Rights and Duties of States gave rise to much controversy and could not be adopted by consensus, this was not the case with the above provision, which was easily and generally accepted.

46. This is because this right is nothing but the exercise of sovereignty (both internal and external) in the economic field (as well as in the "political, social and cultural" spheres). The value and role of the different provisions which reaffirm it are basically classificatory, both of its range and different applications or manifestations, as well as of its implications and consequences for the international legal system.

47. The Charter of Economic Rights and Duties of States goes further in the specification of this right by providing, in several of its articles, concrete applications of it to different aspects of economic life, e.g. article 7 (the right of every State to choose the ends and means, that is the model, of its development); article 4 (the right of every State to choose the forms of organization of its foreign economic relations, and to enter into bilateral and multilateral arrangements); article 12 (the right of every State to participate in subregional, regional and interregional co-operation); and article 5 (the right of every State to associate in organizations of primary commodity producers).

48. Article 5 is interesting in revealing the usefulness of such elaboration or specification provisions, in as much as it was controversial and was not adopted by consensus, which shows that although there may be general agreement on the principle itself, this agreement may cease to obtain somewhere along the way between the general normative proposition and its different levels and cases of application. But on the substance of the controversy over article 5, to the extent that this article is based on a capacity inherent in sovereignty, i.e. the freedom to associate with other States in the pursuit of certain economic objectives (article 12) and to choose the methods of participating in international trade (article 4), the burden of proof is clearly on those who claim the existence of any limitation on this capacity. In other

words, it is on the adversaries of the provision to prove that such producers associations violate an existing norm of international law which was not actually done.

49. The clarification extends also to the implications and consequences of the principle for the international legal system in general.

50. The right which is affirmed here is a freedom (liberty) or power (capacity). It is typical of the norms of "the international law of coexistence" in that, by asserting this right to all States, it imposes a general obligation or duty, not on a particular State but on all other States in general, to respect this right, i.e. a passive obligation of abstention from interfering with the exercise of this right. This injunction, which is a reaffirmation of the general principle of non-intervention in this specific context, explicitly figures in most of the articles of the Charter of Economic Rights and Duties of States mentioned above, which formulate the different manifestations of this right (articles 1, 4, 5). It also follows that the exercise of this right or freedom cannot legally justify the taking of reprisals or retaliatory measures, which thus remain illegal or constitute a delict either per se, or, even where they do not constitute a violation of another international obligation, as acts of intervention in the exercise of a sovereign right.13/

2. Permanent sovereignty over natural resources

51. If the formulation of this principle is relatively new, the problems it deals with are not.

As was mentioned above, internal sovereignty means the exclusivity or monopoly of power within the territorial limits of national jurisdiction, including the natural resources which are situated therein. But this exclusive power is subject to any limitations imposed by international law. Thus,

the exclusivity of power entails the responsibility of the State for what takes place within the ambit of its territorial jurisdiction in violation of international law.

52. The principle of permanent sovereignty over natural resources addresses the question of the limits imposed by international law on States regarding alien economic interests within their territorial jurisdiction. This is an old question which was subject to much controversy and litigation between capital exporting and capital importing countries during the 19th and early 20th century. The outcome of these confrontations necessarily reflected the balance of power between these two categories of States.14/ It constituted the "practice" at the basis of such international legal institutions as diplomatic protection and much of the elements of State responsibility, which the Third World countries of the day tried to contain by such devices as the Calvo clause and the Drago doctrine.

53. The reemergence of this issue in the United Nations in the early fifties under the new denomination "permanent sovereignty over natural resources" came in the wake of the first wave of post-war independence. It was a reflection of the spreading view that this was a necessary complement or component of the right of self-determination. Indeed, it was in the context of drafting article 1 of the International Covenants on Human Rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), dealing with self-determination, that the principle (as an item) was first introduced in the United Nations in 1952, and was finally included as the second paragraph of article 1 of the two Covenants (and years later, under the modified formulation preferred by the developing countries, was inserted in article 47 of the Civil Rights Covenant and in article 25 of its twin).

54. If a first resolution in 1952 15/ proved controversial a Commission on Permanent Sovereignty over Natural Resources was established in 1958 16/ to conduct a full survey of the principle, and prepared a draft resolution which was very widely accepted in 1962,17/ and is generally considered as reflecting international law on the subject.

55. New formulations of the principle appeared in subsequent instruments, particularly the Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States, which were more controversial. Content analysis of these different instruments reveals, however, that their divergencies are much narrower than is generally claimed, and that a common normative proposition can be formulated therefrom, admittedly with some ends left open.

56. From the beginning, the General Assembly made it a point to situate the principle within the framework of general international law, declaring "that the right of people freely to use and exploit their natural resources is inherent in their sovereignty and is in accordance with the purposes and principles of the Charter of the United Nations." 18/

57. Though reflecting a tendency to become more emphatic with time, the general enunciation of the principle has not changed much. The Charter of Economic Rights and Duties formulates the general enunciation in article 2, paragraph 1, as follows:

> "Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities."

58. The adjective "permanent" has been used from the beginning to qualify the sovereignty over natural wealth and resources. The purpose of the adjective "permanent" is to

emphasize that sovereignty is the rule and can be exercised at any time, that limitations are the exception and cannot be permanent, but limited both in scope and time. The adjective "inalienable," which is sometimes added, goes to emphasize this connotation. The adjective "full" is of recent appearance, and though it does not add to the substance, it emphasizes the comprehensive character of sovereignty and of the powers inherent in it.

59. The subject matter over which this sovereignty is exercised was described from the beginning as "natural wealth and resources." The Charter of Economic Rights and Duties of States separates "natural resources" from wealth (but this can only mean that wealth as all economic assets in general, situated within the territorial jurisdiction of the State, are subject to its sovereignty). Both the Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States add to "natural resources" (and wealth in the case of the Charter) the term "economic activities." Neither the words in themselves, nor in context , indicate whether the activities envisaged here are those relating to natural resources, or economic activities in general. If the reference is to the former, then it does not really extend the ambit of the sovereign powers (as we shall see below); if on the other hand it is to economic activities in general, then again the proposition would simply mean that economic activities within the territorial jurisdiction of the State are subject to its sovereignty, which is the general rule in international law in any case.

60. The powers included in this permanent sovereignty which can be freely exercised by the State include the possession, exploitation and disposal of the natural resources (and possibly wealth in general; but thus formulated, the enumerated powers are hardly applicable to "economic activities" as such).

61. Article 4(e) of the Declaration on the Establishment of a New International Economic Order is more specific in its articulation of the relationship between the natural resources, the economic activities relating to them and the exercise of permanent sovereignty: "In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation ..." But it is the extent of this control and whether it is subject to any limitations imposed by international law, and if so which ones, that constitutes the crux of the matter.

62. In other words, the general enunciation of the principle at this level of abstraction does not go beyond stating, perhaps in a novel and more emphatic way, the general principles of international law, and in particular those of sovereignty and territorial jurisdiction, in their application to natural wealth and resources (and to the economic field in general, including economic wealth and activities). And at that level there can hardly be any disagreement. But the situation changes as the instruments go into greater specification, particularly in describing the modalities of the exercise of permanent sovereignty in regulating foreign investment and in the case of nationalization.

(a) Control of foreign investment

63. If we go on to compare the provisions of General Assembly resolution 1803 of 1962 (paragraphs 2, 3 and 8) and of the Charter of Economic Rights and Duties of States of 1974 (article 2, paragraph 2(a)), we find that both affirm the right of the State to regulate foreign investment according to its own economic objectives. Beyond that the Charter emphasizes the freedom of the State, by prescribing that it shall not be compelled to grant preferential treatment to foreign investment, while resolution 1803 goes on to specify that once the State authorizes foreign capital, the investment will be

governed by the terms of the authorization, national legislation and international law, and that agreements freely entered into should be observed in good faith.

64. The difference, however, it is submitted, is more in the emphasis than in the substance. The reference to international law does not provide any answer to the initial question of whether and how it complements or sets limits on national legislation, though that was precisely the purpose of the resolution. Nor does (or can) the reiteration in the resolution of the principle pacta sunt servanda, which is a fundamental principle of law recognized in all municipal legal systems as well as in international law, elevate agreements between States and private parties to the rank of international agreements.

65. On the other hand, the absence of reference to international law in article 2/2(a) of the Charter of Economic Rights and Duties of States, in spite of its psychological impact, does not preclude the application of international law, if there is room or scope for such application. (But as we have just noted, resolution 1803, in spite of its mention of international law, does not define this scope either). Nor does the absence of reference to pacta sunt servanda mean that it is inapplicable, as there is no conceivable national legislation which refutes this principle. However, pacta sunt servanda does not mean, in any legal system, that agreements are completely immune to change.

66. In as far as the control of foreign investment is concerned, the difference between the two instruments is much narrower than the general impression one gets at first glance. It is basically a question of different emphasis rather than different content of the normative proposition.

67. The Charter of Economic Rights and Duties, coming twelve years after resolution 1803, adds another provision (article 2, paragraph 2(b)) in this respect dealing with a

particular form of private foreign investment which drew much attention in the meantime, namely that of the transnational corporation. This provision, apart from affirming the legal power of the State to control and regulate the activities of these entities with a view to ensuring their compliance with its laws and economic objectives and their non-intervention in its internal affairs (which is nothing but the reiteration of the power described above), prescribes a duty on all States to co-operate in rendering this control effective. Indeed as the activities of transnational corporations straddle several States, their effective control necessitates the co-operation of those States. But this is a different (positive) type of obligation than the ones usually attached to sovereign equality, and which are usually obligations of abstention or non-intervention with the exercise of the rights or powers of others. 19/

(b) Nationalization

68. Nationalization is the breaking point in the relation between the State and the foreign investor. General Assembly resolution 1803, in its paragraph 4, provides:

> "Nationalization, 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. In such cases 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 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."

69. The Charter of Economic Rights and Duties of States, provides in article 2, paragraph 2(c):

"To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, 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 and in accordance with the principle of free choice of means."

70. The analysis of the normative content of these provisions reveals four elements:

- the purpose of the taking or property
- the requirement of compensation
- the applicable law
- the means of settlement of disputes arising therefrom.

The last two are inextricably linked with the question of compensation and shall be examined in its context below.

(i) Purpose

71. While the General Assembly's Declaration on the Establishment of a New International Economic Order describes "the right of nationalization or transfer of ownership to ... nationals" as "inalienable" and "an expression of the full permanent sovereignty of the State," implying that its exercise is completely discretionary and unfettered (and while the Charter of Economic Rights and Duties of States is silent on the subject), General Assembly resolution 1803 specifies that "nationalization, expropriation or requisition shall be based on grounds of public utility, security or the national interest."

72. This requirement which can be found in the older writings on the subject, also appears in some recent bilateral treaties on the protection of foreign investment. 20/ However, the determination of the public or national interest in any

specific situation can only be effected by the State concerned. And it is hardly conceivable that such a determination can be reviewed or contested by another entity (be it a judicial or arbitral organ); so that if this condition can stand in principle, it comes down to very little in practice, as long as the State invokes a public or national interest (a judgment to which one has to defer).

73. It is, however, in this context that the question of discriminatory and retaliatory nationalizations arises. According to a frequently repeated opinion, discriminatory nationalizations violate international law 21/ (or, looked at from the point of view of the requirement of public or national interest, they are not considered in the contemplation of international law as serving such an interest or purpose).22/ But here again, the situation becomes much more difficult to clarify as we move towards specific applications.

74. Proceeding from the principle of permanent sovereignty over natural resources, it is impossible to affirm that the State cannot discriminate in exercising its power to "nationalize" between nationals and aliens. And the arguments for the legitimacy as well as the legality of a State's effort not to leave its economic destiny in foreign hands are evident. Is there a duty not to discriminate between foreign nationalities? Here again the evaluation of the public interest depends on the particular economic situation and structure rather than on the nationality of the interest holders. A State may be faced with a situation where much (or what it considers much according to its own economic objectives) of its economy is controlled,for historical (e.g., former colonial ties) or other reasons, by aliens belonging to one State, or such aliens may control a key sector of the economy which the State wants to nationalize. It is submitted that in such cases, the nationalization measures, while affecting only one

nationality, cannot be considered as delictual or violative of international law. 23/ This is because the act of nationalization can be explained in terms of the economic situation, or economic objectives in general, and not exclusively in terms of the specific nationality of the affected persons.

75. It is only when the taking of property or economic interests is expressly and exclusively based on the nationality of the affected persons that we face a situation of retaliatory nationalization. Whether such an act constitutes a violation of international law or not depends on whether it fulfills the conditions of reprisals in international law (that it is a reaction to a prior violation of international law; that it was preceeded by a warning and a call for reparation; and that it is proportionate to the initial violation). 24/

(ii) Compensation

76. The matter of compensation is in practice the most important, and most controversial, question about nationalization or the taking of alien property. Its solution is indissolubly linked to the question of applicable law, which sets the standard for compensation, and the settlement of disputes arising therefrom.

a. Applicable law

77. Both General Assembly resolution 1803 and the Charter of Economic Rights and Duties of States use the same adjective, "appropriate," to qualify due compensation. Where they differ, however, is in the standard according to which the "appropriateness" of the compensation has to be tested. Both refer in the first place to the national law of the nationalizing State. But while resolution 1803 adds to it "international law," the Charter provision puts all the emphasis on the national element and widens the discretionary margins of the standard by adding, after "its laws and regulations," the words "and all circumstances that

the State considers pertinent." This leads one writer to consider this provision as an attempt at introducing a built-in general Calvo clause.25/ But even if, substantively, only the national standard applies, the role of international law does not completely disappear from the picture. For it will continue to control the "due process" aspect of the application of national law.

78. However, apart from the psychological impact of the omission of international law from the provision, its formulation does not preclude adding other factors to those which it specifically mentions as having to be taken into account (unless one resorts to a contrario reasoning, which is legally untenable. But these other factors have to stand on their own legal grounds, other than the particular provision which does not mention them, i.e. general principles of customary international law. By mentioning appropriate compensation, the Charter of Economic Rights and Duties itself confirms that this is, at least in principle (i.e. as a general proposition), a requirement of general international law.

b. Meaning of "appropriate" compensation

79. What is the import in international law of the requirement of "appropriate" compensation? If a complete (and generally accepted) elucidation of the meaning of "appropriate compensation" in contemporary international law might prove impossible, this does not preclude trying to narrow the margins of indeterminacy through successive approximations, by identifying the elements of agreement which can be found in this regard.

80. In the first place, it is necessary to distinguish between "compensation" as an element of "lawful" nationalization or expropriation, and "reparation" for injury caused by a "delictual" or "illegal" act of nationalization. The latter would be the case if the taking of property is in violation of a specific treaty obligation subscribed to by the nationalizing

State, as in the Chorzow Factory case, 26/ which was generally considered as the locus classicus of the law on the matter in the pre-war era.

81. It is with regard to "reparation" that the Permanent Court of International Justice defined "the principles which should serve to determine the amount of compensation due for an act contrary to international law," in the following terms:

> "... reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it." 27/

82. But the Court specifies that this is not the "fair compensation" required for nationalization or expropriation in general "since it would be tantamount to rendering lawful liquidation and unlawful dispossession undistinguishable in so far as their financial results are concerned." 28

83. The Mexican nationalizations in the 1930's provided the occasion for positions to crystalize. For while the United States coined on that occasion the formula "adequate, effective and prompt compensation" (i.e. full and immediate),29/ Mexico, though recognizing an obligation to pay compensation, maintained that this was a question determined under national law, and that it depended on the capacity to pay of the nationalizing country;30/ that otherwise, an obligation to pay "immediately the value of the properties taken" would itself confiscate the right of the State to restructure its economy and to introduce social reforms, i.e. what we would now call the exercise of its permanent sovereignty over its natural resources as well as its freedom to choose its economic system. 31/

84. These were still the positions when the issue of perma-

nent sovereignty over natural resources was raised in the United Nations, in the early 1950's. And in spite of the lengthy and intricate negotiations which preceded its adoption, General Assembly resolution 1803, by using a new and neutral adjective "appropriate" (hence exempt from old connotations), which can thus be interpreted by each side according to its own conception, reveals that no consensus could be reached on that point.

85. It is true that several Western writers hurried to interpret "appropriate" in the resolution as meaning "adequate, prompt and effective." But it would be a gross misinterpretation of reality to consider this as the interpretation of the resolution, rather than one of its possible interpretations, which is strongly contradicted by others. 32/

86. The Charter of Economic Rights and Duties of States, by referring only to the national standard, indeed bears in favour of an alternative interpretation of "appropriate compensation," though still without logically excluding all other possibilities of interpretation.

87. If resolution 1803, as well as article 2, paragraph 2(c) of the Charter, are thus open-ended and do not reflect real consensus as to the content of the requirement of "appropriate compensation," international practice does not provide much further clarification either.

88. After the Second World War, nationalizations took place in some major Western States (public services), in Eastern Europe, and later on in a good number of Third World countries. Most of the cases in the last two categories were settled (where a settlement was reached) by "global settlement agreements," which amounted to partial compensation. On the other hand, a growing number of bilateral treaties between Western and developing States, while recognizing the right to nationalize against compensation, tend to use adjectives such as

"full," "adequate," "prompt, adequate and effective," which call to mind the maximalist interpretation.

89. Two factors, however, make it difficult to generalize from these treaties. First, these are essentially treaties for the protection of private foreign investment, thus only developing States which are willing to grant such protection in exchange for other benefits expected from or provided by the treaties, would subscribe to them. It would be unreasonable to expect a capital exporting State endorsing by treaty the express right of the other States to nationalize or expropriate the interests of its nationals without or with only discretionary or partial compensation. Developing States which refuse to subscribe to this standard of protection would not enter into such treaties.

90. Second, the terms used by these treaties are not uniform and cover, in addition to those mentioned above, a wider range going from the mere "against compensation" to "appropriate," "fair," "just," "just and equitable," etc., which leave a wide margin for interpretation.

91. Thus, if "adequate, prompt and effective" was never the standard of general international law, one has moreover to set against it the widespread post-war practice of partial global settlements. If the language of some of the recent bilateral treaties is evocative of this standard, this has to be weighed against the general stand of the Third World, as represented by the Group of 77, on the issue in general (including not only those numerous States which refuse, but also some of those which enter into, such bilateral treaties, whose conclusion is often put as a condition for granting aid and other benefits), in multilateral fora such as the General Assembly and the UNCTAD, and which is reflected in the General Assembly's Declaration on the Establishment of a New International Economic Order and Charter of Economic Rights and Duties of States.

92. It is reasonable to conclude on the requirement of "appropriate compensation" that, beyond the meaning that some compensation has to be paid (whose quantum would thus depend on the particular circumstances of each case), the normative content of that requirement is undeterminable for lack of sufficient consensus on a common understanding. 33/ Filling this gap is one of the most important tasks of any further effort at the progressive development of international law in this field.

93. Some recent international commercial arbitrations have also been invoked as corroborative evidence in favour of the "adequate, prompt and effective" compensation standard. 34/ But if these awards do not sufficiently converge either in language, in reasoning, or in actual results (in terms of the evaluation of compensation) to be really relevant as evidance of a consolidating trend, they clearly bring out the fact that the resolution of the problem of "appropriate compensation" in a particular case greatly depends on the means followed to settle the dispute over it.

c. Settlement of disputes over compensation

94. A careful comparison of General Assembly resolution 1803 and article 2, paragraph 2(c), of the Charter of Economic Rights and Duties of States, apart from differences in emphasis, reveals here again an identity of normative content. Both prescribe recourse to, and exhausting remedies provided by, national jurisdiction. It is true that Resolution 1803 seems to recommend ("should") the use of international arbitration or adjudication, if the dispute is not settled within the framework of national jurisdiction, while the Charter commands ("shall") that it be settled under the domestic law and by the tribunals of the nationalizing State, unless there be recourse to international arbitration or adjudication. But in the final analysis both

agree that, beyond national jurisdiction, recourse to international arbitration or adjudication depends on the consent and agreement of the State or States concerned, which is the only solution compatible with the well established general principles of international law on the subject. It is probable, if such recourse is agreed upon, that the tribunal - be it public (inter-state dispute) or private (dispute between a State and a private party), but especially in the latter case - would apply a standard closer to full compensation. While if the process is confined to national jurisdictions, they would tend towards, or in all probability be more sympathetic to, the theory of the national standard, which is more discretionary.

95. Thus, as far as the settlement of compensation disputes is concerned, the normative and generally accepted solution is clear, namely that national jurisdiction should be exhausted, and that recourse to international or internationalized procedures is a pure matter of agreement and depends on the consent of the State or States concerned.

(c) Legal consequences of the principle of permanent sovereignty

96. As was mentioned before, the normative content of this principle, which derives from sovereign equality, is the affirmation of a faculty or freedom of the States. The consequence of this affirmation is a passive obligation incumbent on all other States to respect the exercise of this faculty, capacity or freedom (i.e. not interfere with, hinder or set obstacle to, such exercise) and a fortiori not to take reprisals (in the legal sense) by reason of it. These legal consequences were always subsumed under the principle of sovereign equality, but were not expressly articulated in the earlier resolutions on permanent sovereignty over natural resources. They were emphasized, however, in the resolutions relating to the NIEO. 35/

97. It should be emphasized, however, that there is nothing new in this hands-off normative prescription, and that it is a necessary consequence of the recognition of the existence of such a right, faculty or freedom. It is a fundamental characteristic in general of the obligations created within the framework of the "international law of coexistence," though,under certain conditions, this law can also impose positive obligations of co-operation as is the case with the principle of full and effective participation.

3. The principle of participatory equality of developing countries in international economic relations (full and effective participation of developing countries in international economic decisions)

98. The final aim of the NIEO is to achieve a greater degree of substantive equality in the international community, to be reflected not only in the sharing of the final outputs of the international economic system, but also in its structures and the modalities of their functioning. In this sense, all the objectives and policy measures constituting the NIEO, as well as the principles and norms of international law deriving therefrom, are teleologically related to, and thus contribute in one way or another towards,the attainment of this final objective.

99. The principle here under consideration, though directly emanating from this general aim, has a much more specific or concrete object, namely participation in the international economic decision-making process.

100. The General Assembly's Declaration on the Establishment of a New International Economic Order provides, in article 4(c), as one of the principles on whose full respect this NIEO should be founded:

> "Full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries ..."

101. Similarly, article 10 of the Charter of Economic Rights and Duties of States provides:

> "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 organizations in accordance with their existing and evolving rules, and to share equitably in the benefits resulting therefrom."

102. This claim to a right to participate in international decision-making is a direct application of the principle of sovereign equality, indeed more akin to sovereignty than to equality. For external sovereignty or independence does not only mean that a State, while substantively bound by the rules of international law, is free to act on the international level without having to submit its decisions to, or pass through, another entity, unless it consents so to do. It also means that decisions directly affecting a State cannot be taken without its participation and consent, for this would amount to deciding for it, or negating its freedom to decide for itself. Thus viewed, it is an application of self-determination to collective decision-making.

103. As a normative proposition, however, participation faces a serious practical legal problem arising from the unstructured and uninstitutionalized character of the process of international decision-making, inter alia in the economic field, which makes this process very hard, if not impossible to seize and pin down for purposes of legal regulation and control. In such cases the only type of legal regulation which can eventually work is a highly institutionalized one, with judicial or other review mechanisms, possessing sufficiently wide discretionary powers to be able to decide not on the basis of specific legal criteria, but on the basis of the total effect of the act or behaviour (i.e., to evaluate whether or not the behaviour has contravened the principle or rule, as defined by its objective or spirit, rather than by an identifiable prescribed

behaviour). This type of review is of course totally lacking in general international law, and can only be found in particular sectors where there exists a specific conventional regulation with an institutional framework to supervise its implementation.

104. And it is in such cases also that the dilemma posed by the problem of participation is amenable to workable legal solutions. This is why article 10 of the Charter of Economic Rights and Duties of States, after stating the principle of the right of all States to participate in international eocnomic decision-making in general, specifies "inter alia, through the appropriate international organizations in accordance with their existing and evolving rules ..."

105. International organizations in general, and those which deal partially or exclusively with international economic questions in particular, can be divided, according to the type of activities they undertake, into (a) deliberative or policy-making and (b) functional. In the deliberative type organizations, like the United Nations, whether in their plenary organs (e.g., the General Assembly, the United Nations Conference on Trade and Development), or in their limited membership organs (e.g., the Economic and Social Council, the Trade and Development Board), all the members have the same voting power according to the principle "one State, one vote" (unless an exception is expressly provided for in the constitutive instrument, as in the case of the Security Council).

106. Functional international economic organizations, such as the International Bank for Reconstruction and Development and the International Monetary Fund, follow both in their plenary and in their limited membership organs a system of "weighted voting" on the basis of subscription to the capital of the organization. 36/

107. There are two aspects to the question of participation: access, or taking part in the process of decision-making, and weight or the actual part taken in this process. Though analytically distinguishable, practically they constitute a continuum, the limiting case being the question of access. The question of access is acutely posed in non-institutionalized contexts, while, in universal international organizations, the question is basically one of weight.

108. Though proceeding from, or based on, equality, the principle is formulated, both in the Declaration on the Establishment of a NIEO and in article 10 of the Charter of Economic Rights and Duties of States, in terms of "full and effective participation." Obviously, equality applies to access. But neither instrument specifies the modalities of "full and effective participation," i.e. whether it necessarily implies "equal participation," in the sense of equal weight in the decision-making process.

109. It is also significant that article 10, when referring to "the appropriate international organizations" (those "through" which "inter alia" this principle is to be applied), takes care to add "in accordance with their existing and evolving rules." In other words, the claim is not for a revolutionary normative proposition overriding existing instruments, but for an evolutionary one, which would work itself out through these arrangements towards the attainment of the objective it sets for them. The normative proposition thus prescribes maximum accommodation of the objective within the rules or arrangements as they stand, but also going beyond them, where this is necessary for a greater approximation of the objective, through the amendment procedures provided for in the arrangements themselves.

110. Though formulated in general terms and embracing not only international economic organizations, but international economic decision-making in general, this normative proposition

has been prompted by the decisions which proved most constraining and detrimental to developing countries and in whose adoption they were denied any meaningful participation, namely decisions relating to the international monetary system revolving around the International Monetary Fund.

111. It may be useful to use this concrete (but most significant) case to illustrate the import of the normative proposition.

First, the existing rules of the Bretton-Woods institutions, as was mentioned above, adopt a weighted voting formula, which gives the Western States a comfortable majority. The weak minority position of the developing countries is accentuated by the absence of the Socialist countries (with a few exceptions) from these institutions (as well as from the General Agreement on Tariffs and Trade).

112. Second, this system did not function according to its initial design, which was itself far from perfect in terms of "full and effective participation." As if by a centrifugal force, real decision-making was thrust out of the Fund and into the hands of the Group of Ten (now eleven), since its creation with the conclusion of the GAB (General Agreement to Borrow) in the early 1960's, the while pushing the developing countries, or what little weight they had, completely out of the real decision-making process. Problems of general interest are thus studied and discussed within the Group of Ten, and decisions are taken on them. By the time a decision of the Group of Ten comes before the organs of the Fund, they have no alternative but to "approve" or "adopt" it, i.e. to act as an echo chamber by formally taking cognizance of an already taken decision. 37/

113. The major economic decision in the international monetary field in recent years (if not since the creation of the Fund), namely the severance of the link between the United States dollar and gold in 1971, was taken unilaterally by one State

(and complemented by the Smithsonian Agreement on the general realignment of currencies between the Group of Ten), though it has profoundly affected and changed the international monetary system, includung the IMF, and greatly eroded the monetary reserves of the developing countries. 38/

114. It can be argued in defending these developments leading to the monopolization of the effective decision-making power within the IMF, that given the weighted voting system of the Fund, the Group of Ten controls in any case a comfortable majority. It cannot be gainsaid, however, that the spirit of the majority system, especially on the international level and between sovereign States, is against the complete disregard of the right of the minority or its exclusion from the process of decision-making altogether as if it did not exist. The spirit of the majority system rather favours the debating of issues of common interest and trying to find generally acceptable solutions and different ways and means of accommodating the interests of all the segments present, so that the majority votes for "railroading" or imposing a decision are only used as a last resort when a deadlock is reached and there is no other way of breaking it.

115. In the deliberative type organizations - where the States constituting the "majority" in the Bretton-Woods institutions are the "minority" and vice versa, and where there was much outcry about "the tyranny of the majority" - substantial concessions have been made by the majority to accommodate the interests of the minority and to give it a greater "weight" in the process of decision-making than warranted by its sheer number. This is reflected in the composition of limited membership organs such as the United Nations Economic and Social Council and the Trade and Development Board, where the proportions attributed to groups do not correspond to their proportion in the total membership of the organization. The main concession

to the minority, however, is the generalization of the use of consensus as a mode for adopting resolutions. It is a mode which gives each group a collective veto (formally, a veto even to each State). It is true that except where concensus is expressly required, there is always a possibility to resort to majority votes. But the mere fact that we now have two categories of resolutions, those adopted by consensus and those adopted by a majority vote, though both formally non-binding (with few exceptions), goes a long way to heighten the legal significance of the former and to diminish that of the latter.

116. A similar adjustment towards a more balanced decision-making process has yet to be found for the Bretton-Woods institutions, particularly the IMF. A first step in that direction would be to return to the initial design of the articles of the agreement by checking and "rolling back" the centrifugal effect or tendency of the weighted voting formula towards pushing the decision-making process outside the framework of the Organization and excluding the developing countries completely from this process.

117. Some efforts have been made, within the existing rules, to associate the developing countries in examining major issues (such as the establishment of the Group of Twenty, then the Interim Committee of the Board of Governors), as well as marginally to increase their voting power through a general increase in quotas and the doubling of the Saudi quota (in exchange for large financial facilities extended to the Fund). But all these measures, while constituting steps in the direction of a more representative decision-making process, did not alter in any substantial way the formal balance of voting power, nor a fortiori the informal decision-making process, within the Fund.

118. What is called for, in terms of reform of the system, is a more balanced "power-sharing" formula at the decision-making

level which would not reflect exclusively either sheer economic power or the sheer weight of members, but would accommodate or take into account, i.e. associate and aggregate, all the interests present. Thus while taking into account "economic power," it would give developing countries a greater say in the process, and would allow them to bear more substantially on it, where the process particularly affects and conditions their situation.

119. Such a balance has been aimed at, through complex and varied formulae, in the most recently established functional international economic organizations such as the Common Fund for Commodities and the International Sea-Bed Authority. But it is not yet reflected in preexisting ones.

120. This is, however, a very delicate balance, whose attainment depends on the particular circumstances of each organization. In other words, the principle of "full and effective participation" can be legally realized only through specific co-operative schemes, for which the prescription can merely provide and define the objective in general but not the details and the modus operandi, which have to be tailored to the specificities of the situation. And it is in such co-operative schemes that the purely normative approach reaches its limitations.

B. The duty to co-operate

121. By contrast with sovereign equality, the duty to cooperate, though constituting one of the basic principles of the Charter of the United Nations, occupies an awkward corner in the traditional system of international law. As was mentioned above, this traditional system, which has been called by Wolfgang Friedman "the international law of coexistence," emerged in the wake of the wars of religion in Europe and endeavored to organize the conditions of coexistence

between antangonistic States, by recognizing them as sovereign and equal and by imposing on them essentially passive obligations of abstention (from interfering in each other's sphere or with each other's activities).

122. In other words, the primary aim of the traditional system was to keep States apart rather than bring them together. This left very little room, if at all, for positive obligations to co-operate which go against the ethos and rationale of such a system. And even where the material conditions of the situation did call for them (e.g. in relations between neighboring States or States partaking in the same international watercourse), interminable controversies arose and are still with us as to whether such positive obligations to co-operate exist, and if so to what effect.

123. Parallelly,at least since the industrial revolution, the imperative of co-operation was becoming more pressing, if States were to draw the full benefits of the new techniques of production, exchange,and particularly communication, which were continuously being developed. But this imperative did not find legal expression in the general principles or rules of customary international law, but rather in conventional law, through multilateral, legislative type treaties (traités-loi) establishing normative and institutional frameworks for cooperation among States in the various technical fields.

124. The aggregation of these conventional frameworks of co-operation , which proliferated particularly in the post-war era, constitutes what Wolfgang Friedman calls "the international law of co-operation." It is a law with a different structure and logic from those of "the international law of coexistence." It is a more ambitious law, as it aims at going beyond the mere separate coexistence of States, associating them into co-operative action to achieve common ends, by prescribing positive obligations to act; and by so doing it tends to wield them into

a more tightly knit international community. But if abstention is the same for big and small, rich and poor, the situation is radically different when it comes to positive action. This is why the international law of co-operation has to take into consideration the real conditions of States, and to operate a division of labour among them according to their capacities and needs,i.e. to dose their rights and obligations according to their specific situations.

125. In order to operate in this way, the international law of co-operation needs more than the mere self-regulatory mechanisms which are barely adequate even for the purposes of the international law of coexistence. It is a different type of legal regulation, which calls for a correspondingly different type of legal organization to sustain it. This is why the international law of co-operation is be necessity an institutional law, and has always been intimately associated with international organizations.

126. Indeed, participation in an international organization, which is an institutional framework for co-operation to achieve certain specific or general common ends, necessarily implies for each member State a duty to co-operate with the other members in endeavoring to achieve those ends, at least to the extent that such co-operation is built into the obligations of membership.

127. The Charter of the United Nations makes international co-operation one of its major purposes (Article 1, paragraph 3) and the duty to co-operate one of its basic principles (Article 2, paragraph 5). It is true that the United Nations being an international organization, and the Charter an international Convention, this does not constitute an exception to what was said before. But in view of the unique position of the United Nations in contemporary international relations, its universal vocation from the beginning, and its almost

universal character at present, the principles of the Charter are generally considered to be part of general international law.

128. Article 2, paragraph 5, of the Charter imposes on Member States a duty to co-operate with the Organization itself, particularly in its action for the maintenance of peace; while Article 1, paragraph 3, enumerates as one of the purposes of the United Nations "/t/o achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights ...," but does not impose it as a duty on Member States. And though Chapter IX of the Charter, entitled "International Economic and Social Co-operation," reiterates this declaration of intention or purpose to a greater length in Article 55, and provides for the institutional machinery to carry it out in Articles 57 to 60, only in Article 56 does it refer to a duty to cooperate as a charge on Member States:

> "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

129. It is primarily on the basis of this article that one could postulate the existence of a general duty of co-operation among Member States in the economic, social and cultural fields, and in the field of human rights, beyond the specific obligations of membership provided here and there.

130. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 39/ proclaims "the duty of States to cooperate with one another in accordance with the Charter." By and under this formulation, the Declaration restates the duty of States to co-operate in the furtherance of United Nations objectives in general, and also specifies that obligation. It calls, inter alia, for

co-operation in (a) the maintenance of peace and (b) the promotion of universal respect for human rights. It reiterates the language of article 56 of the Charter (in subdivision (d)), without limiting it (as article 56 of the Charter does) to the purposes set forth in the Charter's article 55, while qualifying it with the phrase "in accordance with the relevant provisions of the Charter (which thus confines the duty to co-operate to where there exists a specific obligation).

131. When it comes, in the last paragraph of this part of the Declaration, to economic, social and cultural co-operation, and more particularly co-operation "in the promotion of economic growth throughout the world, especially that of the developing countries," the tone changes and the exhortatory "should" is used instead of the obligatory "shall" which is used until then.

132. In other words, and as revealed by the Declaration, up to 1970 there was no consensus on a general duty to co-operate outside the express obligations undertaken to that effect by States in the UN Charter or in other international agreements. But just a few years later, the Declaration on the Establishment of a New International Economic Order, the Charter of Economic Rights and Duties of States (both noted above in other contexts), the resolution on Development and International Economic Co-operation, 40/ and the other resolutions and instruments coming in their wake on the same subject, all proceed from the premise of interdependence, which postulates by necessity a duty to co-operate on the legal level.

133. The principles and norms of international law to be examined below all revolve around the concept of a duty to co-operate, and purport to elaborate it further and give it more substance in its application to international economic relations, and more particularly North-South (and corresponding Souht-South) relations. Though they be formulated as general principles, they are in fact each related more

particularly (or specifically) to a substantive economic field (or, with the exception of the last one of them, to an item in the balance of payment): the principle of preferential treatment is more particularly related to manufacturers, though it is capable of generalization; the principle of stabilization of export earnings of developing countries to commodities; the right of every State to benefit from science and technology, obviously to science and technology; the principle of entitlement of developing countries to development assistance to financial flows; and the principle of common heritage of mankind, which is of a different nature, to the use of international commons.

134. The normative prescriptions of these principles, however, can only define their aim or objective in general, but not the extent to which this objective is to be realized nor the ways and means of achieving it, which have to be worked out in particular co-operative schemes tailored to the specificities of each situation. Thus, the normative prescription can at most, in addition to defining the objective in general, create a duty or an obligation to negotiate with a view to defining more precisely the targets to be reached and the ways and means of reaching them.

135. But such a normative prescription is not sufficient by itself to constitute a normative proposition. In other words, the purely normative approach reaches its limits in the context of the international law of co-operation, which, by modulating the legal regulation closely to its subject-matter, is rich in specific applications that do not, or not yet, lend themselves to normative generalizations. This is why in what follows, in spite of the importance of the subjects dealt with in these principles, they will be treated briefly, or rather as much as their normative content permits.

1. The principle of preferential treatment for developing countries

136. If the international law of co-operation, in prescribing positive action to achieve common ends, has to take into consideration the real conditions of States and to divide the tasks among them, in terms of rights and obligations, according to their capacities and needs, then its application to North-South economic relations leads necessarily to the principle of preferential treatment of developing countries.

137. Indeed, this principle, under the slightly different denomination of the principle of duality of norms (le principe de la dualité des normes), is at the basis of what French writers have called "the international law of development" ("le droit international de développement"), which embodies those rules of international law governing the economic relations between developed and developing countries. 41/

138. Similarly, if we accept that the main purpose of the NIEO is to re-equilibrate international economic relations, or rather the international economic system, in order to make it a more congenial environment for, and more conducive in its mechanisms to, the development of third world countries, then positive discrimination or preferential treatment would in one way or another be at the basis of all corrective action, whether remedial or affirmative, i.e. all the bundle of economic policy measures constituting the NIEO. Thus, all the principles which follow can be reduced, in toto or in part, to the principle of preferential treatment.

139. The difference, however, between the principle of preferential treatment and direct transfer assistance (which is

in a sense also a species of differential treatment), as corrective or affirmative action in favour of the weaker members of society, is that preferential treament produces its effect indirectly through the legal system by varying or easing the conditions of application of the rules to make them less constraining or more advantageous to the beneficiaries of the preferential treatment.

140. The rationale of the principle is thus very general and capable of application to all rules of international law regulating international economic relations. It was, however, in the more specific field of international trade that the question of preferences in favour of developing countries was first suggested and taken up, particularly in the first United Nations Conference on Trade and Development (UNCTAD) in 1964, 42/ leading to the adoption of the Generalized System of Preferences (GSP) in 1970, 43/ which is the most concrete, comprehensive, and hence most important application of the principle to date. It is thus legitimate to analyse the normative contents of the principle against the background of the GSP, while keeping in mind that this principle has numerous other manifestations 44/ and is capable of wider applications.

141. The principle is enunciated in abstract and general language in article 19 of the Charter of Economic Rights and Duties of States which reads as follows:

> "With a view to accelerating the economic growth of developing countries and bridging the economic gap between developed and developing countries, developed countries should grant generalized preferential, non-reciprocal and non-discriminatory treatment to developing countries in those fields of international economic co-operation where it may be feasible." 45/

142. The normative content of the general principle, however, revolves around, and can be summarized by, the four adjectives used in this provision to qualify the term "treatment."

(a) Preferential here means "differential" treatment

or positive discrimination (which is, paradoxically, not incompatible with the adjective non-discriminatory, as explained below). The nature, scope and extent of the difference in treatment constitute the "preference," which has to be specifically defined in each case.

(b) Non-reciprocal means that preferences are granted on a unilateral basis, and that developed countries should not expect to enjoy the same preferential treatment from the beneficiary countries. It is this concessionary element or character which constitutes here the differential treatment of developing countries and distinguishes preferences in their favour from other mutually preferential arrangements such as customs unions, free trade areas or economic integration schemes. It should be remembered in this connection that the move towards a GSP was largely motivated by a desire to substitute it for pre-existing "vertical" or "reverse" preferences, which helped in preserving the economic ties between many newly independent countries and the former colonial powers, and were thus considered by many as maintaining economic dependence.

(c) Generalized: this is the most important adjective which, from the normative point of view, would transform preferences from mere ad-hoc variable concessions in bilateral relations (always for a consideration on the same or at another level) into a "system," i.e. a permanent and fixed feature or component "built into" the international economic system. To that end, preferences have to be uniform in their content and general in their personal scope of application, in the sense of being granted by all developed countries and enjoyed by all developing ones.

(d) Non-discriminatory: this is in fact a component of the "generalized" character of the preferences, and simply means that there should be no discrimination among developing countries in their entitlement to preferences.

143. Indeed, both the non-reciprocal and the non-discriminatory features aim at transcending the direct ties or relations between the grantors and the beneficiaries of preferences, by moving from vertical, direct and reciprocal relations to a horizontal and general, hence impersonal, system whose application is determined by the objective status of States as developed or developing, rather than by their special ties or by exchanged considerations.

144. To what extent can we say that this concept of preferential treatment has crystallized in international law, at least in international trade law, particularly as reflected in the GSP?

The GSP is both preferential and non-reciprocal, thus fulfilling the substantive requirements of affirmative action. But it is neither general nor non-discriminatory. Indeed, the developed countries could not agree on a single uniform system of preferences, so they went ahead with individual schemes. The "Agreed Conclusions," which were reached within UNCTAD and which were supposed to lay down the main features of this single system, ended up being a mere regulation of the common features of these individual schemes (as distilled from the different offers made by the developed countries which were accepted by the developing ones). The result is that we do not have a generalized system, but a multiplicity of individual schemes which are not uniform in content, and from which each preference-giving country or group of countries can exclude certain, or certain categories, of developing countries; and can, as well, modify or withdraw preferences in whole or in part being that they do not consider the grant of preferences as constituting a legally binding commitment. 46/

145. The real significance of these traits of the GSP, in terms of content analysis of the principle of preferential treatment, is that they reveal the resistance of preference-giving countries

in general to a move away from a vertical, bilateral set-up which emphasizes the grant or concessionary element and in which they keep the direct power of decision on all major questions. While conceding preferential treatment in many contexts, these countries evidently resist the advent of a horizontal institutional set-up (or general system), where decisions are collective and based on purely objective criteria or considerations.

146. Thus, while it can be said that the "preferential" and "non-reciprocal" elements of the normative proposition, i.e. its substantive concessionary or affirmative action components, have been crystallized and are generally accepted, the same cannot be said of the "generalized" and "non-discriminatory" elements, i.e. the structural components required to transform the substance from the level of particular arrangements into a general norm or principle of the international law of co-operation.

147. It is in this respect, that of the degree of "generality" and "institutionalization," that the normative contents of the principle are yet to crystallize. But even then, they still would not constitute a self-sufficient normative proposition on the operational level. For, the same as with all the principles revolving around the duty to co-operate, the normative proposition can only provide the objective and framework in general, which then have to be concretized and complemented by a specific legal regulation. Such specific legal regulation is necessary in order to determine in each context, inter alia, the nature, scope and extent of the preferences, the conditions under which they are to be given, the preference-giving and receiving States, the procedures, and mechanisms for their administration.

2. The principle of stabilization of export earnings of developing countries

148. This principle is an example of the differential and

preferential treatment of developing countries, in as much as it not only addresses a problem which, albeit generally, is felt with particular acuity by those countries (namely the endemic instability of international commodity markets) but also, and more importantly, it proposes a solution specifically conceived to alleviate the hardship this problem may cause to them.

149. The present day international division of labour is the outcome of a historical process. This process has led, through the integration of third world countries in the international economy, to their specialization in the production of raw materials for export to the industrialized world. This is why commodities (which is the term used to designate raw materials in the form they take in international trade), whether agricultural, mineral or of other kind, constitute the bulk of the exports of developing countries, and their export proceeds amount to a large proportion of their national income, in comparison with developed countries.

150. International commodity markets are characterized by a high degree of instability (frequency and wide margins of price fluctuations; the tendency for stocks to accumulate and for prices to collapse). This instability is the result of the inelasticity of supply, in view of the length of the production cycle and of the very slow process of adjustment of the productive capacity.

151. For a long time attempts were repeatedly made to reduce this instability, through national and international measures which endeavored to stabilize commodity prices either by controlling supply through production or export quotas or by direct intervention in the market through buffer stocks. After the Second World War, the Havana Charter of 1947 developed the modern concept of commodity agreements, associating on an equal footing both producers and consumers, in order to ensure that such agreements remained an instrument of stabilization against

erratic and cyclical fluctuations, and not one of intervention in the workings of long-term market forces.

152. With the advent of UNCTAD in 1964, the main concern becomes the secular adverse movement of the terms of trade of commodities, which constitute the bulk of the exports of developing countries, against industrial goods, which constitute the bulk of their imports. In consequence, the aim of commodity agreements becomes not only the stabilization of commodity prices against short-term fluctuations, but their stabilization in the long run at a "renumerative and equitable" level, compatible with the requirements of development.

153. In this development strategy, clearly the final aim and object of stabilization is not merely the price of commodities, but their terms of trade, so that its net effect would approximate an indexation of commodity prices to the prices of industrial goods , which indexation in turn aims at achieving the stabilization of real income from export proceeds around a growing trend.

154. This objective can, however, be attained by other means or instruments of economic policy as well. Among them is the constitution of producers associations, aiming to increase the bargaining power of producers and thus put them in a better position as one of the market forces to participate in the process of price formation. Another method would be to act not at the intermediate level of price but directly at the income level, through compensatory financing of shortfalls in commodity export proceeds. These are not incompatible measures and can be combined or used cumulatively. However, as commodity agreements have been very difficult to negotiate - which explains their very limited number - the other measures have tended to gain in importance.

155. Can we speak of a principle of compensatory financing of shortfalls in exports proceeds (or more specifically of commodity exports proceeds) of developing countries? And if so, what would be its normative content?

The Programme of Action on the Establishment of a NIEO provides:

> "Until satisfactory terms of trade are achieved for all developing countries, consideration should be given to alternative means, including improved compensatory financing schemes for meeting the development needs of the developing countries concerned."47/

The Integrated Programme for Commodities also cites among the international measures to be taken:

> "Improvement and enlargement of compensatory financing facilities for the stabilization, around a growing trend, of export earnings of developing countries." 48/

Both these provisions formulate the principle by reference to existing schemes, which have thus to be examined for guidance as to the normative content of the principle.

156. Two such schemes function at present, one (which in fact has three variations: STABEX, SYSMIN and the Protocol on ACP Sugar) on an interregional level within the Lomé Conventions between the EEC and the associated ACP countries;49/ the other on a more general, or universal level, namely the Compensatory Financing Facility (CFF) established within the IMF in 1963.50/ In addition, several schemes are under study, the most important among them being UNCTAD's "Proposal for a Complementary Facility for Commodity-Related Shortfalls in Export Earnings."51/

157. If we compare these schemes, we find that the conditions and modalities of their application vary significantly. Still it is possible to identify a few traits of a general normative proposition concerning compensatory financing which emerge from them:

(a) The compensatory financing applies only in favour of developing countries. Commodity exporting developed countries are judged to have enough economic resilience and power to take care of themselves. In this sense, this principle is a special application of the more general one of differential and preferential treatment. But differential treatment applies also among developing countries, by extending to the least developed ones even more generous conditions. The IMF Facility, however, does not make this distinction, nor for that matter is it formally limited to developing countries (though in practice this is the case).

(b) Though the principle is usually formulated in broad terms to cover shortfalls in export proceeds in general, in actual fact the compensation provided for in the schemes is for shortfalls in the proceeds from commodity exports. It is true that, here again, the IMF Facility is not formally limited to shortfalls in commodity export proceeds; but even then the IMF decision creating the Facility specifies that its purpose is "to assist members, particularly primary exporters." 52/ In any case, though their proportion is slowly declining, commodities still constitute the bulk of the exports of developing countries, and they are the major cause for the instability of their exports proceeds, so that the wider formulation or product coverage would not necessarily yield substantially different results.

(c) Compensatory financing takes the form of a loan, covering usually less than the full, but not less than half the amount of the shortfall. 53/ The terms and conditions under which this loan can be extended and has to be repaid differ from one scheme to another. But the concessionary element increases for the less developing countries, reaching under certain circumstances the level of outright grant (except, once again, for the IMF Facility, which does not make this distinction).

158. With these contents, the principle of compensatory financing seems akin in its effect to ex post facto indexation. But it is not real indexation, except in its concessionary elements if they in fact exist, as what is advanced has to be repaid.

159. Compensatory financing is thus a species of corrective, remedial action, which applies after the fact, thus avoiding any tampering with the market forces. It merely purports to mitigate or alleviate the hardships these forces may cause. The affirmative action (or assistance) element is thus more visible than in other preventive or ex ante techniques (such as those mentioned above in relation to commodities) which aim at "correcting" or "re-equilibrating" the initial basic rules relating to the workings of the international commodity markets.

160. This factor may also explain why this principle has proved to be easier to accept by the developed countries than the other alternative legal approaches to the problem of commodities, and why it has made relatively more headway in practice.

161. Here again, and in spite of the widening acceptance of the principle, its emerging normative content described above does not constitute a self-contained normative proposition. It merely defines the aim or objective and serves as a general framework which has to be filled in each context by a specific regulation providing for the conditions and modalities of the functioning of the particular scheme, including the institutions needed for its implementation.

3. The principle of the right of every State to benefit from science and technology

162. Unlike the two preceding principles which apply mainly to manufactured and commodity exports of the developing countries (that is, to their visible exports), the present principle relates to technology which is an important item of their

invisible imports (services). Since the beginning of the sixties, there has been an increasing awareness of the strategic importance of technology in the process of development, more particularly of industrialization, and of the built-in obstacles which impede the flow and effective transfer of needed technology to developing countries.

163. Attempts by the United Nations General Assembly at a normative formulation of the principle here under consideration are numerous. Though largely similar, these declarations are not identical, and should be examined cumulatively with a view to identifying the normative content of the principle. Prominent among them is the Declaration on the Establishment of a New International Economic Order, which provides as one of its principles:

> "Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies." 54/

164. The Programme of Action on the Establishment of a New International Economic Order also includes a part IV entitled "Transfer of Technology," which provides:

> "All efforts should be made:
>
> "(a) To formulate an international code of conduct for the transfer of technology corresponding to needs and conditions prevalent in developing countries;
>
> "(b) To give access on improved terms to modern technology and to adapt that technology, as appropriate, to specific economic, social and ecological conditions and varying stages of development in developing countries;
>
> "(c) To expand significantly the assistance from developed to developing countries in research and development programmes and in the creation of suitable indigenous technology;
>
> "(d) To adapt commercial practices governing transfer of technology to the requirements of the developing

countries and to prevent abuse of the rights of sellers;

"(e) To promote international co-operation in research and development in exploration and exploitation, conservation and the legitimate utilization of natural resources and all sources of energy.

"In taking the above measures, the special needs of the least developed and land-locked countries should be borne in mind." 55/

165. Similar pronouncements can be found in article 13 of the Charter of Economic Rights and Duties of States (which provides a general statement of the principle in its paragraph 1: "Every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development"); 56/ in the resolution of the Seventh Special Assembly entitled "Development and International Economic Co-operation"; 57/ in the International Development Strategy for the Second United Nations Development Decade ; 58/ and in the International Development Strategy for the Third United Nations Development Decade. 59/

166. Moreover, the normative content of the principle which can be identified through the analysis of these instruments is illustrated by two on-going negotiations where efforts are being made at concretizing the principle by elaborating a more specific international regulation: the United Nations Conference on an International Code of Conduct on the Transfer of Technology 60/ and the seventh revision of the Paris Convention for the Protection of Industrial Property. 61/

167. Content analysis of these pronouncements leads to the following conclusions:

(a) The general aim or purpose of the principle is to ensure for developing countries access to the achievements of modern science and technology (in other words, a right to partake in, and benefit from them). Here again, in the final analysis, the question is one of effective particpation;

(b) The means to achieve this end are multiple. But from a normative point of view, they can be classified in two large categories:

(i) A positive obligation of assistance on and by developed countries and international organizations to developing countries, in various forms:

a. Making more readily available, through wider exchange and dissemination, a greater flow of information to developing countries, in order to allow them to make more informed technological choices in full knowledge of the available possibilities, particularly as concerns advanced technologies;

b. Providing technical assistance to developing countries in the establishment and strengthening of their scientific and technological infrastructures (e.g., in personnel training, in setting up and conducting science and technology R and D programmes, etc.) which can thus develop into a viable and eventually self-sustained base for the creation of indigenous technologies;

c. Devoting more of R and D activities by developed countries to problems of primary interest to developing countries with a view to developing, preferably in co-operation with the latter countries, appropriate technological solutions to these problems.

(ii) An international legal regulation of technological transactions, in order to ensure that the access of developing countries to technology takes place on fair, equitable and mutually beneficial terms and conditions. In this component, the principle comes closer in its approach to the preceding two

principles, in that it purports to "correct" or "re-equilibrate" an imbalance in the working of the international economic system.

168. Though a derivative of science, which is a res communis, technology itself is subject to appropriation. Indeed most of the technology sought by developing countries is patented and thus legally considered as industrial property, the patent holder having the exclusive powers of using and disposing of it. In addition, the industrial property market (as with other services such as shipping and insurance) is far from perfect in the economic sense of the term. It is poles apart from "perfect knowledge" both as to available alternatives and as to pricing. It is also highly restrictive, with marked monopolistic or oligopolistic traits, where a large part of the sought technology is in the hands of transnational enterprises which are themselves difficult to fathom, and where in most cases the transfer of technology is part of a larger package. With the transnational enterprises thus marshalling inordinate knowledge and economic power compared to the developing countries dealing with them, the balance of bargaining power is such that it can only yield technological transactions disproportionately tilted in the favour of such transnationals. It thus becomes necessary to redress this disparity mainly by the following regulatory measures:

(a) Requiring greater transparency in the industrial property market;

(b) Protecting developing countries against their own weakness in technological transactions through legal regulation which imposes certain limits and standards to be heeded and followed in individual transactions with a view to ensuring their fair, equitable and mutually beneficial character;

(c) Providing for preferential treatment in favour of developing countries, inter alia in national and international regulation of industrial property.

169. This preferential treatment is to be applied also among developing countries by affording the least developed of those countries even greater favourable treatment.

170. Both the negotiations on the seventh revision of the Paris Convention and on the Code of Conduct on the Transfer of Technology deal essentially with the regulation of technological transactions (though in the revision of the Paris Convention, the question of aid is at issue as well). The difficulties that both these negotiations are facing (as well as the negotiations on the Code of Conduct for Transnational Corporations 62/ are not so much with the assistance component, nore even with the preferential treatment aspects, but with attempts to correct or re-equilibrate the initial basic rules relating to the workings of the industrial property market. Illustrative of these attempts, in the revision of the Paris Convention, are proposals emphasizing inventors' certificates as alternatives to patents (thus taking away the monopoly aspect from the use of the subject invention or process, but not the requirement of compensation) and proposals for non-voluntary licensing in certain circumstances. 63/ In other words, the developed countries accept more easily the adoption of ancillary rules with clear "affirmative action" content, than tampering with the basic initial rules.

171. The same is true of the negotiations on the Code of Conduct, where a major element of disagreement is over "restrictive practices," the developing countries being for the prohibition of a wide range of practices which they consider "restrictive" of their development efforts, while developed market-economy countries only accept as "restrictive" those practices which are restrictive of competition. On the other hand, developing countries require greater latitude in regulating technological transfers and subjecting them to their own legislation and jurisdiction with a view to ensuring that they are made on fair, honest and equitable terms and conditions,

andthat they respond to their actual needs. 64/

172. These controveries bring out one of the major difficulties in attempting to elaborate a legal regulation of technological transfers, namely that usually these are between private parties (at least as far as the transferor is concerned in the large majority of cases). A meaningful international legal regulation will have to be translated into a municipal one in order to produce its ultimate effect, and has to be formulated in terms of a definition of both the ambit and the limits, but also to some extent the positive contents, of the national regulation.

173. The developing countries adopt a wide definition on both issues. The developed countries, on the other hand, adopt a restrictive attitude, especially as concerns the positive obligation to legislate and implement controls on the activities of the private parties within their jurisdiction, particularly transnational corporations, in order to bring them to act in conformity with the international standards to be laid down in the Code.

174. In its technical approach, especially in defining the ambit of national regulation, the principle under consideration comes close to the principle of permanent sovereignty over natural resources, though its other component, namely the positive obligation to legislate and effect control, clearly partakes of the duty to co-operate in its aim if not in its technique of implementation. This also explains the fact that the institutional element in relation to this principle, though not totally absent (especially as regards the obligation of assistance), is less prominent than is the case with the other principles deriving from the duty to co-operate.

4. The principle of entitlement of developing countries to development assistance

175. Though development assistance can take many forms, such as technical, financial, in kind (e.g. food), debates and resolutions in the United Nations, as well as the writings on the subject, have concentrated mainly on one form of assistance, namely the financial, and have extended the debate to the financial flows to developing countries in general, including the whole question of debt which is clearly not, or not mainly, one of assistance.

176. Here again, as with the preceding principles revolving around the duty to co-operate, this principle, though formulated in general terms, envisages basically a specific item of the balance of payment. For purposes of the analysis of the normative content of the principle, however, its subject-matter has to be clearly defined: it has to be limited to assistance, but cover all forms of it. 65/

177. Since the end of the Second World War, development assistance, both technical and financial, has become a permanent feature of North-South international economic relations and one of the main functions of the contemporary network of international organizations. It is a permanent item in the budgets of all developed countries as well as in the development and financial planning of all developing countries.

178. The continuous flow of assistance from all developed countries and from international organizations over a long period of time creates expectations and induces reliance on its continuation on the part of the developing countries. It also recalls the model of the "international law of co-operation" described above, which takes into consideration the real conditions of States and doses their rights and obligations according to their capacities and needs. But is it really the case here, and can we as yet speak of development assistance

in terms of rights and obligations?

179. In fact, in spite of a certain regularity in the flows of assistance, it is difficult to maintain that they have given place to a concrete normative proposition, specific as to their content (or level) or individualized as to their destination (or beneficiaries). In other words, though each developed country devotes a certain amount of resources each year to development assistance, and each developing country receives every year from diverse sources a certain amount of assistance and may rely on it, it is not legally possible yet to assert that there is a legal obligation resting on the former with a corresponding right in favour of the latter. There is still a missing direct legal link (apart from cases of special arrangements) between the members of the two categories of States considered individually. But such a direct legal link partakes of the logic of the "international law of co-existence," a logic which can hardly accommodate a principle such as this.

180. By contrast, the international law of co-operation can provide a suitable legal framework for this principle. Indeed, if there is to be a right, or an entitlement, on the part of developing countries to development assistance, it can only be vis-à-vis the international community as such. And if there is to be an obligation of solidarity in the form of development assistance charged to the developed countries, it would also have to be vis-à-vis the international community, which, not commanding the resources necessary for fulfilling its obligation of assistance, can only discharge it with the resources put at its disposal by those of its members which have the capacity to do so: the developed countries. In other words, for this principle to become operational as a self-contained normative proposition, not only does its content need to be specified, but so do also the parties to the legal relations deriving therefrom and the institutional arrangements which relate them to each other.

181. Efforts at specifying the content of the principle have been under way since the late fifties. They all build on Articles 55 and 56 of the Charter of the United Nations. The former directs the Organization to promote "higher standards of living, full employment, and conditions of economic and social progress and development." The latter clause provides significantly that: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." In 1960, at the beginning of the United Nations /First/ Development Decade, the General Assembly adopted a resolution in which it "/e/xpresses the hope that the flow of international assistance and capital should be increased substantially so as to reach as soon as possible approximately 1 per cent of the combined national incomes of the economically advanced countries ..." 66/

182. By 1970, this global aim for all developed countries (but not for each individually) of 1 per cent of their combined "national income," which was clearly proposed as a wish (a "vœu"), became much more specific in the resolution on the International Development Strategy for the Second United Nations Development Decade (adopted by consensus thus commanding the acceptance of the developed countries): the target of 1 per cent is no longer a percentage of national income but of gross national product, and it is not a combined target for all developed countries, but an individual one which "each economically advanced country should endeavor" to reach. Moreover, as a sub-target (for whose attainment each "will exert its best efforts"), 70 per cent of this 1 per cent should be in official development assistance (ODA). Finally, the conditions of assistance should be improved (terms softened, financial aid unencumbered or without strings, etc.) 67/

183. Moreover, one of the persistent demands in the resolutions relating to the improvement of the conditions of assistance

is the request to channel an increasing proportion of it through multilateral institutions and procedures, i.e. for increasing institutionalization.

184. If we understand the principle, however, as not merely relating to assistance but aiming to increase the financial flows to developing countries in general (as many of the more recent resolutions 68/ and writings do), then its normative content would include not only the prescription of a greater contribution to multilateral schemes and financial institutions, but also a greater effort at revising the rules governing the functioning of existing institutions, with a view to widening the channels and quickening the pace of the flows. It would include inter alia revisions aiming at easing actual burdens (e.g., rescheduling and cancellation of certain debts), changing lending policies and conditions and opening more facilities or windows particularly in the IMF and IBRD.

185. All the aforementioned prescriptions provide for special preferential treatment in favour of the least developed countries.

186. The said targets, though generally subscribed to by the international community (including the developed countries) are not considered by the developed countries to be a matter of legal obligation, but mere standards of achievement. Indeed, for almost two decades now, development assistance is moving away from rather than towards these targets, especially the target of 1 per cent of the gross national product in assistance. And if in the majority of cases the nominal amount of aid has not regressed but has simply tended to level off and thus expectations and reliance were not formally disregarded, both in real and percentage terms the assistance from developed countries was dwindling away. Even then, one has to keep in mind that this is merely a tendential description of the evolution of development assistance provided by developed countries in general, and that there has never been a question of maintaining direct assistance by amount (be it nominal), or by

(recipient) country, as a matter of legal obligation.

187. The resistance of developed countries is even greater to the claim for the progressive increase of the proportion of assistance flowing through multilateral channels and procedures, i.e. for increasing institutionalization. Indeed, most development assistance from East or West remains bilateral. But bilateral assistance is by nature subjective and is always based on a consideration, strategic, political, economic or other.

188. Institutionalization makes it possible to treat development assistance legally as a right or entitlement of developing countries vis-à-vis the international community at large. Parallel to what was said earlier about preferential treatment, it would constitute a move from vertical, reciprocal and subjective relations to horizontal and impersonal systems, where decisions are collective, and are based on objective rules, i.e. on objective categories of actors (developed and developing countries, and sub-categories thereof) and criteria (need). Unlike the case of the principle of preferential treatment, however, the problem with institutionalization here is not that of the very existence of an institutional framework, as numerous multilateral development programmes and facilities do exist; the problem is that of the financing of these institutions, the developed countries keeping them on very short leash and prefering to provide assistance directly on a bilateral basis.

189. It is only when channelling assistance through these institutions becomes the rule rather than the exception that the principle under consideration would acquire the structural components necessary to transform its normative substance from the level of particular arrangements into a general principle of the international law of co-operation. And it is only when the pledges of the individual developed countries to reach the targets set for their development assistance become more specific both as to their volume and to their recipients, by ad-

dressing them to specific institutions representing the international community, that the normative substance of the principle, namely the entitlement of developing countries to development assistance, becomes a legal reality or, in other words, an operational normative proposition. But this would also mark the threshold of an international solidarity or income tax, which we cannot count upon in the foreseeable future.

190. The above explains the continuous attempts at identifying direct or autonomous resources for the international community, which would allow it to give effect to the principle without depending in turn on appropriations from governments. 69/ One such source can be the revenue from the exploitation of the resources of international commons. The United Nations Law of the Sea Convention of 1982 provides the first example of what can be done in this respect. It proclaims the "International Area" of the sea-bed (that lying beyond national jurisdiction) "and its resources ... the common heritage of mankind" (article 136), and establishes an international institution, the International Sea-bed Authority, to regulate and administer the exploitation of these resources (articles 156-158). This exploitation can take place either directly by the Authority through its operational arms, the "Enterprise" (article 170), or indirectly through the granting of licenses to public or private enterprises against a fee and a proportion of their net proceeds (Annex III). The revenues are to be distributed on a "non-discriminatory basis" (article 140, paragraph 2), according to a formula that will take "into particular consideration the interests and needs of developing States ..." (article 160 (f-i)).

191. It is true that this pioneering regime may remain practically dormant for some time to come, for reasons which will be discussed below under the principle of the common heritage of mankind. Still it is the first detailed legal regulation providing for an autonomous source of revenue for the interna-

tional community as such to be included in a law-making multilateral convention of major importance.

192. Another potential source of autonomous financing is the often repeated proposal, particularly in UNCTAD, to establish a "link" between the creation of new international liquidities and development financing. This idea of a "link" goes back to the discussions in the early sixties over the reform of the international monetary system, leading to the introduction of the Special Drawing Rights (SDR) in the IMF. It can take shape inter alia by altering the allocation formula of new SDRs within the Fund, abandonning the actual system of proportionality to members' quotas for a formula which would weigh the scale more heavily in favour of developing countries, or simply by allocating them directly to multilateral development institutions.70/ In spite of their recurrence, these proposals have not made much headway owing to the resistance of developed countries.

193. Yet another possible autonomous source of revenue has been proposed in the form of a "global development tax on international trade." 71/ But here again, such proposals remain for the time being politically moot.

194. In conclusion, the need for massive development financing is generally recognized, and the development assistance from developed countries, though insufficient, continues to flow. But what is missing from a normative point of view is the legal and institutional framework of relating the one to the other.

195. Institutionalization, through the adoption of objective procedures and criteria, perhaps in particular contexts such as the Lomé Conventions, if it spreads to cover an increasing proportion of assistance, may eventually reach the threshold of the qualitative transformation of development assistance into an effective principle of the international law of co-operation. This transformation can be accelerated if the international

community succeeds in devising and adopting schemes enabling it to raise revenues directly, without depending on States, for purposes of development financing.

5. The Principle of the common heritage of mankind

196. This is a relatively new principle, having come to prominence in the process leading to the adoption of the United Nations Convention on the Law of the Sea of 1982, though it was first mentioned in the context of outer space in the early sixties. It proposes a new formula for the use of the international commons. In spite of its recent origins, it was given specific application in two sets of major multilateral instruments relating to the sea-bed, ocean floor and subsoil thereof beyond the limits of national jurisdiction, and outer space.72/

197. The comparative analysis of these regimes, and of the debates which preceded them as well as of the writings on the subject, makes it possible to identify the normative content of this principle, which is composed of four constituent elements (or sub-principles) 73/ as set forth below:

(a) "Non-exclusive" use, hence "non-appropriation" of the area in question

198. This is the classical doctrine of res communis, which is absorbed but qualified and complemented by the principle of common heritage of mankind. Res communis is distinguishable from res nullius which is the status of what is not actually appropriated but which remains subject to appropriation, as well as from joint or undivided ownership which is a species of appropriation by several subjects. The res communis status means that its subject-matter lies beyond the ambit of the legal institution of appropriation, and is amenable to its own parallel or opposite legal regime. But if the object or area cannot be appropriated by one or several members of the community, this is because it has to remain open to be used by all the members of the community. Thus, the res communis status implies in the

first place free and equal, i.e. non-discriminatory, access to the area and its resources for all the members of the community. It also implies that the use of the area and the exploitation of its resources has necessarily to be non-exclusive. But if the area as such and its resources in the general sense, e.g. the mines, are not subject to appropriation, this is not the case with the product of their use or exploitation by the different members of the community, such as here the minerals, which remain the property of those who have extracted them.

199. In its functioning and results, the res communis regime is a special application of the liberal doctrine of laisser faire, laisser passer. Indeed, in context of the traditional law of the sea, it was the logical extension of the principle of the freedom of the high seas to the subject-matter of their resources. This liberal regime, while guaranteeing formal equality of access to the resources of the area governed by it, sanctions in fact the inequality of the outcome, as it puts no limit to individual use or exploitation as long as it is formally non-exclusive. The result is that only those commanding the means of effective use or exploitation of the resources would draw the whole or most of the benefit from the use of the res communis (in the absence of any limitation or equalizing mechanisms as to the outcome). It is on this point that the principle of common heritage of mankind departs from the res communis regime (while building on it) by qualifying and limiting it so as not only to regulate the conditions of access to the res communis, but also ensure that the benefits from its use and the exploitation of its resources are equitably shared by all the members of the community.

(b) Regulation and control of the use of the common heritage

200. This is the great departure from the res communis regime, under which once access is regulated the rest is left to States

individually, according to the liberal doctrine of laisser faire, laisser passer. Under the "common heritage" principle, the use itself is regulated and controlled. This is why the principle requires the existence of institutions to implement the regulation and exercise the control.

201. The regulatory and institutional component has been provided for in detail in the United Nations Convention on the Law of the Sea of 1982 (as was briefly described above in the context of the principle of entitlement of developing countries to development assistance). It is also this component which is at the root of the United States objections to the Convention, and its refusal, together with a number of other developed countries, to sign it.

202. As far as outer space is concerned, the principle has been declared in a general way in the 1963 General Assembly Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space,74/ the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, and the 1979 Agreement Concerning the Activities of States on the Moon and other Celestial Bodies. Article 11, paragraph 5, of this last Agreement provides, however, that:

> "States Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible."

In other words, in the two major contexts where the principle has found specific application, the regulatory and constitutional component is either contested or not yet elaborated.

(c) Equitable sharing of the benefits deriving from the use of the "common heritage"

203. The regulatory and institutional component of the principle

aims at ensuring that the outcome of the application of the regime corresponds to its finalities. The main objective of the common heritage principle and what differentiates it from the liberal and individualistic res communis regime is that what is "common" in it for all the members of the community is not merely the theoretical faculty to accede to the use of the common heritage and to benefit from it, but also the actual sharing of the benefits deriving therefrom, whether these members are in a position to use the common heritage themselves or not. Moreover, the canalization of the sharing and distribution of benefits through multilateral institutions provides the international community with the autonomous resources needed to finance development and give effect to solidarity. The sharing of benefits can thus be used as a means of preferential treatment and redistribution by following a scale geared to need, thus favouring developing countries and, to a greater degree, the least developed among them.

204. It is important to note that the six developed countries which did not sign the Law of the Sea Convention and which have adopted national legislation permitting enterprises within their jurisdiction unilaterally to explore and exploit the resources of the "international area," without submitting to the regulatory and institutional regime of the Convention, have provided for earmarking part of the proceeds for assistance purposes.75/ They thus recognize the existence of an obligation in this regard, or accept the "common heritage" principle in its equitable sharing of benefits component, though they do not yet accept its regulatory and institutional, i.e. structural, dimension.

205. It can thus be said that the principle, as a general normative proposition, is accepted in broad lines, but not in all its components or details. However, without the regulatory and institutional component, it cannot effectively function as an operational principle of the international law of co-operation.

(d) Exclusively peaceful use of the common heritage

206. This requirement is the logical result of the fact that the two specific legal regulations existing to date, those relating to the sea-bed beyond national jurisdiction and to outer space, have been elaborated within the framework of the United Nations and had, in consequence, to be in conformity with the purposes and principles of its Charter. 76/ Moreover, both the terms "heritage" and "mankind" bring to mind the interests of future generations, whose safeguarding requires first and foremost such a limitation (in addition to conservation and the protection of the environment). Still certain activities taking place in these areas constitute more or less indirectly (if only through monitoring and intelligence gathering), important components of the defense system of great Powers, which leaves room for further disarmament measures in these areas.

(e) Evaluation of the principle

207. Can this principle find further specific application beyond the two spacial areas already declared "common heritage of mankind," namely the sea-bed beyond national jurisdiction and outer space? In these two cases, the application of the principle was made possible when the exploitation of the resources of the spacial area was "about to become feasible"; 77/ and the need for legal order or regime was thus moving from being a moot question towards becoming a practical issue. At the same time, no appropriation claims were yet asserted. Thus their proclamation as common heritage of mankind was politically feasible, though not necessarily easy. And it is in such cases and at such moments that the principle finds its natural ambit. It is much more difficult to apply it, however, to spacial areas over which there already exist certain claims of appropriation. The inclusion of such areas into the "common heritage of mankind" would require both a renunciation of these claims and a general acceptance of the application of the "common heritage" regime to them,which is politically much more difficult to achieve.

III. CONCLUSIONS AND RECOMMENDATIONS

208. What conclusions can be drawn from the present study? Much controversy has surrounded the concept of a NIEO, and has been reflected on the principles and norms of international law relating to it. A dispassionate examination of these principles and norms, from the point of view of normative content and legal status, reveals, however, an extended legal map with a juxtaposition of areas of shade and light. Indeed, the normative propositions vehicled or expressed by these principles and norms are in good part generally accepted. But even then, the degree of general acceptance may vary or wane as we move towards more specific conditions, modalities or cases of application or derogation. In other cases, the general normative proposition might be clearly formulated but is not generally accepted yet, in contrast with some of its specific cases of application. In yet another category of cases, the general normative proposition itself or some of its components are not very clear, with some elements of practice hovering below them, though the link between the two levels awaits to be legally articulated.

209. Though perhaps not living up to the expectations created by the drive for the establishment of a NIEO in the middle seventies, this chequered balance sheet is far from being negative. For one has to take into consideration not only what remains to be done, but also the considerable normative substance which has already been elaborated, refined and generally accepted.

210. This evaluation is particularly warranted in international law where, in the absence of legislative power, there is no possibility of instant creation of norms of general international law (except for the very far-fetched hypothesis of a treaty which would be simultaneously adopted by all the members of the international community). The process of creation and development of such norms is thus always long and adruous. As was said above, it is usually a piece-meal, hence a cumulative process,

in which new law emerges from practice, precedents, negotiations and pronouncements which are frequently registered in instruments of ambiguous legal nature, in the sense that they do not by themselves confer on their contents the quality of law. This is why it is not always easy to chart the course of this process from the point where certain ideas take hold in society and are progressively articulated into social and economic objectives and desired policy measures (such as the NIEO), through the large grey area where they are progressively and sometimes imperceptibly transformed, until they emerge from it as well established legal norms. Indeed, the boundaries of positive law (or between "law" and "pre-law" or "soft law") cannot always be clearly defined.

211. In any case, it is obvious that the fate and pace of development of the principles and norms of international law relating to the NIEO is a function of the progress towards the establishment of the NIEO, because these principles and norms can be fully operational and self-contained as normative propositions, i.e. as legal regulation, only if the subject matter which they purport to regulate is itself settled and generally accepted. This is not to say that we need to have a high degree of concreteness as a condition precedent, since in the life cycle of a legal rule there is always a margin of indeterminacy and an element of continuous legal elaboration.

212. The principles here discussed, and the NIEO to which they give legal expression, are generally considered as necessary pre-conditions for the creation of an international economic environment favourable to the development of the less developed countries and can thus be viewed as collectively constituting for these countries a "right to development," parallel, on the economic level, to self-determination on the political plane.78/ Such a right is not just necessary for equitable and harmonious global development and the fulfillment of the ideals of justice and equality of the Charter of the United Nations. More con-

cretely, it is a conditio sine qua non for the full realization of the economic, social and cultural rights of the individual, which together with civil and political rights make up what is known as internationally recognized human rights. For without a reasonable level of development, society will not be materially in a position to provide its members with the positive services and to secure for them the minimum economic standards called for by these rights. Moreover, a situation of economic deprivation cannot fail to produce its negative effects on civil and political rights as well.

213. What can be done practically to further the progressive development of the principles and norms of international law relating to the NIEO? The succint evaluation provided above of the actual situation of these principles suggests that we build upon what is already generally accepted as law; and that, through the United Nations process of progressive development of international law, the areas of shade should be clarified, by completing the elaboration of the general normative propositions where gaps exist and specifying as far as possible those of their conditions, modalities and cases of application or derogation which are still unclear, unformulated or controversial. It is hoped that the process of progressive development and elaboration of these principles and norms will also favour a widening consensus over them, thus contributing to the consolidation of their legal status as well.

214. In consequence, consideration might be given to continuing action of progressive development by means of an intergovernmental working group within the framework of the Sixth Committee of the General Assembly. Such a group might be backed by a small support unit, which might provide liaison with United Nations agencies and other institutions active in this field. Alternatively, the task might be entrusted to a Commission with appropriate machinery and expert resources.

Notes

1/ 1969 I.C.J. 41-42, para. 72.

2/ Hans Kelsen considers "legal rules" as the scientific description or rendering of "legal norms" (or authoritatively prescribed behavior). He defines "rules of law" as "statements to the effect that under certain conditions (among which the delict plays an essential part) a certain consequence, namely a sanction, ought to take place." Principles of International Law (New York, Reinhart, 1959), p. 6. (A principle of ... law, it might be added here, is distinguishable from a moral principle or a principle entirely in the realm of policy or politics, as is shown in the text immediately following that which accompanies this note.)

3/ See M. Virally, "Le role des 'principes' dans le développement du droit international," Recueil d'Etudes de Droit International en Hommage à Paul Guggenheim (Genève, Faculté de droit de l'Université de Genève - Institut Universitaire de Hautes Etudes Internationales, 1968), pp. 531-554; B. Graeffrath, "Zur Stellung der Prinzipien im Gegenwärtigen Völkerrecht," Sitzungsberichte der Deutschen Akademie der Wissenschaften zu Berlin, No. 2 (1968), pp. 3-28; G. Abi-Saab, "The Third World and the future of the international legal order," Revue Egyptienne de Droit International, vol. 29, (1973), p. 27, at 39-48.

4/ See G. Abi-Saab, in Les résolutions dans la formation du droit international du développement (Genève, Institut Universitaire de Hautes Etudes Internationales, 1971), pp. 9-10; G. Abi-Saab, "The legal formulation of a right to development," in Hague Academy of International Law - United Nations University, The Right to Development at the International Level, Workshop, R.J. Dupuy, ed. (Hague, Sitjhoff and Noordhoff, 1979), p. 159, at 160-61.

5/ W. Friedman, The Changing Structure of International Law (London, Stevens, 1964), especially chaps. 6 and 22.

6/ U.N.C.I.O. Documents, vol. 6 , p. 457.

7/ General Assembly Resolution 2625 (XXV).

8/ Document A/AC 119/L6, 7 and 8.

9/ Document A/AC 125/L11.

10/ Supra note 7.

11/ General Assembly Resolution 3201 (S-VI).

12/ General Assembly Resolution 3281 (XXIX).

13/ Article 32 of the Charter of Economic Rights and Duties of States provides: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights."

14/ See P. Jessup, A Modern Law of Nations (New York, MacMillan, 1952), pp. 95-96.

15/ General Assembly Resolution 626 (VII).

16/ General Assembly Resolution 1314 (XIII).

17/ General Assembly Resolution 1803 (XVII).

18/ General Assembly Resolution 626 (VII) (emphasis added).

19/ Several attempts have been or are being made within international organizations to give effect to this obligation by means of elaborating codes of conduct (ILO, WHO, OECD, and the on-going negotiations within the UN organs).

20/ See the relevant texts in UNITAR/DS/5 (1982),pp. 420-427.

21/ See UNITAR staff study "The principle of permanent sovereignty over natural resources," ibid., at pp. 307-310 /hereinafter "UNITAR staff study"/.

22/ Another way of reaching the same legal result, while admitting that only the State can determine what is in its national interest, is to consider that there is an irrebbutable legal presumption of absence of public or national interest in cases of discriminatory nationalization.

23/ See UNITAR staff study, supra note 21, p. 309.

24/ The act of expropriation or nationalization can be directed at members of groups defined not by nationality but racially or ethnically (while invoking national or security interests); in other words, it can be used as an instrument of racial discrimination. If we accept, as we must, that there is a rule of international law prohibiting racial or ethnic discrimination (which cannot but partake of jus cogens), then such an act would be violative of international law. But this is a question which goes much beyond the scope of the present report.

25/ B. Weston, "The Charter of Economic Rights and Duties of States and the deprivation of foreign-owned wealth," 75 Am. J. Int'l L., (1981), pp. 437-475.

26/ 1928 P.C.I.J., Series A, No. 17.

27/ Ibid., p. 47.

28/ Ibid.

29/ UNITAR staff study, supra note 21, p. 311.

30/ Ibid., p. 312.

31/ This opinion is also shared by some eminent Western jurists such as Lauterpacht who considered that in cases where nationalization is part of large scale social reform, only partial compensation would suffice (1 Oppenheim, International Law, 8th ed., H. Lauterpacht, ed. (London, Longsmans,1955), p. 352. See also, P. Guggenheim, 1 Traité de droit international public (Genève, Georg, 1953), p. 334, and the numerous authorities cited therein.

32/ Including some Western writers, e.g. I. Brownlie, Principles of Public International Law (Oxford, Calderon Press, 1966), pp. 440-442.

33/ A 1981 decision of the U.S. Court of Appeals for the Second Circuit is revealing in this respect (Banco National de Cuba vs. Chase Manhattan Bank, 658 F2d. 875, 892):"It may well be the consensus of nations that full compensation need not be paid 'in all circumstances," ... and that requiring an expropriating State to pay 'appropriate compensation' - even considering the lack of precise definition of that term, - would come closest to reflecting what international law requires."

34/ E.g. Texaco Overseas Petroleum Company and California Asiatic Oil Company vs. The Government of the Libyan Arab Republic (Awards of 27 Nov. 1975, and 19 Jan. 1977), 53 Int'l Law Reports (1979), pp. 389ff; Aminoil vs. Kuwait (Award of 24 March 1982), 1982 ILM 976ff.

35/ General Assembly Resolution 3201 (S-VI); Charter of Economic Rights and Duties of States, General Assembly Resolution 3281 (XXIX), art. 32.

36/ In the GATT, the third leg of the institutional tryptich dealing with general international economic problems within the family of the UN, negotiations on tariff and other barrier reductions first used to take place between principal exporters and importers of an item (a category to which no developing country belonged, considering that GATT negotiations dealt basically with manufactures); then since the Kennedy Round in the early 1960's, negotiations take place mainly between three partners: the U.S., the EEC and Japan.

37/ See Carreau, Juillard and Flory, Droit International Economique (Paris, LGDJ, 1980), p. 135:

> "/Le Groupe des Dix/ s'est progressivement erigé en centre de décision autonome, minant par là l'autorité des organes officiels du FMI ... En raison du poids des participants, toute proposition du Groupe des Dix peut s'analyser comme une véritable décision soumise a'la ratification autonomique du FMI qui tend a'devenir une simple chambre d'enregistrement."

38/ Carreau, Juillard, and Flory, "Chronique de droit international économique," 18 Annuaire Francais de Droit International (1972), p. 692ff.

39/ General Assembly Resolution 2625 (XXV).

40/ General Assembly Resolution 3362 (S-VII).

41/ M. Virally, "Vers un droit international du développement" II Annuaire Francais de Droit International (1965), pp. 3-12; M. Flory, Droit international du développement, Paris, P.U.F., 1977 (Collection Thémis); A. Pellet, La droit international du développement, Paris, P.U.F., 1978 (Collection Q.S.J.); O. Schachter, "The Evolving International Law of Development," 15 Colum. J. Transn'l L. (1976), pp. 1-16.

42/ See General Principle VIII, adopted by 78 votes to 11, with 23 abstentions. Proceedings of the United Nations Conference on Trade and Development /hereinafter "UNCTAD"/, First Session, vol. 1, p. 20.

43/ "Agreed Conclusions" on the Generalized System of Preferences. UNCTAD Document TD/B/AC.5/36. For the history and evolution of the GSP, as well as to the principle of preferential treatment in general, see A. Yusuf, Legal Aspects of Trade Preferences for Developing States. A Study on the Influence of Development Needs in the Evolution of International Law (The Hague, Nijhoff, 1982).

44/ See, in general, W. Verwey, "The principle of preferential treatment for developing countries," UNITAR/DS/5 (1982), pp. 6-183.

45/. See also articles 18 and 26 which are more specific applications of the principle.

46/ See Yusuf op. cit., pp. 94-98.

47/ General Assembly Resolution 3202 (S-VII).

48/ UNCTAD IV, Resolution 93 IV (30 May 1976).

49/ See W. Benedek, "The principle of stabilization of export earnings of developing countries," UNITAR/DS/5 (1982), pp. 224-243.

50/ IMF, Decision No. 1477 - (63/8), 28 February 1963, See also Benedek, op. cit., pp. 244-251.

51/ Ibid., pp. 251-255.

52/ Decision cited supra note 50, para. 6.

53/ Benedek, op. cit. p. 261.

54/ General Assembly Resolution 3201 (S-VI).

55/ General Assembly Resolution 3202 (S-VI).

56/ General Assembly Resolution 3281 (XXIX).

57/ General Assembly Resolution 3362 (S-VII), sect. III.

58/ General Assembly Resolution 2626 (XXV), paras. 60-64.

59/ General Assembly Resolution 35/56, sect. III (G)(1980).

60/ United Nations Conference on an International Code of Conduct on the Transfer of Technology, Geneva 1978, Selected documents of the Conference, Document TD/CODE TOT/10 and Add. 1 et. seq. See also A.C. Espiritu, "The principle of the right of every State to benefit from science and technology," UNITAR/DS/6 (1983), pp. 115-130.

61/ Ibid., pp. 86-114.

62/ United Nations Intergovernmental Group on a Code of Conduct: Transnational Corporations: code of conduct: formulations by the Chairman, Document E/C.10/AC 2/8. See also Espiritu, op. cit., pp. 63-74.

63/ Ibid., p. 93.

64/ Ibid., pp. 121-130.

65/ A current definition of development assistance is that of the Development Assistance Committee (DAC) of the OECD, according to which development assistance must be public (governmental), concessional (containing at least a 25 per cent grant element) and directly aimed at enhancing economic welfare and development (Organization for Economic Co-operation and Development, Development Co-operation Review 1977, Annex III, para. 1).

See also P. Mutharika, "The principle of entitlement of developing countries to development assistance," UNITAR/DS/6 (1983), p. 161. This definition also concentrates on the financial flows, which constitute, it is true, the bulk of development assistance. But it can be understood to cover the costs of other forms of assistance as well.

66/ General Assembly Resolution 1522 (XV), entitled "Accelerated flow of capital and technical assistance to the developing countries."

67/ General Assembly Resolution 2626 (XXV), paras. 42-45.

68/ Both General Assembly Resolutions 3201 and 3202 (S-VI) of 1974 ("Declaration on the Establishment of a New International Economic Order," and the attendant "Programme of Action ...") adopt the wider conception which, while including assistance, considers it a part of the more general problem of increasing financial flows to developing countries within the framework of the reform of the international monetary system.

Though article 22, paragraph 1, of the Charter of Economic Rights and Duties of States follows the same conception, the bulk of this article, the same as article 17 (the two provisions of the Charter dealing principally with the subject), adopt the narrower and more specific definition of assistance.

69/ It should be noted that resources eventually released through disarmament (article 15 of the Charter of Economic Rights and Duties of States is representative of the often repeated demands in this respect) would not constitute an autonomous source of development financing for the international community, as they remain in the hands of the disarming countries.

70/ See Y.S. Park, "The Link between Special Drawing Rights and Development Finance," 100 Princeton Essays in International Finance (Princeton, Princeton University, 1973).

71/ See Sunshine, and Chaudhri, "Global development taxes: a promising new source of international finance for developing countries," 19 Colum. J. Transn'l L. (1981), pp. 407-453.

72/ UN Convention on the Law of the Sea (1982); Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (1967) and Agreement Governing the Activities of States on the Moon and other Celestial Bodies (adopted as Annex to General Assembly Resolution 34/68, 1979). Two fundamental General Assembly resolutions should also be mentioned: Declaration of Principles Governing the Sea-Bed and the Sub-Soil thereof, Beyond the Limits of National Jurisdiction (General Assembly Resolution 2749(XXV));Declaration of Legal Principles

Governing the activities of States in the Exploration and Use of Outer Space (General Assembly Resolution 1962 (XVIII)).

73/ Most of these elements come out clearly, in the context of the sea-bed, from article 29 of the Charter of Economic Rights and Duties of States, which provides:

> "The sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind. On the basis of the principles adopted by the General Assembly in resolution 2749 (XXV) of 17 December 1970, all States shall ensure that the exploration of the area and exploitation of its resources are carried out exclusively for peaceful purposes and that the benefits derived therefrom are shared equitably by all States, taking into account the particular interests and needs of developing countries; an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon."

74/ General Assembly Resolution 1962.

75/ See, J.L. Stuart, "Law of the Sea: unilateral licensing of seabed mining," 23 Harv. Int'l L.J. (1982), pp. 155-163. A. D'Amato, "An alternative to the Law of the Sea Convention," 77 Am J. Int'l. L. (1983), pp. 281-285.

76/ See H. Wunsche, "The Principle of Common heritage of Mankind," UNITAR/DS/6 (1983), pp. 453-55.

77/ Agreement Governing the Activities of States on the Moon and other Celestial Bodies (1979), supra note 72, article 11, para. 5.

78/ See G. Abi-Saab, "The legal formulation of a right to development," supra note 4.

ANNEX IV

REPORT OF THE UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

A. Background

1. It was in its 35th session that the General Assembly first assigned to UNITAR the task of preparing an analytical study on the topic which is the subject of this agenda item. By paragraph 1 of its resolution A/35/166 of 15 December 1980, the General Assembly requested UNITAR:

"(a) To prepare a list of the existing and evolving principles and norms of international law relating to the new international economic order concerning the economic relations among States, international organizations and other entities of public international law, and the activities of transnational corporations, as contained, inter alia, in the following texts:

"(i) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; 2/

"(ii) Declaration and Programme of Action on the Establishment of a New International Economic Order /General Assembly resolutions 3201 (S-VI) and 3202 (S-VI)_/;

"(iii) Charter of Economic Rights and Duties of States /General Assembly resolution 3281 (XXIX)_/;

"(iv) General Assembly resolution 3362 (S-VII)of 16 September 1975 on development and international economic co-operation;

"(v) International Development Strategy for the Third United Nations Development Decade; 3/

"(vi) Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices; 4/

"2/ General Assembly resolution 2625 (XXV), annex.

"3/ General Assembly resolution 35/56, annex.

"4/ TD/RBP/CONF/10.

"(vii) Final Acts of the United Nations Conference on Trade and Development 5/ and declarations adopted by all United Nations conferences relevant to the new international economic order;

"(b) To prepare an analytical study, on the basis of the list referred to in subparagraph (a) above, on the progressive development of the principles and norms of international law relating to the new international economic order.

"5/ Proceedings of the United Nations Conference on Trade and Development, vol. I, Final Act and Report (United Nations Publication, Sales No. 64.II.B.II); ibid., Second Session, vol. I and Corr. 1 and 3 and Add. 1 and 2, Report and Annexes (United Nations publication, Sales No. E.68.II.D.14); ibid., Third Session, vol. I, Report and Annexes (United Nations publication, Sales No. E.73.II.D.4); ibid., Fourth Session, vol. I, Report and Annexes (United Nations publication, Sales No. E.76.D.10 and corrigendum); and ibid., Fifth Session, vol.I, Report and Annexes (United Nations publication, Sales No.E.79.II.D.14)."

2. In its progress report contained in the report of the Secretary-General (A/36/143, sect.II, para. 4) on the implementation of that resolution, UNITAR informed the General Assembly that it fully shared the Secretary-General's previously expressed view that "the task of studying this question is a long-term one, requiring adequate time and resources" (A/35/466, para. 12).

3. Accordingly, the General Assembly, by its resolutions A/36/107, A/37/103, and lastly resolution A/38/128 of 13 January 1984, extended, in each instance, the mandate of UNITAR to complete the analytical study. During each successive year that the study has been in progress, the substantive work by UNITAR followed an eight to nine-month cycle, culminating each time in the submission in the month of August of segments of the study for the consideration of the General Assembly, and resuming in the month of December or January following renewal by the General Assembly of the Institute's mandate for this project.

B. Summary of work previously completed by UNITAR

4. As its first task in connection with the analytical study, UNITAR prepared a consolidated list or "Compendium of topics or issues of the principles and norms of international law relating to the new international economic order"

(UNITAR/DS/4). It constitutes the first systematic attempt to set forth the dispersed mass of the relevant international sources into a comprehensive schematic Compendium. The document was submitted, as part of the report of the Secretary-General (A/36/143 and Add. 1 and 2), to the General Assembly at its thirty-sixth session.

5. On the basis of the inventory of sources contained in the Compendium, extensive library and field research was conducted, and consultations had with relevant international organizations. The work entailed examination of the actual practice of States, and the implementation of instruments by international organizations, as well as decisions of international tribunals and the works of eminent publicists. This process enabled UNITAR to identify several broad principles of varying degrees of normative maturation:

(a) Preferential treatment for developing countries;

(b) Stabilization of export earnings of developing countries;

(c) Permanent sovereignty over natural resources;

(d) Right of every State to benefit from science and technology;

(e) Entitlement of developing countries to development assistance;

(f) Participatory equality of developing countries in international economic relations;

(g) Common heritage of mankind.

6. UNITAR submitted the following documents to the General Assembly at its thirty-seventh session: analytical papers on the first three principles listed above, accompanied by analytical appendices of texts of relevant instruments (UNITAR/DS/5), and the progress report of UNITAR incorporated in the report of the Secretary-General (A/37/409, sect. II).

7. UNITAR thereafter submitted the following documents to the General Assembly at its thirty-eight session: analytical papers on the principles listed in paragraph 5(d), (e) and (g) above, together with analytical appendices of texts of relevant instruments (UNITAR/DS/6), and the progress report of UNITAR incorporated in the report of the Secretary-General (A/38/366, sect.II).

8. As reported by UNITAR in its last progress report to the General Assembly (A/38/366, sect.II, para. 17(a)), the analytical paper on the principle of "Participatory equality of developing countries in international economic relations" listed in paragraph 5 (f) above, required revisions, and there was insufficient time to effect them and submit the paper in time for the thirty-eight session of the General Assembly. However, the analytical compilation of texts of instruments relevant to this principle was included in document UNITAR/DS/6.

9. The analytical paper on the principle of "Participatory equality of developing countries in international economic relations " was prepared anew by a different consultant engaged by UNITAR and has now been submitted to the General Assembly as an addendum to the said UNITAR/DS/6.

10. Both in 1982 and 1983, on its own initiative, and in the latter case pursuant to the directive of the General Assembly (A/37/103, para. 4), UNITAR convened meetings of panels of experts to review and critically evaluate the work in progress prior to the submission of the aforementioned documents, UNITAR/DS/5 and UNITAR/DS/6, to the General Assembly (see UNITAR progress reports in A/37/409, para. 9, and A/38/366, para. 17, respectively).

11. Also both in 1982 and 1983, in accordance with the directive of the General Assembly (A/36/107, para. 4, and A/37/103, para. 3, respectively), UNITAR requested relevant information and views from an extensive list of international organizations (see UNITAR progress reports in A/37/409, paras. 5-6, and A/38/366, para. 14, respectively; see also para. 16 below).

12. UNITAR has been receiving numerous and continuous requests from Governments and from public and academic institutions (in addition to those referred to in paragraph 16 below) for copies of the three documents referred to above (UNITAR/DS/4, UNITAR/DS/5 and UNITAR/DS/6), and has disseminated them accordingly. Thus, in its view, the study has generated widespread scholarly and political interest.

13. UNITAR commenced work on the final analytical study in December, 1983.

C. The final analytical study

14. By paragraph 1 of its resolution A/38/128, the General Assembly requested UNITAR to complete the third and final phase of the study in time for its submission by the Secretary-General to the General Assembly at its thirty-ninth session. In compliance with this request, UNITAR has completed and submitted, for the consideration of the General Assembly at its thirty-ninth session, the following:

(a) The present report;

(b) An analytical paper on the principle of "Participatory equality of developing countries in international economic relations." This is issued as an addendum to document UNITAR/DS/6 and is to be read in conjunction with the prior report of the Secretary-General, A/38/366 (see paragraphs 8-9 above); 1/

(c) The comprehensive analytical study on the seven principles listed in paragraph 5 above, as well as on the additional principle of "Freedom of choice of economic system." (It was concluded that this principle also merits specific inclusion and treatment among principles of the New International Economic Order, though it be simply a direct derivative or application in the economic field of the fundamental legal tenet of sovereign equality of States). The study analyzes the integration of these eight principles into the general framework of international law, examines the legal scope of their content, and specifies all the corollary principles that come under the ambit and within the purview of each one of them. It avoids mere recapitulation of matter found in the prior separate studies on these principles contained in documents UNITAR/DS/5 and UNITAR/DS/6, which were meant to delve into each principle in depth, albeit in a possibly somewhat tentative fashion pending the preparation of an integrated study. Thus it aims, instead, at fleshing

out and distilling the legal substance and normative strands of the relevant propositions and at ascribing to them their appropriate placement with regard to the hierarchy and parameters of international law, whether de lege lata or lege ferenda. The study is not as encompassing as it might have been had there been allowed more time for its preparation (see paragraph 18 below). It concentrates on the salient legal issues from an intrinsic perspective, at the same time giving an overview of the interplay and effect of the relevant extrinsic elements impacting on those issues. 2/

15. In paragraph 2 of its resolution 38/128, the General Assembly further requested UNITAR to prepare a summary and outline of the study in order to facilitate debate on the item. Pursuant to this request, an outline and a summary of the analytical study are contained in this document as annexes I and II, respectively, to the report of the Secretary-General.

16. In paragraph 4 of its resolution A/38/128, the General Assembly moreover stated that it

> "Requests the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization, the regional commissions, the United Nations Centre on Transnational Corporations and other relevant intergovernmental and non-governmental organizations active in this field, as determined by the United Nations Institute for Training and Research, to submit relevant information and to co-operate fully with the Institute in the implementation of the present resolution."

The same request was contained in the prior resolutions of the General Assembly on this item (A/35/166, para. 3; A/36/107, para. 4; and A/37/103, para. 3), and in each instance, this request was met by UNITAR (see progress reports contained in A/36/143, para. 9; A/37/409, para. 6; and A/38/366, para. 14). In the immediately prior phase of the study, UNITAR elicited information from 137 organizations (see progress report contained in A/38/366, para. 14). In connection with this final

phase of the study, UNITAR again requested information from the same 137 organizations, plus an additional number of 8 organizations, making a total of 145 organizations in all. 3/* These organizations were sent documents UNITAR/DS/5 and UNITAR/DS/6, inviting their comments thereon.

17. UNITAR engaged two consultants 4/ to assist it to carry out the last phase of the study, and two one-week sessions of consultations were held: one in New York in December of 1983 and one in Geneva in June 1984, each attended by both of the consultants and UNITAR staff.

D. Conclusion

18. UNITAR wishes to remind the General Assembly that, though the Panel of Experts convened by UNITAR in July 1983 had suggested that the fortieth session would be a more realistic timetable for submission of the final study by reason of the complexity of the task (see Report of the Secretary-General, A/38/366, sect. II, para. 17(b), (c)), UNITAR endeavoured to fulfill the mandate given to it by the General Assembly in its resolution 38/128 and has, to the best of its ability (see para. 14(c) above), complied with the requests embodied in that resolution.

19. UNITAR wishes to express its appreciation to the organizations and experts who have cooperated with it in the implementation of the resolutions of the General Assembly on this item. UNITAR is further grateful to the General Assembly for its support for the work of the Institute.

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* Note 3 below sets forth in alphabetical order the list of the organizations.

Notes

1/ The paper was prepared by Professor Milan Šahović, Director, International Law Department, Institute of International Politics and Economics, Belgrade, Yugoslavia. It is to be distributed as a UNITAR document, in English only.

2/ See Annex III of this document. The study is issued in all United Nations official languages.

3/ Information was solicited from the following organizations:

United Nations Bodies and Affiliates

Committee on Disarmament, Geneva, Switzerland; Director-General for Development and International Economic Co-operation, New York*; Economic and Social Commission for Asia and the Pacific, Bangkok, Thailand; Economic Commission for Africa, Addis Ababa, Ethiopia; Economic Commission for Europe, Geneva, Switzerland; Economic Commission for Latin America, Santiago, Chile; Economic Commission for Western Asia, Baghdad, Iraq; Food and Agriculture Organization, Rome, Italy; General Agreement on Tariffs and Trade, Geneva, Switzerland; International Atomic Energy Agency, Vienna, Austria; International Bank for Reconstruction and Development, Washington, D.C.; International Development Association, Washington, D.C.; International Finance Corporation, Washington, D.C.; International Labour Organization, Geneva, Switzerland; International Maritime Organization, London, England; International Monetary Fund, Washington, D.C.; The Group of 77, New York; United Nations, Geneva, Switzerland; United Nations, Vienna, Austria; United Nations African Institute for Economic Development and Planning, Dakar, Senegal; United Nations Asian and Pacific Development Institute, Bangkok, Thailand; United Nations Centre for Science and Technology for Development, New York; United Nations Centre on Transnational Corporations, New York; United Nations Commission on International Trade Law, Vienna, Austria; United Nations Conference on Trade and Development, Geneva, Switzerland; United Nations Conference on the Law of the Sea Secretariat, New York; United Nations Development Programme, New York; United Nations Environment Programme, Nairobi, Kenya; United Nations Industrial Development Organization, Vienna, Austria; United Nations Latin American Institute for Economic and Social Planning, Santiago, Chile; World Intellectual Property Organization, Geneva, Switzerland.

Other International Organizations

Asian and Pacific Coconut Community, Jakarta, Indonesia; Association of Iron Ore Exporting Countries, New Delhi, India; Association of Natural Rubber Producing Countries, Kuala Lumpur, Malaysia; Inter-governmental Council of Copper Exporting Countries, Neuilly Sur-Seine, France; International Bauxite Association, Kingston, Jamaica,W.I.; International Cocoa Organization, London, England;

International Coffee Organization, London, England; International Cotton Advisory Committee, Washington, D.C.; International Lead and Zinc Study Group, London, England; International Olive Oil Council, Madrid, Spain; International Rubber Study Group, London, England; International Sugar Organization, London, England; International Tin Council, London, England; International Wheat Council, London, England; Organization of Arab Petroleum Exporting Countries, Kuwait City, Kuwait; Organization of Petroleum Exporting Countries (OPEC) Fund, Vienna, Austria; OPEC Secretariat, Vienna, Austria.

Regional Organizations

Africa

African and Mauritian Union of Development Banks, Banqui, Central African Republic; African Centre for Monetary Studies, Dakar, Senegal; African Development Bank, Abidjan, Ivory Coast; African Development Fund, Abidjan, Ivory Coast; Bank of Central African States, Yaoundé, United Republic of Cameroon; Central African Customs and Economic Union, Banqui, Central African Republic; Central Bank of West African States, Dakar, Senegal; Common Afro-Mauritian Organization, Banqui, Central African Republic; Council of the Entente Mutual Aid and Guarantee Fund, Abidjan, Ivory Coast; Development Bank of Central African States, Banqui, Central African Republic; East African Development Bank, Kampala, Uganda; Economic Community of the Great Lakes Country, Gisenyi, Rwanda; Economic Community of West African States, Lagos, Nigeria; Lake Chad Basin Commission, N'Djamena, Chad; Maghreb Permanent Consultative Committee, Tunis, Tunisia; Mano River Union, Freetown, Sierra Leone; Organization for the Development of the Senegal River, Dakar, Senegal; Organization of African Unity, Addis Ababa, Ethiopia; River Niger Commission, Niamey, Niger; West African Clearing House, Freetown, Sierra Leone; West African Economic Community, Ouagadougou, Upper Volta.

Asia

Afro-Asian Rural Reconstruction Organization, New Delhi, India; Asian-African Legal Consultative Committee, Pelham, New York; Asian Clearing Union, Teheran, Iran; Asian Development Bank, Manila, Philippines; Asian Productivity Organization, Tokyo, Japan; Association of South-East Asian Nations Secretariat, Jakarta, Indonesia; Colombo Plan for Co-operative Economic Development in South and South-East Asia, Colombo, Sri Lanka; Indian Society of International Law, New Delhi, India*; International Law Association of Japan, Tokyo, Japan*; South-East Asian Central Banks Research and Training Centre, Petaling Jaya, Malaysia; South Pacific Bureau for Economic Co-operation, Suva, Fiji; South Pacific Commission, Noumes Cedex, New Caledonia; South Pacific Forum, Suva, Fiji.

Middle East

Arab Bank for Economic Development in Africa, Khartoum, Sudan; Arab Fund for Economic and Social Development, Kuwait City, Kuwait; Arab Fund for Technical Assistance to Arab and African Countries, Tunis, Tunisia; Arab Monetary Fund, Abu Dhabi, United Arab Emirates; Arab Planning Institute, Safat, Kuwait; Council of Arab Economic Unity, Amman, Jordan; Islamic Development Bank, Jeddah, Saudi Arabia; Kuwait Fund for Arab Economic Development, Kuwait City, Kuwait;

League of Arab States, Cairo, Egypt; League of Arab States, New York.

Americas

American Society of International Law, Washington, D.C.; Andean Development Corporation, Caracas, Venezuela; Andean Reserve Fund, Bogota, Colombia; Andean Sub-regional Integration Agreement, Lima, Peru; Caribbean Development Bank, Barbados, W.I.; Caribbean Free Trade Association, Georgetown, Guyana; Caribbean Investment Corporation, Georgetown, Guyana; Central American Bank for Economic Integration, Tegucigalpa, Honduras; Central American Clearing House, Tegucigalpa, Honduras; Central American Common Market, Guatemala City, Guatemala; Central American Monetary Council, San Jose, Costa Rica; Central American Research Institute for Industry, Guatemala City, Guatemala; Centre for Latin American Monetary Studies, Mexico, D.F., Mexico; East Caribbean Common Market, Collidge, Antigua; East Caribbean Currency Authority, Bassaterre, St. Kitts; Institute for Latin American Integration, Buenos Aires, Argentina; Inter-American Development Association, Washington, D.C.; Inter-American Development Bank, Washington, D.C.; Inter-American Institute of Agricultural Sciences, Washington, D.C.; Intergovernmental Committee on the River Plate Basin, Montevideo, Uruguay; International Bar Association, New York*, International Trade Commission, Washington, D.C.; Latin American Association of Development Financing Institutions, Lima, Peru; Latin American Economic System, Caracas, Venezuela; Latin American Export Bank, Panama City, Panama; Latin American Free Trade Association, Montevideo, Uruguay; National Bar Association, Washington, D.C.; Organization of American States, Washington, D.C.; Organization of Central American States, San Salvador, El Salvador; Secretariate Permanente de Tratado General de Integración Económica Centro-Americano, Guatemala City, Guatemala; World Health Office for the Americas, Washington, D.C.

Europe

Bank for International Settlements, Basle, Switzerland; British Institute of International and Comparative Law, London, England*; Centre for Research on The NIEO, Oxford, England; COMECON, Moscow, Union of Soviet Socialist Republics; Commission of the European Community, Brussels, Belgium; Commonwealth Secretariat, London, England; Council of Mutual Economic Assistance, Moscow, Union of Soviet Socialist Republics; European Free Trade Association, Geneva, Switzerland; European Investment Bank, Luxembourg; European Economic Community, Brussels, Belgium; Hague Academy of International Law, The Hague, Netherlands; Hellenic Institute of International and Foreign Law, Athens, Greece*; Institute for International Ret og Europaret, Copenhagen, Denmark; Institute of Comparative Law, Belgrade, Yugoslavia; Institute of International Politics and Economics, Belgrade, Yugoslavia; Institute of Legal Science, Warsaw, Poland*; International Commission of Jurists, Geneva, Switzerland*; International Financial Corporation for Investment and Development in Africa, Geneva, Switzerland; International Law Association, London, England; Le Droit, Nice, France; Nordic Investment Bank, Helsinki, Finland; Organization for Economic Co-operation and Development, Paris, France; Yugoslavian Society of International Law, Belgrade, Yugoslavia.

4/ Georges Abi-Saab (Egypt), Professor, Institute Universitaire de Hautes Etudes Internationales, Geneva, Switzerland and A. Peter Mutharika (Malawi), Professor, Washington University School of Law, St. Louis, Missouri.

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* Denotes additional organizations from which information was solicited in 1984.
