

TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER

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A serious dialogue is under way in the international community between rich and poor nations (North and South) to determine the structure of international economic relations in future decades. At stake are the rules which govern international trade, finance, investment and the allocation of world income. The new international order, first proclaimed on May 1, 1974, in the Declaration of the Establishment of a New International Economic Order (Resolution 3201 S-VI) and the Programme of Action (3202 S-VI) at the closing of the Sixth Special Session of the General Assembly of the United Nations, has spawned an ongoing series of negotiations which can be expected to continue for some time to come. Current events have borne out the statement made by Mr. Richard of the United Kingdom on May 3, 1974 at the conclusion of the Sixth Special Session:

I believe that this Assembly will, in later years, be seen as a turning point: the United Nations is committing itself to a serious attempt to create a new world economic structure through the processes of rational discussion and orderly change. We have thus proclaimed the agenda of much of the international community's business for the next decade. Things will never be the same again.¹

In the year and a half since the New International Economic Order (NIEO) was proclaimed, various negotiations between North and South have taken place. On December 12, 1974, a Charter of Economic Rights and Duties of States was adopted by the 29th General Assembly. On February 28, 1975 the Lome Convention between the European Economic Community and 46 African, Caribbean and Pacific countries was signed. Such international organizations as the International Monetary Fund, the World Bank (International Bank for Reconstruction and Development), the Organization for Economic

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1.U.N. General Assembly, A/PV. 2231, at 18.

Cooperation and Development and the General Agreement on Tariffs and Trade, to name but a few, found their agendas increasingly devoted to concerns raised by developing countries. The General Assembly Seventh Special Session on Development and International Economic Cooperation, which ended on September 16, 1975, issued a series of directives to international institutions, some of them newly created, to carry on the deliberations between North and South.

The United States has maintained that there is no need for major structural change in the international economic order, and that negotiations between North and South should be devoted to a process of adjustment of the existing international economic system.² It has been suggested that the terminology calling for a New International Economic Order be changed to reflect a gradual accommodation rather than a sharp departure from the current system. For this reason, Under-Secretary of State Charles W. Robinson has suggested that the negotiations should be characterised in terms of a "Global Economic Order."³

In demanding constitutive, or fundamental, revision of the principles governing economic relations between North and South, developing countries insist that mere tune-up or repair of existing machinery can no longer suffice. What is required in the economic relations between developed and developing countries is a complete overhaul of the economic order. While the more radical of the developing countries insist on the need for a wholly new system, all would agree that significant parts should be replaced. One conclusion which is not disputed by either developed or developing countries is that the international economic order is in need of repair.

I am critical of the role which the United States has chosen in the negotiations surrounding the NIEO. I believe that the United States has played a game of "brinksmanship" in bargaining to grant that minimum amount of "concessions"

2. The U.S. position towards the NIEO has received primary attention in this article, with the position of other developed countries brought in primarily to illuminate the U.S. position. This limitation has been made not only to keep the scope of the article within manageable proportions, but also because the U.S. position is a chief constraint in the implementation of the NIEO.

3. Meeting at Overseas Development Council on July 29, 1975, 1717 Massachusetts Avenue, N.W., Washington, D.C.

which will "satisfy" the developing countries, in the sense of averting a general outcry and further polarization in the international community. One could argue that even judged according to the single objective of "damage limitation," the U.S. has failed on its own terms. Moreover, in pursuing this policy, the U.S. has engaged in serious blunders which have placed great stress on diplomatic channels and devalued the image of the U.S. and its capacity to bargain in good faith. This cost is one with which future policy makers in the U.S. will have to contend.

A further criticism of the U.S. policy towards the NIEO is that it is short-sighted. I would argue that when economic conditions in the international community have undergone a major shift, it is in the interest of all nations to make the international order accommodate to those changes as rapidly and smoothly as possible. Furthermore, many developing countries are facing an economic crisis, one which presents a grave threat not only to their own populations, but to the world community as a whole. When nations "go bankrupt" in an interdependent economic system, the repercussions are felt by all--by widespread economic warfare, failure of the world banking system, or world-wide depression.

It is argued by developing countries not only that the existing economic order is in danger of breaking down, but also that the rules of the game are inequitable. The international market is not equally accessible to all nations, international investment is concentrated among the affluent, and prices of products from developing countries are inherently diminished by the functioning of the system. The present distribution of world income is heavily skewed in favor of the industrialized, developed nations. Less than one-third of the world population receives more than 85% of world income, and in particular, the gross national product of the U.S., which has only 6% of the world's population, is more than double the gross national product of 80 countries with two-thirds of the world population.⁴ Without equal opportunity in world economic expansion, developing countries can expect the imbalance only to be exacerbated.

It is my contention that when the underlying economic realities which confront developing countries are kept in

4. Algeria, "Petroleum, Raw Materials and Development," Memorandum on the Occasion of the Special Session of the U.N. General Assembly, April 1974, at 2.

mind, the need for a new international economic order becomes evident.⁵ Those countries which can least afford it must bear the brunt of many problems in the world economic situation: shortage and increased prices of food and fertilizer; increased price of energy; continued world-wide inflation and increasing cost of the import of manufactured goods.

In a study by the World Bank Group Staff, it was estimated that even when 40 developing countries deplete their remaining foreign exchange reserves by 20%, and after IMF facilities are used, balance of payments deficits in 1975 would exceed \$2.7 billion.⁶ In 1974 non-oil producing developing countries had a deficit in balance of payments on current account of \$28 billion, which was financed chiefly by heavy borrowing.⁷ Over the period between 1971 and 1974, production in 30 percent of developing countries (with roughly half the population in developing countries) failed to keep pace with population growth. Only one-fourth of the developing countries had a rate of growth higher than that of the 1960s, while over 40 percent experienced a relative decline.⁸ Two-thirds of the developing countries

5. For publications addressing the need for fundamental changes in the international economic order see:

James W. Howe et al., The U.S. and World Development Agenda for Action 75, Praeger (1975),

Report of Aspen Interreligious Consultation, Global Justice and Development, Aspen, Colorado (1974),

Republic of Algeria, Petroleum, Raw Materials and Development, Memorandum submitted by Algeria on the Occasion of the Special Session of the U.N. General Assembly (1974),

Committee for Economic Development, Strengthening the World Monetary System (1973),

Ministry of Foreign Affairs, The Netherlands, Symposium on a New International Economic Order (1975),

Project R10, Reviewing the International Economic Order, Rotterdam (1975),

The 1975 Dag Hammarskjöld Report, "What Now," Development Dialogue (1975), No. 1/2.

6. Impact of Increased Materials Prices on Developing Countries, World Bank Staff, Development Digest, Vol. XII No. 3, July 1974.

7. IMF Survey, August 25, 1975, at 243.

8. United Nations World Economic Survey, Part I, E/5665 (1975), at 5.

failed to attain production increases of 6%, the target growth rate.⁹ Outflows of capital to pay for public debt service rose for 80 developing countries from about \$2.8 billion in 1965 to \$7.3 billion in 1972. This represented 44.5 percent of new gross inflows of capital by 1972, so that nearly half of all capital imported by developing countries is spent on interest payments to service public debts.¹⁰ The prices of commodities exported by developing countries relative to their imports (the net barter terms of trade) declined at an average yearly rate of 2.2% over the period 1952-1972.¹¹

In an analysis of trends in the new world economic situation, the Secretary-General of the U.N. Conference on Trade and Development (UNCTAD) cautioned that temporary emergency relief would fail to meet the exigencies of "a profound structural disequilibrium in the world economy."¹² The question whether the current economic situation was due to cyclical factors or due to a molecular change¹³ in the world order was discussed by various policy makers at a series of meetings during the summer of 1975. U.S. Treasury officials took the position that problems were not of a structural nature, and that an upswing in economic activity in industrialized countries would set developing countries back on the track of economic growth.¹⁴

The debate seems to have been resolved in favor of a pragmatic position that demands by developing countries are to be met with a hard-line resistance, trading U.S. con-

9. World Economic Survey, 1974, Part Two, Economic and Social Council, E/5681, 9 May, 1975, at 2.

10. Financial Flows to and from Developing Countries, UNCTAD, TD/B/(XV/Misc.3) 3 June, 1975, at 64.

11. "Terms of Trade of Developing Countries," UNCTAD/CD/Misc.60, at 4.

12. Mid-Term Review and Appraisal of the Implementation of the International Development Strategy, UNCTAD/TD/B/530, at 9.

13. A molecular change in this context is meant to describe a fundamental change in the character of relations between North and South.

14. Meeting at Overseas Development Council of June 16, 1975; Charles A. Cooper, Assistant Secretary for International Affairs, Department of the Treasury. See also "The Developing Countries' Demand for a New International Economic Order" by James P. Grant, President of O.D.C.

cessions to the extent such immediate concerns as access to supplies of raw materials are forthcoming. This approach has increased the polarization between North and South, with many developing countries despairing of achieving any reform in the structure of international institutions without escalating confrontation. By daring developing countries to prove their capacity to affect the welfare of industrialized countries (whether through producer cartels, expropriations or trade restrictions) before earnest effort is made to alter the rules of the economic system, severe stress is placed upon the viability of the present international economic order. It appears to have been forgotten that the health of the economic system as a whole will benefit everyone; and that as long as necessary adjustment in the structure of economic institutions is resisted or delayed, the grave risk of a general economic breakdown is being taken.

Accordingly, I believe that many of the controversies surrounding the NIEO can be resolved in a dispassionate appraisal of long-term economic trends. Many of the demands made by developing countries are consonant with the general welfare of the international community as a whole. This article will point out those structural changes which seem necessary at present for stability in the international order. However, the need for institutional change will become increasingly apparent through an evolving process as negotiations on the NIEO continue. Of perhaps greater importance at this juncture is the assurance that the procedure by which the dialogue between North and South takes place is effective. Unless the negotiating parties have confidence that agreements reached in this process will be implemented, or indeed whether agreement can be reached at all, dialogue cannot advance. It is when viewed in this light that certain unresolved procedural conflicts become especially troublesome. In particular, an unfortunate crisis in the formulation of American foreign policy brought on by public disagreement between the Department of State and the Department of the Treasury has caused many to question whether at this time the U.S. is capable of bargaining in good faith.¹⁵

However uncertain progress has been in bridging the considerable distance between the positions of the North and South, it is apparent that a serious dialogue on the NIEO is under way. It is therefore instructive to examine

¹⁵. See footnotes 64, 66, 68, 69, 70 and 137.

the results of negotiations culminating in the resolutions made at the Sixth and Seventh Special Sessions of the General Assembly of the U.N., or what can be referred to loosely as the legislative history of the NIEO. It will no doubt be necessary to reevaluate the importance ascribed to various events occurring before and during the negotiations as hindsight illuminates areas of particular relevance to the resolutions' implementation. Nevertheless, certain landmarks have emerged as incontrovertible guideposts that will influence further relations between North and South concerning the international economic order.

1. Declaration of the New International Economic Order

A. Background of the Sixth and Seventh Special Sessions

A legislative history of the Sixth and Seventh Special Sessions of the General Assembly is necessarily incomplete, for a number of developments spanning the years after decolonization have contributed to the process which culminated in the demand for a new international economic order. The Sixth and Seventh Special Sessions, resulting as they did in an ambitious set of guidelines for international institutions and a concrete programme of action, should nevertheless be judged primarily in terms of the potential political influence they will have. Discussions of development issues have become matters delegated to high-level officials, including heads of government as well as foreign ministers. Also of significance in these Special Sessions is the ability of developing countries to function as a collective bargaining unit. In maintaining their unity through a series of hard negotiations, the Group of 77 (now totaling 105 developing countries) has altered the power relationship between developed and developing countries. It is from this strengthened bargaining position that the Group of 77 will seek implementation of the General Assembly resolutions on the NIEO.

Tracing out the legislative history of the Sixth and Seventh Special Sessions involves not only identifying the origins of ideas incorporated into the resolutions, but the process which their enactment set into motion. The Sixth Special Session marked the surfacing of a collective bargaining unit among developing countries which had been forming gradually since the mid 1950's. As a matter of fact, had the Sixth Special Session never been called, the provisions which were agreed upon would probably have emerged

in much the same way at the Special Session which at the end of 1973 had already been scheduled for September 1975. This resolution called for a meeting of the General Assembly "at a high political level" to examine "the political and other implications of the state of world development and international economic cooperation."¹⁶ Although the attitude among developing countries that they would have to forge political unity in order to achieve their economic goals came into its own at the Sixth Special Session, it had been in the process of formation for nearly two decades.

1. Collective Bargaining Position of Developing Countries

a. the non-aligned countries

The collective bargaining structure which emerged at the Sixth Special Session was based on the organization of developing countries into the Group of 77. This group grew from meetings among developing countries stretching over 19 years. As early as 1955, a group of 29 African and Asian countries met in Bandung at Indonesia's initiative. This conference, which the People's Republic of China attended, was addressed to efforts for hastening the independence of countries still under colonial rule. The first conference was aimed at shifting away from solidarity based merely on regional ties and away from alliances with the great powers. The second conference, held in Cairo in 1962, sought compromise between conflicting positions. At that conference the recommendation was made to hold an international conference on trade and development, the precursor to UNCTAD, which is now one of the permanent organs of the U.N. dealing with development problems.

The third conference was held in Lusaka in 1970 to consider the problem of white regimes in southern Africa. The economic dependence of developing countries was also considered, and for the first time the concept of self-reliance was formulated. The conference called for a decrease in dependence on aid from developed countries and the establishment of an effective strategy for economic, financial and technical development. In 1972 a meeting of Ministers of Foreign Affairs of the non-aligned countries at Georgetown further defined the concept of self-reliance, and an action programme of economic cooperation among developing coun-

16. A/Res. 3172 (XXVIII).

tries was established.

Between September 5 and 9, 1973, the Fourth Conference of Non-Aligned Countries was held in Algiers. The number of countries had increased to 75, and for the first time several large Latin American countries were present. The resolutions were formulated in terms of "developing countries" rather than non-aligned countries, which pointed to a greater awareness of North-South problems.¹⁷ Economic issues were given increasing emphasis, and a programme of action was drawn up which once again focused on self-reliance. The means set down in Algiers for achieving increased cooperation and industrial development were similar to the programme established in Georgetown. A new proposal was for the establishment of a development fund (presumably to be financed by oil-exporters). The Algiers action programme of economic cooperation which formed the basis of the negotiations at the Sixth Special Session included the following measures:

- Doubling of trade among developing countries;
- Most favored nation treatment of imports from developing countries;
- Assistance untied to purchases from developing countries;
- Greater cooperation in financial and monetary areas, to be achieved by payment and settlement agreements and more intensive cooperation of national and regional banks;
- Extension of credit on preferential terms to developing countries;
- Investment in export promoting sectors of developing countries;
- Establishment of producers agreements (similar to OPEC);
- Formulation of an international code for regulating direct foreign investment;
- Improvement of postal service among developing countries, and exchange in cultural, scientific and commercial affairs.

17. The non-aligned countries sought to find a middle ground between the polarization between East and West in the Cold War years. As colonial ties became broken, economic considerations and development issues grew increasingly relevant.

b. developing countries and the U.N.

Attempts to place the NIEO in an historical perspective must also take into account the organization and activities of UNCTAD. The roots of UNCTAD can be traced back to the proposals for an International Trade Organization which grew out of a U.N. Conference on Trade and Employment held at Havana from November 21, 1947 to March 24, 1948. The conference drew up a Charter, and many of the provisions foreshadow the agenda of the NIEO, including the need for general economic development--in particular, of those countries "in which resources are as yet relatively undeveloped" (Article 8); international flow of capital and security of investment (Article 12); the need for processing of indigenous primary commodities (Article 13, section 7a) and for commodity agreements (Chapter VI).

The proposal for an ITO, which was designed to join the IMF and IBRD in forming the foundation of the post-war economic order, was never ratified by the U.S. The GATT (General Agreement on Tariffs and Trade), originally intended as an interim measure pending establishment of the ITO, implemented some of the commercial policy clauses of the Havana Charter. Some of the trade and development policies of the ITO were later incorporated into UNCTAD, albeit in diluted form.

At the recommendation of the 1962 Conference of Non-Aligned Countries in Cairo, a resolution was passed in the Economic and Social Council in that same year to convene the first Conference on Trade and Development.¹⁸ The first Conference of UNCTAD was held in Geneva between March 24, 1964 and June 15th. Raul Prebisch was the first Secretary-General of the Conference, and he had headed the preparation of a paper which outlined the problems facing developing countries.¹⁹ This served as a precedent for one of the most important functions which UNCTAD has come to play: serving as an intellectual center or "think tank" for development issues. In addition to the consciousness-raising aspects, the first UNCTAD conference also provided a forum for the emergence of collective action among developing countries.

One of the most important results of the conference was its call for the establishment of a permanent machinery

18. E/Res. 917 XXXIV, endorsed in A/Res. 1785 XVII.

19. Raul Prebisch, "Towards a New Trade Policy for Development," E/CONF. 46/3.

to deal with development issues. A major source of contention, which foreshadowed similar problems in negotiations on the NIEO, was whether voting should proceed by simple majority. It was clear that developing countries would be able to vote through resolutions which did not meet the approval of developed countries on the strength of their numbers. However, when it came time for implementation of the resolutions, support from developed countries would be necessary. The issue was solved by a compromise measure, to provide conciliation machinery for the forging of recommendations "of a specific nature for action substantially affecting the economic or financial interests of particular countries." Agreement would be obtained from governments prior to voting on matters which called for concrete implementation (e.g. granting tariff preference). On matters relating to the aspirations or point of view of developing countries, voting would be by simple majority.

UNCTAD was set up as an organ of the U.N., with a permanent Trade and Development Board to carry out its functions between the periodic conferences. Although recommendations made by UNCTAD carry a certain weight within the U.N. system, governments are not legally bound to their implementation. A recommendation for a preference system, made at the first Conference in 1964, is only now being implemented by the U.S. It is instructive to compare the wide leeway accorded to decisions taken at UNCTAD by governments who have not bound themselves legally to the rather elaborate mechanism for breach of agreements contemplated by the Havana Charter. The plans for the International Trade Organization provided for consultation and arbitration for failure to meet obligations (Article 93),²⁰ compulsory jurisdiction by the International Court of Justice (Article 96),²¹ and suspension of concessions for non-compliance (Article 94).²²

At the second Conference of UNCTAD in New Delhi in 1968, only a moderate amount of agreement was reached on such matters as trade expansion among developing countries, trade with socialist countries, shipping, the food problem, and

20. United Nations Conference on Trade and Employment held at Havana, Cuba from November 21, 1947 to March 24, 1948, Final Act and Related Documents at 49.

21. *Id.* at 50.

22. *Id.* at 49.

the designation of a policy towards the least developed and land-locked countries. No progress was made in the areas of access to markets or "a global strategy for development." Dissatisfaction was expressed over the "very limited positive results that are not commensurate with the dimensions and urgency of the development problem."²³

The third Conference was held in Santiago between April 13 and May 21, 1972. Principal areas of work were restructuring and reform of the international monetary system, problems of the least developed among the developing countries, and access to markets. An important item on UNCTAD's agenda has been the monitoring of the development decades. The first development decade was designated by the General Assembly in December, 1961,²⁴ which set annual rate of growth targets of 5% for developing countries, and provided that developed countries would "endeavor to supply . . . financial resources to the developing countries of a minimum amount approaching as nearly as possible to 1%" of national income. The second development decade, proclaimed in resolution 2626 (XXV) is currently under review at the Thirtieth General Assembly, and its provisions have been re-interpreted in light of NIEO resolutions.

c. Organization of Petroleum Exporting Countries

A major development which explains many of the results which were achieved by the Sixth Special Session is the operation of the Organization of Petroleum Exporting Countries (OPEC). This group was established in 1960 by the four leading producers of oil in the Middle East: Saudi Arabia, Iraq, Iran and Kuwait. The objective of this group, later joined by Indonesia, Libya, Qatar and Venezuela, was to increase the control of OPEC countries over the petroleum industry. This aim was to be achieved through the following methods:²⁵

- a. increase in production of crude oil
- b. restoration of older, higher price level of crude oil
- c. increasing profit share of governments

23. Secretary-General of UNCTAD, "The significance of the Second Session of UNCTAD," May 7, 1968. TD/96, at 2.

24. A/Res. 1707 XVI.

25. Michael Tanzer, The Political Economy of International Oil and the Underdeveloped Countries (1969), at 62.

- d. greater national participation in the petroleum industry by increasing the employment of nationals and the share of government in industry
- e. (after 1968) collection of specific statistical information on price and distribution.

Plans for future implementation included marketing of petroleum by OPEC governments, ownership of shipping tonnage, and control of refinery and marketing facilities overseas.

At a conference in Vienna in September 1971, OPEC countries considered action to counteract decreased oil revenues from devaluation of the dollar. At a conference in Geneva in January 1972 the OPEC countries obtained an increase in the posted price of crude petroleum of 8.49%. By January 1974, OPEC countries had obtained price increases which represented an increase of 478.7% over the price in January of 1970.²⁶ At a meeting in Vienna on September 24-27, a further price increase of 10 percent was agreed to.

The increase in the cost of energy to other developing countries is a source of friction between OPEC countries and the rest of the third world. While major oil exporters had a surplus of \$70 billion on current account in 1974, as compared to only \$6 billion in 1973, the combined deficit of non oil-producing developing countries increased from \$9 billion in 1973 to \$28 billion in 1974.²⁷ OPEC countries have sought to soften this impact on developing countries by offering soft term financing of oil imports and financial and technical aid. In 1974 aid from OPEC to developing countries was estimated at \$2.5 billion, or 1.8% of their GNP.²⁸

Various OPEC countries have recognized the utility of an alliance with other developing countries. In accordance with the philosophy behind the Georgetown conference, OPEC countries recognize the potential usefulness other developing countries can have in their own process of industrialization. In addition, in a long-term confrontation with developed countries, OPEC looks to support from other developing countries. Moreover, many of those developing countries who have been left behind the recent growth of OPEC are exporters of other raw materials who would seek to set up producer organizations along the model established by OPEC. They seek OPEC support in this endeavor since OPEC countries have proved to be a useful bargaining partner in negotiations

26. U.N. General Assembly, "The Hypothetical Impact of Commodity Price Movements On World Trade," A/9544/Add.2, 12 April 1974, at 2.

27. IMF Survey, August 25, 1975, at 241.

28. UNA-USA, Issues Before the United Nations General Assembly in 1975, (hereinafter "Issues") at 36.

with developing countries. In summary, developing countries have found a basis for collaboration which enhances their collective strength in winning concessions from developed countries.

2. Convening of the Sixth Special Session

The U.S. initiative to hold a conference on the energy crisis in Washington in February 1974, coming as it did in the wake of the Algiers conference, was interpreted by OPEC countries as a frontal attack. The Washington conference was ostensibly called to institutionalize cooperation among energy importing countries in energy conservation and in their relations with the producing countries, as well as to examine the problems of the poorer petroleum-importing countries. OPEC viewed the conference as an attempt to undermine the alliance which it had established with the developing countries.

[T]his conference would be held with a view to determining the new price of petroleum, and, on the same occasion, inaugurating and consecrating this new line of cleavage between the Third World countries which, it is hoped, can be created on the basis of petroleum prices. 29

On January 30, 1974 President Houari Boumediene of Algeria, acting as President of the group of non-aligned countries, submitted a letter to the Secretary General of the U.N. which requested the convening of a special session of the General Assembly for "study of the problems of raw materials and development." In this letter, three factors were mentioned which necessitated the special session: the failure of the International Development Strategy, attitudes of governments of some developed countries which violated objectives of the International Development Strategy, and financial difficulties in the international community due to the international monetary crisis. This special session would examine the oil cartel within the context of "all the questions relating to all types of raw materials."³⁰

In accordance with Articles 8(a), 9 and 10 of the Rules of Procedure of the General Assembly, a majority of member states must agree to the gathering of a special session

29. Algeria, Memorandum, at 17.

30. Permanent Representative of Algeria to U.N., A/9541, February 5, 1974.

within 30 days of a proposal. Within two weeks of Boumediene's letter the necessary 68 votes had been obtained and the date of April 9, 1974 was chosen for the commencement of the Sixth Special Session. At the time that the Sixth Special Session was held, there had already been a resolution passed at the Twenty-Eighth General Assembly to have a special session on development problems. This special session, to be devoted to development and international economic cooperation, had been scheduled for September 1975. The Sixth Special Session was to be held in addition to the original special session scheduled for the following year.

In addition to the plans which had been made at the Twenty-Eighth session of the General Assembly, a working committee had been meeting to consider the drafting of a charter of economic rights and duties of states. This idea had been an outgrowth of the Third Session of UNCTAD (United Nations Conference on Trade and Development) which was held in Santiago in May of 1972. The idea of having a counterpart in the economic field to the Universal Declaration of Human Rights was suggested by Mr. Echeverria Alvarez, the President of Mexico, at a plenary meeting, and the Group of 77 adopted a resolution establishing a working group of thirty-one countries to draw up the text of a charter.³¹ The working group had met for the first two times in Geneva in February and July of 1973. The working group, called the Group of 41, met again in Geneva in February of 1974.

At the meeting in February of the working group of the 77, a background paper was prepared which outlined those areas which the Sixth Special Session should address. It was recommended that concrete measures ought to be considered, avoiding mere reiteration of principles already established in UNCTAD and other fora and that institutional questions ought to be examined at a later time after solutions were found for more immediate problems. Strategic recommendations were made, which stressed the importance of solidarity of the Group of 77 and which cautioned that discussions regarding economic cooperation among developing countries remain at a general level and be carried out in fora where only developing countries were present.

Sixteen considerations were listed which outlined the

31. Resolution 45 (III), May 18, 1972.

need for "urgent international action on issues of world trade in primary commodities and raw materials." Problems mentioned included the deteriorating terms of trade of many developing countries, whose principal exports had declined in price, while imports from developed countries had increased due to inflation. Frustration at the failure to find solutions in current negotiations was also listed, with disappointing implementation of the International Development Strategy, breakdown in negotiations of commodity agreements, and continued existence of trade barriers to developing countries. Also listed in the difficulties facing the Group of 77 were transportation costs, instability of the international monetary system, and loss of markets through increased use of synthetic substitutes for natural products.

A programme of action was drawn up to correct those problems identified in the first part of the background paper, so as to

bring about a rise in the standard of living of all the peoples of the world, with a view to narrowing the gap separating the developed and developing world, avoiding, at the same time, the dangers of a world-wide recession and continued international economic instability.³²

It was considered necessary to obtain confirmation of political will from developed countries regarding the implementation of prior commitments in UNCTAD for the International Development Strategy for the Second Development Decade, and concerning agreements on trade negotiations, for increased access to markets for developing countries and price stabilization for some commodities. In addition, the adoption of new measures was sought, including an integrated plan for commodity trade, with establishment of increases in price to match world inflation (indexation), buffer stocks and financing of trade among developing countries. Another measure recommended for inclusion in an action plan was the structural adjustment of tariffs in developed countries to improve the international distribution of labor.

B. Procedure and Substance of the Sixth Special Session

Even during the Sixth Special Session itself, it was apparent that a significant turning point had been reached and

³². Working Group of 77, Suggested Draft Paper, at 4.

that a new international economic order was indeed being established. It is becoming increasingly evident that new ground rules are being formed in the international community and that an era has passed. Unless the significance of the Sixth Special Session is understood, it will be increasingly difficult to interpret future developments in international relations.

There are two significant features about the Sixth Special Session which cause it to have such importance. Developing countries as a bloc used their collective strength to press for high-level discussions at which they took the initiative. Recognition of their collective strength will serve as a strong impetus to maintain the cohesion among developing countries, and after several intensive negotiations with developed countries this solidarity does not show signs of abating. If anything, supported by recent successes and confident from growing experience at negotiating, the Group of 77 has achieved closer cohesion.

A second important aspect of the Sixth Special Session is the very intense interaction between developed and developing countries. All parties in the negotiations were constantly reminded of the interdependence of the international economy, as issues of economic development and transfer of resources came into discussion, many of them for the first time in the context of feasible concessions. Underlying the bargaining positions of confrontation was the recognition that no national economy could function without the continued cooperation of the other nations.

After the oil embargo, developed countries realized their dependence upon developing countries. Likewise, developing countries were confronted in a direct sense with the inflation in the price of imports of manufactured materials which an increase in raw materials prices would cause. In short, the increase in international trade and increasing integration of the world economy meant that a "beggar thy neighbor" approach would ultimately end in a "cutting off one's nose to spite one's face."

1. Process of Negotiations

The Sixth Special Session was conducted on a series of levels. While general statements were made in the plenary session, a series of negotiations were carried out by an ad hoc group of the 77. Starting in January, informal meetings had been held among members of the Group of 77 at the United Nations to plan a strategy for the Sixth Special

Session. It was determined that the developing countries would take a common bargaining position. By the time that the ad hoc committee began official sittings on the 11th of April, a declaration and action programme had been drafted, to which the Group of 77 had agreed.

The plenary session served as a platform for general statements by delegations from April 10th through 24th. The tone of the statements was generally positive, and the word "interdependence" was very frequently mentioned. However, it became obvious that the positions taken by developing and developed countries were based on different assumptions. There did not appear to be very much middle ground between the two categories to which Great Britain had referred as "those who have been unduly cautious and those who have, through their understandable impatience, run ahead of what can be achieved."³³ The Soviet Union denied having responsibility for the economic situation of developing countries, but blamed neo-colonial practices by Western Powers.

The ad hoc committee of the Group of 77 was first to be composed of thirteen countries, but when this proved to be too large, a working group of 6 countries was agreed upon: Iran (Hoveyda) as chairman, India, Pakistan, Venezuela, Mexico and the Ivory Coast, with Upper Volta (Diallo) as rapporteur. The ad hoc committee continued to meet through the entire session, and a series of negotiations were conducted with developing countries. As the negotiations progressed, several separate negotiations were held between the 5 spokesmen of the Group of 77 on the one hand, and bargaining groups composed of the OECD countries, the Chinese, and the Soviet bloc, on the other hand. The meetings of the ad hoc committee of the Group of 77 expanded to 36 countries as the negotiations progressed.

The ad hoc committee was also presented with six draft resolutions which were submitted by France, Japan, Sri Lanka, the U.S. and Saudi Arabia. After a vote, the ad hoc committee decided to consider the draft resolutions after the declaration and action programme had been agreed upon. Since there was no more time to consider the six resolutions by the end of the special session, it was decided to refer them to the next meeting of the ECOSOC. The declaration and the action programme were considered paragraph by paragraph,

33. Mr. Ivor Richard, General Assembly, A/PV/2209, at 13.

with amendments which were delivered at each session. The ultimate formulation of the wording was agreed upon after informal consultation between Chairman Hoveyda and Rapporteur Diallo.

The general strategy in having a document which had been accepted by the Group of 77 before the negotiations began, was that unless a negotiated document could be adopted by the General Assembly by consensus, the original document would be submitted for a vote. By the third week of the Sixth Special Session a document had been formulated which was considered by the ad hoc committee for referral to the General Assembly as a "basis for consensus." The representatives of the U.K., the U.S., and Germany stated that they would agree to this procedure on the condition that they would have an opportunity to clarify the meaning of terms in the document in the plenary.

Ambassador Hoveyda reacted to this position by stating that if the negotiated declaration and action programme were not seen as a ready basis of consensus, that the original draft resolutions prepared by the Group of 77 would be submitted to the plenary for voting. Algeria made an appeal to avoid confrontation after there had been cooperation and constructive negotiations; it was decided to support the chairman and regard the negotiated documents as a basis for consensus. The representative of the U.S. stated that he had no objection to the Chairman's proposal, but that the U.S. would maintain its reservations in the plenary. A unanimous decision was then made to refer the declaration and action programme to the plenary.

2. Substance of Negotiations

The Group of 77 made a number of significant concessions in altering the original documents in order to reach a consensus. As far as the declaration was concerned, the greatest source of contention between developing and developed countries was the provision regarding permanent sovereignty over natural resources. This provision, Section 4(e) of both the original and final declarations, concerned the demand that compensation and the manner of nationalization were to be exclusively within the jurisdiction of the domestic state, and that disputes would be settled in accordance with domestic law.

The original formulation as proposed by the Group of 77 was as follows:

4 (e). Every country has the right to exercise permanent sovereignty over its natural resources and all economic activities. With this principle in mind:

- (i) Every country has the right to exercise effective control over its natural resources and their exploitation with means suitable to its own situation, including the right of nationalization or transfer of ownership to its nationals;
- (ii) The right of all States, territories and peoples under foreign occupation, colonial rule or apartheid, to restitution and full compensations for the exploitation and depletion of, and damages to, the natural resources, as well as the exploitation and manipulation of the human resources of those States, territories and peoples;
- (iii) Nationalization is an expression of the sovereign right of every country to safeguard its resources; in this connexion, every country has the right to fix the amount of possible compensation and mode of payment, while possible disputes have to be solved in accordance with the domestic laws of every country.

This principle may be applied according to the national interests and laws of each country. It shall in no way affect the right of all States to conclude, in the free exercise of their sovereign will, agreements consonant with the purposes and principles of the United Nations. ³⁴

The developed countries found this unacceptable, and negotiations concerning this provision continued throughout the special session. Although the developed countries were prepared to support the right of permanent sovereignty, they insisted that nationalization should proceed in accordance with international law. Developing countries felt that they had not been sufficiently involved in the formation of international law in the past, and that reference to international law could not be considered as neutral in this context.

³⁴. Report of the Ad Hoc Committee of the Sixth Special Session, A/9556 (Part II) at 3, 4.

In the last week a formulation was found which was acceptable to both developed and developing countries that did not go into the issue of compensation, but contained a declaration supporting permanent sovereignty, including the right of nationalization. A concession by developed countries was the provision that no state could be subjected to "economic, political, or any other type of coercion which prevented the exercise of this right." The American delegation made an objection to the new formulation at the last moment when the authority of the U.S. representative to agree was overridden by superiors. A formal objection was made on the grounds that a new element was added to the right of nationalization by the phrase "transfer of ownership to its nationals." It was felt by many developing countries that the U.S. had not bargained in good faith. A similar faux-pas was made at the Seventh Special Session.³⁵

Another change made in the declaration was the inclusion of a provision which gave the right of restitution to states under alien domination. This provision would apply to Namibia, in support of the decision of the International Court of Justice on June 21, 1971, which declared that South Africa was illegally in that territory. The wording in Section (g) regarding transnational corporations was changed from "control" to "regulation and supervision."³⁶ Section (h) concerning the right to extend assistance to developing countries under colonial and alien domination was modified to an affirmation of the right of developing countries to achieve liberation.³⁷ Paragraph (j) which concerned in-

35. See footnotes 118, 119.

36. The draft text read:

(f) Control of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries; A/9556 (Part II) May 1, 1974 at 4.

The final version read:

Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries; A/9556 (Part II) May 1, 1974 at 27.

37. The draft text read:

(h) Extending of assistance to developing countries, peoples and territories under colonial and alien

dexation of prices of exports of raw materials to imports of manufactured goods was surprisingly allowed to remain in the final document, with a slight modification of the wording from "terms of trade which have continued to deteriorate" to "unsatisfactory terms of trade."³⁸ Paragraph (t) which related to producers' associations was changed from "Establishment and strengthening" to "Facilitating the role which producers' associations may play, within the framework of international co-operation."³⁹

domination, foreign occupation, racial discrimination, apartheid or which are subjected to coercion, economic aggression or political pressure and neo-colonialism in all its forms and which have established or are endeavouring to establish effective control over their natural resources and economic activities that have been or are still under foreign control; Id. at 4.

The final version read:

(h) Right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities; Id. at 27.

38. The draft text read:

(i) Establishment of a just and equitable relationship between the prices of raw materials, primary products, manufactured and semi-manufactured goods exported by developing countries and the prices of raw materials, primary commodities, manufactures, capital goods and equipment imported by them with the aim of improving their terms of trade which have continued to deteriorate; Id. at 4.

The final version read:

(j) Just and equitable relationship between the prices of raw materials, primary products, manufactured and semi-manufactured goods exported by developing countries and the prices of raw materials, primary commodities, manufactures, capital goods and equipment imported by them with the aim of bringing about sustained improvement in their unsatisfactory terms of trade and the expansion of the world economy; Id. at 27.

39. The draft text read:

(s) Establishment and strengthening by developing countries of producers' associations in respect of major primary commodities of importance to the world economy;

Id. at 5.

Negotiations surrounding the programme of action made little progress, since fundamental differences existed between the developed and developing countries. In the third week during a meeting with Western countries, Ambassador Hoveyda pointed out the difference between the English and French text of the draft documents. In the French text, at the beginning of nearly every chapter and section and in most individual paragraphs, the conditional "il faudrait" was used, while in the English text this term was either lacking or translated in more strict wording. When it was pointed out by Ambassador Hoveyda that the action programme concerned recommendations and suggestions which had to be considered by appropriate U.N. organs, a basis for compromise was found.

Even after the action programme had been changed to include the conditional "All efforts should be made" in nearly every chapter, it was still necessary to modify some of the language. For example, in chapter I on raw materials, paragraph (c) concerning producers' associations was changed from "establishment and improvement" to "facilitate the functioning, and further aims."⁴⁰ Paragraph (d) of the same chapter concerning indexation was changed from "establish" to "evolve" and "work for."⁴¹ A new paragraph (g) was added which strengthened the final document by providing for the

The final version read:

(t) Facilitating the role which producers' associations may play, within the framework of international co-operation, and in pursuance of their aims, inter alia, assisting in promotion of sustained growth of world economy and accelerating development of developing countries; Id. at 28.

40. The draft text read:

(c) Establishment and improvement of effective and appropriate producers' associations and joint marketing arrangements among developing countries to defend the prices of exportable primary commodities, to increase the sharing of markets and to stabilize markets for them.

Id. at 6.

The final version read:

(c) To facilitate the functioning, and to further the aims, of producers' associations, including their joint marketing arrangements, orderly commodity trading, improvement in export income of producing developing countries and in their terms of trade, sustained growth of world economy for the benefit of all.

Id. at 31.

41. The draft text read:

processing of raw materials in producer developing countries.⁴²

The section on food remained similar, with a small revision substituting the need to increase market opportunities in section (e)(ii) for the original provision that inefficient producers in the developed world should not be protected by tariff or non-tariff barriers.⁴³ The section on general trade was expanded to include (vii) to facilitate better international division of labor,⁴⁴ (vi) to

(d) To establish a just and equitable relationship between prices of raw materials, primary commodities, semi-manufactured and manufactured goods exported by developing countries and the raw materials, primary commodities, food, manufactured and semi-manufactured goods and capital equipment imported by them and to establish a link between the prices of exports of developing countries and the prices of their imports from developed countries.

Id. at 6-7.

The final version read:

(d) To evolve a just and equitable relationship between prices of raw materials, primary commodities, semi-manufactured and manufactured goods exported by developing countries and the raw materials, primary commodities, food, manufactured and semi-manufactured goods and capital equipment imported by them and to work for a link between the prices of exports of developing countries and the prices of their imports from developed countries.

Id. at 31.

⁴². (g) To take measures to promote the processing of raw materials in the producer developing countries.

Id. at 31.

⁴³. The draft text read:

(e) Developed countries should refrain from:

(ii) Protecting by means of tariff or non-tariff barriers or other methods inefficient producers in the developed world at the cost of developing countries which produce the same products.

Id. at 7.

The final version read:

(e) By developed countries in evolving their policies relating to production, stocks, imports and exports of food to take full account of the interests of:

(ii) Developing exporting countries which need increased market opportunities for their exports.

Id. at 32.

⁴⁴. (vii) Developed countries should make appropriate adjustments in their economies so as to facilitate the ex-

reimburse receipts from customs duties applied to imports from developing countries;⁴⁵ and (ix) compensatory financing schemes.⁴⁶ The provision (xi) setting up buffer stocks was qualified by the statement that developed countries would finance "wherever necessary" and that an aim was "to contribute to the expansion of world trade as a whole."⁴⁷

Chapter II concerning the international monetary system was changed only slightly after having been put in the

pansion and diversification of imports from developing countries and thereby permit a rational, just and equitable international division of labour.

Id. at 32.

⁴⁵. (vi) When the importing developed countries derive receipts from customs duties, taxes and other protective measures applied to imports of these products, consideration should be given to the claim of the developing countries that these receipts should be reimbursed in full to the exporting developing countries or devoted to providing additional resources to meet their development needs.

Id. at 32.

⁴⁶. (ix) 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 developing countries concerned.

Id. at 32.

⁴⁷. The draft text read:

(ix) Setting up of buffer stocks and their financing by the international financial institutions, the developed countries and--when they are able to do so--by the developing countries, the aim being to favour the producing and consuming developing countries.

Id. at 9.

The final version read:

(xi) Setting up of buffer stocks within the framework of commodity arrangements and their financing by international financial institutions, wherever necessary, the developed countries and--when they are able to do so--by the developing countries, the aim being to favour the producing and consuming developing countries and to contribute to the expansion of world trade as a whole.

Id. at 32.

conditional mode. One change was the substitution in paragraph (g) of "the review of relevant provisions" in place of "the reform of the existing voting system."⁴⁸ In Chapter V on transnational corporations, the original paragraph (d) which provided for regulation of repatriation of profits was excluded.⁴⁹ Chapter VII, concerning cooperation among developing countries was one of the only sections which did not contain the introductory term that "all efforts should be made."⁵⁰ Other sections which were not placed in the conditional were Chapter VI on the need for the General Assembly to adopt the Charter of Economic Rights and Duties of States, and Chapter IX on the role of the United Nations.

The negotiations for Chapter X of the action programme, which concerned a special programme to help the most seriously affected and least developed and the land-locked countries, represented an important success of the Sixth Special Session. The food crisis and the draught in Africa, leading to mass starvation, was an underlying reality in the world economy which gave particular urgency to the action taken by the United Nations. The original draft prepared by the Group of 77 did not contain any provisions to address directly the problems of this international emergency. At the beginning of the session, a group of twelve countries was established and produced Chapter X. The committee was

⁴⁸. The draft text read:

(g) The International Monetary Fund (IMF) to ensure effective participation by developing countries in the decision-making process through the reform of the existing voting system.

Id. at 10.

The final version read:

(g) The IMF should review the relevant provisions in order to ensure effective participation by developing countries in the decision-making process; Id. at 35.

⁴⁹. (d) Regulate the repatriation of the profits accruing from their operations.

Id. at 13.

⁵⁰. 1. Collective self-reliance and growing co-operation among developing countries will further strengthen their role in the new international economic order. Developing countries, with a view to expanding co-operation at the regional, subregional and interregional levels should take further steps inter alia:

Id. at 38.

marked by a great deal of sympathy between developed and developing countries, since there was agreement about the necessity for assistance to be mobilized within a short term.

Chapter X established a Special Fund to provide emergency relief, which was to be administered by thirty-six countries. During the negotiations of the Sixth Special Session, it was rumored that the United States delegation would be authorized to submit a programme which would have a great bearing on the negotiations conducted throughout the session. On the 30th of April a proposal was submitted which provided for a \$4 billion target of emergency relief and which called for soft term loans for most seriously affected countries. This proposal was regarded as "too little, too late" by most of the delegations that had been involved in the setting up of the special fund, in which oil exporting countries had been particularly generous in pledging aid. It was also doubted whether support within the Administration and Congress could be found for implementation. The U.S. proposal was subsequently withdrawn.

3. Adoption by Consensus

On May 1, 1975 the plenary session of the General Assembly met to consider adoption of the draft resolution which had been referred unanimously from the ad hoc committee for adoption without vote. The condition for the substitution of the draft which had been revised through negotiation in place of the original draft of the Group of 77 was that it would be adopted by consensus. The U.S. had maintained throughout the negotiations with the ad hoc committee that it did not accept the document and that it would reserve the right to clarify its position regarding the content of the resolution in the plenary session. However, the reservations expressed by Ambassador Scali on May 1, 1974 were of such a broad scope that many developing countries accused the U.S. delegation of failure to bargain in good faith.

Ambassador Scali stated that the declaration and action programme, even as revised through negotiation, did not "represent a consensus in the accepted meaning of that term." Ambassador Scali explained the failure of the U.S. to object to the unanimous decision in the ad hoc committee to refer the drafts to the plenary, on a basis of consensus, as a desire to prevent increasing polarization between the developed countries and the Group of 77. "But our objecting at the last second would only have served to exacerbate the divisions that we have worked to the best of our ability to

bridge during the past weeks."⁵¹

Reservations expressed by the U.S. dealt with the failure of the declaration to provide for the duty under international law of compensation upon nationalization. The U.S. further objected to the principles of producer associations and restitution for exploitation enumerated in the declaration. It was also objected that regulation of transnational corporations in the interest of host countries should be subject to the norms of international law. Objections to the programme of action were so substantial as to preclude a "detailed listing and explanation." An objection was voiced to the idea of indexation, or the linking of prices of raw materials to manufactured goods. The U.S. declared that it would consider commodity agreements on a case-by-case basis. Another reservation was made to the allocation of a specified share of the U.S. market to developing countries. The provisions in the programme of action which related to international finance were said to be better left to the International Monetary Fund.

The European Community also expressed reservations about the resolutions passed without vote in the General Assembly. Minister Scheel, speaking on behalf of the E.C.C., objected to provisions in the resolutions which would refund revenues obtained in customs duties on goods imported from developing countries. Regarding the sections relating to commodity agreements and buffer stocks, the Community added the proviso that the needs of consumers be taken into consideration. The role of producers' associations was interpreted in the context of language contained in the declaration, which defined the framework of operation as international cooperation. The principle of indexation was stated as difficult to realize.

The individual members of the E.E.C. also made specific reservations in addition to those made by the Community as a whole. The Netherlands stated that the principle of restitution should be considered on a case-by-case basis. The Netherlands took a conciliatory position, speaking of the consensus by which the resolutions were adopted. The Netherlands was also the only developed country which stated that it was prepared to accept the principle of indexation, but declared that prices of imports should also include the imports from other developing countries as well as from developed countries. Italy also expressed reservations, de-

51. Press Release U.S.U.N.-44(74) May 1, 1974, at 2.

claring that the right of nationalization should be exercised in accordance with international law. The principle of indexation was declared to be unfeasible. Italy also expressed reservations about the ability of a free market economy to limit the substitution of synthetics for natural raw materials. The United Kingdom echoed the need for due regard to international law in the exercise of right of permanent sovereignty over natural resources. Reservations were also expressed on the advisability of encouraging "the formation of what would be in effect producers' cartels."

Japan had among the most restrictive of the reservations, and Mr. Saito stated that had there been a vote Japan would have abstained. A long list of provisions were mentioned as being objectionable, including producer agreements, indexation, substitution of synthetics, the trade and general preference sections, freight rates, implementation of code of conduct for liner conferences, much of the international finance provisions, transfer of technology, approval of OPEC by the developing countries, assistance by the U.N. in the operation of nationalized industries, and the revision of voting rights in international financial institutions.

The reaction of developing countries to the unexpected series of reservations made by developed countries was mixed. Some delegations were of the opinion that, had they known beforehand the extent of the reservations, they would not have been prepared to make the concessions that they did in revising the resolutions during negotiations. They would have found it preferable to submit the original draft prepared by the Group of 77 to a vote in the plenary. Other delegations were satisfied by the procedure taken, since the cooperation of developed countries would be necessary in having the resolutions implemented.

The Mexican delegation pointed out that the resolutions as passed were unambiguous on their face, and that the reservations expressed after adoption by consensus did not have any import on the meaning of the provisions. Mr. Bouteflika, speaking on behalf of the Group of 77, underlined the maturity of developing countries in making substantial concessions during negotiations. He described the process by which the resolutions had been enacted as a "genuine consensus." It was conceded that consensus did not mean unanimity, and that differences existed in the international community. The solidarity of the Group of 77 in the Sixth Special Session was interpreted as a "contemporary reality," one which had resulted in the use of documents prepared by the third world as a basis for dialogue.

The procedure by which the resolutions had been passed at the Sixth Special Session became a source of contention in the international community. At the twenty-ninth session of the General Assembly a speech by Ambassador Scali was interpreted as a direct confrontation. In this speech, obtaining support from those "whose cooperation is vital to implement a decision" was said to be crucial in reconciling differences among members. The speech contained inflammatory language which was viewed askance by many delegations:

Unenforceable, one-sided resolutions destroy the authority of the United Nations . . . The function of all parliaments is to provide expression to the majority will. Yet, when the rule of the majority becomes the tyranny of the majority, the minority will cease to respect or obey it, and the parliament will cease to function. 52

This speech was regarded by a diplomat at a European mission to the U.N. as particularly unfortunate since the "power of the word" was crucial to international diplomacy. Since the verbal atmosphere in which relations are carried out have a significant impact on negotiations, the confrontation was considered to be counterproductive.

In the aftermath of the Sixth Special Session a harder bargaining position was taken by developing countries. Some delegations became less ready to make major concessions in negotiations, since it was felt that developed countries had been unappreciative of the compromises made by the Group of 77 at the special session. Other delegations did not believe that developed countries had been sufficiently earnest in the negotiations at the special session, as attested by the junior level of many negotiating delegations. In general, it became more difficult for the less militant of the developing countries to play a conciliatory role in softening the demands made by the Group of 77.

The new power many developing countries had exercised at the Sixth Special Session was intoxicating at times, and it became difficult to pass even innocent resolutions.⁵³

52. Press Release U.S.U.N. 191(74) December 6, 1974 at 3.

53. Negotiations continued for four weeks on a resolution passed at the Economic and Social Council requesting U.N. organizations to submit a report on implementation of the Programme of Action. Disagreement concerned the language contained in a paragraph referring to the resolutions

C. The Charter of Economic Rights and Duties of States

The fourth and final meeting of the working group to draft the Charter of Economic Rights and Duties of States was held in Mexico City in June of 1974. The working group was officially to be composed of 31 members from both developing and developed countries, but ten other countries sent representatives to help in drafting the Charter. UNCTAD was in charge of supervising the work done on the Charter, in accordance with Resolution 45 (III) passed in Santiago on May 18, 1972.

After the outcome of the Sixth Special Session, the incentive to make concessions was diminished. Many developing countries felt that they would be as likely to receive a negative vote with a version of the Charter which did not go very far as with a version which implemented many of the claims originally contained in the declaration and action programme. Two major items of contention were nationalization and producers' agreements.

The negotiations on nationalization, contained in Article 2 of Chapter II, did not result in agreement between developing and developed countries. The developed countries insisted on the inclusion of a provision that compensation should be provided in accordance with international law, while developing countries believed it should be in accordance with domestic law. The governing standard in international law is that compensation be "prompt, adequate and just." The final formulations used in the Charter, which provided for "appropriate" compensation, had been used in a proposal submitted by the United States,⁵⁴ which was based on wording contained in the Resolution on Permanent Sovereignty over Natural Resources 1803 (XVII) adopted Dec. 14, 1962. The U.S. proposal also provided for the compensation to be made in accordance with international law, however.

Another area of contention in the Charter concerned the right of raw material producers to form associations. Negotiations on Article 5, which concerned this right, were also

passed at the Sixth Special Session. The dispute arose over whether the language should be "taking fully into account"; "taking into account"; or "bearing in mind." E/Res. 1911 LVII, August 2, 1974.

54. UNCTAD, TD/B/AC.12/2, August 8, 1974, at 21.

unable to bridge the distance between positions taken by developing countries and the developed countries. The principle of indexation was also incorporated into the Charter in Article 28, although a concession was included in the reference to equity to consumers.

The method by which the Charter was adopted radically differed from that used in passing the resolutions at the Sixth Special Session. There were 18 documents and amendments proposed in the plenary session of the General Assembly in addition to that submitted by the working group. The amendments were defeated, and the Charter was enacted by vote. Senator Percy of the U.S. delegation requested that each article and preamble be voted on separately, which meant a total of 127 votes. The Charter as a whole was enacted by 120 votes in favor, 10 abstentions, and 6 opposed. The negative votes were cast by Belgium, Denmark, Federal Republic of Germany, Luxembourg, the United Kingdom and the United States. Abstentions were made by Austria, Canada, France, Ireland, Israel, Italy, Japan, the Netherlands, Norway, and Spain.

There was a greater amount of support for the separate articles of the Charter than for the Charter as a whole. If Articles 2 and 5 had been different the Charter would probably have been adopted by consensus. The U.S. position regarding the Charter of Economic Rights and Duties of States was further elaborated in a paper prepared in the summer of 1975.⁵⁵ The Charter was criticized along with the NIEO resolutions as

unbalanced documents which fail to achieve the purposes of encouraging harmonious economic relations and cooperation for development; and which tend to discourage rather than encourage needed capital flow.⁵⁶

The U.S. enumerated difficulties with various provisions in the Charter, and expressed the desire that negotiations had continued until a text resolving "the remaining differences" had been formulated.

Article 2 was characterized as "the most difficult and contentious" of the entire Charter. Paragraph 1, which ex-

55. "Principal substantive issues in the Charter of Economic Rights and Duties of States and the Declaration and Plan of Action on the Establishment of a NIEO." U.S. Mission to the U.N. hereinafter "Principal Issues."

56. Id. at 3.

tended permanent sovereignty over not only natural resources, but "wealth and economic activities" was viewed as problematic, raising practical problems in such cases as jurisdiction over exported goods. The objections to paragraph 2, dealing with the regulation of foreign investment, reiterated the position outlined in a policy statement on "Economic Assistance and Investment Security in Developing Nations" made by President Nixon on January 19, 1972. It was asserted that expropriation of U.S. property should be (1) non-discriminatory; (2) for a public purpose; and (3) with prompt, adequate and effective compensation. Article 2 was further criticized for failing to guarantee treatment of foreign investors according to a minimum standard under international law. Perhaps the most objectionable provision in Article 2 was that disputes over compensation should be settled under domestic law (paragraph c). The U.S. feared that leaving the determination of "appropriate" compensation to the host state might result in refusal to compensate at all. It was further criticized that Article 2 imposed no duty on the host country to import foreign capital in good faith.

Although at first glance it would appear that irreconcilable differences exist between the positions of capital exporting and capital importing countries, the distance between these viewpoints can be narrowed when underlying economic realities are taken into account. On the one hand, developing countries dependent upon foreign investment recognize the need to provide a secure climate with guarantees in order to obtain continuous transfers of capital and technology. On the other hand, it is increasingly recognized by capital exporters that insistence upon rigid investment rules from a prior era tends to worsen relations with host countries. In this context, the Council of the Americas, while supporting the U.S. policy on expropriation disputes contained in the 1972 presidential statement, recognized that "inflexible trigger-type mechanisms and automatic responses to expropriations may unproductively exacerbate nationalist sensibilities and impair U.S. commercial and overall national interests."⁵⁷

Another source of opposition to the Charter was the endorsement of the right of states to organize producer asso-

57. Council of the Americas, "The Trade Act of 1974 Summary of COA Member Company Views on Hemispheric Trade and Relations," March 1975, at 8.

ciations, contained in Article 5 of the Charter. The U.S. was unwilling to accept any limitation on its right to respond "to the actions of such cartels in order to protect [its] own interests."⁵⁸ Here again, it can be asserted that economic realities render this dispute academic. Threat of U.S. reprisals has not been effective in disbanding OPEC, and with respect to cartels in other products, the U.S. position may have a provocative impact which would outweigh its deterrent effect.

There is some disagreement about the bearing which the Charter will have on future international relations. The opinion of one delegate of a developed country was that it is only the socialist countries who still refer to the Charter, using it as a political lever. He felt that the Charter had lost its significance as soon as it incorporated provisions which did not have general acceptance, and he cited the statement of one of his colleagues as soon as the long process of voting had been concluded: "The Charter is now dead, and we can all return to business."

Another view of the Charter emphasizes the dynamic impact which it can have in influencing international norms. As a statement of the aspirations of developing countries who supported the Charter, it may enhance that the acceptance of the more controversial provisions can be obtained in the long run. This interpretation of the Charter's significance points to the stronger bargaining position which developing countries can derive from an explicit statement of their expectations. Rather than consolidate the new economic order on a step-by-step basis, waiting for each component to be solidified before putting it into operation, the proponents of the Charter would prefer to outline the general direction that the new economic order must take. The controversy around the Charter as far as developing countries are concerned is whether the new economic order should be constructed brick-by-brick or whether it is preferable to draw up architectural plans.

The adoption of the Charter has been viewed as symptomatic of a failure of the United Nations in that it has led to confrontation and polarization within an institution which must rely upon voluntary compliance for implementation of decisions. Another view of the Charter is that it has vindicated the usefulness of the United Nations as a

58. U.S.U.N., "Principal Issues," at 5.

forum which accurately reflects the real political and social concerns in the international community. This view sees the political unity achieved by the Group of 77 as a real change in international conditions with which the world community will have to contend. The disagreement between developing and developed countries is interpreted as a reflection of the importance of the questions being addressed. The Danish delegation stated along with its reservations on the resolutions passed by the Sixth Special Session that the failure to find agreement on all of the provisions was due to the scope of the problems being handled:

[I]t would serve no purpose to conceal the fact that there are a number of paragraphs where it has not been possible to find a wording which is acceptable to my delegation. This is not surprising, however, when one realizes that the Programme of Action contains a catalogue of nearly all the economic questions which the different United Nations bodies have dealt with for the last 10 years. 59

If the Charter is to be judged in terms of the degree to which all of its provisions are subscribed to in the international community, then it can be viewed critically. However, it is not clear that the Group of 77 consider the Charter as a collective bargaining agreement to which the developed countries have committed themselves. Rather, the Charter is viewed as a statement of their collective strength and ability to maintain a solid front in difficult negotiations. When the Charter is interpreted in this light, it can be seen as a departure point for future negotiations between developed countries and the Group of 77, instead of as an unrealizable set of principles.

II. Position Taken Towards the New International Economic Order

A. Policy of Developed Countries

The resolutions of the NIEO have provided a strong incentive to developed countries to formulate a response to developing countries' needs. Although in many cases the Sixth Special Session and the Charter did no more than reiterate demands expressed previously, the formation of a coalition among developing countries with OPEC as a driving

59. Mr. Isaksen, General Assembly, May 2, 1974, A/PV. 2230, at 50.

wedge gave a new urgency to the issues. With the prospect of another special session to be devoted to development issues in September 1975, both developing and developed countries felt compelled to further define their respective positions. In addition, two significant pieces of trade legislation, one in the U.S. and one in the E.E.C., were significantly influenced by the NIEO resolutions.

1. The Lome Convention

On February 28, 1975, an agreement between the E.E.C. and 46 African, Caribbean and Pacific Countries (ACP States) was signed. The Lome Convention was the conclusion of a series of negotiations which began formally on July 26, 1973.⁶⁰ Before the Convention can be implemented, the nine national parliaments of the E.E.C. and two-thirds of the ACP States will have to ratify it. The Convention is to extend over a five-year period, and it provides for free access to the Community market for nearly all of the products exported from ACP states. The trade concessions granted by the E.E.C. are based on the principle of non-reciprocity by developing countries for E.E.C. products. Another innovation of the Convention is the inclusion of a system for stabilizing export earnings, which guarantees an income to countries dependent on export of any of twelve specified products, and which links the price of sugar to prices guaranteed to Community producers.

The Lome Convention is viewed as a significant achievement by many of the ACP States, who were able to "present a united front throughout the negotiations."⁶¹ However, the provisions for the transfer of nearly \$3.5 billion, more than 80% of which in grants and the rest in soft term loans, are considered to be disappointingly small. Central banks and national financial institutions of ACP States are to play an increased role in implementing the payments. Another feature of the Convention is the provision for industrial cooperation and assistance in establishing manufacturing facilities in developing countries. An industrial promotion scheme is to be supervised by a newly established Industrial Development Centre run by ACP States and the Community. The transfer of technology and estab-

60. Spokesman's Group, Commission of the European Communities, P-13, February 1975, at 2.

61. Id. at 2.

lishment of firms is left to private business.

Although the Lome Convention incorporates a number of innovative provisions, it is at best a partial response to problems raised by developing countries in the negotiations for the NIEO. The magnitude of resource transfer is small; there is no increased access to the Common Market for many goods of export interest to developing countries; and there is some doubt whether the Convention will be ratified. The suspension of customs duties on goods imported from the ACP States on a non-reciprocal basis is, however, one direct response to a provision contained in the Programme of Action of the Sixth Special Session. Perhaps the most striking feature of the Lome Convention is the process by which it was negotiated, with collective bargaining by the ACP States despite disparate interests. In addition, the fact that agreement could be reached between developed and developing countries after protracted bargaining had a calming influence on the preparations for the Seventh Special Session.

2. The 1974 Trade Act of the U.S.⁶²

The trade scheme adopted by the U.S. provides a contrast to the concessions granted to developing countries by the E.E.C. On January 3, 1975, Public Law 93-618 (the 1974 Trade Act) was enacted. The Trade Act grants authority for the U.S. to participate in multilateral trade negotiations, but also contains such protectionist provisions as authority for imposition of import surcharge (Section 122), more readily applied restrictions on imports (Sections 201 and 203), and retaliation against cartel activities (Section 108). Although trade benefits for developing countries are granted by the Trade Act, many nationalistic provisions severely limit the positive aspects.

Title V of this law concerns a generalized system of preferences (GSP), which authorizes the President to allow imports from developing countries duty-free access to the U.S. market. The procedure by which products are designated for GSP benefits is outlined in Section 503 of the Trade Act. A list of eligible articles is drawn up by the President, published in the Federal Register, and hearings are held by the International Tariff Commission to determine the "probable economic effect" on domestic producers, labor and consumers. After receiving the Commission's ad-

62. Public Law 93-618 (H.R. 10710).

vice, the President is empowered to issue an executive order of those products to receive GSP benefits. A list of eligible articles was published in the Federal Register on March 26, 1975, but the scheme has not yet gone into effect. The U.S. is the final developed country to implement the proposal for a GSP adopted at the first session of UNCTAD in 1964. Eleven developed market economies and four socialist developed countries (including the USSR) have adopted GSP schemes.

The purpose of GSP schemes is to stimulate export of manufactures and semi-manufactures, with the constraint that domestic competition in the preference-granting country should not be unduly affected. In order to achieve this end, elaborate safeguard provisions are incorporated into GSP schemes. Some countries (like the EEC and Japan) have introduced a priori limitations, with a basic amount of imports allowed according to past trade performance plus a marginal increase or supplementary amount. Other countries with GSP schemes provide safeguard procedures via an escape clause which defines when preferences will be withdrawn. Under the U.S. escape clause, imports are limited to 50% or \$25 million of a product per year in cases where there is a competitive domestic producer [Section 504(c)(1)].

There are several limitations on the application of the U.S. GSP scheme which have aroused strong negative reactions among developing countries. Section 502(b)(2) of the Act, which disqualifies OPEC countries from the GSP, has caused the U.S. Administration various difficulties, including the canceling of a trip by Secretary of State Kissinger to Buenos Aires (retaliation for the exclusion of Venezuela and Ecuador from the scheme). A bill seeking to soften the effects of Section 502(b)(2) by authorizing preferences for OPEC countries that did not embargo oil in 1973-74 (Venezuela, Ecuador, Iran, Nigeria, Indonesia and Gabon) was introduced by the Administration during the summer of 1975. However, House Ways and Means Committee leaders did not act on the preferences bill. Other countries entering producer associations which "withhold supplies of vital commodity resources from international trade or raise the price of such commodities to an unreasonable level and cause serious disruption of the world economy" are also exempted from GSP benefits under this section.

Under Sections 502(b)(4) and (6) GSP eligibility is denied to any country which has nationalized the property of

a U.S. national without provision for prompt, adequate, and effective compensation. It is unfortunate that the commitment to increase trade opportunities for developing countries has been overshadowed by the protective and retaliatory provisions contained in the Trade Act. In addition, in the crucial area regarding the removal of nontariff barriers, the hands of U.S. negotiators are tied by the language contained in Section 102(a) to the effect that "nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to [or other distortions of] international trade." On balance, the 1974 Trade Act has probably served to heighten developing countries' mistrust of the ability of the U.S. to respond to their concerns.

3. The International Conference on Energy

Perhaps the event having greatest impact on the preparations for the Seventh Special Session was the failure of a preparatory meeting in Paris, in April 1975, for international energy discussions. At that meeting, the U.S., the E.E.C., and Japan were unable to agree with four oil-producing countries--Saudi Arabia, Iran, Algeria and Venezuela--and three non-oil producing countries--India, Zaire and Brazil--on the agenda for a full-scale conference. The U.S. resisted the inclusion of raw materials other than oil for discussion at the energy conference, while OPEC countries maintained solidarity with other developing countries by insisting that negotiations be linked to general development demands and other commodities.⁶³ The conference was indefinitely postponed, in order to give the industrial countries time to adjust to the political reality that talks on guaranteed security of energy supply could not proceed without simultaneous dialogue on the concerns of non-oil producing countries.

Once it became clear that the considerable bargaining leverage of OPEC countries was inextricably linked to demands of developing countries for a NIEO, a split within the U.S. Administration became visible. The Treasury Department,

⁶³. The U.S. should have foreseen that insistence upon discussion of energy issues alone was doomed to failure. Developing countries had stated their intention to link energy talks to discussion of overall development demands at the Dakar Conference in February and at the OPEC Heads of State Conference at Algiers in March.

headed by William E. Simon, vigorously opposed any concession to demands of developing countries. While the argument was couched in terms of the values of the free enterprise system, an ideological repugnance to negotiations with an oil cartel and a refusal to open the Pandora's box of interference with the market mechanism,⁶⁴ Simon's position was based on a hard-nosed view of underlying power relations. Simon, supported by Under-Secretary Jack F. Bennett and Assistant Secretary Gerald L. Parsky, believed that OPEC could be broken up eventually through a policy of energy conservation and alternative sources of supply. The threat of producer associations in other raw materials was not seen to be likely.

The State Department viewed the increasing polarization between the industrialized countries and the developing countries as a serious problem. The bloc of OPEC and the non-oil producing countries in the Group of 77 was considered as a present reality, which could be split apart more easily through skillfully designed incentives than through major confrontation. Accordingly, a special inter-agency task force was appointed to come up with an activist, positive position for the U.S. to take at the Seventh Special Session. It was determined that the outcome of the Sixth Special Session which had served to widen the distance between developing countries and the industrialized world should not be duplicated.

The State Department hoped to avoid a major confrontation by the combination of offering specific proposals at the Seventh Special Session, and of organizing a meeting which would pre-empt the discussion in the General Assembly. In order for this policy to work, however, it was necessary for the U.S. to maintain a convincing position that the attitude towards developing countries' demands had softened. Unfortunately, in the process of preparing speeches for foreign consumption, Henry Kissinger opened his flank to criticism from the Treasury Department. The dispute was widely covered by the press, so that any attempt to placate domestic critics had the immediate effect of undermining American credibility. The net effect only served to discredit the ability of the present Administration, if not institutions of U.S. government as a whole, to formulate an

64. See William Safire, "Brother, Can You Spare A Paradigm?" N.Y. Times, June 2, 1975, at 25, col. 2.

internally consistent policy towards development issues.

While the substantive position of the U.S. was being ironed out, in a controversial move also bitterly resisted by the Treasury Department, Under-Secretary of State Charles W. Robinson met separately with members of the original ten-nation preparatory group that had met in Paris in April, in an attempt to set up an international energy conference. On July 15th, the U.S. was able to announce that agreement had been obtained from Saudi Arabia, Iran, Venezuela, and Brazil for an international energy conference.⁶⁵ In order to reconvene the conference, it was necessary for the U.S. to agree to negotiate on a wide range of NIEO issues concurrently with discussions of price and supply of energy. However, it was felt that this forum would be much preferable to that of the U.N. system, where voting was heavily weighted in favor of developing nations.

The structure of the Paris meeting would be determined in three phases. A meeting at the subcabinet level would take place in October among the group of ten which had met in April. By December the group would be expanded to consist of nineteen developing country representatives (eight from OPEC) and eight developed country representatives. This group of 27 would meet at the ministerial level in four commissions, each composed of a maximum of 15 members. The commissions would deal with (a) energy, (b) commodities, (c) development issues and (d) financial problems. The financial commission, included at the insistence of Saudi Arabia, would not be concerned with international monetary reform, due to resistance from the U.S. and several E.E.C. countries, including France.

The conference was viewed by many developing countries as a dilatory tactic. Many governments of developing nations did not trust the willingness of the U.S. to negotiate in any of the commissions other than energy. This mistrust found outlet in the dispute about the procedure linking progress in the various commissions. Developing countries wanted there to be rigid ties between negotiations in the separate commissions, so that progress in talks on energy would act as a stimulus to discussion in the other commissions. The U.S. wanted there to be "parallelism," or only loose correspondence. Another disagreement was the extent to which negotiations would have a bearing on discussions in other fora. U.N. agencies, OPEC, and the

65. N.Y. Times, July 15, 1975, at 50, col. 1.

International Energy Agency were to send observers, but it was not settled whether decisions taken in the commissions would guide actions in other international bodies.

By setting up a new forum which could conceivably oversee interrelated negotiations on NIEO demands, it was hoped that direct confrontation would be avoided at the Seventh Special Session. However, the credibility of U.S. intent to breathe substance into the procedural forum which it had created for negotiations was simultaneously being undermined by those arguments which were being used domestically by the State Department to obtain support of the Treasury Department. One Treasury Department official managed to leak to the press the rationale by which the Administration had adopted the scheme:

At the meeting with President Ford and all his economic advisers, Secretary Kissinger advanced a plan to fool the third world countries by setting up separate commissions to talk raw material prices--just jawboning sessions--while the oil cartel was dealt with separately. To an experienced politician 'setting up a committee' is a way of putting a problem on a shelf until it is forgotten: President Ford saw the Kissinger plan as a device for talking raw materials cartels to death.⁶⁶

By committing the U.S. to economic parleys without any prior resolution of the underlying position to be taken in addressing NIEO demands, the U.S. was taking a serious gamble. Unless the U.S. could be forthcoming on any of the substantive issues involved, the credibility of American negotiators would be further eroded. Not only would delay in confronting the issues intensify the problems to be faced, but the use of international cooperation in dealing with such problems would become less likely.

4. The OECD Ministers Meeting of May 28th 1975

In response to the importance that was being ascribed to the Seventh Special Session by developing countries and the intensity and high level at which the Group of 77 was preparing for negotiations, the 18 industrialized members of the OECD (Organization for Economic Cooperation and Development) devoted considerable attention to development issues at a special session of their Executive Committee,

66. N.Y. Times, June 2, 1975, at 25, col. 2.

which met at ministerial level in Paris on May 28, 1975. Particular emphasis was placed on the important political impact of development issues to be considered at the Seventh Special Session, the 30th General Assembly, and UNCTAD meetings. Two resolutions were passed at the meeting. The first resolution concerned the establishment of a high-level group on commodities which would consider the problem according to particular products. The possibility of concerted action by particular producers and groups of producers would be studied and policy objectives of consumers and producers would be explored, with an emphasis on medium and long term perspective.

The second resolution was a general declaration on "Relations with Developing Countries." The wording of the resolution was in very bland terms:

3. Ministers resolved to intensify their efforts to cooperate with [developing] countries in their endeavors to improve the conditions of life of their people and to participate increasingly in the benefits of an improved and expanding world economy. . . .

5. They determined to consider policies aimed at strengthening the position of the developing countries in the world economy and expressed their willingness to discuss with the developing countries the relevant issues, with particular emphasis on food production, energy, commodities, and development assistance for the most seriously affected countries.⁶⁷

The wording of the declaration had been intentionally kept vague through hard negotiations by Treasury Officials⁶⁸ who had resented the formulation of speeches prepared by Henry Kissinger for the occasion.

The substantive position of the U.S. towards development issues was set forth by Henry Kissinger in three speeches given on May 13th, 27th and 28th. The dispute between the Department of State and the Treasury Department came to a head on the clearance of a major policy speech delivered to the Kansas City International Relations Council

67. OECD Declaration on Relations with Developing Countries, May 28, 1975, at 1.

68. John Ray, Director, Office of Trade Policy, Department of the Treasury, at meeting of U.N. Association, June 11, 1975

on May 13th. In what was seen as a major shift and signal of a greater responsiveness to NIEO demands, Treasury Department officials had been consulted only after the major lines of the speech had been drafted. Last minute amendments deleted mention of a "new world economic order"⁶⁹ and added the caveat that indexing would not be supported.⁷⁰ Although the tone of the May 13th speech was conciliatory, concrete proposals were not very far reaching and did not address developing countries' chief demands. In general, the call for a NIEO was rejected. "[W]e are convinced that the present economic system has generally served the world well." However, it was recognized that developing countries did not believe that they participated equally in the benefits of the world economy, and the U.S. committed itself to rectifying and improving this situation. "We recognize that an international order will be durable only if its members truly accept it. . . . [W]e are prepared to strengthen and expand the international economic system."

In the rest of the May 13th speech the position vis-à-vis commodities was less forthcoming. Indexation was dismissed as disadvantageous to the poorest countries and an artificial interference with the market mechanism. A concession was the recognition of the limitations on the operation of private capital, which did not result in an optimal level of investment in developing countries due to unstable prices and political factors. However, rather than supporting the proposal for an integrated approach to commodities advanced by developing countries to deal with these problems, the U.S. recommended that a "case-by-case" method be used in "arrangements in individual commodities." The U.S. also proposed to deal with the problem of increased processing of commodities by attacking import restrictions in developed countries through the Multilateral Trade Negotiations (MTN) in GATT, and stimulation of investment in developing countries through the World Bank.

In the speech delivered by Henry Kissinger to the International Energy Agency on May 27, 1975, the main thrust of the proposals was directed to the need for a concerted energy policy combining conservation, the development of alternate sources of energy, and a tariff policy which would

69. "A New Economic Order," James Reston, N.Y. Times, May 30, 1975, at 31, col. 5.

70. "Kissinger's New Role," Bernard Gwertzman, N.Y. Times, June 4, 1975, at 53, col. 2.

protect the creation of domestic energy supplies from the potential of predatory pricing policies on the part of OPEC. In a section devoted to relations with producers, attention was given to investment opportunities for recycling oil dollars, including the establishment of industries such as fertilizer in producer countries with the technology of industrialized countries.

One strain running throughout the three Kissinger speeches was the need to cope with the special problems of the "most seriously affected" countries, or the poorest among the developing countries, whose economies suffered from the impact of increased oil prices most strongly. In the May 13th speech the problems of these countries, numbering about forty, were singled out for attention.

A serious concern must be the needs of the poorest. They have been the most grievously affected by the food and energy crises of the past 2 years. Their fate affects us morally as well as materially. Their prosperity would contribute to ours. And their participation in the global economy is required so that all nations, and not only the richest, have a stake in the world which we are building. 71

While the need to aid these countries could not be doubted, and at least some if not exclusively humanitarian motives had prompted the focusing on these problems, American overtures were viewed with suspicion among the Group of 77 as an attempt to dissociate the non-oil-producing developing countries from OPEC. In fact, the May 27th speech pointed out the vulnerability of the poorest developing countries to confrontation between the North and South.

If the terribly complex issues before us are to be resolved through tests of strength, it is not the advanced industrial powers who will pay the highest price. Instead, it will be the poorest and most disadvantaged--those in whose name and for whose benefit these tactics are purportedly used. 72

71. Henry A. Kissinger, "Strengthening the World Economic Structure," Speech before the Kansas City International Relations Council, May 13, 1975, Bureau of Public Affairs, at 3.

72. U.S. Mission to the U.N. Address by Henry A. Kissinger before the International Energy Agency, Paris, France, May 27, 1975, at 3.

The speech presented a challenge to OPEC countries to join OECD countries in alleviating the immediate payments problems of the most seriously affected countries. In fact, on August 7, 1975 the IMF announced the contribution of \$149 million SDR's (Special Drawing Rights, approximately equivalent to \$177 million), by 18 OECD and OPEC countries to subsidize interest rates charged by loans from an \$8 billion "oil facility."⁷³ This fund, monitored by the IMF and consisting of surplus dollars mostly from OPEC countries, was created originally to allow the IMF to lend at commercial rates and to provide assistance to the poorest countries to pay for increased import deficits.

The final proposal in the May 27th speech referred to the U.S. desire to resume the preparatory meeting in Paris for an energy conference. The format suggested by the U.S. was that the commissions would proceed without fixed deadlines for the conclusion of agreement, thereby alleviating the risk, from the U.S. perspective, that willingness for progress in one sphere would have to be coupled with negotiations in a less desired area. The work of the commissions was proposed as a supplement to work in other related international bodies, acting as a stimulus rather than a substitute.

The May 28th speech before the Ministerial Council of the OECD did not add much to the Kansas City speech. The debate about whether discussion should refer to a NIEO rather than improvement of the existing system was dismissed as largely irrelevant.

It is time to end the theoretical debate over whether we are seeking a new order or improving the existing one. Let us deal in reality, not rhetoric.⁷⁴

One addition to the measures which the U.S. was willing to support in regard to commodities trade was the review of mechanisms for stabilization of earnings, similar to the STABEX scheme of the Lome Convention. The IMF facility was seen as a base for expansion, so that export earnings of developing countries could be offered greater protection from sharp fluctuation.

A crucial area where the U.S. was prepared to offer

73. United Nations Press Release IB/3534.

74. U.S. Mission to the U.N. Press Release, Address by Henry A. Kissinger before the OECD Ministerial Council, Paris, May 28, 1975, at 5.

development assistance was in the solution of the world food problem. The U.S. pledged continuing food aid of 4 million tons per year, and also pressed for long term solutions by the creation of international grain reserves and increasing production of food in developing countries. The U.S. proposed the creation of an International Fund for Agricultural Development to be administered by an organization created by the World Food Conference, (the Consultative Group on Food Production and Investment), to apply technology for improving agriculture in developing countries.

While the area of food was one in which the U.S. could make a great contribution by virtue of its large production and technological advancement, again in appealing to the poorest nations the U.S. was suspected of acting to break the solidarity of the Group of 77, rather than for altruistic reasons. Specifically, it was felt that while charity was laudable, as long as underlying structural inequities were not dealt with, world poverty would only continue to worsen.

5. Position of United Kingdom and the Netherlands

Pressure was placed on the U.S. to adopt a more forthcoming position towards the NIEO by various other industrialized countries. Some OECD partners, more dependent upon supply of raw materials from developing countries than the U.S., perceived a greater immediate risk from the escalation of confrontation between North and South. The United Kingdom and the Netherlands in particular took special pains to enter into dialogue with developing countries.

At a meeting of heads of government of the Commonwealth countries at Kingston, Jamaica on May 1, 1975, Harold Wilson outlined a proposal for a general agreement on commodities which the U.K. would be willing to enter as part of "a new deal in world economies."⁷⁵ Although the U.K. recognized that tackling the commodity question alone was not a sufficient response to the demands by developing countries for a NIEO,⁷⁶ by singling out this issue for attention, the U.K. was following the sentiment of many developing countries.

The problem of commodities trade has formed a focus for

75. "World Economic Interdependence and Trade in Commodities," presented to Parliament by the Prime Minister, May 1975, at 1.

76. A.R.K. Mackenzie, Minister of Economic and Social Affairs, U.S. Mission to the U.N. at a meeting of the U.N. Association of the U.S. on June 11, 1975, 345 E. 46th Street, New York, N.Y.

many of the provisions of the NIEO resolutions for several reasons. Developing countries are dependent upon the export of commodities to earn more than two-thirds of their foreign exchange for the financing of development. The wide fluctuation of prices and decline in value of important commodities such as coffee, tea, rubber, and jute⁷⁷ has aroused the concern of developing countries. In addition, the success of OPEC countries in forming a producer association and the potential bargaining leverage to be obtained in this way served as a stimulus to exporters of other commodities. The developments in consultations among developing countries on the establishment of an integrated series of commodity agreements will be explored in a later section.

The U.K. did not support the multi-commodity approach called for by developing countries, but nonetheless was able to announce support for such demands as joint financing of international buffer stocks by consumers as well as producers and stabilization of export earnings. The U.K. had hoped that by obtaining a general approach to the negotiation of commodity agreements, the particular problems posed by each commodity agreement would be more easily solved. This would be a compromise between the multi-commodity approach and the insistence by consumer countries that commodity agreements be negotiated on a case-by-case method.

Similarly, the U.K. sought to soften the controversy surrounding the indexation of commodity prices to the prices of manufactured goods imported by developing countries. While not dismissing the proposal out of hand, the technical difficulties surrounding the approach were pointed out. Thus, the problem in identifying a common base or date of reference for prices due to varying price cycles was mentioned. Also, unequal benefits among developing countries would result from any given system due to endowment of resources, so that the poorest countries would more often than not receive the least revenue. The suggestion was put forward that commodity prices should be formed by market forces, subject to regulation within a range to be negotiated. While earnings would thus be protected from wide fluctuation, the problem of long-term price decline would be approached through income stabilization schemes similar to the STABEX scheme introduced in the Lome Convention.

77. UNCTAD, TD/B/C.1/166/Supp.1/Add.1, December 13, 1975, Annex III, at 5.

The U.K. published a booklet which included a detailed analysis of world trade in commodities and background information on the operation of existing commodities arrangements in addition to the proposals outlined above.⁷⁸ Although the U.K. was not prepared to answer many of the developing countries' demands, it demonstrated that it was interested in entering into serious discussion at the Seventh Special Session, if not at a special conference on commodities which it also proposed.

The Netherlands also made considerable efforts to open a dialogue between industrialized nations and developing countries. As a small nation with an economy heavily dependent upon international trade, Holland is in an especially vulnerable position vis-à-vis confrontation with the third world. Holland has nevertheless, or perhaps for that very reason, been largely sympathetic to demands by developing countries for an equitable international system.

The Dutch Minister for Development Cooperation, Jan P. Pronk, has taken a protagonistic position towards the NIEO, and he was selected as Chairman of the ad hoc committee at the Seventh Special Session to oversee negotiations between developing and developed countries. An international symposium on a NIEO was convened by Jan Pronk at The Hague between May 22 and 24, just before the OECD meeting. Attended by American policy-makers as well as international experts, the symposium considered the problems facing the international community arising from the distribution of world income, and sought long-term solutions on finance, scarcity, trade, decision-making, and adjustments in developing countries.

Also sponsored by the Dutch government, a project called "Reviewing the International Order" began work in October 1974. The project combined input from 20 specialists from developing and developed countries in preparing an interim report in June 1975, which was hoped would "prove of value in furthering discussions on the [NIEO] during the Seventh Special Session of the U.N. General Assembly."⁷⁹ The RIO made recommendations for nine problem areas, including raw materials, income redistribu-

78. "World Economic Interdependence and Trade in Commodities" May 1975, 109 pages.

79. "Reviewing the International Order Interim Report," prepared during the Second General Meeting Held 17-20 June 1975, in Rotterdam, at 4.

tion, the international monetary system, and international division of labor. The analysis was predicated upon the realization that even with stringent positive assumptions that no limit to world food production exists, a per capita increase in income in the developing world of 5% per year, and 3.3% per year in the developed world, and low population forecasts of the U.N., it would take 40 years to reduce the ratio of income between rich and poor countries from 13:1 to 6:1.

B. Policy of Group of 77

The Group of 77 held a series of meetings beginning in early 1975, which enabled them to arrive at a common negotiating position vis-à-vis the developed countries. While these meetings were not strictly defined in terms of preparations for the Seventh Special Session, it became clear that the Group of 77 had become committed to interaction at a ministerial level in formulating a consistent set of demands. It is difficult to discern what trade-offs were arrived at among the Group of 77 in order to find that least common denominator which would satisfy all partners. The internal bargaining process remained a matter among members of the Group of 77; it is significant that ranks were not broken throughout the process of internal dialogue.

Again, while it is meaningful to examine the immediate outcome of the series of meetings among the Group of 77 (insofar as formal final reports reflect the actual substance of the dialogue), the process by which negotiations took place is of greater significance. An assumption which enabled participants to muster the necessary political will to achieve a common position was that only by collective action could desired structural changes be made in the international economic system. The potential for a breakdown in negotiations was enormous--developing countries encompassed a wide range of disparate economic needs, and many uncertainties accompanied any country's choice to cast its lot in with others of the Group of 77. A major threat was--as is true of collective bargaining in general--that any particular country or group of countries would find greater chance to have its individual needs met by direct contact with developed countries. However, if there is one testimony to the emergence of the NIEO it is this: the Group of 77 has recognized the need for a collective approach to common structural problems shared by developing countries in the international economic system.

The negotiations by which the Group of 77 formulated a

common position proceeded in various fora, and indeed at various points it became difficult to coordinate the decisions taken in New York with those in Geneva and elsewhere. The problems of delegation of authority became acute in proportion to the extent it was felt that the locus of policy decision-making had been centralized in the Group of 77. The more cynical among the Group of 77 believed that the dialogue was too remote from such substantive economic negotiations as the multilateral trade negotiations in GATT or the Development Committee of the IMF and World Bank, where countries by and large pursued individual policies. On the other hand, it was felt by many developing countries that the ultimate interrelation between development problems (monetary, trade, investment) necessitated a coordinated approach only possible by centralizing decisions in the Group of 77. The common viewpoint was that an impetus to substantive negotiations between the Group of 77 and industrialized countries could be provided through a collective posture.

1. The Conference of Developing Countries on Raw Materials

One means by which OPEC sought to retain support for the concept of producer associations from other developing countries was by increasing the possibility for other producer associations to follow their success. Accordingly, a conference was held in Dakar between February 4th and 8th, 1975 to carry out "a detailed analysis of the fundamental problems of raw materials and development in the light of recent trends in international economic relations."⁸⁰ The Conference placed the bargaining power of OPEC at the disposal of producers of other commodities by providing that no energy talks would be held without simultaneous discussion of other raw materials. OPEC sought to institutionalize this cooperation by establishing a council of producer associations and the common financing of a multi-commodity buffer stock. It was hoped that by linking commodities into a common scheme, this would increase the bargaining strength of developing countries. This approach rested on the assumption that the strength of one producer association could be used to enhance and reinforce the strength of exporters of other products.

The tone of the language adopted by the Dakar Con-

80. Conference of Developing Countries on Raw Materials, Dakar, February 4-8, 1975, E/AC.62/6., at 1.

ference was far from conciliatory, with wording that would alienate even friendly audiences in developed countries. The first enumerated paragraph of the declaration spoke of "the present structure of international trade, which had its origins in imperialist and colonialist exploitation, and which has continued in force up to the present day, in most cases through various forms of neo-colonialism."⁸¹ An underlying principle for the Group of 77 in changing the organization of world trade to a just and equitable system was said to be the need for "combining their forces to strengthen their negotiating power."⁸²

An analysis of fundamental inequalities in the international market trading system was given in a general declaration. Through tariff structure in the developed countries, access to markets by developing countries was denied. In addition, bargaining power in the marketing of commodities was imbalanced, so that oligopolistic buyers were able to extract profits from developing countries, competing among themselves for sale of their products. One focus was the declining terms of trade in prices of primary commodity exports relative to manufactured imports. Paragraph 9 referred to long-term deterioration in the net barter terms of trade, or the purchasing power of developing countries from export earnings from primary commodities.

In a further refinement of this complaint, a new measure of the distribution of income between developed and developing countries was referred to in paragraph 4.⁸³ According to the theory of "factoral terms of trade," the benefits of increased productivity in a factor entering into production in the export sector can also be passed on to importing countries. When prices decrease at the same time as factor inputs become more efficient, gains in productivity are passed on to developed countries. Thus, while increased productivity would ordinarily result in an increase in profits if prices remained the same, benefits of an increase in productivity were in fact not retained by developing countries, although benefits of increased productivity in manufactured goods were retained by developed countries.

Paragraph 17 listed the areas in which action by developed countries on commodities had not been forthcoming, including the failure to enter into commodities agreements

81. Id., at 1-2.

82. Id.

83. Id., at 3.

and the failure to open markets to goods from developing countries.⁸⁴ Paragraph 23 also pointed to foregone profits and employment through processing and shipping of developing countries' raw materials by developed countries.⁸⁵

The Dakar Action Programme called for collective self-reliance among the Group of 77 to right the structural problems of the international trading system.⁸⁶ An elaborate scheme was outlined calling for the following action:

- grant preference to goods from developing countries (1f)
- cooperate in investment and production projects (1h)
- implement prior decisions to exchange technology, cooperate in monetary trade and industrial spheres (1i)
- set up a council to strengthen cooperation among producer associations (paragraph 2, implemented in Resolution VI)
- establish a multi-commodity buffer stock (4)
- increase investment in agricultural sector (9)
- set up regional enterprise for processing of primary commodities (9)
- establish regional payments unions (10)
- examine advisability of joint purchasing agency for strengthening bargaining power in buying of patents and licenses (14)

Another strain in the Dakar Action Program outlined the demands of the Group of 77 for action by developed countries. This section was worded more moderately, calling for agreement on an integrated programme on commodities, cooperation in reforming the monetary institutions, expansion of trade opportunities for developing countries, and reform of the international patent system. The import was that with cooperation by developed countries, the more provocative elements of the plan for self-help among the Group of 77 outlined in the previous section would be set aside.

2. Second Ministerial Meeting of Group of 77

It was not only through obtaining more equitable prices for the export of raw materials that developing

84. *Id.*, at 6-7.

85. *Id.*, at 9-10.

86. Conference of Developing Countries on Raw Materials, Dakar, February 4-8, 1975, E/AC.62/6, at 13ff.

countries hoped to raise their income. The Group of 77 called for an increase in industrialization both in order to process their own natural resources for export and in order to produce manufactured goods for domestic markets as well. The meeting of Ministers in Algiers from February 15 to 18, 1975 was concerned with formulating the Group of 77's common position for the Second General Conference of the United Nations Industrial Development Organization (UNIDO) to be held in Lima in the latter half of March.⁸⁷ The Group of 77 formulated a two-pronged approach to industrialization, with one set of provisions directed to collective self-reliance and another set directed to policies requiring cooperation from developed countries.

The text formulated by the Group of 77 in Algiers contained strong provisions, which could be softened in return for cooperation from developed countries in forthcoming negotiations. The Declaration and Plan of Action adopted by the Group of 77 set a target for increasing the share of developing countries from the present level of 7% to 25% of world industrial production by the year 2000.⁸⁸ A central part of the Algiers plan called for negotiations to transfer those industries which, according to criteria of comparative advantage or local processing of raw materials, could be more equitably located in developing countries. The argument made by the Algiers Conference was that developing countries would embark on a shift of their trade pattern. In lieu of the present system where raw materials were shipped to developed countries for processing and then re-imported to in developing countries for consumption of the final product (e.g. Hershey bars), horizontal trade would be increased among developing countries. The Group of 77 proposed to implement this system unilaterally through trade preferences if cooperation was not forthcoming from developed countries.⁸⁹

87. UNIDO was created in 1966 by the General Assembly to increase industrialization in developing countries, and is composed of U.N. members.

88. Declaration and Plan of Action on Industrial Development and Cooperation E/AC.62/4 at 5.

89. Other recommendations were made by the Algiers Conference:

- to prevent export of pollution and environmental destruction to developing countries (paragraph 17)

The plan of action also set forth principles upon which developing countries should base national industrialization policies. It could be questioned, however, whether some of the policies were not mutually exclusive. For example, with limited capital resources, a choice would have to be made between the aim of establishing small, medium-scale and rural industry (paragraph 23g) or basic petro-chemical, steel and metallurgical industries (paragraph 23f). In the section dealing with cooperation among developing countries, ambitious plans were made to apportion industries (paragraph C on complementarity of industries) according to long-term agreements on product specialization (paragraph i). Plans were also made to share technology through establishment of coordinating institutions (paragraphs b and k).

3. OPEC Heads of State Conference

One month after the Dakar Conference, OPEC Heads of State met in Algiers in order to reaffirm the intention of oil-producing countries to maintain solidarity with others in the Group of 77. Provisions adopted in the Dakar Conference were given the explicit approval of OPEC members. The Conference also directed criticism to developed countries for over-reaction to the increase in the price of oil.

Internal differences between OPEC members were ironed out by paragraph 8, which provided that all proposals were to be considered as an "overall programme,"⁹⁰ and that no component could be separated from others for individual implementation. This would enlist the support of all OPEC members for the Algerian concern with collective self-reliance among the Group of 77 and for the Saudi Arabian concern with monetary reform.

OPEC was careful to promise assistance to the rest of the Group of 77 in order to preserve unity of interest. Paragraph 9 promised financial assistance to the most affected

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- to regulate and control transnational corporations (paragraph 20)
 - to encourage producer associations (paragraph 25)
 - to train local personnel to process indigenous raw materials (paragraph 31)

Id., at 7-9.

90. "Declaration adopted by the Conference of the Sovereigns and Heads of State of OPEC Member Countries," held at Algiers from March 4-6, 1975, E/AC.6215, at 4.

developing countries, production and supply of fertilizer, and cooperation with other raw material exporters.⁹¹ OPEC countries sought to minimize the threat of increased oil prices to non-oil producers by the provision in paragraph 10 "to negotiate with the most affected developed countries, bilaterally or through international organizations, the provision of financial facilities that allow the growth of the economies of those countries while ensuring both the value and security of the assets of OPEC Member Countries."⁹²

4. Third Ministerial Meeting of Coordinating Bureau of Non-Aligned Countries in Havana and Meeting of Foreign Ministers of the Non-Aligned Countries in Lima

The Lima Conference meeting from August 25 to 30, just prior to the Seventh Special Session was designed to put muscle behind the demands about the NIEO to be made at the Seventh Special Session. The Group of 77 was interested in demonstrating that they were prepared to move forward in producer associations, buffer stocks, and control of transnational corporations. Many of the provisions were designed as a spur to developed countries to negotiate with developing countries. The plans calling for self-reliance among the Group of 77 would be implemented unilaterally in the event that no progress was made in negotiations with the developed countries.

Agreement was reached at the Conference on a number of concrete economic provisions, indicating the depth and precision of the groundwork preceding the Conference. In addition to informal consultations, a fifteen country Coordinating Bureau met in Havana to prepare an agenda for the Lima Conference.

The Group of 77 also moved to consolidate various institutional arrangements that had grown out of previous meetings.

Perhaps the most important provision in this respect was that paragraphs 153 and 154 called for the establishment of a Fund for Financing Buffer Stocks.⁹³ This plan was in reaction to the lack of agreement with developed countries in UNCTAD to implement the integrated plan for commodities

91. *Id.*, at 4, 5.

92. *Id.*, at 10.

93. "Development and International Economic Cooperation," A/10217, September 5, 1975, at 44-45.

that would take consumer interests into account. Thus, the Group of 77 made it clear that unless financing was forthcoming from developed countries for the establishment of a joint fund, producers' associations would administer a fund on their own. This intent was further elaborated in Resolution XII calling for an agreement to be drawn up not later than February, and a conference before June 30, 1976.

Another detailed provision was the plan in paragraph 163 and Resolution X to establish a Solidarity Fund for Economic and Social Development of the Non-Aligned Countries. The Convention, drafted in Kuwait in January and approved in Havana by the Coordinating Bureau, was open for signature until December 31, 1975. Membership in this fund was to be obtained at an equal subscription rate of 500,000 SDR's, with voluntary contributions above that amount. The Fund, to be located in Kuwait, would make loans for financing of development programmes, industrialization, transfer of technology, export promotion, and technical assistance. The Fund was seen as a way to cement the growing bonds of cooperation among the Group of 77 and to provide an alternative to the dependence of developing countries upon institutions controlled by developed countries.

In the international monetary sphere, a plan was set forth in paragraph 171 to expand cooperation among Central Banks of the Group of 77. A group of representatives from Central Banks would be established to explore such possibilities as a payments union to lessen developing countries' dependence upon convertible currency. Transactions among developing countries could be coordinated through a central clearinghouse that would operate in a barter fashion. In the area of international monetary reform, paragraph 172 authorized the Group of 24^{95a} to "assess the progress of the international monetary reform and the situation of the international financing for development, in the context of the New International Economic Order."⁹⁴

In addition to the very specific and immediate proposals for economic action, the Lima Programme endorsed the long-term goal of the establishment of an International Trade Organization, in paragraph 182.⁹⁵ In the section calling for cooperation with developed countries, paragraph 186 called for implementation of the Charter of Economic

94. *Id.*, at 49.

95. *Id.*, at 52.

95a. The Intergovernmental Group of 24 on International Monetary Affairs is a coalition of developing countries which has met eleven times so far at a ministerial level in order to press for greater awareness of the concerns of developing countries in monetary reform.

Rights and Duties of States.⁹⁶ Other areas where action from developed countries was called for included assistance in food production (paragraph 190),⁹⁷ implementation of the generalized system of preferences (and denouncing coercive elements in an obvious reference to the U.S. scheme in paragraphs 196⁹⁸ and 197⁹⁹), and progress in trade liberalization of imports to developed countries in GATT (paragraph 198).¹⁰⁰

The Group of 77 had shown by the preparations for the Seventh Special Session that they were capable of arriving at common positions in a number of substantive areas. The potential schism between the poorest of the developing countries and the oil producers had been averted through special concessions granted them in the areas of loan facilities and accordance of priority to their needs. International consultations had been intensified through the creation of both formal and informal networks which would enable the developing countries to enter into a process of collective bargaining on the NIEO with developed countries.

III. Negotiations on the New International Economic Order

A. Preparations for the Seventh Special Session

The dialogue between North and South on the NIEO continued in the various international economic arenas which met in 1975. Such U.N. subsidiary organs as UNCTAD, UNIDO, and various committees of the Economic and Social Council became caught up in the preparations for the Seventh Special Session. The General Assembly had called upon the U.N. system to put the provisions of the Sixth Special Session into effect.¹⁰¹ Accordingly, the scope of consultations

96. *Id.*, at 53.

97. *Id.*, at 55.

98. *Id.*, at 56.

99. *Id.*

100. *Id.*, at 57.

101. The U.N. system had been specifically instructed by the 57th Session of the Economic and Social Council to issue progress reports on implementation of the resolutions passed at the Sixth Special Session (E/Res./1911 of August 2, 1974). Furthermore, a mid-term review and appraisal of the International Development Strategy for the decade of the 1970's had been scheduled for 1975. (A/Res.2626 XXV). Thus, voluminous reports were prepared by various U.N. agencies which analyzed the current economic situation of de-

between developed and developing countries in U.N. bodies was expanded to include consideration of underlying structural problems within the United Nations system which related to implementation of the NIEO.

Negotiations that were taking place between developed countries and developing countries in arenas affiliated with the U.N., such as the International Monetary Fund and GATT, also became incorporated in the Seventh Special Session's deliberations on the NIEO. Although the General Assembly was not equipped to deal with the technical issues raised in negotiations, it was hoped that impetus and directives would be given by the General Assembly to overcome

developing countries, and the work being done to implement both the old IDS and the new Declaration and Programme of Action.

Report of the Secretary-General, "Implementation of the Declaration and the Programme of Action on the Establishment of a New International Economic Order: Activities of Organizations of the U.N. System," E/5629, 3 March 1975.

Department of Economic and Social Affairs, "World Economic Survey," 1974, Part One, "Mid-Term Review and Appraisal of Progress in the Implementation of the IDS," E/5665, ST/ESA/26, New York 1975.

Department of Economic and Social Affairs, "World Economic Survey," 1974, Part Two, "Current Economic Developments," E/5681 and Add.1, Add.2, Add.3, May 9, 1975.

"Consideration of Appropriate Changes in the Overall Pattern of International Economic Relations in the Light of the Constraints of a General Policy Nature on the Implementation of the Programme of Action on the Establishment of a New International Economic Order, for the Achievement of which the Charter of Economic Rights and Duties of States is One," E/AC.62/8, May 5, 1975.

"Mid-term Review and Appraisal of the Implementation of the International Development Strategy; Implementation of the Declaration and Programme of Action on the Establishment of a New International Economic Order; Special Session of the General Assembly Devoted to Development and International Economic Cooperation," TD/B/530, January 20, 1975; TD/B/530/Add.1 (Part I) February 3, 1975, (Part II) February 6, 1975; and Annex 2, February 1975, Add.2, February 3, 1975.

Committee for Development Planning, "Report on the Eleventh Session," Supplement No. 4, April 7-16, 1975, E/5671.

bottlenecks in the negotiations taking place in other fora. Thus, the high diplomatic level of the Seventh Special Session could facilitate negotiations being pursued on parallel tracks.

In general, developing countries took a structural approach to the economic problems under consideration. The specific content of the negotiations between North and South will be examined in the context of particular provisions in the Seventh Special Session Resolution. Although the developing countries were prepared to accommodate broad demands to a piecemeal implementation, they did not lose sight of the overall need for a NIEO. Polarization and confrontation had given way to a dogged pursuit of partial measures. It was reasoned that movement in the right direction could eventually add up to long-term progress.

If the need for change is now recognized all round, it is conceded also that change will have to be brought about in an orderly and step-by-step manner and with the consent and cooperation of all concerned.¹⁰²

The need for the Seventh Special Session to achieve substantive agreement on many of the thorny conflicts between North and South was somewhat alleviated by the scheduling of the Paris Conference on International Development Cooperation to be held after the Special Sessions in December. The assurance that the foreign ministers of twenty-seven developed and developing countries would eventually meet to discuss raw materials, energy, development, and financial affairs had a soothing effect on many developing countries. Expectations for finding agreement were transferred to the Paris Conference, thus lessening the pressure on the Seventh Special Session.

In any case, the developing countries had not expected the Seventh Special Session to resolve all the issues slated for consideration at the Fourth Conference of UNCTAD, to be held in Nairobi, Kenya in May 1976. It had been hoped, however, that a mandate could be given to UNCTAD in such areas as commodities, debt renegotiations, and a code of conduct for the transfer of technology, so that preparations would advance far enough to result in concrete agreement at the Conference.

¹⁰². Iqbal A. Akhund, Press Release ECOSOC 3817, August 1, 1975, at 2.

Preparations for determining the procedure and agenda of the Seventh Special Session had been charged to the Economic and Social Council, whose 54 members held their 59th session between July 2 and 31. In the annual debate on economic and social policy, the tone of many speeches was generally conciliatory, reaffirming the need for consensus. The U.S. statement delivered by Ambassador Clarence Ferguson on July 7th recognized this need.

My government is most happy to join with all those governments who hold to the belief that true consensus regarding solutions is the only viable outcome of our deliberations. ¹⁰³

However, it was also clear that great distance remained between the various positions. Agreement was found only in the rudimentary position that developed countries were prepared to enter negotiations. "As our varied positions emerge, we will be prepared to engage in the dialogue and negotiations we all contemplate."¹⁰⁴ Developing countries on their part tempered the tone of their speeches in anticipation of the shift in American policy promised by the Kissinger speeches.

1. Fourth Session of Committee on Natural Resources

One area which reflected the considerable distance between developed and developing countries was the dispute concerning permanent sovereignty over natural resources. This dispute was reopened in the Council through the consideration of a resolution which had been drafted by the Committee on Natural Resources, which had met in Tokyo from March 24th to April 4th. The resolution drafted by the Committee had been inspired by the Sixth Special Session. The inevitable dispute which consideration of this resolution would touch off was sought to be avoided by the Netherlands delegation. They moved for the Committee to abandon this discussion,¹⁰⁵ but to no avail. The Committee referred the draft resolution to the Council, which adopted it by a vote of 24 in favor to 7 against, with 5 abstentions.¹⁰⁶

The draft resolution was worded even more strongly

¹⁰³. Press Release USUN-75 (75), at 3.

¹⁰⁴. *Id.*, at 5.

¹⁰⁵. Committee on Natural Resources, "Report on the Fourth Session," E/5663, at 30.

¹⁰⁶. Press Release ECOSOC/3790, July 17, 1975, at 1.

than comparable provisions in the Charter of Economic Rights and Duties of States. Not only was settlement of disputes over nationalization deemed a matter for domestic jurisdiction, but it was explicitly stated that compensation and mode of payment should be determined by the host country.

[The Economic and Social Council (2)] re-affirms that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each State carrying out such measures.¹⁰⁷

Another provision of the resolution re-emphasized that measures which coerced directly or indirectly those States exercising sovereign rights over natural resources were in violation of the U.N. Charter and the Charter of Economic Rights and Duties of States.

The U.S. response to the draft resolution was overwhelmingly negative. "The [U.S.] representative stated that [the] draft resolution . . . was completely, wholly, and totally unacceptable to his delegation."¹⁰⁸

2. The Preparatory Committee for the Special Assembly Session

One of the most important functions of the Council was to prepare an agenda and proposals to serve as a basis for negotiations at the Seventh Special Session. In August 1974 the Council delegated this task to the Preparatory Committee [E/Res./1911 (LVII)]. The Committee held two one-week sessions in March and June. Most of the work in narrowing the areas for negotiation was accomplished in informal meetings of the Group of 77 in New York. By May 1, an agenda was proposed which gave a "very restricted and selective list of areas and questions [deserving priority] to be used for preliminary contacts between the representatives of the Group of 77 and those of the other groups."¹⁰⁹

¹⁰⁷. *Id.*, Draft Resolution 111, at 7-8.

¹⁰⁸. Committee on Natural Resources, E/5663, at 31.

¹⁰⁹. Conference Room Paper No. 1, May 1, 1975, at 1.

Five issues were listed and defined in sub-categories: international trade (including commodities and access to markets); transfer of real resources for financing the development of developing countries and international monetary reform; science and technology; industrialization; and restructuring of the economic and social sectors of the U.N. system.

The narrowing of areas for negotiation received a favorable response from developed countries. At the OECD Ministerial Meeting of May 28th, "[m]inisters . . . expressed their willingness to discuss with the developing countries the relevant issues, with particular emphasis on food production, energy, commodities and development assistance for the most seriously affected countries."¹¹⁰ The U.S. issued a proposed agenda on June 13th, for the second session of the Preparatory Committee, which met from June 16 through 20. Five items were given: international commodity trade; international food needs; transfer of financial resources; problems of poorer developing countries; and structural change in the U.N. system. Thus, there was considerable overlap between the U.S. and Group of 77 proposals. By the end of the meeting, it was agreed that the Special Session should have one committee of the whole, and a series of ad hoc working groups.¹¹¹

During the early part of the summer, informal meetings were held by the Group of 77 internally as well as with industrial countries in order to formulate a text upon which to base negotiations. The process of arriving at agreement was laborious, as after each consultation with developed countries it was necessary to renegotiate a common position among the Group of 77. By the end of the June meeting a preliminary text had been drafted that needed to be sent back to the national capitals of the developing countries for approval. This strategy repeated the procedure used in the Sixth Special Session: to arrive at a common position before beginning negotiations with developed countries, in order to provide an incentive for reaching consensus during the final negotiation. The Preparatory Committee adjourned for two months in order to have time to finalize the proposed text.

At the Economic and Social Council meeting in Geneva the agenda was finalized: the U.S. proposal was accepted to add food and agriculture to the list of items to be

¹¹⁰. OECD Declaration of Ministers of May 28, 1975.

¹¹¹. Press Release GA/DEC/17, August 13, 1975. Plans were also made to have night meetings during the Special Session in order to accommodate all speakers in the two week duration.

covered by the Special Session, bringing the number of topics for the General Assembly's consideration up to six. The Council also recommended that the Special Session should adopt, on a priority basis, "concrete and positive decisions on all the issues enumerated . . . which would make a positive impact on further negotiations for the establishment of a new international economic order."¹¹²

When the Preparatory Committee met for its third session on the 18th of August, it had before it the position paper of the Group of 77, to which a section on food and agriculture had been appended.¹¹³ Proposals made by East Germany regarding the importance of the State sector, by the Netherlands dealing with emergency relief, and by the U.S. outlining a global approach to long-range food needs were submitted as well. While the E.E.C. was prepared to enter preliminary negotiations in such areas as industrialization, U.S. diplomats were unable to proceed, pending resolution of the position to be taken by Henry Kissinger.¹¹⁴

B. Process of Negotiations

The Seventh Special Session opened on September 1, 1975, with the commencement of formal addresses to the General Assembly. The U.S. speech was read by Ambassador Moynihan on September 1, 1975, since Henry Kissinger was involved at that point with putting the finishing touches on the Sinai disengagement pact. By the time the general debate had concluded on September 11th, 108 speeches had been delivered.

The actual negotiations at the Seventh Special Session took place in an ad hoc committee. This committee met on September 2 for its first session, where it elected Jan Pronk, Minister of Development Cooperation of the Netherlands, as its Chairman. Negotiations started on September 4th, but serious talks could not begin until the U.S. delegation was ready to participate on September 8th.

The U.S. delegation had not received specific instructions prior to the final formulation of the Kissinger speech, which was being fought out between the Treasury and State Departments up until the last minute. When Kissinger arrived on September 5th, he stated to the dele-

¹¹²E/Res. 1980 (LIX) in Press Release ECOSOC/3818, August 1, 1975, at 5.

¹¹³E/AC.62/L.4, August 11, 1975, and Add. 1, August 14, 1975.

¹¹⁴U.N.A.-U.S.A., "The Seventh Special Session of the U.N. General Assembly," at 4.

gation in no uncertain terms that he did not want a repeat of the history of the Sixth Special Session.¹¹⁵ The delegation drafted a working paper consisting of a patchwork quilt of U.S. proposals from the September 1 speech, watered-down provisions of the Group of 77 draft resolution, and parts of an E.E.C. text.¹¹⁶ This American text, known as Working Paper No. 10, was used as the basis of negotiations for the U.S. position in the ad hoc committee's working groups.

Various working groups struggled to find a compromise text. The working group on science and technology, chaired by Diallo of Upper Volta, was able to find agreement without too much difficulty. The negotiators for the Group of 77 were technically expert, while the competence of some U.S. officials was called into question at various points.¹¹⁷

By September 12th, the date scheduled for conclusion of the Seventh Special Session, agreement was still not in sight in crucial areas, and the Session was extended. On the final weekend Thomas O. Enders, Assistant Secretary of State for Economic Affairs, who was known to take a hard-line stance toward development issues, and Ambassador Moynihan met with a delegation from the Group of 77, headed by Manuel Perez Guerrero of Venezuela. At that point, the U.S. retreated visibly from positions taken in Working Paper No. 10 that had been the basis of negotiations in the ad hoc committee. U.S. approval of a provision formulated by the E.E.C. confirming prior commitments to meet the official development assistance target of 0.7% was retracted¹¹⁸ along with a provision which would have authorized the IMF and World Bank to examine "the proposed link between the issue of SDR's and development assistance."¹¹⁹

This shift in stance again called into question the ability of the U.S. to adopt a coherent policy from which

^{115.} U.N.A.-U.S.A., "The Seventh Special Session, September 1-16, 1975," at 7.

^{116.} Position of the E.E.C. and its Member States, A/AC.175/2, September 4, 1972.

^{117.} In negotiations dealing with expansion of the IMF buffer stock facility, the U.S. official was not aware that current rules prevented the use of funds by producer associations.

^{118.} Working Paper No. 10, September 8, 1975, at 6.

^{119.} Id., at 6.

negotiations in good faith could be made. A considerable number of the Group of 77 were at that point in favor of adopting the original text, which had been written prior to negotiations. Only with great difficulty was it possible for more moderate factions in the Group of 77 to prevent the abandonment of attempts to find consensus. Only one hour before the final drafting of Resolution 3362 (S-VII) at 4:00 a.m. on September 16, did the Group of 77 decide to adopt a consensus document.¹²⁰ The extent of the consensus was again conditional, however. Some wording was not acceptable to the U.S. or other industrial nations, and these objections were to be read into the record of the Special Session.

C. Substance of Negotiations

In viewing the substantive outcome of the Seventh Special Session, it must be recalled that the negotiations represented part of the process of dialogue between North and South. It was as if a single frame in a moving picture were held up for examination. The configuration of forces between North and South would thus be "frozen" for the instant which the General Assembly was examining. The topics under consideration had been dealt with previously in other fora, and it was expected that negotiations on these issues would continue at the Paris Conference, in UNCTAD, in the World Bank, and in GATT. One delegate referred to the function of the Seventh Special Session as that of a traffic cop, granting right of way to various issues, and halting the progress of others.¹²¹

In order to understand the compromises worked out at the Seventh Special Session, it is therefore necessary to consider prior negotiations carried on in other organizations, and to follow the delegation of these issues by the General Assembly to other fora for further resolution. However, it is not possible to examine in depth all of the issues involved at the Seventh Special Session. Rather than covering the entire range of issues in a cursory manner, the most controversial issues have been selected for detailed analysis. The overall tenor of the Seventh Special

¹²⁰. "U.N. Adopts Plan for Poor Nations," N.Y. Times, September 16, 1975, at 9, col. 1.

¹²¹. Francisco Gonzalez de Cossio, Adviser, Economic Affairs, Permanent Mission of Mexico to the United Nations, at meeting of U.N.A.-U.S.A. of June 11, 1975.

Session should become apparent through this selective analysis, since the trend and direction of the negotiation process is easily discernible in the progress made in key areas.

1. International Trade

International trade issues were among the most thorny in the dialogue between North and South on the NIEO. Developing countries complained of built-in inequalities which prevented them from equal access to markets, and which forced steadily declining terms of trade and wide fluctuations in earnings from commodity exports. Developing countries set forth a convincing construct which outlined the various means through which their economies were adversely affected by the present system. An important victory for the developing countries was in convincing developed countries that the ravages of inflation besetting the international economic system stemmed from "the secular inflationary trend in the developed market economies."¹²² Economists examining the relative significance of inflationary impulses concluded that many developing countries were not in a position to alleviate the impact which inflation, transmitted through integrated capital markets, was having on their economies.

a. Terms of Trade

Another inherent imbalance in the international economy was viewed to be long-term deterioration in the terms of trade of the developing countries' raw material exports, in relation to their imports of manufactured goods. Although there was some dispute whether there had in fact been a long-term decline in the terms of trade,¹²³ a study of net barter terms of trade showed an average annual decline between 1952 and 1972 of 2.2%.¹²⁴

In order to remedy declining terms of trade, developing countries called, in the working paper, for indexation "of the prices of commodity and raw material exports from

¹²². Report of the Expert Group over Inflationary Processes in the International Economy and their Impact on Developing Countries, TD/B/579, at 5.

¹²³. "U.N. Officials Defer Comment on Report Denying Price Gaps," N.Y. Times, May 27, 1975 at 8, col. 3, and Press Release No. 3916 of May 27, 1975.

¹²⁴. Terms of Trade of Developing Countries, UNCTAD/CD/Misc. 60 at 4.

developing countries to the prices of their imports from developed countries."¹²⁵ Neither the E.E.C. nor the U.S. was prepared to go along with indexation. The E.E.C. proposed that prices should be achieved "which are fair for consumers and remunerative for producers" and which "encourage a long-term equilibrium between expanding production and increasing consumption."¹²⁶ The U.S. in turn proposed "appropriate and practical approaches that protect the interests and advance the well-being of producers and consumers."¹²⁷ The outcome of the negotiations on indexation was for the Secretary-General of UNCTAD to continue study of "direct and indirect indexation schemes and other options with a view to making concrete proposals before the Conference at its fourth session."¹²⁸ The U.S. made it clear in the formal reservations read by Ambassador Jacob Myerson on September 16 that it would not go along with indexation.

It was proposed that commodity prices be "indexed"--that is, fixed by agreement and augmented as prices for industrial goods rise. We have agreed to join others in the study of such a proposal. However, the United States has to make clear it does not support such a proposal.¹²⁹

b. Integrated Programme for Commodities

The Group of 77 also proposed to deal with problems of trade through regulation of the raw material market, with an integrated programme for commodities.¹³⁰ Developing

¹²⁵. A/10003/Add.1 Annex 1, Part 1, at 2.

¹²⁶. A/AC.176/2, paragraph 9.

¹²⁷. Working Paper No.10, submitted by U.S., Ad Hoc Committee of the Seventh Special Session, at 3.

¹²⁸. A/Res/3362, at 3.

¹²⁹. Press Release USUN-93 (75), at 2.

¹³⁰. In fact, the regulation of commodities trade through international agreements has been a long-standing approach to problems of price fluctuation and level. The first agreement between producers and consumers was the 1933 Wheat Agreement, which functioned only for a short time. Earlier schemes for regulation of commodity trade were producer cartels in coffee, sugar and tea dating prior to World War II. Only five products have had producer and consumer commodity agreements: coffee, cocoa, sugar, wheat and tin. At present, only the International Tin Agreement

countries felt that an integrated approach was necessary since price levels of commodities and the failure to negotiate new agreements (in 10 years only one new agreement was negotiated) made it necessary "to study the problem of commodities within the general economic framework, and to tackle it in a new spirit and with new methods."¹³¹

In view of the increased international attention to commodities problems, the 87 member UNCTAD Committee on Commodities scheduled three sessions for 1975. The first meeting, held between February 10th and 13th in Geneva, considered a proposal for an integrated approach to commodity agreements. The proposal was composed of five components: international commodity stocks; a common fund; multilateral commitments; compensatory arrangements; and the processing of raw materials and foodstuffs.¹³² The plan, as originally outlined, would have provided for a system of buffer stocks in 18 commodities including wheat, maize, rice, sugar, coffee, cocoa, tea, cotton, jute and manufactures, wool, hard fibres, rubber, copper, lead, zinc, tin, bauxite, alumina, and iron ore. The cost of stocking these commodities was estimated at \$10.7 billion. This proposal was considered by the Committee to be a "useful basis" for further work.

At the second meeting of the committee, beginning on July 21, a revised proposal was submitted for consideration.¹³³ This new proposal identified five "core" commodities for which buffer stocks should be established in the near future: coffee, copper, rubber, tea and tin. An additional five com-

and the International Cocoa Agreement are operating effectively. A fifth tin agreement was renegotiated in a Conference between May 20 and June 21, 1975, and it will enter into force on July 1, 1976 after ratification. The International Cocoa Agreement, which came into force in June 1973, will expire in September 1976. In six other commodities the possibility of producer-consumer arrangements are currently under consideration: sugar, coffee, wheat, copper, rubber and cotton.

131. Mr. Corea, 8th Session of Committee on Commodities, February 10-13, 1975 TD/B/C.1/SR 118, at 4.

132. UNCTAD TD/B/C.1/166 and supplements 1-5.

133. TD/B/C.1/184 through 187.

modities were suggested for possible inclusion in a more extended program: sugar, cotton, cocoa, jute and manufactures, and hard fibres. A common fund of \$2.75 billion was proposed to finance the purchase of buffer stocks. Three alternatives for the financing of this fund were given: 1) a tripartite structure, with contributions from exporting, importing, and OPEC countries; 2) equal capital shares, with exporting and importing countries paying an equal share; and 3) exporters' majority capital shares, with importing countries contributing less than half of the required funds. In all three schemes, provision was made for financing to be divided into two parts: capital (paid-up, needed for disbursement and commitments) and loans (paid-up, needed for disbursement, and commitments). It was proposed that one-third of the capital be obtained on a subscribed basis with no interest rate and another third on concessional terms. The IMF buffer stock facility was suggested as a source of low-interest loans. Very low income countries were expected to contribute only nominally to the capital subscription.

Behind the proposal for the joint financing of a common buffer stock by both developing and developed countries was the threat that the Group of 77 would be prepared to implement the scheme unilaterally through producer associations if developed countries were not willing to participate. Advanced consultations among producers of coffee, bananas, natural rubber, copper, bauxite and iron have taken place, and agreements to restrict production have been made by coffee-producing countries (Cafe Mondial), copper-producing developing countries (International Council of Copper-Exporting Countries--CIPEC), and the Association of Natural Rubber Producing Countries.¹³⁴

Developing countries threatened to finance a common buffer stock unilaterally if support was not forthcoming from developed countries. In the case of a buffer stock financed primarily by exporting countries, rules for operation would not take consumer nations into account. This

¹³⁴. There has been much speculation about the potential for producing countries to raise the price of their exports through concerted action. One article comes to the conclusion that only in the cases of timber, copper, and iron ore is this feasible.

Ernest Stern and Wouter Tims, "The Relative Bargaining Strengths of the Developing Countries," American Journal of Agricultural Economics, May 1975.

would mean limitation of supply in order to raise prices. Oil producing countries would be prepared to provide capital for such a scheme; a precedent for this kind of action was shown by the assistance given by Venezuela to the Central American Coffee Producers in 1974. By the end of August, the Group of 77 had concretized this plan in the Lima Declaration, which called for a Conference before June 30, 1976 to establish a fund for financing buffer stocks.

The second part of the Committee on Commodities concluded with a mandate to UNCTAD's Secretary-General to hold "periodic and informal consultations" with governments in order to further elaborate the integrated programme in time for the third meeting of the committee scheduled for the 9th through 19th of December 1975.¹³⁵

The U.S. position on commodities agreements was not altogether consistent. While the State Department had intimated that a more favorable look was being given to commodities agreements, the Treasury Department undermined this position. In his speech at the OECD on May 28th, Henry Kissinger stated the following:

The time is ripe for a detailed look at problems of commodity trade--for solutions that will benefit producers and consumers alike. . . . [W]e do not believe that exclusive producers organizations are the best way to solve the commodity problem. In our view consumers and producers should jointly discuss their problems and possible remedial actions. We are prepared to do so. Specifically, we are ready to discuss new arrangements on a case-by-case basis. We have already made proposals for a new International Coffee Agreement. We are ready to discuss other commodities as circumstances warrant.¹³⁶

Two weeks later, in testimony to a House Banking Subcommittee, Assistant Treasury Secretary Gerald Parsky pursued a hard-line tack which "was tougher in tone than the recent statements on the subject by Secretary of State Henry Kissinger."¹³⁷ Espousing a free-market philosophy, Mr. Parsky stated that, "We must resist any generalized system of

¹³⁵. Press Release TAD/627, July 30, 1975.

¹³⁶. Speech before the Ministerial Council of the OECD of May 28, 1975, USUN Press Release at 8.

¹³⁷. "U.S. to Fight Fixing of Commodity Prices by Developing Nations, Treasury Says," Wall Street Journal, July 10, 1975, at 2, col. 3.

commodity agreements aimed at fixing prices." Studies by a Ford Administration committee examining U.S. policy on international commodities were cited which concluded that no agreement was needed in the case of bauxite, copper, iron ore, lead or zinc. Only tin was seen as a suitable commodity for an agreement. A new coffee-pricing pact would be subject to "intense review by the administration." In this manner, the Treasury Department encouraged developing countries who were skeptical that the U.S. would participate in a consumer-producer arrangement to rely upon exclusively producer associations.

The negotiations on commodities agreements at the Seventh Special Session resulted in a mandate that UNCTAD's Fourth Conference should "reach decisions on the improvement of market structures in the field of raw materials and commodities of export interest to the developing countries, including decisions with respect to an integrated program and the applicability of elements thereof."¹³⁸ The E.E.C. had consented to a qualified integrated approach in its position paper: "the instruments (e.g., commodity agreements) may cover a very wide range and may where necessary be combined. A choice cannot be made without considering specific cases."¹³⁹ The U.S. on the other hand was only prepared to "discuss new agreements in individual commodities on a case by case basis."¹⁴⁰

Agreement at the Seventh Special Session was obtained to expand the operation of two facilities at the IMF dealing with commodity trade. One facility, which provided compensatory financing of export revenue fluctuations, was seen as a possible alternative to indexation. Instead of interfering with market prices, compensatory financing would guarantee a minimum income to exporters of commodities with reduced earnings from a decrease in prices. The United States proposed the establishment of a development security facility to replace the fund's existing compensatory financing scheme. Under present rules introduced in 1969 the IMF

¹³⁸. A/Res/3362 (S-VII), at 2.

¹³⁹. A/AC.176/2, paragraph 11.

¹⁴⁰. Bureau of Public Affairs, "Global Consensus and Economic Development," Speech of the Secretary of State at the United Nations, Bureau of Public Affairs Press Release, September 1, 1975, at 12.

facility is intended for members who export primary products when balance of payments difficulties arise. Borrowing is limited to 25% of the member's subscription to the IMF, and calculation of the shortfall is contingent upon sufficient statistical data. Repayment is on terms similar to the standard rule of 3-5 years limitation, with charges at normal rates for IMF transactions--that is, on a graduated scale from 4% per annum at one year to 6% per annum at four years.

The development security facility would provide up to \$2.5 billion per year, or a total of \$10 billion outstanding in loans (or an average of 5 years per loan). The loans could be convertible into grants under prescribed conditions for the poorest countries. The grants would be financed through a trust fund supported by the sale of IMF gold, another of the U.S. proposals. Loans would not be made at the expense of normal drawing rights limited by IMF quotas. In addition, part of the loans would be available automatically, with additional portions subject to balance of payments conditions and reserves for violent swings in commodity earnings. Shortfalls would be calculated in accordance with projected exports, as well as current and past levels.

Agreement on expansion of the buffer stock financing facility was not explicit, with the IMF asking merely to study the possibility of permitting direct assistance to international buffer stocks. Under present arrangements, the IMF provides loans for the financing of buffer stocks to members of international buffer stock schemes, but subject to stringent conditions:

- a) that international arrangements are in accordance with exporter and importer interests;
- b) that arrangements are of medium-term duration;
- c) that trade discrimination is not incorporated into the schemes;

- d) that financing is also forthcoming from sources other than the facility;

- e) that short-term price fluctuations are balanced around a medium-term price equilibrium; and

- f) that long-term supply controls are consistent with the interests of consumers, i.e., adequate provision for participation of importers and stability of agreements.

The IMF facility has a capacity to finance buffer stocks of over SDR 3 billion, but use of the facility has been for amounts of about SDR 25 million, in connection with finan-

cing of buffer stocks of the International Tin Agreement and the International Cocoa Agreement. The condition for lending that there must be immediate and temporary balance of payments difficulties introduces uncertainties into availability of funding. Borrowing for use of buffer stock financing eliminates other borrowing rights from the IMF, limiting the usefulness of the present buffer stock facility. In addition, the loans, which call for repayment within five years, are too short, since the price fluctuation cycles of some products take longer than that period.

The provisions for buffer stocking as finally incorporated into the resolution made by the Seventh Special Session were much less explicit than those called for by the Group of 77. UNCTAD was called upon to reach decisions bearing on:

(a) Appropriate international stocking and other forms of market arrangements for securing stable, remunerative and equitable prices for commodities of export interest to developing countries and promoting equilibrium between supply and demand, including, where possible, long-term multilateral commitments;

(b) Adequate international financing facilities for such stocking and market arrangements.¹⁴¹

The IMF was asked to study a relaxation of the rules which would allow loans to an international buffer stock and not merely to countries.

[T]he Fund should expedite its study of the possibility of an amendment of the Articles of Agreement, to be presented to the Interim Committee, if possible in its next meeting, that would permit the Fund to provide assistance

¹⁴¹. A/Res. 3362 (S-VII), at 2.

The original proposal by the Group of 77 called for:

Agreement should be reached at the fourth session of UNCTAD on an integrated programme for commodities . . . which should

(i) establish international stocking and market intervention arrangements to support prices at remunerative and just levels for commodities of export interest to developing countries;

(ii) create a Special International Fund for financing of stocking and market intervention arrangements;
. . . . A/10003/Add.1 (Part I) Annex I, at 1.

directly to international buffer stocks of primary products. ¹⁴²

The disagreement on the integrated commodity scheme to be considered at UNCTAD IV was taken by the Group of 77 in stride, perhaps due to their determination to proceed at all costs, even if by a unilateral implementation. The Group of 77 is proceeding with the arrangements for a common fund to finance buffer stocks in accordance with their resolution to this effect in the Lima Declaration.

c. Multilateral Trade Negotiations and the Generalized System of Preferences

The developing countries' interest in a re-structuring of commodity trade also envisioned an expansion of their capacity to process their own raw materials. However, the tariff structure in developed countries was seen to frustrate the diversification of the economies of the developing countries and the diminution of their dependence on the export of raw materials. In industrial countries the tariff rate tends to rise with the level of processing of the import. Industrial raw materials are generally admitted duty-free, or at very low rates, while relatively high tariff rates exist for finished products and moderate tariffs for semi-manufactures. This discrimination against processed and manufactured goods is known as "tariff escalation," and has proved particularly troublesome for developing countries seeking access to markets for their industrial products.

The U.S. supported a tariff de-escalation: "[W]e are ready to join with other participants in Geneva to negotiate changes in the system of protection in the industrialized countries that favors the import of raw materials over other goods."¹⁴³ However, the reluctance of the E.E.C. to deal with this issue left the system unchanged.

One factor seen by developing countries as tending to maintain the present discrimination against products from developing countries in the existing tariff structure was the procedural framework of GATT. Due to the bargaining structure of GATT tariff rounds, where concessions are traded off among similar markets, tariffs facing developing countries are on the average of 50% higher than those levied

^{142.} *Id.*, at 7.

^{143.} Speech of the Secretary of State, Bureau of Public Affairs Press Release, September 1, 1975, at 10.

on imports from other developed countries.¹⁴⁴ For example, during the Kennedy Round negotiations in 1967, substantial cuts were made on products in which developed countries dominate world trade (chemicals, machinery, transport equipment, etc.), while generally only small tariff cuts were made on products of major export interest to developing countries (foods, textiles, leather and leather goods, etc.).

The Seventh Special Session focused on the structure of the current multilateral trade negotiations in GATT. Although the Tokyo Round officially commenced with the Declaration of Ministers at Tokyo on September 14, 1973, actual negotiations did not reach a substantive phase until early 1975. One dispute not fully resolved by the Seventh Special Session was the degree to which developing countries should be accorded special treatment in the multilateral trade negotiations. According to the Tokyo Declaration, "priority attention [was] to be given to products or areas of interest to developing countries."¹⁴⁵ The principle of reciprocity in conducting negotiations was to be relaxed for developing countries.

The developed countries do not expect reciprocity for commitments made by them in the negotiations to reduce or remove tariff and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of the trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs.¹⁴⁶

However, these principles were not in strict agreement with the most favored nation clause, one of the fundamental provisions of the GATT. According to Article I, any reduction in the import duties of a GATT member must be applied "immediately and unconditionally" to imports from all other GATT members. Tariff reductions granted on a m-f-n basis

¹⁴⁴. UNCTAD, "The Structure of Protection in the Industrial Countries and Its Effects on the Exports of Processed Goods from Developing Countries," TD/B/C.2/36, Table 2, as cited in TD/B/C.1/166, Supp. 5, at 5.

¹⁴⁵. Declaration of Ministers at Tokyo on September 14, 1973, at paragraph 5.

¹⁴⁶. Id., at paragraph 5.

cannot be revoked except in certain circumstances specified under GATT rules. Consequently, the U.S. felt that developing countries would gain more from m-f-n tariff reductions than non-binding preferential treatment.

The disagreement was settled according to ambiguous language in the final resolution: "The multilateral trade negotiations under way should take fully into account the particular interests of developing countries with a view to providing them differential and more favourable treatment in appropriate cases."¹⁴⁷ It was unclear from this language whether tropical products, singled out by the Tokyo Declaration for priority treatment, constituted such a case. The French had expressed the view that negotiations should aim toward a package deal so that progress over tropical products would be conditioned upon agreement in other areas of the trade negotiations.

Several other problems in the multilateral trade negotiations were addressed, but not fully resolved, by the Seventh Special Session. One such area was the safeguard rules, which, as currently formulated in Article XIX of GATT, allow for the introduction of protective measures when "material injury" occurs. Developing countries had called for a reformulation of the existing rules in order to ensure the growth of their exports without arbitrary and unnecessary safeguard measures. However, the final agreement at the Seventh Special Session provided:

Countervailing duties should be applied only in conformity with internationally agreed obligations. Developed countries should exercise maximum restraint within the framework of international obligations in the imposition of countervailing duties on the imports of products from developing countries.¹⁴⁸

Of special interest in the current round of the multilateral trade negotiations, the issue of non-tariff barriers, was also the subject of some compromise. The U.S. was handicapped in the tariff negotiations inasmuch as Congressional approval of the elimination of non-tariff barriers was not granted in the U.S. Trade Act, which authorized the extent of concessions permitted in these trade negotiations. The text agreed to at the Seventh Special Session qualified the de-

¹⁴⁷. A/Res/3362 (S-VII), at 4.

¹⁴⁸. Id.

mand of the Group of 77 by inserting the condition that liberalization should be "where feasible and appropriate."¹⁴⁹

Some accord with respect to the Generalized System of Preferences (GSP) was also reached. Developing countries had called for improvement of the GSP "so as to include all products of export interest to the developing countries, at zero rates of duty and without quotas and ceilings or any other non-tariff barriers."¹⁵⁰ Under the present system, many limitations exist on the effectiveness of GSP schemes in increasing export earnings of developing countries. Agricultural products are virtually excluded. Many of the industrial products of particular interest to developing countries are not covered by the GSP, such as textiles, leather and petroleum products. Only 22% of the exports from developing countries directed toward preference-giving countries are included in GSP schemes.

It was also feared that the advantages derived from relative tariff preferences under the GSP would erode as world-wide tariff and non-tariff barriers were reduced under the multilateral trade negotiations. In addition, as the E.E.C. expanded and a free-trade area in manufactures was introduced in Western Europe, preferences granted developing countries under the GSP would become less significant. Average preference margins granted under the GSP schemes as a whole vary from 9.0% to 12.0%, and these margins are reduced as protection levels decline among preference-giving countries.¹⁵¹

In calling for an increase of the GSP, many of the Group of 77 were necessarily abandoning special trade advantages which they had received as a result of the current trade configuration. For example, the ACP States enjoying special privileges under their agreement with the E.E.C. would lose their relative advantage over other developing coun-

¹⁴⁹. "Developed countries should take effective steps within the framework of multilateral trade negotiations for the reduction or removal, where feasible and appropriate, of non-tariff barriers affecting the products of export interest to developing countries on a differential and more favourable basis for developing countries." *Id.*, at 4.

¹⁵⁰. A/10003/Add.1 (Part 1) Annex 1, at 2.

¹⁵¹. UNCTAD, TD/B/C.5/22, at 38.

tries by an expansion of the E.E.C.'s GSP scheme. The Group of 77 had found a means to harmonize the interests of developing countries in calling for simultaneous expansion of other markets so as to increase trade outlets for all developing countries. The text adopted at the Seventh Special Session also incorporated this demand, providing as well that the GSP would be extended beyond the 10 year period originally granted.

The Generalized Scheme of Preferences should not terminate at the end of the period of ten years originally envisaged and should be continuously improved through wider coverage, deeper cuts and other measures, bearing in mind the interests of those developing countries which enjoy special advantages and the need for finding ways and means for protecting their interests.¹⁵²

The Group of 77 had originally demanded that the GSP "should be applied in a non-discriminatory manner to all developing countries"¹⁵³ in an obvious reference to the U.S. exclusion of OPEC members from GSP benefits. This language was deleted from the resolution.

2. Transfer of Real Resources for Financing the Development of Developing Countries and International Monetary Reform

Of chief concern to developing countries is their shortage of capital with which to finance development. In order to increase the flow of capital to developing countries, the Seventh Special Session considered both voluntary financial aid from developed countries and changes in the structure of the international monetary system. Shortly before the General Assembly was a review of the implementation of the target for flow of financial resources set by the International Development Strategy. Each developed country was asked to provide by 1972, or by 1975 at the latest, a flow of financial resources to developing countries of at least 1% of Gross National Product. The strategy provided also that 0.7% was to be in the form of official development assistance. The U.S. had only promised its "best efforts" to meet the target set by the IDS.¹⁵⁴

152. A/Res/3362 (S-VII), Sept. 19, 1975, at 4.

153. A/10003/Add.1(Part I) Annex I, at 3.

154. U.N.A.-U.S.A., "Issues," at 27.

Developed countries have not been successful in meeting the IDS target of 0.7% of GNP for official development assistance (ODA). The flows of ODA to developing countries from industrial members of the OECD Development Assistance Committee averaged 0.33% of GNP between 1969 and 1973. The U.S. performance in granting ODA at 0.28% of GNP was considerably below the average.¹⁵⁵

The resolution adopted by the Seventh Special Session made a distinction between those countries which had considered themselves bound by the International Development Strategy to provide 0.7% transfer of official development assistance and those which had not. On one hand, continued commitment was promised by those countries which had already recognized the target while commitment was promised from those countries including the U.S., which had not pledged the transfer.

Developed countries confirm their continued commitment in respect of the targets relating to the transfer of resources, in particular the official development assistance target of 0.7 per cent of gross national product, as agreed in the International Development Strategy for the Second United Nations Development Decade, and adopt as their common aim an effective increase in official development assistance with a view to achieving these targets by the end of the decade. Developed countries which have not yet made a commitment in respect of these targets undertake to make their best efforts to reach these targets in the remaining part of this decade.¹⁵⁶

The Group of 77, it is to be noted, had originally demanded implementation of the target in 1978 "by all economically advanced countries."¹⁵⁷ Even with this compromise, the United States expressed further reservations:

[T]he U.S. fully supports the objective of an effective increase in official development assistance and intends to increase the level of its own assistance. It does not, however, con-

¹⁵⁵. Financial Flows to and from Developing Countries, TD/B/C.3(VII)/Misc.1, at 10.

¹⁵⁶. A/Res /3362 (S-VII), at 5.

¹⁵⁷. A/10003/Add.1 Annex 1, at 3.

sider the establishment of specific targets as likely to achieve the intended result. ¹⁵⁸

The issue of the debt burden of developing countries was one of particular interest to the poorest countries. Service payments on the public debt of 80 developing countries grew from \$2.8 billion in 1965 to \$7.3 billion in 1972.¹⁵⁹ This meant that nearly half the new gross inflow of capital was used to service the public debt. The Group of 77 called for the convening of a conference of major donor and creditor countries in 1976 "to devise ways and means of mitigating this burden."¹⁶⁰

An ad hoc group of governmental experts on the debt problems of developing countries was convened by UNCTAD. The group recommended that ad hoc meetings be held between major creditor and developing countries "to examine at the international level with debtor countries the situation in a wider context prior to debt re-negotiation in the customary fora."¹⁶¹ The Seventh Special Session did not convene the conference for debt re-negotiation, as had been requested, but shunted the entire issue to UNCTAD IV, which was to consider "the need for, and the possibility of, convening as soon as possible a conference of major donor, creditor and debtor countries to devise ways and means to mitigate this burden."¹⁶²

The remaining issues concerning the international monetary system were simultaneously under consideration at the Joint Annual Meeting of the IMF and World Bank in Washington on September 1-5. The General Assembly could only contribute peripherally to the discussion in that forum. While a number of monetary issues were considered at the Seventh Special Session, the major contention of developing countries that their interests were not adequately taken into account in the restructuring and reform of monetary institutions remained undiminished.

Demands of developing countries for a greater role in management of the international monetary system have coincided with a major effort in the international community to restructure and reform monetary institutions since

¹⁵⁸. Press Release USUN-93(75), at 2.

¹⁵⁹. TD/B/C.3(VII)/Misc.1, at 64.

¹⁶⁰. A/10003/Add.1 Annex I, at 4.

¹⁶¹. Press Release TAD/631 August 18, 1975, at 4.

¹⁶². A/Res/3362 (S-VII), at 6.

August 1971 when the U.S. suspended the gold standard. This signalled the end of the Bretton Woods system that had functioned since the end of World War II, and exchange rates began fluctuating from the par values agreed upon by the Fund.

In 1972, efforts to reform the Fund's Articles of Agreement to reflect the existing use of floating exchange rates resulted in the establishment of the Committee of 20--the Committee on Reform of the International Monetary System and Related Issues. However, the Committee abandoned efforts to find agreement on major changes in June 1974, opting instead for interim measures and a general evolution towards a new system.¹⁶³ An Interim Committee of the Board of Governors on the International Monetary System was established to advise the Fund on reforming the monetary system.

In order to incorporate the issues of development into reform of the monetary system a special Development Committee was formed, viz., the Joint Ministerial Committee of the Board of Governors of the Bank and Fund on the Transfer of Real Resources to Developing Countries. The Development Committee was expected to coordinate policy between the Fund, established to deal with international currency stability, and the World Bank, established to finance reconstruction and development of member countries.

A central concern of developing countries in seeking monetary reform is the difficulty of obtaining hard currency to finance development. Under the prevailing system, while developed countries with hard currencies are able to create international liquidity through expansion of their domestic monetary supply (through creation of currency, government deficit spending, etc.), developing countries must depend upon their export earnings.

Under present rules, SDR's¹⁶⁴ are distributed in proportion to a member's quota in the IMF, further disadvantaging developing countries. In the six years, ending in 1974, that SDR's were in use, developing countries were allocated 2.1 billion SDR's of the total 9.3 billion created.¹⁶⁵ Developing countries have pressed for a

163. IMF Survey, June 17, 1974, at 177, and "Outline of Reform Supplement," June 17, 1974.

164. The special drawing right (SDR), an international source of liquidity created by the IMF, has been used since 1969 as a supplement to gold in international transactions.

165. U.N.A.-U.S.A., "Issues," at 37.

link between the creation of SDR's and development assistance, which would provide an automatic mechanism for their aid. The Seventh Special Session incorporated a demand for such a link in the final resolution:

The establishment of a link between the special drawing rights and development assistance should form part of the consideration by the International Monetary Fund of the creation of new special drawing rights as and when they are created according to the needs of international liquidity. 166

The U.S. objected to this portion of the resolution. 167

Increasing the role of the SDR and limiting the use of national currencies in international transactions would provide for more equal access of developing countries to international liquidity. Such a system would also prevent a massive export of inflation as had been caused by U.S. deficit spending during the Vietnam War, when the U.S. dollar was convertible with gold and used as international currency. Many developing countries, forced to hold dollar reserves as international currency, lost a large amount of capital with the devaluation of the dollar. The Seventh Special Session proposed a larger role for SDR's along with a proportionate reduction in the use of national currencies:

The role of national reserve currencies should be reduced and the special drawing rights should become the central reserve asset of the international monetary system in order to provide for greater international control over the creation and equitable distribution of liquidity and in order to limit potential losses as a consequence of exchange rate fluctuations. 168

The U.S. objected to this provision as well. 169

166. A/Res/3362 (S-VII), at 5.

167. "The U.S. does not subscribe to the paragraph dealing with the link between special drawing rights and development assistance. The U.S. position is that it does not support a SDR-aid link. This position is unchanged, sir." Press Release USUN-93(75), at 2.

168. A/Res/3362 (S-VII), at 7.

169. "We differ with the paragraph dealing with reform of the international monetary system. We share the general objective of placing the SDR in the center of the international monetary system, but we believe that, in the

Agreement was reached concerning a compromise on the disposal of IMF gold reserves (150 million ounces valued at \$6 billion official prices). The agreement, settled in the Interim Committee on August 31, provided for the allocation of one-sixth of the gold to developing countries and one-sixth to member countries according to their quota. Also agreed on in the Interim Committee meeting was a reallocation of voting rights in the IMF. The voting weight in the IMF depends upon a country's contribution, or quota. The reallocation resulted in doubling the voting weight of oil producers in the IMF 5% to 10% of the total. The voting weight was redistributed without reducing the quota of other developing countries, set at about 23%; the U.S. quota, previously 22.95%, absorbed much of the shift. At the same time that voting rights were reallocated, the quorum for a majority was increased to 85%. Thus, the U.S. retained its veto power, while OPEC countries were accorded a near-veto as well.

3. Transfer of Technology

Concern for the impact of transnational corporations on economic development at the Seventh Special Session was incorporated into resolutions on transfer of technology. The Group of 77 had originally channeled their interest in regulation of transnational corporations into the creation of a Commission on Transnational Corporations¹⁷⁰ and an Information and Research Center on Transnational Corporations.¹⁷¹ Political difficulties delayed the appointment of a Director of the Information and Research Center until the 8th of August, 1975, when Klaus A. Sahlgren of Finland, a compromise candidate, was appointed.

Pending the formation of this Center, work had been done in various other organizations preparatory to drafting a code of conduct for the transfer of technology. The code was intended to foster an international standard to govern the behavior of transnational corporations. Developing countries supported such a code since they wanted help in enforcing

absence of agreement on all the inter-related components of a fully reformed international monetary system, it is inappropriate to specify selected aims or elements."

Press Release USUN-93(75), at 2.

170. E/Res/1913 (LVIII), December 3, 1974.

171. E/Res/1908 (LVII), August 2, 1974.

provisions by home countries and desired a common bargaining position for all developing nations in gaining access to technology. The developed countries supported the code because the multinationals were willing to subscribe to a voluntary code in order to improve the image of overseas operations.

Three sets of consultations between the U.S. and Latin American countries on a possible code of conduct occurred, culminating in November 1974; a fourth meeting was cancelled by Latin nations in reaction to the exclusion of Ecuador and Venezuela from GSP benefits. Further attempts to draft a code of conduct for transfer of technology were made by UNCTAD.¹⁷² By May 16, 1975, Brazil submitted a revised code to the Inter-Governmental Group of Experts. A major provision of the code provided that agreements on technology transfer, including royalty payments, would be subject to the jurisdiction of the laws of the host country, as would settlement of disputes. Arbitration would be resorted to "if the laws applicable to the technology transfer arrangements do not exclude recourse to arbitration in this field and the parties concerned agree to submit their possible disputes to arbitration."¹⁷³ Industrialized countries had pursued the drafting of a code of conduct in alternative fora: the International Chamber of Commerce, the OECD, and the Council of the Americas.

In these discussions, a major dispute arose whether the code should be voluntary or binding. Opponents of a binding code argued that with restrictive provisions, transfer of technology would not take place, and governments would not be able to interfere with the operation of private corporations:

We do not believe that the government could or should establish the terms and conditions applicable to transfers of technology by its private sector. ¹⁷⁴

¹⁷². Pugwash Group's Draft Code of Conduct on Transfer of Technology, TD/B/AC.11/L.12 and UNCTAD, "Study of the Possibility and Feasibility of an International Code of Conduct on Transfer of Technology," TD/B/AC.11/22 .

¹⁷³. TD/B/C.6/AC.1/L.1/Rev.1, at 16.

¹⁷⁴. Fund for Multinational Management Education in Cooperation with the Council of the Americas, "Analysis of the Pugwash Working Group's Draft Code of Conduct," Codes of Conduct for the Transfer of Technology, A Critique, at 4.

The Seventh Special Session failed to settle this disagreement, but referred further consultations to UNCTAD IV.

All States should co-operate in evolving an international code of conduct for the transfer of technology, corresponding, in particular, to the special needs of the developing countries. Work on such a code should therefore be continued within the United Nations Conference on Trade and Development and concluded in time for decisions to be reached at the fourth session of the Conference, including a decision on the legal character of such a code with the objective of the adoption of a code of conduct prior to the end of 1977. ¹⁷⁵

The U.S. reiterated its opposition to a binding code in reservations made at the end of the Seventh Special Session.

We support work on international guidelines for the transfer of technology, including most especially the progress being achieved at UNCTAD. We do not believe that adoption of a legally binding code of conduct is the path to pursue, and we do not read the resolution as so indicating. ¹⁷⁶

4. Industrialization

The Seventh Special Session also discussed the desire of developing countries to increase their industrialization. Several proposals were endorsed which had been made at the Second General Conference of UNIDO in Lima, Peru from March 12 through 26, 1975. The Lima Declaration and Plan of Action had been adopted as a whole by the Conference with 82 votes in favor, 7 abstentions, and the U.S. casting the sole negative vote. Among the provisions in the Lima Declaration was a scheme for negotiations between developing countries and developed countries on international division of labor. The original wording drafted by the Group of 77 called for

(d) Continuous negotiations and consultations, based on the concept of shared development, designed to ensure redeployment of industries to

¹⁷⁵. A/Res/3362 (S-VII), at 8.

¹⁷⁶. Press Release USUN-93(75), at 2.

developing countries, in particular those which process locally available raw materials or which consume vast quantities of energy; to this end concrete projects and development programs should be prepared, including financial arrangements on bilateral or multilateral bases. ¹⁷⁷

Although the paragraph was substantially reworded, the substance remained the same in the final version.

(61d) Urgent consultations, taking into account appropriate information with respect to the development of demand and supply, availability of production factors and their costs, the possibilities and conditions of investment and the availability of appropriate equipment and technologies, with a view to facilitating, within a dynamic context and in accord with authorities available to Governments, the redeployment of certain productive capacities existing in developed countries and the creation of new industrial facilities in developing countries. These consultations should in particular relate to industries processing raw materials exported by developing countries or which consume vast quantities of energy, and should result in concrete proposals for inclusion in the development programmes of participating developing countries. ¹⁷⁸

U.S. rejection of this scheme remained unequivocal: "[W]e believe that redeployment of industries should be a matter of the evolution of economies rather than a question of international policy or negotiation."¹⁷⁹

The Seventh Special Session also endorsed other decisions taken at the UNIDO Conference,¹⁸⁰ which included many

¹⁷⁷. Declaration and Plan of Action on Industrial Cooperation and Development, Second Ministerial Meeting of the Group of 77 at Algiers, E/AC.62/4, at 17.

¹⁷⁸. Report of the Second General Conference of UNIDO ID/CONF.3/31, at 57.

¹⁷⁹. USUN-93(75), at 3.

¹⁸⁰. "The General Assembly Endorses the Lima Declaration and Plan of Action on Industrial Development Cooperation." A/Res/3362 (S-VII), at 9.

of the contested issues of the NIEO.

Old wounds created by the enactment of the Charter of Rights and Duties of States were re-opened by paragraphs 32, 33 and 76, which called for compliance with the precepts contained in the Charter:

(32) That every State has the inalienable right to exercise freely its sovereignty and permanent control over its natural resources, both terrestrial and marine, and over-all economic activity for the exploitation of these resources in the manner appropriate to its circumstances, including nationalization in accordance with its laws as an expression of this right, and that no State shall be subjected to any forms of economic, political, or other coercion which impedes the full and free exercise of that inalienable right. ¹⁸¹

The U.S., in response, reiterated that sovereignty over natural resources must be exercised in accordance with international obligations, and stated that it would continue to oppose the Charter as a whole so long as agreement could not be reached on this principle. Accordingly, the U.S. extended an invitation for renegotiation of the articles in the Charter which it had rejected.

The principle of producers associations, supported in paragraphs 47, 48, 60(e) and (f) of the Lima Declaration, was renounced by the U.S. as contrary to consumer interests and stable commodity trade.

Unilateral action by producers--or unilateral action by consumers--will not result in a stable equilibrium in commodity trade nor promote the expansion of markets, dependable income for producers, adequate and dependable supplies for consumers and stable prices that are both remunerative to producers and fair to consumers that the U.S. considers necessary for the international trading system. ¹⁸²

The provision in paragraph 19 calling for indexing the prices of imports to developing countries was dismissed as infeasible and unnecessary.

¹⁸¹. ID/CONF.3/31, at 48.

¹⁸². ID/CONF.3/SR.18/Add.1/Rev. 1, at 32.

In contrast to the negative comments upon the actions of markets, the U.S. believes that markets perform important allocation functions more efficiently throughout an economy in most instances than do centralized decision-making mechanisms.¹⁸³

The Seventh Special Session also considered the recommendation in paragraph 66 that UNIDO be converted into a specialized agency separated from the General Assembly and meeting in a regularly scheduled General Conference.

A draft constitution of UNIDO was circulated to member countries, and replies were also forwarded to the General Assembly. By that time, the U.S. position had shifted from being "unconvinced of the wisdom of transforming UNIDO into a specialized agency"¹⁸⁴ to a request that sufficient time be extended in finding a formulation of the final constitution for "all countries to reach consensus on a text which reflects their interests in active participation."¹⁸⁵ The U.S. suggested that a small negotiating group report back to the 31st General Assembly.

The Seventh Special Session recommended that a conference be held in Vienna to draft a constitution for submission by the last quarter of 1976.¹⁸⁶

5. Food and Agriculture

The area of food and agriculture was added to the agenda of the Seventh Special Session at the request of the United States. The U.S. offered a well-thought-out program which enjoyed both Congressional and Administrative backing. During the Seventh Special Session, Congressman Donald Fraser announced that the House of Representatives had passed the International Development and Food Assistance Act,¹⁸⁷ which authorized a \$200 million contribution by the U.S. to the International Fund for Agricultural Development created by the World Food Conference in Rome in November

183. *Id.*, at 33.

184. TD/CONF.3/SR.18/Add.1/Rev.1, May 9, 1975, at 34.

185. Development and International Economic Cooperation, Draft Constitution of a Specialized Agency for Industrial Development, A/10202/Add.1, at 19.

186. A/Res/3362 (S-VII), at 11.

187. Press Release USUN-91(75), September 11, 1975, at 1.

1974.¹⁸⁸ The U.S. was willing to provide food aid amounting to 6 million tons of grain, 60% of the world target set by the World Food Conference.¹⁸⁹ The U.S. further offered to provide technical assistance in agriculture by introducing a bill which would facilitate technical assistance by American universities.¹⁹⁰

The Seventh Special Session supported the provisions adopted by the World Food Conference and reiterated the targets of assistance and stockpiling food reserves set by the Conference.¹⁹¹ One provision inserted at the last minute by the Group of 77 emphasized the desire of many developing countries to increase their exports of agricultural goods to markets in developed countries.¹⁹² Tariff protection on agricultural products is generally high in developed countries, and protection of temperate zone agricultural products grown domestically often varies with seasons. The U.S. had reservations on this provision:

With regard to the statement in the second paragraph about market access and adjustment measures, we understand developing countries' interests,

188. E/CONF.65/20, "Report of the World Food Conference," at 12-13.

189. Speech of the Secretary of State, Bureau of Public Affairs, September 1, 1975, at 13.

190. *Id.*, at 7.

191. "In order to make additional resources available on concessional terms for agricultural development in developing countries, developed countries and developing countries in a position to do so should pledge, on a voluntary basis, substantial contributions to the proposed International Fund for Agricultural Development so as to enable it to come into being by the end of 1975, with initial resources of SDR 1,000 million. . . . In view of the importance of food aid as a transitional measure, all countries should accept both the principle of a minimum food aid target and the concept of forward planning of food aid. The target for the 1975-76 season should be 10 million tons of food grains."

A/Res/3362 (S-VII), at 12.

192. "[D]eveloped countries should effectively facilitate access to their markets for food and agricultural products of export interest to developing countries, both in raw and processed form, and adopt adjustment measures, where necessary." A/Res/3362/(S-VII), at 11.

but we cannot concur in the sentence as formulated since it is inconsistent with United States policy.¹⁹³

6. Re-Structuring of the U.N. System

Throughout the dialogue between North and South on the NIEO, an underlying concern of both developing countries and developed countries was the need for improvement in the way the U.N. handles economic problems. Although there was agreement that change was needed, there was no consensus on which aspects of organization were most in need of restructuring. The U.S. complained of increasing difficulty negotiating economic matters in the General Assembly. The budget system was complained of as being unwieldy, with overlapping funds and programs. Developing countries demanded a forum where interrelated issues could be negotiated, and urged an International Trade Organization which would be in a position to take binding decisions on interconnected economic matters.¹⁹⁴

The General Assembly, in response to these expressed concerns, requested a study on structural changes within the U.N. system.¹⁹⁵ An expert Group of 25 was appointed by the Secretary-General, and on May 20th, 1975, they issued a unanimous report. The report was greeted with great fanfare in the U.S. press; a front page article in the N.Y. Times on May 21st hailed it as "the first such major attempt at fundamental change since the world organization was formed 30 years ago."¹⁹⁶

The report represented a compromise package, with component parts not to be implemented separately.¹⁹⁷ Broad structural changes were proposed, including the abolition of 164 existing suborgans of the Economic and Social Council.

193. Press Release USUN-93(75), at 3.

194. For the underlying rationale behind the need for an ITO, see Lal Jayawardena, Annex II, "Background Material in the Fields of Trade, International Monetary Reform, and Development Financing," E/AC.62/9, at 67.

195. A/Res /3343 (XXIX), December 17, 1974.

196. "Sweeping Change in U.N. is Urged by World Panel," N.Y. Times, May 21, 1975.

197. Richard Gardner, "The U.N. and the International Economic Order," Meeting at the Overseas Development Council of May 22, 1975, Washington, D.C.

The proposals included a new consultative procedure, which would provide for negotiating groups of concerned countries mandated to find consensus. One proposal which the U.S. warmly supported was the consolidation of existing development-related funds into a U.N. Development Authority.¹⁹⁸ Budgets in the U.N. system would be rationalized and coordinated by a central priority-making group.¹⁹⁹ While this would promote efficiency, it was viewed with some misgivings by developing countries as a means to control or eliminate more controversial activities. Another recommendation was for the creation of a new position of Director General for Development and International Economic Cooperation, second in rank only to the Secretary-General.

The Expert Group, in negotiating a package compromise position, alienated many countries that would have supported a more modest scheme dealing purely with functional problems in the U.N. system. The Expert Group served only as an advisory body, and governments, who had not delegated authority to the experts themselves did not feel committed to the final outcome of negotiations. Instead of endorsing the report of the Group of Experts, the General Assembly recommended the creation of another committee which would consider other proposals on restructuring of the U.N. systems as well as the report of the Expert Group.²⁰⁰

Conclusion

The Seventh Special Session did not bring the U.S. or the Group of 77 closer to agreement on any number of substantive economic problems. Although a consensus resolution did emerge at the end of the session, disagreements were either masked by ambiguous wording or referred on to other fora with minimal instructions on finding agreement. To UNCTAD IV were delegated the problems of the integrated commodity program, indexation, debt renegotiation, and a code of conduct for the transfer of technology. A decision on the extent to which reciprocity would be expected from developing countries was left to the determination of the multilateral trade negotiations in GATT. The demand for linking of SDR's with development assistance was given unresolved to the IMF. The constitution of UNIDO remained to

198. "A New U.N. Structure for Global Economic Co-Operation," E/AC.62/9, at 41.

199. *Id.*, at 37.

200. A/Res 3362 (S-VII), at 15.

be drafted, and the U.S. had given no commitment to meeting the target of 0.7% official development assistance set by the international development strategy.

While the Group of 77 felt that it had exercised great restraint in compromising many of its NIEO demands, the U.S. Administration had strained its unity to the limit in preparing for the Seventh Special Session. The State Department had exercised a great deal of ingenuity in gaining the acquiescence, if not the support, of the Treasury Department for an international development security facility, a trust fund supported by sale of IMF gold, willingness to enter commodity agreements on a case by case basis, and substantial food aid. Yet in bargaining with the Group of 77, the U.S. had again presented an inconsistent position, with promises made one day revoked the next. The Group of 77 was also left with uncertainty whether all of Kissinger's proposals would be enacted by a recalcitrant Congress or supported by a split Administration.

Agreement had been obtained largely on the premise that discussion of the issues would be continued on a ministerial level in a new forum specially created to link energy talks with overall development problems. The Paris Conference on International Cooperation, beginning on December 16, 1975, could be seen by developing countries as a germ for the creation of an International Trade Organization that would be able to connect negotiations on interrelated trade problems. However, the U.S. had convened the conference for the sole reason that energy talks could only proceed in tandem with talks in other commissions on issues of special concern to the Group of 77. The Administration approved the convening of these talks with the expectation that all but the energy commission would become empty discussions. Thus, while expectations of the Group of 77 were with great difficulty held in abeyance by the promise of substantive talks in Paris, the U.S. was barely able to consent to participate in such a forum. The U.S. has not been able to modify its position sufficiently to accede to the demands that the Group of 77 is likely to reiterate in Paris.

In creating a new forum for negotiations on the NIEO outside of the General Assembly, the U.S. has succeeded in removing the dialogue between North and South to a venue which, while limiting the number of participants, possesses the capacity to pursue binding negotiations. It is not clear, however, that the U.S. is any more capable of entering into substantive talks in this new form. Unless the

U.S. is prepared to do so, the talks on the NIEO will become a kind of pea-game, with the Group of 77 chasing around different negotiating fora in the attempt to find the U.S. present in one of the empty shells. This game is not likely to proceed for very long without a resumption of conflict and polarization between North and South. If this occurs, the South will undoubtedly resort unilaterally to a NIEO of producer associations, trade restrictions, and expropriations.

At this point, it is imperative for the U.S. to enter into substantive negotiations with the Group of 77 on a NIEO. Only thus can the possibility of mutual accommodation to an order which benefits North and South alike be explored. A worsening economic crisis in developing countries, along with a shift in collective bargaining strength among the Group of 77, means that the U.S. cannot indefinitely postpone a decision to participate in NIEO negotiations. Unless the U.S. is able to reorient its approach to development issues and enter into substantive talks with the Group of 77 soon, the opportunity for dialogue may be lost in escalating confrontation and economic warfare between North and South.

