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Multinational Corporations and the Emerging World Order

Lewis D. Solomon*

INTRODUCTION

THE DEVELOPMENT of the multinational corporation¹ as a global force ranks as one of the key features of the second half of the twentieth century. Giant firms came to rely on the seemingly limitless expansion of a world system characterized by a relatively free flow of investment and goods among nations and the abundant supply of cheap energy. Corporate managers viewed the world as an open market for a consumer society resting on the continuance of stable political arrangements which would permit corporate expansion.

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¹ There is no generally agreed definition of a "multinational corporation," nor agreement on how many multinational corporations there are. A multinational corporation has its base in one country and operates in other nations through branch plants or subsidiaries which may be wholly or partially owned or by means of joint venture or management arrangements. The parent firm has ultimate control over its foreign affiliates, although the degree of only a dozen "truly multinational" corporations to more than 3,000 U.S. companies with direct investments abroad are treated as U.S. multinational for statistical purposes.

Professor Raymond Vernon of Harvard refers to 187 United States based multinational enterprises, with manufacturing facilities in six or more countries in *RESTRICTIVE BUSINESS PRACTICES — The Operations of Multinational U.S. Enterprises in Developing Countries — Their Role in Trade and Development*, UNCTAD, (study by Raymond Vernon), E.72.11 D.16, at 2, 23(1972). A 1973 U.S. Tariff Commission study, *Implications of Multinational Firms for World Trade and Investment and for U.S. Trade and Labor*, agrees that precise definition is difficult and concludes that, to reduce the definitional problem to manageable proportions, "The study will focus on all U.S. firms engaging in foreign direct investment in production facilities."

United States Tariff Commission, report to the Committee on Finance of the United States Senate and its Subcommittee on International Trade on Investigation No. 332-69, under Section 332 of the Tariff Act of 1930, Committee Print, February, 1973, at 83. For its basic data, the Tariff Commission study relies on a benchmark survey taken by the Department of Commerce of all U.S. direct investments abroad for the year 1966, which covers 3,400 U.S. enterprises and 23,000 foreign affiliates. In that survey the U.S. Commerce Department defined direct foreign investment ". . . to include all foreign business organizations in which a U.S. person, organization or affiliated group owns an interest of 10 percent or more. In addition, a foreign business organization in which 50 percent or more of voting stock is owned by U.S. residents is counted as a direct

Apologists for multinational corporations point to the ability of such firms to transmit and allocate resources as part of an hierarchical global organization. The global firm mobilizes and combines capital with effective management. The efficiency advantages of multinational firms, that is, the use of resources to achieve economic growth, are stressed.ⁱⁱ Specific benefits derived from the multinational form of business organization allegedly include optimizing resources on a worldwide level, transferring modern technology and managerial skills, supplying capital to meet investment demands abroad, bringing new products to consumers, and training work forces in different nations. In short, it is maintained that global firms provide benefits for developing nations. By helping tie the world together multinational corporations also contribute to a reduction in conflicts among nations.ⁱⁱⁱ

foreign investment even though no single U.S. group owns as much as 10 percent." *U.S. Direct Investments Abroad 1966*, Part I: Balance of Payments Data, U.S. Department of Commerce, Office of Business Economics, Dec. 1970, at 2. For other definitional variations see BROOKE & REMMERS, *THE STRATEGY OF MULTINATIONAL ENTERPRISE* 5 (1970) ("A multinational company is any firm which performs its main operations, either manufacture or the provision of service, in at least two countries."); *THE MULTINATIONAL ENTERPRISE* 16 (Dunning ed. 1971) ("The concept of the international or multinational producing enterprise (MPE) . . . [is defined] simply as an enterprise which owns or controls producing facilities (i.e., factories, mines, oil refineries, distribution outlets, offices, etc.) in more than one country."); GOVERNMENT OF CANADA, *FOREIGN DIRECT INVESTMENT IN CANADA* 51 (1972) ("The multinational enterprise will be defined as the embodiment of foreign direct investment by a single business enterprise which straddles several economies (a minimum of four or five) and divides its global activities between different countries with a view to realizing over-all corporate objectives.") Hymer and Rowthorn, *Multinational Corporations and International*, in *THE INTERNATIONAL CORPORATION* 58 (Kindelberger ed. 1970) ("Multinational corporations see the world as their oyster and judge their performance on a world-wide basis. They look to their global market position."); Rolfe, *The International Corporation in Perspective*, in *THE MULTINATIONAL CORPORATION IN THE WORLD ECONOMY* 17 (Rolfe and Damm eds. 1970) ("An International company may be defined as one, with foreign content of 25 percent or more; 'foreign content' is defined as the proportion of sales, investment, production or employment abroad."); U.N. DEPT. OF ECONOMIC AND SOCIAL AFFAIRS, *MULTINATIONAL CORPORATIONS AND WORLD DEVELOPMENT* 5 (1975) (" . . . the term 'multinational corporation' is used here in the broad sense to cover all enterprises which control assets — factories, mines, sales offices and the like — in two or more countries."); VERNON, *SOVEREIGNTY AT BAY* 4 (1971) (large in size, operate in a substantial number of countries, have access to a common pool of human and financial resources, control their widespread activities). See also Aharoni, *On the Definition of a Multinational Corporation*, 11 Q. REV. OF ECON. & BUS. 27 (1971).

ⁱⁱ See, e.g., Jacoby, *The Multinational Corporation*, 3 CENTER MAGAZINE 37 (1970). Fayerweather, *The Internationalization of Business*, 403 ANNALS 1, 4-5 (1972).

ⁱⁱⁱ See, e.g., Maisonrouge, *How a Multinational Corporation Appears to its*

Third World nations view the present world capitalist system based on multinational corporations as unacceptable. The concept of dependency flowing from deep feelings of having been ignored and exploited in both the colonial and post-colonial periods underpins the quest of Third World nations for a worldwide redistribution of wealth, status, and power. The success of the Organization of Petroleum Exporting Countries (OPEC) altered the global balance of power by challenging the existing world capitalist system. The nuclear stalemate and the efficacy of guerilla insurgency campaigns neutralized American military power and rendered political power less effective. Power on the international scene has come to rest on the control of scarce resources and the ability to construct regional economic blocs. The new system, however, creates the specter of intensified transnational conflict. Rising expectations may also render intolerable existing inequalities of wealth, status, and power.

This article focuses on the impact of American multinational corporations on the economic, cultural and political processes of developing nations, the response of such countries to multinational entities, and other means which have been proposed to control and regulate global firms. In formulating policy recommendations regarding the accountability of multinational corporations, this article relies on an interdisciplinary social science approach.

The current conflict between multinational firms and developing countries forms part of a larger struggle between industrialized nations and Third World countries. A preliminary assessment of the possible future changes in the world system is underway. This article also explores the means for facilitating a global transfer of wealth, status and power and the possibilities for building a system which will produce benefits for industrialized nations, Third World countries and multinational corporations.

Implicit in the discussion of sharing the benefits and the costs of the organization of production across national lines and determining who should make such decisions, is the need to formulate the goals of the emerging world order. The present period of crisis and transition may provide an unparalleled opportunity for a fundamental reexamination of the economic, political and social institu-

Managers, in *GLOBAL COMPANIES* 19 (Ball ed. 1975). But compare, Alger, *The Multinational Corporation and the Future International System*, 403 *ANNALS* 104, 112 (1972). Horowitz, *Capitalism, Communism, and Multinationalism*, in *THE NEW SOVEREIGNS* 133-137 (Said and Simmons eds. 1975) argues that multinational corporations may have lifted the United States and the Soviet Union out of the cold war by producing a common set of national interests based on economic realities.

tions — global corporations, nation-states, regional groupings, economic blocs, and transnational arrangements — which currently produce, control and distribute wealth, status and power. This article raises the possibility for a new world order resting on the creation of organizations and institutions that will further human growth and development and enable individuals to realize their potential^{iv} through participation in decision making and an equitable distribution of the world's bounty. Others hopefully will be led to rethink the present arrangements and investigate other alternatives, including the need for and the possibilities of achieving a new set of more self-contained economic, political and social institutions.

I. THE CONCEPT OF DEPENDENCY

Developing countries perceive multinational corporations and the worldwide capitalistic system as perpetuating the dependency¹ of such countries on industrialized nations, even after the ending of

^{iv} See Solomon, *Towards a Federal Policy on Work Restructuring the Governance of Corporations*, 43 GEO. WASH. L. REV. 1263 (1975).

¹ The literature on dependency is vast. Leading works include: Galtung, *A Structural Theory of Imperialism*, 13 J. OF PEACE RESEARCH 81 (1971); FRANK, *CAPITALISM AND UNDERDEVELOPMENT IN LATIN AMERICA* (1967); Frank, *The Development of Underdevelopment*, in *LATIN AMERICA: UNDERDEVELOPMENT OR REVOLUTION* 3 (Frank ed. 1959); BARAN, *THE POLITICAL ECONOMY OF GROWTH*, Ch. 5-7 (1965); Amin, *Development and Structural Changes: African Experience*, in *THE WIDENING GAP: DEVELOPMENT IN THE 1970's* 312 (Ward, Runnals and D'Anjou eds. 1971); Dos Santos, *The Structure of Dependence*, 60 AM. ECON. REV. 231 (1970); Sunkel, *Big Business and 'Dependencia'*, 50 FOR. AFF. 517 (1972); Weisskopf, *Capitalism, Underdevelopment and the Future of the Poor Countries*, in *ECONOMICS AND WORLD ORDER FROM THE 1970's TO THE 1990's* 43 (Bhagwati ed. 1972); Seers, *Big Companies in Small Countries*, 16 KYKLOS 4 (1963); Bodenheimer, *Dependency and Imperialism: The Roots of Latin American Underdevelopment*, in *READINGS IN U.S. IMPERIALISM* 155 (Fann & Hodges eds. 1971); Muller, *The Multinational Corporation and the Underdevelopment of the Third World*, in *THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT* 124 (Wilber ed. 1973). See also U.N., DEPT. OF ECON. AND SOC. AFFAIRS, *MULTINATIONAL CORPORATIONS* 47-48, 53-54 (1973), and West, *Economic Dependence and Policy in Developing Countries*, in *LEADING ISSUES IN INTERNATIONAL ECONOMIC POLICY* 160-163 (Bergsten and Tyler eds. 1973). GRIFFIN, *UNDERDEVELOPMENT IN SPANISH AMERICA* 117 (1969) views dependency not in terms of the expansion of a given socio-economic system but of a rapid and fundamentally political socio-economic transformation. But see UNCTAD, *RESTRICTIVE BUSINESS PRACTICES* 22, (1972) where Prof. Vernon concludes, "My impression is that, when measured in narrow economic terms the operations of U.S.-based subsidiaries in the less developed countries have benefited those countries on balance, as compared with any of the likely available alternatives." For a critique of the dependency theory see also Ray, *The Dependency Model of Latin American Underdevelopment*, 15 J. OF INTERAMERICAN STUDIES AND WORLD AFF. 4 (1973).

formal colonial relationships in the post-World War II period.² In the view of Third World nations multinational corporations have redistributed wealth from the underdeveloped periphery to the centers of industrial power and decision making by securing effective economic, political and cultural dominance for certain countries such as the United States.³

Analysts fear that participation in the international capitalist system of trade, investment and organization of production creates an international polarization between the sophisticated center countries and the developing nations on the periphery. The needs of industries in the center set the order of priorities. Strategic decisions are made in centralized corporate hierarchies in a few global cities with the rest of the world confined to lower levels of activity and income. Income, status, authority and consumption patterns radiate from the hierarchical system of multinational corporations headquartered in world cities located in the center.

One step below the corporations in world cities lie plants located in lesser cities. The corporations provide a centralized framework for control, determine global strategy, innovate a never-ending flow of new products and dispense a flow of information, while the plants handle and manage day-to-day activities. These lesser cities adjust to the commands emanating from the upper echelons, and engage in coordination and supervision of production and distribution. At the periphery, nations produce raw materials needed by the center and carry out certain phases of industrial production under foreign control. According to dependency theorists, the development of the entire system, integrated in a vertical hierarchical structure, is shaped to meet the global strategy and

² Developing countries tend to associate foreign capital with colonial rule. See Hirschman, *Ideologies of Economic Development in Latin America*, in *LATIN AMERICAN ISSUES: ESSAYS AND COMMENTS* 3 (Hirschman ed. 1961).

³ An example of dependence was pre-Allende Chile, which exported a single product (copper comprised 80 percent of exports). Foreign firms penetrated and dominated the economy and repatriated profits out of Chile. From 1945 to the early 1970's, U.S. firms remitted \$7.2 billion from Chile while providing only \$1 billion. Rosen, *The Open Door Imperative and U.S. Foreign Policy*, in *TESTING THEORIES OF ECONOMIC IMPERIALISM* 125 (Rosen and Kurth eds. 1974). Chile also had ample coal and petroleum, yet imported fuels. It was a major exporter of wheat and livestock, but relied on imported food from the United States. FRANK, *LATIN AMERICA: UNDERDEVELOPMENT OR REVOLUTION* 102 (1969). Weak institutional structures also pervade developing countries and include antiquated governmental legal structures, a lack of competent and independent administrators, a weak labor movement, and a lack of competition from local business. BARNETT AND MULLER, *GLOBAL REACH: THE POWER OF THE MULTINATIONAL CORPORATIONS* 137-139 (1974) [hereinafter cited as *GLOBAL REACH*].

expansionist needs and plans of multinational firms. Multinational corporations control operations based on a global strategy developed outside of and without regard to the interests of host nations. Foreign subsidiaries conduct truncated operations, not a full line of functions.

Under the theory of dependency, growth in the developing nations occurs as a reflex of the expansionistic drives of multinational firms and the economic systems of the dominant countries. As the world divides between the center and the periphery, three types of concentration — partner, commodity, and trading — may occur. The center has many trading partners. A country at the periphery generally establishes trade relationships with one or two partners. The center produces and trades in a diversified range of products while the periphery concentrates only on a few primary exports to pay for its imports. Finally capital intensive, high skill activities with significant spinoff effects in other areas characterize the center. The periphery, on the other hand, concentrates on labor intensive, low skill activities with a limited spinoff thrust.⁴

It is charged that economic exploitation results from the incorporation of developing nations into the world capitalistic system. This, in turn, produces underdevelopment, slow economic growth, and technological backwardness, as the center controls the economic potentials of the periphery. The center's power grows through technological progress, while the periphery is relegated to the function of a raw material supplier. The integration of developing countries into the world capitalistic system defines and delimits the alternatives available for Third World nations.

But does dependency constitute a continuing situation in which the possibilities for development are predetermined, and does the world capitalistic system necessarily involve continued expansion and exploitation? After examining the factual basis for the concept of dependency through an analysis of the economic, cultural and political impacts of global firms on developing nations, the efforts of developing countries to extricate themselves from the so-called iron law of dependency will be discussed.

A. *Analysis of the Theory of Dependency*

Economic problems constitute the mainstay of the dependency theory. It is alleged that developing countries face declining terms of trade and are plundered by firms engaged in extracting raw

⁴ Hymer, *The Efficiency (Contradictions) of Multinational Enterprise*, 60 AM. ECON. REV. 441 (1970); Hymer, *The Multinational Corporation and the Law of Un-*

materials. In manufacturing operations multinational corporations engage in transfer pricing and restrictive business practices, and support technologies and social structures inimical to rounded development. Reliance on foreign technology creates a fear of technological dependence, unfair competition and foreign control over industry. Multinational firms may also acquire local firms and gain control over financial and capital markets.

The net result of multinational activity in raw material extraction and manufacturing is the generation of "excess" profits which multinationals repatriate to their home country, adversely affecting a host nation's balance of payments. The outflow of national wealth weakens a country's capacity to develop a local capital market and indigenous firms as well as its capacity to develop an independent technological base. The cultural and political questions must not be overlooked. The elite in developing countries follow consumption patterns of advanced countries. Multinational firms create clientele groups whose interests, privileges and status derive from their ties to foreign enterprises and who desire to assure that these firms continue to play a preeminent role in a local economy. In addition the firms may intervene directly or indirectly in a nation's political process. The global corporations may also produce a fear of a loss of national sovereignty and identity on the part of nation-states and reduce the choices available for a host country. Conflicts may arise between the economic goals of a corporation and the broader policies of a nation-state. A country may develop a branch plant outlook which affects its broad range decision-making power.

B. *Economic Factors*

1. *Raw Materials*

The intertwining of developing nations into the world capitalist system generates at least two problems in terms of raw materials produced in such nations. First, developing countries allege that their respective primary commodity exports, apart from ownership of such materials by global firms, face declining "terms of trade."⁵

even Development, in *ECONOMICS AND WORLD ORDER FROM THE 1970'S TO THE 1990'S*, 124-126, 129 (Bhagwati ed. 1972).

⁵ Prebisch viewed the benefits from technological change and increased productivity as spreading to the center of the world system based on an analysis of the long-run downward trend in the terms of trade between the manufactured products exported from Great Britain to Latin America and the primary products imported into Great Britain from Latin America since the late 19th century.

See Prebisch, *Commercial Policy in the Underdeveloped Countries*, 49 *AM. ECON.*

Terms of trade deteriorate when import prices rise faster than export prices. A widely held belief exists that the prices of raw material exports failed to keep pace with the upward spiral in the price of manufactured goods imported from industrialized nations. In support of the theory of declining terms of trade, a recent study by the Secretariat of the United Nations Conference on Trade and Development (UNCTAD) indicates that between 1953 and 1972 the terms of trade for the commodities covered, which include about two-thirds of the total value of commodity exports excluding petroleum, declined about 2.2 percent annually on the average.⁶ The report concluded, "The analysis presented in . . . this note would appear to establish fairly conclusively that the net barter terms of trade of a large number of primary commodities, accounting for the bulk of the commodity exports (excluding petroleum) of developing countries, have deteriorated substantially over the last 25 years."⁷ However, another study prepared for the Secretary General of UNCTAD by a group of experts found that for a broad range of products, again excluding petroleum, prices of raw materials during the past 25 years rose about as much as prices of manufactured goods. The group found no clear evidence of a long-term deterioration in the terms of trade of developing countries, although the terms of trade were subject to substantial short-term fluctuations.⁸

Although further analysis must be undertaken, it appears likely that since 1950 prices of raw material exports from developing

REV. 251 (1970). DiMarco, *The Evolution of Prebisch's Economic Thought* and Dadone and DiMarco, *The Impact of Prebisch's Ideas on Modern Economic Analysis*, in *INTERNATIONAL ECONOMICS AND DEVELOPMENT* 20 (DiMarco ed. 1972); See also LAW, *INTERNATIONAL COMMODITY AGREEMENTS*, 19-22 (1975). For criticisms of Prebisch's conclusions and methodology see Ellsworth, *The Terms of Trade between Primary Producing and Industrial Countries*, 9 *INTER-AMERICAN ECON. AFF.* 47 (1956) (decline in prices British paid for primary products 1876 to 1905 stemmed from a substantial decline in inward freight rates); Haberler, *Terms of Trade and Economic Development*, in *ECONOMIC DEVELOPMENT FOR LATIN AMERICA* 275 (Ellis ed. 1961) (annual index of U.K. commodity terms of trade too narrow); Flanders, *Prebisch on Protectionism: An Evaluation*, 74 *ECON. J.* 305 (1964).

⁶ UNCTAD SECRETARIAT, *TERMS OF TRADE OF DEVELOPING COUNTRIES* 6 (1975) (UNCTAD/CD/Misc. 60).

⁷ *Id.* at 14. See also Cairncross, *How Best to Help Third World*, *Manchester Guardian*, Sept. 20, 1975, at 7, cols. 3, 4, 5 and Maidenberg, *Poor Sugar — Exporting Lands Hard Pressed by Price Slump*, *N.Y. Times*, Mar. 16, 1976, at 59, col. 2.

⁸ Dale, *Idea of Growing Disparity in World Prices Disputed*, *N.Y. Times*, May 25, 1975, § 1, at 1, col. 2; See also LAW, *supra* note 4, at 22-23 (1975). For further clarification see United Nations Press Section Office of Public Information, Note 3916, May 27, 1975.

countries have declined relative to prices of manufactured imports.⁹ The declining terms of trade concept underpins the argument that the world capitalist economy automatically and inexorably works against developing nations. Both past and future studies must be approached critically, however, because of the problems inherent in constructing terms of trade indices. Difficulties include comparing the value of import packages which shift composition because of technological change, the appearance of new materials such as synthetics, and the growing emphasis on recycling. The rising share of services in the economics of developed countries also adversely affects the demand for primary commodity products. A shift has also occurred in the pattern of the quality and quantity of traded goods. Productivity changes must also be taken into account. Use of index numbers involves such matters as determining the weighting system, a suitable base period, inclusion of certain countries and whether the index should be based on actual price quotations or unit values derived from trade statistics.¹⁰

In addition to the likelihood that raw material exports from developing countries encountered declining terms of trade since 1950, foreign ownership and exploitation of natural resources by global firms have enraged developing nations. Multinational corporations engaged in extractive industries were viewed as too rapidly drawing nonrenewable resources from the soil, seeking only high profits and lacking interest in local development.¹¹ Considerable skepticism pervaded Third World nations about the value returned to such nations by direct foreign investment in mineral extraction. The mere existence of raw material producing, foreign-owned enclaves also constituted a source of resentment.¹² On the other hand, other observers have emphasized the contribution of foreign capital to local development through the generation of

⁹ Power, *Of Raw Materials, Raw Statistics and Raw Deals*, N.Y. Times, Aug. 31, 1975, at 15, col. 2 concludes: "In the 1950's prices fell, although from a high and untypical peak. In the 1960's, using the old techniques of measuring, terms of trade fluctuated around a fairly flat mean. And now in the 1970's, after a short boom, they are moving downward again. And once the double factorial method is refined we may well get confirmation that a much grimmer situation has prevailed."

¹⁰ See Stobaugh, *Systemic Bias and the Terms of Trade*, 49 REV. OF ECON. AND STAT. 617 (1967).

¹¹ See e.g., BARAN, *THE POLITICAL ECONOMY OF GROWTH* 197 (1957); Evans, *National Autonomy and Economic Development: Critical Perspectives on Multinational Corporations in Poor Countries*, in *TRANSNATIONAL RELATIONS* 325 (Keohane and Nye eds. 1971).

¹² VERNON, *SOVEREIGNTY AT BAY* 50 (1971).

foreign exchange and tax revenues.¹³ Until recently it was doubted whether developing nations possessed sufficient capital, know-how and other skills, and access to an international sales network to develop their raw material wealth.¹⁴ This line of reasoning has come under attack¹⁵ and increasingly more governments are seizing ownership and control of raw materials from global firms.

2. *Manufacturing Enterprises*

In the 1950's, developing countries turned to a new development strategy; namely, encouragement of foreign direct investment in manufacturing industries designed to reduce a nation's dependence on the importation of such products.¹⁶ Together with the relentless quest by multinational corporations for expansion, the trend toward establishing manufacturing plants exacerbated the economic plight faced by the developing world. As a result, problems arose such as use of transfer pricing, restrictive business practices, transfer of inappropriate technology, lack of local research and development and the impact on industrial organization, capital markets and balance of payments.

a. *Transfer Pricing*

Intrafirm transactions between a parent and its subsidiaries enable multinational corporations to maximize global profits. These intrafirm exchanges replace market transactions and enable multinational firms to evade many of the checks on corporate behavior provided by national laws. Intrafirm transactions may take a number of forms including: 1) locating profits in a subsidiary in a country with lower tax rates (conversely restricting profits where taxes are higher) thereby reducing a corporation's

¹³ Mikesell, *The Contribution of Petroleum and Mineral Resources to Economic Development*, in FOREIGN INVESTMENT IN THE PETROLEUM AND MINERAL INDUSTRIES 3 (Mikesell ed. 1971); Vernon, *Foreign Enterprises and Developing Nations in The Raw Materials Industries*, 60 AM. ECON. REV. 122 (1970).

¹⁴ INTERNATIONAL CHAMBER OF COMMERCE, MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT 13 (1974); Zinser, *Alternative Means of Meeting Argentina's Petroleum Requirements*, in FOREIGN INVESTMENT IN THE PETROLEUM AND MINERAL INDUSTRIES 189 (Mikesell ed. 1971); Cruft, *Comment*, in INTERNATIONAL CONTROL OF INVESTMENT 97 (Wallace ed. 1974).

¹⁵ TANZER, *THE POLITICAL ECONOMY OF INTERNATIONAL OIL AND THE UNDERDEVELOPED COUNTRIES*, Ch. 22 (1969).

¹⁶ VERNON, *SOVEREIGNTY AT BAY* 99 (1971); GORDON AND GROMMERS, *UNITED STATES MANUFACTURING INVESTMENT IN BRAZIL* (1962); Baranson, *The Automotive Industry in the LDCs*, 3 COLUM. J. OF WORLD BUS. 49 (1968).

total tax burden on a worldwide system of operations; 2) withdrawing funds from a given subsidiary (for example, in the face of limits on repatriation or the expectation of foreign exchange losses if a country devalues its currency) by increasing prices on the goods sold to such subsidiary by other subsidiaries in a multinational corporation; and, 3) financing a subsidiary by reducing prices on goods sold to such subsidiary by other subsidiaries in the multinational corporation.¹⁷

From the viewpoint of a developing country, transfer pricing results in a subsidiary located in such a nation paying higher prices on imports, especially so-called intermediate goods, than prevail in so-called independent markets. These techniques may cause a loss of taxes and foreign exchange for a developing country. Low reported profit levels may deter local competition and perpetuate dependence.

From the viewpoint of a multinational corporation, various factors external to the firm influence it in its decision to engage in transfer pricing. Such factors include the tariff barriers in force in the importing country, the absolute and relative difference in tax rates, actual and expected exchange rate differentials, and government policies on remittance transfers. The internal reasons for corporations' use of transfer prices include varying degrees of ownership of subsidiaries, a desire to place profits where ownership is the highest, the goal of reducing profits for wage negotiations purposes, and using pricing as a means of allocating markets among subsidiaries.

Publicly available studies indicate that multinational corporations generally engage in transfer pricing in their operations in developing countries — particularly in overpricing the goods imported by developing countries and underpricing the export items produced by such nations. A leading study by the Colombian government of a wide range of pharmaceutical imports showed an overpricing by global firms, in comparison with world market

¹⁷ ROBBINS AND STOBAUGH, MONEY IN THE MULTINATIONAL ENTERPRISE 91 (1973). For examples of different approaches to transfer pricing see TUGENDHAT, THE MULTINATIONALS 147-49 (1971) (citing Dr. James S. Shulman, unpublished thesis, Transfer Pricing in Multinational Business, (1966); Carley, *Lands of Opportunity*, Wall Street Journal, Oct. 16, 1972, at 1, col. 6; Rose, *The Rewarding Strategies of Multinationalism*, FORTUNE, Sept. 15, 1968, at 104. Other transfer pricing techniques include allocation of overhead and joint costs, such as exploration, research and development, and advertising and overpricing the plant and equipment used to set up or expand a foreign facility. Other interaffiliate transactions include altering the speed with which a bill to or from a subsidiary in another country is paid (the so-called "leads and lags" technique).

prices, of 155 percent in 1968 and 87 percent for the 1967 to 1970 period compared with 19 percent on products imported by locally owned firms. Selected rubber imports were overpriced by 44 percent (in comparison with zero overpricing by local firms), some chemical imports by subsidiaries of global firms were overpriced by 25 percent, and electrical components by 54 percent. For 11 of 14 foreign firms surveyed in Colombia in 1966-1967, the profit accruing from overpricing exceeded declared profits.¹⁸ Conversely, foreign subsidiaries of multinational corporations in Colombia underpriced a number of export products, including timber, processed fish and precious metals.¹⁹ Another study of Latin

¹⁸ UNCTAD, POLICIES RELATING TO TECHNOLOGY IN THE COUNTRIES OF THE ANDEAN PACT: THEIR FOUNDATIONS (Doc. No. TD/107 prepared by the Junta del Acuerdo de Cartagena 1971) at Par. 128-129. In the Chilean pharmaceutical industry, imports by foreign subsidiaries were overpriced by 30 to 500 percent; in Peru the range was 20 to 300 percent. *Id.* A parent may drain profits from a subsidiary that faces difficult labor negotiations or if another party owns a major share of a subsidiary, or if profit remittances are blocked by government regulation. It may also seek to evade currency-exchange restrictions and losses from currency devaluations. In the Colombian pharmaceutical industry in 1968, reported profits were 3.4 percent of the effective return, royalties 14 percent and overpricing 82.6 percent. The drug companies in the sample overpriced imports by \$3 million and estimates of the cost of the whole drug industry of the Colombia balance of payments in 1968 runs as high as \$20 million. TURNER, MULTINATIONAL COMPANIES AND THE THIRD WORLD 59-60 (1973); Shulman, *When The Price Is Wrong by Design*, in READINGS IN INTERNATIONAL FINANCIAL MANAGEMENT 184 (Stonehill ed. 1970). A number of foreign subsidiaries may show "losses" each year yet mysteriously continue in business. See also Brundenius, *The Anatomy of Imperialism: The Case of the Multinational Mining Corporation in Peru*, 9 J. OF PEACE RESEARCH 189 (1972); Muller, *Multinational Corporation and the Underdevelopment of the Third World*, in THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT 143-144 (Wilber ed. 1973) (Table 4 Overpricing of Imported Intermediate Parts by Foreign Ownership Structure: Colombia 1968); BARNET AND MULLER, GLOBAL REACH 158 (1974); ORGANIZATION OF AMERICAN STATES, EXECUTIVE SECRETARIAT FOR ECONOMIC AND SOCIAL AFFAIRS, SECTORAL STUDY OF TRANSNATIONAL ENTERPRISES IN LATIN AMERICA: THE AUTOMOTIVE INDUSTRY 21, 24 (1974). (Transfer pricing interaffiliate charges, intra-corporate debt in foreign subsidiaries in automobile industry in Latin America); Lall, *Transfer Pricing by Multinational Manufacturing Firms*, 35 OXFORD BULL. OF ECON. AND STAT. 173, 185-87 (1973); BARANSON, AUTOMOTIVE INDUSTRIES IN DEVELOPING COUNTRIES (1969); UNCTAD, BALANCE OF PAYMENTS AND INCOME EFFECTS OF PRIVATE FOREIGN INVESTMENT IN MANUFACTURING: CASE STUDIES OF COLOMBIA AND MALAYSIA (Doc. No. TD/B/C.3(vi)/Misc. 1 prepared by Lall and Mayhew 1973); H. S. Walker, Permanent Representative of Jamaica to the U.N., SUMMARY OF THE COMMENTS OF THE HEARINGS BEFORE THE GROUP OF EMINENT PERSONS TO STUDY THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS 424, E.74.II.A.9. (1974) [hereinafter cited as GROUP OF EMINENT PERSONS]. (Pricing of inputs and outputs is believed to be contrived to avoid local taxation and frustrate exchange controls.)

¹⁹ UNCTAD, POLICIES RELATING TO TECHNOLOGY IN THE COUNTRIES OF THE ANDEAN PACT: THEIR FOUNDATIONS (Doc. No. TD/107 prepared by the Junta del

American exporters of manufactured goods in 10 Latin American countries in the 1966-1969 period suggests that multinational enterprises underpriced exports by an average of 40 percent.²⁰

In addition to the methodological infirmities of such studies²¹ and the facile denials by multinational corporations,²² several structural factors internal to multinational firms, may in the future minimize the scope of transfer pricing. First, the latitude available to firms depends upon the percentage of the total output for a given subsidiary (or for an industry or foreign subsidiaries as a whole) represented by local expenses incurred by that subsidiary.²³ If, as seems likely, an overwhelming percentage of

Auerdo de Cartagena 1971) at Par. 128-129. See also Muller and Morgenstern, *Multinational Corporations and Balance of Payments Impacts on LDCs: An Econometric Analysis of Export Pricing Behavior*, 27 KYKLOS 304, 306 (1974); Statement of Ronald Muller, House of Representatives, Committee on Foreign Affairs, *THE MULTINATIONALS FUNCTION AND FUTURE* 93rd Cong., 2nd Sess. at 74 (1974).

²⁰ Muller and Morgenstern, *supra* note 19, at 304.

²¹ VERNON, *SOVEREIGNTY AT BAY* 139 (1971). One critical problem involves establishing world independent market prices as a basis for comparison.

²² See e.g., Emil Collado, Executive Vice-President Exxon Corporation, *GROUP OF EMINENT PERSONS* 34 (1974) (The manipulation of prices usually neither feasible nor desirable in light of severe penalties for using improper transfer prices); Maisonrouge, *The Mythology of Multinationalism*, 9 COL. J. WORLD BUS. 7, 11 (1974) (IBM prices according to a uniform standard involving the cost of production of the item to be imported plus a fixed markup); Champion Spark Plug Company Paper Submitted to Subcommittee on International Trade Committee on Finance, December 29, 1972, in *Senate Compendium* (1973) (Champion's prices to foreign subsidiaries are essentially the same in each country with minor fluctuations due to volume). See generally INTERNATIONAL CHAMBER OF COMMERCE, *REALITIES: MULTINATIONAL ENTERPRISES RESPOND ON BASIC ISSUES* 54-60 (1974). (Caterpillar Tractor Co. and Pfizer Inc. divided profits according to the subsidiaries, respective contributions to finished products). But compare BARNET AND MULLER, *GLOBAL REACH* 278 (1974). ("... [I]t is clear that the practice of charging transfer prices which deviate from market value is increasingly widespread."). Braun, *International Control From the Standpoint of the European Economic Community*, in *INTERNATIONAL CONTROL OF INVESTMENT* 54 (Wallace ed. 1974), notes: "It is practically beyond question that multinational companies manipulate internal price relations so as to locate their profits either in the country of the mother company or in countries where taxes are lowest." Empirical studies disputing the pervasive existence of transfer pricing include GREENE AND DUERR, *INTERCOMPANY TRANSACTIONS IN THE MULTINATIONAL FIRM*, 21-22 (1970). A survey of 130 U.S. firms indicated that many of such corporations treated foreign subsidiaries as "unrelated" parties and charge competitive prices. TUGENDHAT, *THE MULTINATIONALS* 145-148 (1971) (Study of eight U.S. firms with overseas interests. Only two regularly use transfer prices to maximize worldwide after-tax profits. Among the remaining six, arm's length pricing is used to avoid conflict as to where to show the highest profit and to project a good citizen image with a host country). A few multinational corporations admit juggling transfer pricing. And the Wall Street Journal reported, "An executive of one big international oil company says prices between sub-

the value of a product is produced locally, little room exists for multinational corporations to enjoy the benefits accruing from overpricing imports. Second, the size and complexity of organizations force managers to dull their pencils somewhat and rely on rules of thumb, not the most sophisticated tools.²⁴ Studies have shown that medium size firms, but not large corporations, tend to favor more flexible pricing procedures which take into account varying circumstances and relationships between the parent and its foreign subsidiaries.²⁵ Use of transfer pricing may pose intrafirm morale problems and conflicts among executives in parent and subsidiary corporations. Finally, governments increasingly attempt to contain the use of transfer pricing, subject to the

subsidiaries are controlled by the company's headquarters, which "tilts" the prices one way or another, depending on the situation.

The treasurer of another company says he sometimes resorts to manipulation especially when a foreign government blocks a subsidiary's profit remittances to the parent." Carley, *Profit Probes*, Wall Street Journal, Dec. 19, 1974, at 1, col. 6. See also ARPAN, *INTERNATIONAL INTRACORPORATE PRICING: NON-AMERICAN SYSTEMS AND VIEWS* (1972) which analyzes the pricing systems used by 60 foreign firms.

²³ Statistics exist as to the value of intrafirm transactions. The United Nations group of Eminent Persons estimated that more than one-quarter of the value of all international trade is in goods of an intragroup character. In addition the intracorporate transactions occur in services, research and development, and administrative functions, making the scope for price manipulation quite extensive. U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 88 (1974). Barnett and Muller estimate that 50 percent of all U.S. exports (excluding agricultural transactions) are bypassing the market. BARNETT AND MULLER, *GLOBAL REACH* 266-67 (1974). Solomon, *International Control of Investment in the Trade Sector*, in *INTERNATIONAL CONTROL OF INVESTMENT* 16-18 (Wallace ed. 1974) states that 10 percent of all U.S. exports involved possible non-arm's-length transactions with a relatively higher percentage of these goods going to developing as opposed to developed countries. He estimates that 5 percent of all world trade is on a non-arm's-length basis. See also Lupo, *Worldwide Sales by U.S. Multinational Companies*, 53 *SURVEY OF CURRENT BUS.* 33 (1973); ORGANIZATION OF AMERICAN STATES, EXECUTIVE SECRETARIAT FOR ECONOMIC AND SOCIAL AFFAIRS, *SECTORAL STUDY OF TRANSNATIONAL ENTERPRISES IN LATIN AMERICA: THE AUTOMOTIVE INDUSTRY* (1974) indicates that for multinationals in general and automotive multinationals in particular, inter-affiliate transactions are probably in excess of 50 percent of total transactions between Latin America and the rest of the world.

²⁴ Stobaugh, *The Multinational Corporation: Measuring the Consequences*, 6 *COLUM. J. OF WORLD BUS.* 59 (1971).

²⁵ But compare Guisinger, *The Rise of the Multinational Corporation and U.S. Trade Policy*, 54 *Soc. Sci. Q.* 552, 559 (1973); ROBBINS & STOBAUGH, *MONEY IN THE MULTINATIONAL ENTERPRISE* 91-92 (1973); Stobaugh, *supra* note 24, at 59 notes that multinational corporations which spend greater than average amounts on research and development seem to be more reluctant than other corporations to use financial techniques which might upset local authorities.

ability to gain sufficient knowledge and administer such provisions in a noncorrupt manner.²⁶

Because of the difficulty in establishing an arm's length price for goods, especially in oligopolistic markets for complex products in a world of currency fluctuations and language barriers, the advantage probably lies with the multinational corporation. The ability to juggle royalty and management fees, other overhead costs and the small number of expert nation-state personnel further contributes to the power of multinational corporations. As one observer concluded, "Though the host government can insist on seeing the books of the local subsidiary, it cannot examine the books of the parent, and even if it could, it would not have the highly trained manpower to make informed reallocations of earnings and costs."²⁷

b. *Restrictive Business Practices*

In the post-World War II period, developing countries, as previously noted, encouraged foreign direct investment in manufacturing plants that would produce import substitute items. These industries required, however, additional imports in the form of capital goods, plants, equipment and raw materials. Lack of a

²⁶ Carley, *Profit Probes*, Wall Street Journal, Dec. 19, 1974, at 1, col. 6; ROBBINS AND STOBAUGH, *MONEY IN THE MULTINATIONAL ENTERPRISE* 92 (1973). The governmental requirements and the organizational constraints of the firm led Robbins and Stobaugh, *id.*, at 92, to conclude that the use of transfer pricing is substantially below its indicated potential. See also statement of Hans Schafner (member United Nations Group of Eminent Persons and Chairman of Sandoz A.B. (Swiss Drug and Chemical Company)) who stated that in the great majority of instances, transfer pricing poses no problem because of the existence of arm's length prices and because transactions are under the scrutiny of many authorities who would reach to evidence of a zigzag policy. U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* (1974). The United States uses Section 482 of the Internal Revenue Code of 1954 to achieve arm's length intra-corporate pricing. For the experiences of American corporations with Section 482 see DUERR, *TAX ALLOCATIONS AND INTERNATIONAL BUSINESS* (1972). (Ch. 3 sets forth the reallocation formulas involving the pricing of goods). See also Hammer, Morrione and Ryan, *Concepts and Techniques in Determining the Reasonableness of Intercompany Pricing Between United States Corporations and Their Overseas Subsidiaries*, N.Y.U. 30TH INST. ON FED. TAX 1407 (1972); Bischel, *Tax Allocations Concerning Inter-Company Pricing Transactions in Foreign Operations: A Reappraisal*, 13 VA. J. INT'L L. 490 (1973). Keegan, *Multinational Pricing: How Far Is Arm's Length?*, 4 COLUM. J. OF WORLD BUS. 57 (1969). American corporations particularly object to the administration of Section 482, and allege that agents do not follow Internal Revenue Service's regulations, that their determinations were arbitrary, capricious and inconsistent with previous findings.

²⁷ Speech by George W. Ball at The New School for Social Research Symposium in New York City, April 5-6, 1974.

sufficient home market impeded profitability. Developing countries then sought to penetrate markets in other countries by exporting in the hope of earning vitally needed foreign exchange, and by absorbing excess plant capacity.²⁸ The export restrictions imposed by a parent multinational corporation over its foreign subsidiaries tended to thwart this strategy.

The imposition of export restrictions by multinational corporations on their foreign subsidiaries appears pervasive. A study by an organ of the Andean Common Market of over 400 contracts for the transfer of technology shows that approximately 81 percent of such contracts prohibited the use of the transferred technology for producing exports, while 86 percent of the contracts contained export restrictions (for example, to certain countries or areas). Two-thirds of the technology contracts in Bolivia, Colombia, Ecuador and Peru, which the Andean Group analyzed, also had tie-in clauses requiring the purchase of intermediate and capital goods from the same source providing the technology.²⁹ Other studies by the United Nations Conference on Trade and Development have indicated the extent of restrictive practices.³⁰

²⁸ See generally BARANSON, *AUTOMOTIVE INDUSTRIES IN DEVELOPING COUNTRIES* (1969) for an analysis of the pressure by developing nations to manufacture for export and the response of multinational corporations. By 1968, exports of subsidiaries of American corporations represented 40 percent of all manufacturing exports from Latin America. UNCTAD, *RESTRICTIVE BUSINESS PRACTICES* (study by Raymond Vernon), E.72.11. D.16, at 15, 16 (1972). One impact of export restrictions is the relatively poor export performance of U.S. corporations in Latin America. United States manufacturing subsidiaries in Latin America export less than 10 percent of total sales; while in Europe, U.S. subsidiaries average 25 percent. Belli, *Sales of Foreign Affiliates to U.S. Firms*, 50 *SURVEY OF CURRENT BUS.* 20 (1970). Further research must be undertaken breaking down export performance to other countries within a region (for instance, Latin America) and to the rest of the world by U.S. manufacturing subsidiaries in different countries in relation to domestic firms.

²⁹ UNCTAD, *POLICIES RELATING TO TECHNOLOGY OF THE COUNTRIES OF THE ANDEAN PACT: THEIR FOUNDATIONS* (A study by the Board of the Cartagena Agreement) TD/107 (1971), TD/107/Corr. I at para. 127-128 (1972). An analysis of 451 contracts by country showed the following prohibitions on exports: Bolivia, 77 percent; Colombia, 77 percent; Chile, 73 percent; Ecuador, 75 percent; and Peru, 89 percent. Overall, by different industries, the figures were as follows: textiles, 88 percent; pharmaceuticals, 89 percent; chemicals, 78 percent; food and beverage, 73 percent; and other, 91 percent. See also BARNET AND MULLER, *GLOBAL REACH* 163 (1974).

³⁰ UNCTAD, *RESTRICTIONS ON EXPORTS IN FOREIGN COLLABORATION AGREEMENTS IN INDIA* (prepared by Indian Investment Center) TD/B/389 (1971) indicating 40 percent of technical collaboration agreements with foreign firms by public and private firms in India contained export restrictions; UNCTAD, *RESTRICTIONS ON EXPORTS IN FOREIGN COLLABORATION AGREEMENTS IN THE REPUBLIC OF THE PHILIPPINES* TD/B/388 (1972) (65 percent of the contracts studied contained export

From the viewpoint of a multinational corporation, export restrictions may appear rational. The parent fears the loss of control over the management of a subsidiary and seeks the preservation of its distribution channels.³¹ However, such practices perpetuate the dependency position of developing countries. More sophisticated defenders of multinational corporations rely on a comparative advantage argument as theoretically countering the extent of export restrictive practices.³² The economic interest argument runs as follows: It is unlikely that firms would restrict exports from subsidiaries which possess the capacity of producing and marketing their products competitively in terms of price and quality, provided continuation and expansion of exports can reasonably be assured. This line of reasoning does not appear to counter the objection of a developing country desiring to increase the exportation of its industrial products, but lacking a significant price or quality advantage.³³ With the trend to global supplying

restrictions). See also UNCTAD, *RESTRICTIVE BUSINESS PRACTICES* (Doc. No. TD/122/Supp. 1 1972), at 38-49 and UNCTAD REPORT OF THE AD HOC GROUP OF EXPERTS, *RESTRICTIVE BUSINESS PRACTICES IN RELATION TO THE TRADE AND DEVELOPMENT OF DEVELOPING COUNTRIES* (Doc. No. TD/B/C 2/119 1973); U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS 65-66* (1974) (citing Pakistani study); Frankena, *Restrictions on Exports by Foreign Investors: The Case of India*, 6 J. WORLD TRADE L. 575 (1972) (restrictions on exports found to comprise a significant trade barrier). GOVERNMENT OF CANADA, *FOREIGN DIRECT INVESTMENT IN CANADA 153-182* (1972) (surveys use of export restrictions by U.S. multinational corporations). INTERNATIONAL CHAMBER OF COMMERCE, *MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT 32* (1974), states that territorial arrangements accompanying patent and know-how licensing are customary.

³¹ UNCTAD, *RESTRICTIVE BUSINESS PRACTICES* (study by Raymond Vernon), E.72.11. D.16, at 17 (1972).

³² INTERNATIONAL CHAMBER OF COMMERCE, *MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT 32* (1974). See generally INTERNATIONAL CHAMBER OF COMMERCE, *REALITIES: MULTINATIONAL ENTERPRISES RESPOND ON BASIC ISSUES 40-46* (1974), for responses to an inquiry regarding export market allocation by parent firms. More ardent defenders of multinational corporations point out that export restrictions may stem from cost-raising import substitution policies and maintenance of an over-valued currency. Johnson, *The Multinational Corporation as a Development Agent*, 5 COLUM. J. OF WORLD BUS. 25, 29 (1970). Hans Schaffer, a member of the U.N. Group of Eminent Persons maintained that the multinational corporations producing highly specialized industrial commodities cannot completely avoid export restrictions and the economic conditions of the country of importation may require such measures. U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND INTERNATIONAL RELATIONS 157* (1974).

³³ This is frankly acknowledged by Olivetti who states: "Local government's expectation of establishing an uncontrolled export policy and practice has been resisted with a certain success. A global export system has been adopted with due regard however to the aspirations of individual countries in this re-

of components by complex multinational firms, export restrictions may become less important and pervasive. But the global firm, not the developing country, still decides on the location of a plant and the quantity of production. With the ability of multinational corporations to shift production facilities to developing countries and use such sites for export purposes, the firm's policy with respect to the price of such exports assumes paramount importance.

c. *Technology Questions*

Whether a developing country seeks manufacturing plants for import and export purposes, reliance on foreign subsidiaries of multinational corporations creates problems in terms of the appropriateness of the technology transferred. These problems can include the form of managerial know-how or production techniques, both labor and the type of products sold, questions regarding the lack of local research, products and processes, and development and impediments posed by the patent system. Opponents of multinational corporations perceive global enterprises as transferring sophisticated technology irrelevant to the needs of developing countries which further stunts a nation's capacity for self-sustaining growth.³⁴ The technology employed in manu-

spect. It is not practical nor possible to meet these aspirations in full and indiscriminately, and therefore there may remain objections and criticisms by individual governments in this connection." INTERNATIONAL CHAMBER OF COMMERCE, REALITIES: MULTINATIONAL ENTERPRISES RESPOND ON BASIC ISSUES 44-45 (1974).

³⁴ See Vaitos, Director, Technology Policy Group, Junta del Acuerdo de Cartagena, GROUP OF EMINENT PERSONS 397-404 (1974); Vaitos, *Foreign Investment Policies and Economic Development in Latin America*, 7 J. WORLD TRADE L. 619-639 (1973); BARNET AND MULLER, GLOBAL REACH 164-66 (1974); Pavitt, *The Multinational Enterprise and the Transfer of Technology*, in THE MULTINATIONAL ENTERPRISE 81 (Dunning ed. 1971); Brundenius, *The Anatomy of Imperialism: The Case of the Multinational Mining Corporations in Peru*, 9 J. OF PEACE RESEARCH 189, 205 (1972); Myrdal, *The Transfer of Technology to Underdeveloped Countries*, 231 SCI. AM. 173 (1974); H. S. Walker, Permanent Representative of Jamaica to the U.N. in Geneva, GROUP OF EMINENT PERSONS 424 (1974); Muller, *The Multinational Corporation and the Underdevelopment of the Third World*, in THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT 133, (Wilber ed. 1973) (study of 257 manufacturing firms in Latin America indicates that multinational corporations use almost one-half the number of employees per \$10,000 of sales as do local firms); ORGANIZATION OF AMERICAN STATES, EXECUTIVE SECRETARIAT FOR ECONOMIC AND SOCIAL AFFAIRS, SECTORAL STUDY OF TRANSNATIONAL ENTERPRISES IN LATIN AMERICA: THE AUTOMOTIVE INDUSTRY 14 (1974). Foreign firms in Pakistan in contrast to domestic firms have higher labor productivity based on a much higher capital to worker ratio. Pavitt, *The Multinational Enterprise and the Transfer of Technology*, in THE MULTINATIONAL ENTERPRISE (Dunning ed. 1971);

facturing facilities reduces job opportunities in economies characterized by unemployment rates in excess of 30 percent.³⁵ Simply enough, jobs are not being created for rapidly growing labor forces.' These manufacturing subsidiaries utilizing capital-intensive techniques create unskilled jobs with minimal training opportunities, relatively low remuneration, and limited spinoff benefits for the remainder of the economy.³⁶ Linkages to the remainder of the economy are especially important in determining whether local entrepreneurs will flourish as distribution channels and in other service capacities,³⁷ and whether the industrial sector will be segregated from the economy. Although the Depart-

UNCTAD, MAJOR ISSUES ARISING FROM THE TRANSFER OF TECHNOLOGY TO DEVELOPING COUNTRIES (Doc. No. TD/B/AC. 11/10 1972). BARANSON, INDUSTRIAL TECHNOLOGIES FOR DEVELOPING ECONOMIES (1969); Bonin, *The Multinational Firm as a Vehicle for the International Transmission of Technology*, in THE MULTINATIONAL FIRM AND THE NATION STATE 111 (Pacquet ed. 1972). See generally Mansfield, *Technology and Technological Change*, in ECONOMIC ANALYSIS AND THE MULTINATIONAL ENTERPRISE 147 (Dunning ed. 1974); U.N. DEPT. OF ECONOMIC AND SOCIAL AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES (1974). INTERNATIONAL CHAMBER OF COMMERCE, THE INTERNATIONAL CORPORATION AND THE TRANSFER OF TECHNOLOGY (1972), indicating the benefits for developing countries.

³⁵ In addition to unemployment, underemployment is pervasive. The redundant urban labor force has been swelled by migrants from the countryside to the town. With the rise of the service sector, a declining percentage of the nonagricultural labor force is employed in industry. PREBISCH, CHANGE AND DEVELOPMENT — LATIN AMERICA'S GREAT TASK 30-31, 233 (1971); Muller, *The Multinational Corporation and the Underdevelopment of the Third World*, in THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT 132-135 (Wilber ed. 1973); OVERSEAS DEVELOPMENT COUNCIL, THE INTERNATIONAL UTILIZATION OF LABOR AND THE MULTINATIONAL CORPORATION IN THE PACIFIC BASIN 3, 7-8 (1972). But the global employment impact of the multinational corporation is minimal as approximately 13-14 million people are employed by subsidiaries of all multinational corporations.

³⁶ See, e.g., Behrman, *Foreign Investment and the Transfer of Knowledge and Skills*, in U.S. PRIVATE AND GOVERNMENT INVESTMENT ABROAD 114 (Mikesell ed. 1962); INTERNATIONAL LABOUR ORGANIZATION, MULTINATIONAL ENTERPRISES AND SOCIAL POLICY 58-59, 62 (1973). Valued managerial and accounting skills will be acquired which may be more suitable for a subsidiary than for another enterprise and thus may not be readily transferable. U.N. DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, MULTINATIONAL CORPORATIONS 52 (1973); Hyson & Weigel, *Investment in the LDCs: The Unresolved Debate*, 5 COL. J. WORLD BUS. 33, 36-37 (1970). But compare INTERNATIONAL LABOUR ORGANIZATION, MULTINATIONAL ENTERPRISES AND SOCIAL POLICY 59, 62 (1973) (which states that managers are trained who go into local firms or government service).

³⁷ Multinational firms may resist the subcontracting of parts and components to independent manufacturers in developing countries because of alleged difficulties regarding quantity control, organization and cost competitiveness. See Watanebe, *International Subcontracting, Employment and Skill Promotion*, 105 INT'L LABOUR REV. 425 (1972). But smaller firms in semi-conductor industries in developed nations will subcontract with independent suppliers in

ment of Economic and Social Affairs of the United Nations concluded, "On the whole, the employment impact on the host countries is positive since extreme cases of destruction of local industries and wholesale displacement of labour are rare,"³⁸ concern exists regarding the creation of a labor "elite," and accentuation of the distortion in wage structure between skill groups, as well as between the urban wage-earning minority and rural majority which characterize many developing nations.³⁹

Multinational corporations, moreover, have generally failed to

developing countries. Helleiner, *Manufacturing for Export, Multinational Firms and Economic Development*, 1 WORLD DEVELOPMENT 13, 20 (1973).

³⁸ U.N., DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, MULTINATIONAL CORPORATIONS 52 (1973). See also U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 75 (1974) for the conclusion that export oriented production has a positive employment impact. See also INTERNATIONAL LABOUR ORGANIZATION, MULTINATIONAL ENTERPRISES AND SOCIAL POLICY 45-46 (1973) (citing study by BUSINESS INTERNATIONAL: NATIONAL GOVERNMENTS AND INTERNATIONAL CORPORATIONS 1967). However, multinational corporations have adverse effects on local firms and cause the replacement of artisan workers by mass production industries. INTERNATIONAL LABOUR ORGANIZATION, *supra* note 36, at 20.

³⁹ U.N., DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, MULTINATIONAL CORPORATIONS 52 (1973); see also U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 76 (1974); INTERNATIONAL LABOUR ORGANIZATION, *supra* note 36, at 55-58, 73. Multinational corporations give training to familiarize new workers with industrial production and give job oriented training. Instruction is also provided to improve general educational qualifications so as to meet future training requirements. See UNCTAD, MEASURES FOR THE EXPANSION AND DIVERSIFICATION OF EXPORTS OF MANUFACTURES, EXPORT POLICIES IN THE DEVELOPING COUNTRIES, MANUFACTURING OF COMPONENTS THROUGH INTERNATIONAL SUBCONTRACTING AS A MEANS OF EXPANSION AND DIVERSIFICATION OF EXPORTS OF MANUFACTURES FROM THE DEVELOPING COUNTRIES (Doc. No. TD/B/C.2/107 1971) at 9.

Wages in resource industries, oil and mineral production, are usually higher than other branches of activity. INTERNATIONAL LABOUR ORGANIZATION, *supra* note 36, at 72; Church, *Labor Relations in Mineral and Petroleum Resource Development*, in FOREIGN INVESTMENT IN THE PETROLEUM AND MINERAL INDUSTRIES: ASC STUDIES OF INVESTOR-HOST COUNTRY RELATIONS 82 (Mikesell ed. 1971) (Latin America and Middle East). Bauxite workers earned a higher wage than other workers in Jamaica. The sugar industry in Jamaica complained that it lost some skilled workers to the bauxite industry. And workers in a bauxite area feel that if they cannot obtain bauxite wages, there might be no point in working at all. H. S. Walker, Permanent Representative of Jamaica to the U.N. in Geneva, GROUP OF EMINENT PERSONS 427-428 (1974). On the payment of higher wages by foreign subsidiaries and the impact thereof, see generally Shearer, *Industrial Relations of American Corporations Abroad*, in INTERNATIONAL LABOR 114 (Barkin, Dymond, Kassalow, Meyers, Myers eds. 1967). Krishnamurti, *Some Effects of the Multinational Corporations*, INTERECONOMICS 362, 366 (1973). Muller, *The Multinational Corporation and the Underdevelopment of the Third World*, in THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT 132-135 (Wilber ed. 1973); U.N. ECONOMIC COMMISSION FOR LATIN AMERICA, THE DISTRIBUTION OF INCOME IN LATIN AMERICA, E/CN 12/368 (1970); Stephen Hymer, New School for Social Research, GROUP OF EMINENT PERSONS 238-239 (1974).

transfer social problem-solving technology capable of producing cheap, basic products because of their self-interest. For example, American firms were reluctant to concentrate on small, efficient cars (or mass-transit vehicles) to meet the transportation requirements of developing countries. Even after the introduction of sub-compact cars in Latin America, parent corporations required their subsidiaries to concentrate the bulk of their advertising on more profitable, larger vehicles.⁴⁰ Only recently have General Motors and Ford addressed themselves to the problems of designing a vehicle for low income consumer needs and smaller scale production requirements.⁴¹ Apparently, little thought has been given to the production of mass-transit vehicles.

From an economic efficiency standpoint, multinational corporations favor capital-intensive plants for several reasons. A firm's experience militates in favor of capital-intensive technology. Lower capital costs (including sunken costs involving knowledge of capital-intensive technologies) generally prevail if capital-intensive technology is used. A subsidiary wishing to compete in the world market needs sophisticated technology. It may be easier for a capital-intensive plant in a vertically integrated multinational enterprise to respond more quickly to unexpected fluctuations in demand and/or production. In short, a capital-intensive plant better protects a manager from risk and uncertainty. The importance of engineers (and executives with an engineering background) in the selection of technology cannot be minimized. Engineers generally prefer sophisticated equipment, with machine or automatic controls, as opposed to a reliance on people to control quality which is implicit in more labor-intensive techniques. The sophisticated,

⁴⁰ ORGANIZATION OF AMERICAN STATES, EXECUTIVE SECRETARIAT FOR ECONOMIC AND SOCIAL AFFAIRS, SECTORAL STUDY OF TRANSNATIONAL ENTERPRISES IN LATIN AMERICA: THE AUTOMOTIVE INDUSTRY 16, 22 (1974). In view of the small size of most markets in developing countries, firms are reluctant to modify or adapt policies and practices.

⁴¹ *Id.* at 16-17. General Motors assembles in Ecuador, Philippines, Portugal, Malaysia its low cost basic transport vehicle components also locally produced, but the engines, transmission, suspension, rear axle and steering systems are supplied by GM's Vauxhall plant in the United Kingdom. Thomas Murphy, Vice Chairman of the Board of GM, GROUP OF EMINENT PERSONS 87 (1974). Also, Ford Fiera multi-purpose vehicle is assembled in the Philippines with its power train supplied by high-volume Ford plants for sale in the Asia-Pacific region. However, second-hand capital equipment imported from a parent is sometimes valued at the comparable price of new equipment, thereby enabling a subsidiary to take higher depreciation charges and if the host country has excess profits tax based on the rate of return of capital or a ceiling on permissible dividend remittances based on the rate of return on capital, the subsidiary can evade the excess profits tax or exceed the remittance ceiling. *Supra* note 40, at 25.

capital-intensive equipment permits an engineer to function at a level for which he was trained and at which he has been functioning in a more "advanced" economy. Managers also wish to avoid problems associated with supervision of large work forces in developing countries, particularly with the difficulties involved in dismissing workers in periods of slack demand, or those who fail to attain a sufficiently high level of productivity.⁴² All of these reasons may be rational from the vantage point of a multinational enterprise, but such corporate strategy fails to meet the needs of developing countries.

Further empirical research must be undertaken to compare the type of technology used by import-substituting or export-oriented foreign manufacturing subsidiaries and local firms. Several pioneering studies indicate that national and foreign firms may not behave differently with respect to the type of technology used.⁴³ A comparison of pairs of matched foreign and local firms in the Philippines and Mexico indicates that the American subsidiaries use more capital per worker, which is more heavily invested in buildings, but that they do not use significantly more equipment per factory worker than their local counterparts.⁴⁴ The subsidiaries

⁴² See Wells, *Economic Man and Engineering Man: Choice of Technology in a Low Wage Country*, PUBLIC POLICY 7-9 (1973); U.N. DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES 12-13 (1974); Emil Collado, Executive Vice President, Exxon Corporation, GROUP OF EMINENT PERSONS 40 (1974) (who notes that in processing operations, using less modern technology almost always results in economic failure), INTERNATIONAL LABOR OFFICE, EMPLOYMENT INCOMES AND EQUALITY: A STRATEGY FOR INCREASING PRODUCTIVE EMPLOYMENT IN KENYA 390 (1972). Limits exist on capital intensive plants including the small size of local markets and the difficulty of maintaining sophisticated equipment. STRASSMAN, TECHNOLOGICAL CHANGE AND ECONOMIC DEVELOPMENT: THE MANUFACTURING EXPERIENCE OF MEXICO AND PUERTO RICO 203 (1968). If labor-intensive technology is used, what will be the cost to consumers in a host country and will the goods be competitive for export purposes? *Infra* note 43, at 21.

⁴³ U.N., DEPARTMENT OF SOCIAL AND ECONOMIC AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES 12-14 (1974) concludes that if the influence of scale and the ability to avoid price competition is removed, multinational techniques and behavior patterns of multinational subsidiaries and local firms are similar. Multinational corporations are more likely than a domestic firm to use labor-intensive second-hand equipment because of their ability to locate and evaluate such equipment.

⁴⁴ Mason, *The Transfer of Technology and the Factor Proportions Problem: The Philippines and Mexico*, UNITAR RESEARCH REPORT 10 (1971); Mason, *Some Observations on the Choice of Technology by Multinational Firms in Developing Countries*, 60 REV. OF ECON. AND STAT. 349 (1973); Mason, *The Multinational Firm and the Cost of Technology to Developing Countries*, 15 CALIF. MANAGEMENT REV. 5 (1973). See generally, STRASSMAN, TECHNOLOGICAL CHANGE AND ECONOMIC DEVELOPMENT (1968).

of American corporations surveyed, therefore, did not use more capital-intensive methods than did local producers. Another report concluded that many multinational corporations, as a result of careful checking of the possibilities for modifying technology, have made a limited number of adaptations in their materials handling, construction and repetitive operations. The latter changes have occurred most notably in food processing and pharmaceutical packaging.⁴⁵ Generally, firms transfer advanced technology to their manufacturing subsidiaries in developing countries, but the particular industry and product affect the choice of technology and may limit a firm's flexibility to select labor-intensive techniques. Competitive pressures may, however, compel a corporation to utilize more labor and less capital per unit of output.⁴⁶

The technology question involves other problems, including the lack of local research and development and impediments posed by the patent system. Developing countries rely on multinational corporations to gain access to new technologies. Cognizant that in a modern world, control of a society may, in large measure, rest on technology, developing countries decry the inadequacy of the level of local research and development. They denounce the brain drain caused by the migration of scientists, professionals and businessmen to advanced countries in search of better paying jobs and an environment thought, at least by Western standards, to be more stimulating and desirable.⁴⁷ In addition to the arguments advanced in opposition to decentralizing research and development facilities in developed countries, spokesmen for multinational corporations assert that the lack of technical experts and support services and the inadequacy of local educational facilities and

⁴⁵ Chudson, *The International Transfer of Commercial Technology to Developing Countries*, UNITAR RESEARCH REPORT 13, at 25-26 (1971).

⁴⁶ Wells, *Economic Man and Engineering Man: Choice of Technology in a Low Wage Country*, PUBLIC POLICY 6, 7 (1973), studies technologies in different plants, local and foreign, in the same developing country. Firms that competed primarily on a brand name basis were more likely to have a capital-intensive technology than those that competed primarily on price. Once the basis of competition is held constant, there is no significant difference between the behavior of a domestic firm and that of a foreign owned factory. See also Helleiner, *Manufactured Firms*, 83 ECON. J. 21 (1973).

⁴⁷ See, e.g., FRANK, CAPITALISM AND UNDERDEVELOPMENT IN LATIN AMERICA: HISTORICAL STUDIES OF CHILE AND BRAZIL 211-214 (1969). NATIONAL ACADEMY OF SCIENCES, U.S. INTERNATIONAL FIRMS AND R.D. & E. IN DEVELOPING COUNTRIES (1973). Research by U.S. firms is centralized in research headquarters in America. See DUERR, R. & D. IN THE MULTINATIONAL COMPANY (1970) (survey of 162 firms); U.S. TARIFF COMMISSION, IMPLICATIONS OF MULTINATIONAL FIRMS FOR WORLD TRADE AND INVESTMENT AND FOR U.S. TRADE AND LABOR, VOL. III 580-585 (1973).

governmental subsidies perpetuate reliance on foreign technology.⁴⁸ If a nation mandates increased local research and development, scarce scientific talent may be absorbed, thus making it more difficult for local firms to compete. But global firms have not lessened the developing countries' fears of technological dependence. Apparently, few multinational firms, if any, have evidenced an interest in building up the educational and technical skills of nationals in the periphery.

Even if the level of research and development activity in developing nations were increased, the patent system poses a fundamental barrier to technological independence. A concentration of patent holders exists in developing countries. In Colombia, for example, in the pharmaceutical, synthetic fiber and chemical industries, 10 percent of all patent holders (all of whom are multinational corporations) own 60 percent of the patents in such areas.⁴⁹ Studies also indicate that the overwhelming percentage (on the order of 90 to 95 percent) of the patents granted to foreigners by various Latin American countries are never utilized or exploited.⁵⁰

In 1966 for U.S. multinational corporations engaged in manufacturing, 6 percent of their research and development funds were spent abroad. Most of the foreign research and development was concentrated in three countries: Canada, the United Kingdom, and West Germany. The higher levels of foreign "research" are clustered in the following areas: industrial and farm machinery, soaps and cosmetics, and food products. This stems from the need to perform necessary research and development and product and market testing on the spot and because research and development only constitute an alteration of a basic American product. *Id.* at 581.

See also EXXON CORPORATION, PUBLIC AFFAIRS DEPARTMENT, THE ROLE OF TECHNOLOGY IN DEVELOPMENT 10 (1974) which states:

". . . [T]he overall level of R & D in developing countries is low and it is true that MNCs conduct only limited amounts of research in developing countries. It is unlikely that MNCs will sponsor significantly higher levels in the near future."

⁴⁸ See, e.g., EXXON CORPORATION, *supra* note 47. Factors favoring the centralization of research include cost, the need for a large market and for contacts between laboratories, headquarters and universities. Research and development activity is viewed as the function for the parent corporation. INTERNATIONAL CHAMBER OF COMMERCE, REALITIES: MULTINATIONAL ENTERPRISES RESPOND ON BASIC ISSUES 72-80 (1974).

⁴⁹ UNCTAD, POLICIES RELATING TO TECHNOLOGY OF THE COUNTRIES OF THE ANDEAN PACT: THEIR FOUNDATIONS 132 (A Study by the Board of the Cartagena Agreement) (Doc. No. TD/107 1971), (Doc. No. TD/107/Corr. 1 1972); Vaitos, *Patents Revisited: Their Function in Developing Countries*, 9 J. DEVELOPMENT STUDIES 71 (1972). For an analysis of the advantages and disadvantages of a patent system in developing countries see Penrose, *International Patenting and the Less Developed Countries*, 83 ECON. J. 768 (1973). See also U.N., DEP'T OF ECON. AND SOC. AFFAIRS, THE ROLE OF PATENTS IN THE TRANSFER OF TECHNOLOGY TO DEVELOPING COUNTRIES (1964).

⁵⁰ UNCTAD, POLICIES RELATING TO TECHNOLOGY OF THE COUNTRIES OF THE

Multinational firms use the patent system existing in developing countries to preserve markets for overpriced imported components or final products. Local firms fall behind in the competitive race due to the lack of access to the technology monopolized by multinational firms through the patent system, and the know-how and human technical skills which global firms have accumulated. Payments for technology also adversely affect the balance of payments of developing countries.

d. *Impact of Industrial Organization*

The economic impact of multinational corporations in developing countries may be viewed from several other points: Increasing economic concentration and loss of entrepreneurial opportunities, draining the local capital markets, and generating high profits for the global firm adversely affecting a nation's balance of payments. Developing countries' fears of foreign industrial dominance and control of key industries have been realized. Statistics from several countries indicate the extent of foreign industrial dominance. Among the 500 largest manufacturing firms in Brazil, foreign subsidiaries controlled 37 percent of total output; multinational enterprises owned 100 percent of that nation's auto and tire production, 67 percent of machinery and 68 percent of electrical appliance machinery output. In Mexico, 100 percent of output in rubber products and transportation materials was foreign controlled, with 75 percent under foreign control in industrial chemicals and tobacco industries.⁵¹ American-style oligopolistically organized industries, resting on brand names and consumer preferences, have come to pervade many developing nations.

ANDEAN PACT: THEIR FOUNDATIONS 132-133 (A study by the Board of the Cartagena Agreement 1972); ORGANIZATION OF AMERICAN STATES, EXECUTIVE SECRETARIAT FOR ECONOMIC AND SOCIAL AFFAIRS, SECTORAL STUDY OF TRANSNATIONAL ENTERPRISES IN LATIN AMERICA: THE AUTOMOTIVE INDUSTRY 29 (1974) estimates that in the manufacturing sectors of Latin American industries, over 80 percent of the total multinational patents registered are never used. See also Vaitos, Director, Technology Policy Group, Junta del Acuerdo de Cartagena, GROUP OF EMINENT PERSONS 399 (1974).

⁵¹ U.N., DEP'T OF ECON. AND SOC. AFFAIRS, MULTINATIONAL CORPORATIONS AND WORLD DEVELOPMENT 20-21 (1973), (1970 figures); in pre-Allende Chile, in each of seven key industries, one to three foreign firms controlled at least 51 percent of production. See Muller, *The Multinational Corporation and the Underdevelopment of the Third World*, in THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT 130 (Wilber ed. 1973) for examples of the oligopoly power of global firms in developing nations. Hymer, *The Efficiency (contradictions) of Multinational Corporations*, 60 AM. ECON. REV. 441, 443 (1970) concludes that "the world level of concentration is much higher than it would be if foreign investment and domestic mergers were restricted."

Foreign subsidiaries thwart competition in a variety of ways. They grow by acquiring firms in the main sectors of a country's private economy.⁵² For example, more than one-third of the direct private investment by American firms in Peru and Colombia during the period 1958 to 1967 involved the acquisition of local firms.⁵³ The absorption of local entrepreneurs retards self-sustained national development. Multinational corporations may also have a displacement effect on a local economy by producing machine-made products which destroy native handicrafts. On the other hand, global firms may create opportunities for suppliers of component parts, retailers, repair shops and provide training for employees, some of whom may take their skills into other lines of endeavor.⁵⁴

e. *Impact on Balance of Payments and Capital Markets*

The repatriation of profits generated by foreign subsidiaries⁵⁵ and charges for patents, trademarks, licenses, know-how, manage-

⁵² See TURNER, *MULTINATIONAL COMPANIES AND THE THIRD WORLD* 49, 50 (1973); Diaz Alejandro, *Direct Foreign Investment in Latin America*, in *THE INTERNATIONAL CORPORATION* 331 (Kindleberger ed. 1970); BARNET AND MULLER, *GLOBAL REACH* 155 (1974) indicate that from 1958 to 1967, the 187 largest U.S. multinational enterprises used capital for the takeover of nearly 50 percent of all manufacturing subsidiaries rather than creating new production facilities. *But compare* Hans Schaffner (member of U.N. Group of Eminent Persons) who maintains that rarely do multinational enterprises merge with firms in developing countries. U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 158-159 (1974).

⁵³ Vaitos, *Comment*, in *INTERNATIONAL CONTROL OF INVESTMENT* 129 (Wallace ed. 1974).

⁵⁴ Vagts, *The Host Country Faces the Multinational Enterprise*, 53 *B.U. L. REV.* 261, 268 (1973); Pavitt, *The Multinational Enterprise and the Transfer of Technology*, in *THE MULTINATIONAL ENTERPRISE* 74-79 (Dunning ed. 1971); Streeter, *Costs and Benefits of Multinational Enterprises in Less Developed Countries*, in *THE MULTINATIONAL ENTERPRISE* 254 (Dunning ed. 1971). See generally WOOD AND KEYSER, *SEARS, ROEBUCK DE MEXICO, S.A.* (1953).

⁵⁵ BARNET AND MULLER, *GLOBAL REACH* 160 (1974) estimate that the minimum rate of return on investment for U.S. manufacturing subsidiaries in Latin America during the 1960's was at least 40 percent. See also Muller, *Multinational Corporations and the Underdevelopment of the Third World*, in *THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT* 147-48 (Wilber ed. 1973), noting that in 1968, 15 multinational drug subsidiaries in Colombia showed a rate of return on investment in excess of 136 percent. These figures, moreover, do not take account of export underpricing, and are based on the net worth of investment as declared by subsidiaries which is probably overvalued. Brundenius, *The Anatomy of Imperialism: The Case of Multinational Mining Corporations in Peru*, 9 *J. OF PEACE RESEARCH* 189, 199 (1972) (a study of the Mascona Mining Company which estimated its annual profits on capital invested in Peru from 1953 to 1966 to be from 29.7 percent to 132.6 percent, depending on the accounting method used).

ment and services⁵⁶ adversely affect a nation's balance of payments. Observers estimate that between 1946 and 1967 for each dollar entering Latin America approximately \$2.70 left.⁵⁷ The interminable nature of the remittances and the lack of guarantees of new capital inflow exacerbate the impact of the suction effect of foreign direct investment in developing countries.

A comparison of investment outflow and inflow by multinational firms may, however, be misleading on several grounds. Foreign investments in new productive activities (as opposed to the takeover of existing firms) generate their own capacity to reduce imports and increase exports of a developing nation. Critical unresolved assumptions include the following: 1) Does the possibility of local replacement of foreign direct investment exist? For example, does a subsidiary's output add to or act as a substitute

Subsidiaries in extractive industries are usually much more profitable, but manufacturing returns generally are understated because of the exclusion of fees and royalties and the use of transfer pricing. For use of transfer pricing as an important element in remittance of income, see Vaitos, *Foreign Investment Policies and Economic Development in Latin America*, 7 J. WORLD TRADE L. 619, 638 (1973) (Studies in Colombia, Peru, Chile, Ecuador and Mexico of firms in electronics, pharmaceuticals, rubber, chemicals, fish, timber and precious metals). Multinational firms assert that in view of the risks undertaken and the greater instability of developing countries, profits are not excessive. Between 1960 and 1968, American multinational firms repatriated 79 percent of net profits from Latin America. From 1965 to 1968, 52 percent of the profits of U.S. manufacturing subsidiaries operating in Latin America were repatriated to the parent corporation. BARNET AND MULLER, *GLOBAL REACH* 153-154 (1974).

⁵⁶ For developing countries, a one-sided flow of technology exists in favor of the developed countries. A study of 13 developing countries (representing 65 percent of the population and 56 percent of the total GNP of developing nations) showed a total cost, in the late 1960's for patents, licenses, know-how and trademarks, management and service fees, to be \$1.5 billion per year or more than half of the flow of direct private investment to developing countries. The costs were growing at the rate of 20 percent per year and absorbing an ever increasing share of export earnings. UNCTAD, *TRANSFER OF TECHNOLOGY* (Doc. No. TD/106 1971). Royalty figures may be deceptive, especially between wholly owned subsidiaries and a parent corporation, as they represent one way of taking money out of a subsidiary in response to corporate strategy and/or governmental policy.

⁵⁷ Dos Santos, *The Structure of Dependence*, 60 AM. ECON. REV. 231, 234 (1970). Earnings repatriations create a net outflow. Between 1965 and 1970 the net investment inflow to 43 developing countries was 30 percent of the income outflow. U.N., DEPT OF ECON. AND SOC. AFFAIRS, *MULTINATIONAL CORPORATIONS* 54 (1973). Further empirical studies must be undertaken to determine the impact of multinational firms on a developing host nation's balance of payments. From 1950 to 1970, U.S. subsidiaries repatriated \$790 million in profits from mining operations in Peru, and the parent corporations invested \$284 million in the form of loans. Brundenius, *The Anatomy of Imperialism: The Case of the Multinational Mining Corporations in Peru*, 9 J. OF PEACE RESEARCH 189, 196 (1972).

for what otherwise would have been produced? 2) What is the impact of foreign direct investment on import substitution by a developing country which may be divided into impact of new subsidiaries as opposed to older units? 3) Were earnings of foreign subsidiaries reinvested or remitted to the parent corporation? Stated differently, for what other purposes would local resources have gone in the absence of foreign direct investment? Foreign subsidiaries may also stimulate the establishment of complementary domestic industries and generate exports from the local production of foreign firms.⁵⁸ However, the generation of income by foreign subsidiaries probably raises income levels and induces a higher level of consumption of imports thereby reducing the supply of local goods available for export.

Global enterprises also tap local capital markets, especially for short-term working capital, drying up the sources of financing relied on by local firms. Subsidiaries of multinational banks

⁵⁸ UNCTAD, *RESTRICTIVE BUSINESS PRACTICES 19-20* (1972) (prepared by Raymond Vernon); Nisbet, *Transferring Wealth from Underdeveloped to Developed Countries Via Direct Foreign Investment: A Marxist Claim Reconsidered*, 37 S. ECON. J. 93 (1970); UNCTAD, *BALANCE OF PAYMENTS AND INCOME EFFECTS OF PRIVATE FOREIGN INVESTMENT IN MANUFACTURING: CASE STUDIES OF INDIA AND IRAN*, (Doc. No. TD/B/C.3(V)/Misc. 1 1971) (prepared by Sanjaya Lall); UNCTAD, *FINANCIAL RESOURCES FOR DEVELOPMENT, PRIVATE FOREIGN INVESTMENT IN ITS RELATIONSHIP TO BALANCE-OF-PAYMENTS EFFECTS ON PRIVATE FOREIGN INVESTMENT IN DEVELOPING COUNTRIES: SUMMARY OF CASE STUDIES OF INDIA, IRAN, JAMAICA AND KENYA*, St. 72-247 (1972) (Prepared by Sanjaya Lall). U.N., *DEP'T OF ECON. AND SOC. AFFAIRS, MULTINATIONAL CORPORATIONS 55* (1973) states: "The one [study] based on the assumption that no local replacement was possible indicated a positive impact on the balance of payments of developing countries; the other, assuming local replacement, indicated negative impact in the case of Latin America, and neutral in other developing countries." Citing HUFBAUER AND ADLER, *OVERSEAS MANUFACTURING INVESTMENT AND THE BALANCE OF PAYMENTS* (1968) and STREETEN AND HALL, *UNCTAD, MAIN FINDINGS OF A STUDY OF PRIVATE FOREIGN INVESTMENT IN SELECTED DEVELOPING COUNTRIES*, (Doc. No. TD/B/C.3111 1973) (Study of 159 foreign firms in Colombia, India, Iran, Jamaica, Kenya and Malaysia. In 55 percent of the sample the impact on a nation's balance of payments was positive; however, in the remaining 45 percent, it would be cheaper for a host country to substitute its own capital for existing foreign capital. For only 21 percent of the firms was the impact clearly positive, 11 percent clearly negative and 60 percent borderline. The positive impact of foreign direct investments on exports and imports is illustrated by the fact that in 1966, U.S. subsidiaries in Latin America exported \$4.5 billion in goods and imported \$1.3 billion in materials and supplies. U.N., *DEP'T OF ECON. AND SOC. AFFAIRS, MULTINATIONAL CORPORATIONS 54* (1973). However, multinational firms may limit exports, overprice imports, or require tie-in purchases. A nation's balance of payments position is adversely affected by the shift to import substitute subsidiaries which import capital goods. See FURTADO, *DEVELOPMENT AND UNDERDEVELOPMENT* Ch. 5 (1967).

may also control increasing amounts of scarce savings in a host country. The propensity of U.S. multinational banks to lend to foreign subsidiaries of U.S. corporations, stemming from the long-range global interests of the banks, further depletes funds available for local enterprises.⁵⁹

C. Cultural Factors

The economic penetration by multinational corporations shapes and distorts cultural patterns in developing countries.⁶⁰ The Westernization (particularly the Americanization) of culture presents a formidable threat to the cultural integrity of the non-Western world. Multinational firms transmit the values and life styles of global capitalism. Not only do the local employees of a foreign subsidiary adopt a life style modeled on the image established by the parent corporation, its executives and employees, but the ethic of consumption spreads to an entire society. A developing country's elite, by imitating Western consumption patterns, creates a demonstration effect which others attempt to imitate.

Multinational firms reproduce the products and ideas originated in developed countries. To remain competitive, local industry must gear production to meet the requirements of a consumer society. But the emerging taste and consumption patterns may fail to meet the needs of the mass of citizens in developing countries. For example, the manufacture and sale of automobiles in

⁵⁹ BARNET AND MULLER, *GLOBAL REACH* 140-141 (1974); Muller, *Multinational Corporations and the Underdevelopment of the Third World*, in *THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT* 136-138 (Wilber ed. 1973). See also Weigel, *Multinational Approaches to Multinational Corporations*, 11 *FINANCE AND DEVELOPMENT* 27, 29 (1974); Vaitos, *Foreign Investment Policies and Economic Development in Latin America*, 7 *J. WORLD TRADE* 619, 634, 635 (1973). For an analysis of sources of funds used to expand U.S. subsidiaries in Canada and the mobilization of Canadian savings by U.S. multinational firms see LEVITT, *SILENT SURRENDER* 137-140 (1970).

Debt repayments to bilateral agencies such as the U.S. Agency for International Development and multilateral agencies such as the World Bank also drain savings from developing countries.

⁶⁰ Evans, *National Autonomy and Economic Development: Critical Perspectives on Multinational Corporations in Poor Countries*, in *TRANSNATIONAL RELATIONS* 332-335 (Keohane and Nye eds. 1971); Vaitos, Director, Technology Policy Group, Junta del Acuerdo de Cartagena, *GROUP OF EMINENT PERSONS* 396 (1974); Peter Goldman, President of International Organization of Consumer's Unions, *GROUP OF EMINENT PERSONS* 193-194 (1974).

See generally BARNET AND MULLER, *GLOBAL REACH* 172-184 (1974). See also Woollacott, *Things That Went Better With Coke*, *Manchester Guardian*, May 24, 1975, at 4; *INTERNATIONAL CHAMBER OF COMMERCE, MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT* 29 (1974).

a developing country absorbs resources which might be utilized for mass transportation, creates pollution problems and requires the importation of petroleum (unless available and refined locally) thereby increasing a nation's balance of payments difficulties. Critics charge that the overzealous promotion of infant formulas in developing countries may indirectly contribute to malnutrition, illness and higher infant mortality rates. The cost of using infant formula may also drain a significant portion of a family's income.⁶¹

With foreign direct investment comes a surfeit of products and reliance by global enterprises on sophisticated marketing techniques to sell their products and create and mold consumer wants and needs. A loss of national control of the communications media may result from the domination of consumption patterns by multinational corporations. Television and radio carry the messages designed to stimulate consumption.⁶² Motion pictures and television create the images of Western society and its values — the thrill of violence and consumption.⁶³ Global advertising firms, particularly American advertising agencies, increasingly account for larger proportion of advertising placed in developing nations. The impact of marketing manipulation⁶⁴ and the sales techniques which observers have deemed inappropriate may be seen in a shift in eating habits, for example, from local beverages (or local soft drinks) to the international soft drinks resulting from an exploitation of brand names. The spread of 400 Kentucky Fried Chicken outlets (Heublein, Inc.) in 30 countries and the international activity of McDonald's and Burger King (Pillsbury Co.) evidence the worldwide proliferation of American "culture."⁶⁵

⁶¹ Crittenden, *Baby Formula Sales in 3d World Are Criticized*, N.Y. Times, Sept. 11, 1975, at 55, cols. 1-5. The problem arises because the milk solid form of infant formula sold overseas must be mixed with water which may be unclean. Improper sterilization of bottles and nipples further contributes to health hazards. In Nigeria the cost of feeding a three month infant with formula is estimated to approximate 30 percent of the minimum urban wage.

⁶² SCHILLER, *MASS COMMUNICATION AND AMERICAN EMPIRE* (1969); WELLS, *PICTURE-TUBE IMPERIALISM: THE IMPACT OF U.S. TELEVISION ON LATIN AMERICA* (1972).

⁶³ *Id.* See also CUBACK, *THE INTERNATIONAL FILM INDUSTRY* (1969).

⁶⁴ Schiller, *Madison Avenue Imperialism*, *TRANS-ACTION* 52, 55 (1971); Field, *Transnationalism and the New Tribe*, 25 *INT'L ORGANIZATION* 353 (1971); Osterberg and Ajami, *The Multinational Corporation: Expanding the Frontiers of World Politics*, 15 *J. CONFLICT RESOLUTION* 457, 467-468 (1971). BARNET AND MULLER, *GLOBAL REACH* 143 (1974) note that American firms can use techniques developed and paid for in the domestic market.

⁶⁵ Said and Simmons, *The Politics of Transition*, in *THE NEW SOVEREIGNS* 27 (Said & Simmons ed. 1975). An interesting impact of consumption is the worldwide tourism industry which ships the world's richest citizens to the world's

The cornucopia of products and advertising affects the values of the citizens of developing countries. Instead of meeting the basic food, health and housing needs, the consumer society fostered by foreign direct investment stimulates wasteful appetites, misallocates resources and contributes to a worldwide homogenization of life styles and values.⁶⁶

D. Political Factors

The rise of a Western-oriented consumer society, it is alleged, co-opts the elite of developing countries who are closely tied to multinational corporations and the international capitalist system. Global firms create client groups whose interests, privileges and status derive from ties to foreign business and who have a vested interest in perpetuating the preeminent position of multinational corporations in a local economy. In a political process characterized by a lack of widespread participation, the detachment of an elite from the masses by multinational firms enables multinational firms to undermine national political autonomy and to diminish national identification. In short, a symbiotic relationship exists between foreign investors and members of local oligarchies which forms the backbone of local reactionary political parties.

Other observers have rejected this deterministic view of the co-optation of local groups and the submergence of the national political process. A study of foreign copper companies and their alleged conservative retinue in Chile from 1955 to 1970, indicates that leaders of the traditional upper classes in Chile did not oppose and in some instances led the movement to restrict the activities of foreign copper producers.⁶⁷ The nationalistic urges of local con-

poorest societies, thereby graphically demonstrating for the nationals of developing countries the gulf between rich and poor. Moreover, local elites realize their relatively underprivileged status by global standards. See TURNER, *MULTINATIONAL COMPANIES AND THE THIRD WORLD* Ch. 8 (1973).

⁶⁶ See, e.g., FRANK, *CAPITALISM AND UNDERDEVELOPMENT IN LATIN AMERICA* 281-318 (1967); Johnson, *Dependence and the International System*, in *DEPENDENCE AND UNDERDEVELOPMENT* 105, 109 (Cockcroft, Frank, Johnson eds. 1972); Frank, *Who is the Immediate Enemy?*, *Id.* at 429; BARAN, *THE POLITICAL ECONOMY OF GROWTH* 153 (1957); BOORSTEIN, *THE ECONOMIC TRANSFORMATION OF CUBA* 12-14 (1968); Evans, *National Autonomy and Economic Development: Critical Perspectives in Multinational Corporations in Poor Countries*, in *TRANSNATIONAL RELATIONS* 339-340 (Keohane and Nye eds. 1971).

⁶⁷ MORAN, *MULTINATIONAL CORPORATIONS AND THE POLITICS OF DEPENDENCE* 172-315 (1974); Moran, *The Alliance for Progress and 'The Foreign Copper Companies and their Conservative Allies' in Chile 1955-1970*, 25 *INTER-AM. ECON. AFF.* 3 (1972). See also MORAN, *The Theory of International Exploitation in Large Natural Resource Investments*, in *TESTING THEORIES OF ECONOMIC IMPERIALISM* 168-169 (Rosen and Kurth eds. 1974).

servative groups may, therefore, block their alleged symbiosis with foreign investors. Local businessmen who compete with foreign subsidiaries perceived their own independent economic interests and generally sought to limit the activities of multinational corporations.⁶⁸ Local bureaucrats tended to make increasing demands on foreign interests so as to increase governmental revenues and perpetuate their claim to power.⁶⁹ These bits of evidence may lead to the conclusion that foreign interests in developing countries, especially in the natural resource field, have few permanent domestic allies.⁷⁰

But multinational firms desire to perpetuate conditions favorable to foreign direct investment, thereby curtailing or destroying the sovereignty of nation-states. To achieve such an objective, global enterprises may attempt to subvert a nation's political process by more direct means than the promotion of a consumer society. Internal cleavages which make the politics of developing countries penetrable and fragile facilitate these efforts. Multinational corporations have actively intervened in the domestic affairs of host developing countries. One instance involved International Telephone and Telegraph Company which financed a coup in Chile against the late President Salvadore Allende Gossens. There and in other instances multinationals sought to subvert (or in that wonderful euphemism "destabilize") the local political process by supporting and collaborating with forces hostile to legitimately constituted political authority.⁷¹ On other occasions global enterprises sought to utilize their broad financial power to develop close, and hopefully favorable, relationships with governmental officials through a variety of means including bribery. Corporate resources have also been used, either legally or illegally under the laws of a host nation, to support particular political parties.⁷² The political process in such nations may constitute a

⁶⁸ VERNON, SOVEREIGNTY AT BAY 199-200 (1971); Vaitos, *Foreign Investment Policies and Economic Development*, 7 J. WORLD TRADE L. 619, 629-630 (1973).

⁶⁹ VERNON, SOVEREIGNTY AT BAY 197-198 (1971). Bureaucrats have also gained more knowledge about the impact of foreign investments through the collection and exchange of information and better training of local personnel.

⁷⁰ MORAN, MULTINATIONAL CORPORATIONS AND THE POLITICS OF DEPENDENCE 247 (1974).

⁷¹ U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 46 (1974); SAMPSON, THE SOVEREIGN STATE OF I.T.T. (1973); Harrington, *U.S. Capitalism: Partner in Chile's Junta*, 8 BUS. & SOC. REV. OF INNOV. 73 (1973); The International Telephone and Telegraph Company and Chile, 1970-1971, *Report to the Senate Committee on Foreign Relations by the Subcommittee on Multinational Corporations* (1973).

⁷² See, e.g., Riding, *Balaguer and His Firm Ally, the U.S., Are Targets of Dominican Unrest*, N.Y. Times, June 6, 1975, at 6, col. 3.

shadow game with the real power held by global enterprises. In addition, global firms have pressured their home countries, with diminishing success, to intervene in the domestic affairs of a host nation. The most conspicuous example of the latter pattern of behavior was the economic strangulation of Allende's regime by the United States government, which resulted in part from the urgings of American business interests.⁷³

Despite the apparent power of multinational corporations, developing countries sought to break out of the grasp of global firms and to limit or end their economic, cultural, and political dependency. These efforts undertaken by national or regional groups, and through the formulation of cartels of raw material producers, form one of the turning points of the 20th century world development.

II. BREAKING FREE FROM THE GRASP OF DEPENDENCY

Third World nations at the periphery, seeking a greater degree of self-determination, gradually abandoned their previously passive role.⁷⁴ Local elites, in many countries, no longer act as pliable allies of multinational firms. Changes occurred in the composition of local ruling groups and in the value structures of such groups. Control over vital raw materials shifted the balance of economic power to nations controlling such natural resources. Nations have also become aware of the opportunities to bargain and to en-

⁷³ U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 45-46 (1974); The International Telephone and Telegraph Company and Chile, 1970-1971, *Report to the Senate Committee on Foreign Relations by the Subcommittee on Multinational Corporations* (1973); Birns, *Allende's Fall, Washington's Push*, N.Y. Times, Sept. 15, 1974, at 21, col. 2. See also BUS. WEEK, Aug. 11, 1973, at 102-103 which reports that while I.T.T. was engaged in a dispute with Ecuador over compensation for appropriated properties, the corporation pressured the U.S. Agency for International Development to withhold from Ecuador for 2 years \$15.8 million in authorized assistance funds. See also Nader and Green, *The Worldcorp Above the Law?*, 12 WAR/PEACE REP. 3, 6 (1973); Sigmund, *The "Invisible Blockage" and the Overthrow of Allende*, 52 FOR. AFF. 322 (1974) argues that the U.S. government did not impose an invisible blockage on Chile.

⁷⁴ As Venezuela's President Carlos Andres Perez put it, "Today, industrialized nations must share decisionmaking with us, we believe in interdependence, but interdependence among equals rather than an interdependence in which there are subordinates." Interview with President Carlos Andres Perez, *What the Third World Wants*, BUS. WEEK, Oct. 13, 1975, at 56. For background on nationalism see DEUTSCH, *NATIONALISM AND SOCIAL COMMUNICATION: AN INQUIRY INTO THE FOUNDATIONS OF NATIONALITY* (1953); HAYES, *THE HISTORICAL EVOLUTION OF MODERN NATIONALISM* (1931); KOHN, *THE IDEA OF NATIONALISM: A STUDY OF ITS ORIGINS AND BACKGROUND* (1944); ARENDT, *THE ORIGINS OF TOTALITARIANISM* (2d ed. 1958).

ter into coalitions. Before analyzing these trends in the area of raw materials, recent attempts by governments to manipulate economic arrangements involving manufacturing operations of foreign subsidiaries will first be examined. Pursuit of national economic and political objectives evolved through three phases: Greater use of bargaining skills to renegotiate with foreign subsidiaries, national legislation, and regional programs. These strategies generally pursued the same objectives vis-à-vis manufacturing firms; namely, to disassemble the organization, management, technology and access to markets provided by global firms and capture excess oligopoly profits. Nations hoped that increased local ownership would promote development by encouraging entrepreneurship and changing the selection of products, the technologies to be used, and marketing methods.

A. *Use of National Bargaining Position*

During the post-World War II period, developing countries operated from a weak bargaining position because of a lack of knowledge regarding the impact of global firms and the absence of the requisite technical and administrative skills. Nations gradually became aware of the fact that the cost of the package provided by multinational corporations was, as previously discussed, too great. Inappropriate modes of technology were transferred. Global firms adversely affected economic and cultural patterns by discouraging local entrepreneurs, stimulating consumption and interfering in the political process. With increased knowledge about the operations and impact of multinational corporations, nations reassessed their bargaining position. Governments of developing countries gained access to requisite expertise to oversee corporate behavior by training nationals in negotiating, taxation, accounting, and production; by hiring top rank international lawyers, accountants, economists and other academicians; and by using foreign and local industrialists, state corporations and advisors from international institutions in the developed world.⁷⁵ The competition by labor-intensive industries for new

⁷⁵ U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 32 (1974); Moran, *The Theory of International Exploitation in Large Natural Resource Investments*, in *TESTING THEORIES OF ECONOMIC IMPERIALISM* 168-169 (Rosen and Kurth eds. 1974); Streeten, *Costs and Benefits of Multinational Enterprises in Less-Developed Countries*, in *THE MULTINATIONAL ENTERPRISE* 248 (Dunning ed. 1971). A Harvard Development Advisory Group has been established to advise developing countries. Salzman, *How to Reduce and Manage the Political Risks of Investment in Less Developed Countries*, in *GLOBAL COMPANIES* 98 (Ball ed. 1975). See also

sources of cheap labor assisted the developing countries. The growing markets in developing countries also made these areas of greater interest to global enterprises. Once a multinational firm located a plant in a country, such an operation became a hostage subject to being squeezed by the government.

Moving from the realization of their increased bargaining position, nation-states required the payment of higher taxes or other fees and imposed restrictions on the financial and operating policies of existing foreign manufacturing units. The increasing complexity of industrial processes and products (the supposed genie of progress) lent an esoteric character to the manufacturing activities. The regenerative nature of manufacturing operations, as opposed to raw material extractive activities, rendered the former less vulnerable to governmental renegotiating pressures.⁷⁶ Facing this dilemma regarding established operations, governments emphasized control over the entry of foreign firms into local markets as their primary strategy.

Access to a greater number of options formed another card in the government's bargaining hand. Leaders realized that a number of firms could supply the type of technologies required by a developing nation.⁷⁷ The ability to negotiate with multinational firms from different nations strengthened a developing nation's bargaining advantage.⁷⁸ Techniques used by nation-states included competitive bidding and challenging established operations by new competitors, often of a different nationality, or stimulating local firms to prevent key industries from falling under foreign domination. In addition to diversifying sources of technology and foreign investment, nations sought new trading partners and mar-

Hanner, *Business Investment Negotiations in Developing Countries*, 18 *BUS. HORIZONS* 97 (1975) and Williams, *Negotiating Investments in Emerging Countries*, 43 *HARV. BUS. REV.* 89 (1965). The dynamics of negotiation between large foreign companies and the Indian government is analyzed in KAPOOR, *INTERNATIONAL BUSINESS NEGOTIATIONS: A STUDY IN INDIA* (1970).

⁷⁶ VERNON, *SOVEREIGNTY AT BAY* 106 (1971).

⁷⁷ Comments by Ryutaro Komiya, U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS* 125 (1974). PUBLIC AFFAIRS DEPT., EXXON CORP., *THE ROLE OF TECHNOLOGY IN DEVELOPMENT* (1974) stated:

The experience of Exxon, IBM and other companies generally shows that there is competition in meeting the technical needs of developing countries and that the negotiators of developing countries are well informed and skillful.

⁷⁸ However, as multinational corporations from the United States, Western Europe and Japan become aware of the bargaining process used by a nation, firms could form a new oligopoly which would prevent a nation from playing off firms from different countries.

kets. Economic and technical assistance provided by centrally planned economies was tapped. But limitations on governmental expertise, the pervasiveness of corruption, the size of a local market, and the amount and profitability of existing foreign direct investment restricted the ability of developing nations to break their dependence on traditional knowledge.⁷⁹ The ability of global firms to develop new products and manufacture more complex products enabled them to retain continued bargaining strength. Multinational firms headquartered in different nations could conspire to upset the strategy of competitive bidding.

B. *National Legislation*

Cognizant of their increasing bargaining power, developing countries are turning to legislation to extract a larger share of the profits, jobs, markets, technology and managerial skills created or controlled by global firms. Governments are pursuing three basic strategies: 1) limiting the entry of foreign firms by preserving certain areas for local firms and by nationalizing key sectors of the economy, 2) requiring local participation in the ownership, management or control of new foreign subsidiaries, and 3) controlling the transfer of technology through the registration of technology contracts and/or government evaluation and approval of such contracts.

The major thrust of national control centers on screening foreign direct investment and permitting entry on stringent conditions agreed to at the outset. Countries have looked to Japanese foreign investment laws as a model. To achieve self-sufficiency and economic development thought to be sound, Japan, commencing in 1950, screened foreign direct investment and only permitted those investments which could make a positive contribution to the Japanese economy. The criteria for screening were generally vague, giving government officials added latitude. Over the past quarter century, with the dramatic resurgence of its economy, Japan gradually relaxed its foreign investment restrictions. Throughout this period, the Japanese government encouraged the licensing of technology to protect domestic industry. By the early 1960's, Japan permitted foreign investment which did not unduly oppress small firms, seriously disturb the industrial order or impede local

⁷⁹ Dunning, *The Future of Multinational Enterprise*, 113 LLOYD'S BANK REV. 15, 30-31 (1974); Horst Heininger, Head of Department, Institute for International Politics and Economy, German Democratic Republic, GROUP OF EMINENT PERSONS 203-205 (1974).

development of industrial techniques. Liberalization took the form of permitting joint ventures equally owned by Japanese and foreign interests in an expanding line of product groups. Only recently has Japan permitted wholly-owned foreign subsidiaries, but only in product areas where local firms assert nearly undisputed competitive superiority.⁸⁰

The Japanese example inspired nationalists in developing countries to delineate, by legislation, general guidelines subject to assessment on a case-by-case basis by an administrative agency, covering areas of investment, ownership, restrictions on profits, business practices and transfer pricing. A general pattern has evolved. Certain economic activities (such as transportation, communications, banking and insurance) are reserved solely to local public or private enterprise. In other areas, nations welcome new foreign investment but require mandatory local participation (either on a public or private basis) of a specified percentage of ownership depending on the type of activity. Legislation usually covers both new investments and takeovers of existing local firms.⁸¹ For

⁸⁰ See Yoshino, *Japan as Host to the International Corporation*, in *THE INTERNATIONAL CORPORATION* 345 (Kindelberger ed. 1970); OZAKI, *THE CONTROL OF IMPORTS AND FOREIGN CAPITAL IN JAPAN* (1972); Kobayashi, *Foreign Investment in Japan*, in *FOREIGN INVESTMENT: EXPERIENCE OF HOST COUNTRIES* 123 (Litvak & Maule eds. 1970); THE ECONOMIC INTELLIGENCE UNIT, *THE GROWTH AND SPREAD OF MULTINATIONAL ENTERPRISE* 35-37 (1969); Okita and Miki, *Treatment of Foreign Capital on a Case Study for Japan*, in *CAPITAL MOVEMENTS AND ECONOMIC DEVELOPMENT* 139 (Adler ed. 1967); Pearl, *Liberalization of Capital in Japan*, 13 *HARV. INT'L L.J.* 59 (1972). Japan has had a strong position because of a large market with a sufficient internal demand and because of the presence of a large, innovative industrial sector. See generally 6 *CASE W. RES. J. INT'L L.* 173 *passim* (1974).

Since the 1960's France has screened proposed foreign investments. Torem & Craig, *Developments in The Control of Foreign Investments in France*, 70 *MICH. L. REV.* 285 (1971); JOHNSTONE, *UNITED STATES DIRECT INVESTMENT IN FRANCE: AN INVESTIGATION OF THE FRENCH CHARGES* 79 (1965).

⁸¹ See generally *New Era for the Multinationals*, *BUS. WEEK*, Jul. 6, 1974, at 73; *Multinationals Find the Going Rougher*, *BUS. WEEK*, Jul. 14, 1975, at 64. India favors technical collaboration agreements subject to governmental approval, with no or a minority foreign capital participation. For example, in fields such as computers, IBM obtained 100 percent ownership of its subsidiary in India because of the complex nature of the industry and the export guarantees given. Foreign majority participation has been allowed where India has made little progress, where the cost of imported equipment is high and where export possibilities exist which will reduce the strain on foreign exchange resources. See Medhord, *Foreign Investment in India*, in *FOREIGN INVESTMENT: THE EXPERIENCE OF HOST COUNTRIES* 280 (Litvak and Maule eds. 1970). Dr. Bharat Ram, Chairman, Delhi Cloth and General Mills Company, Ltd., *GROUP OF EMINENT PERSONS* 355 (1973).

Since 1960 Thailand has used a merit ratio system which has a built in bias favoring local participation for selecting projects that warrant promotional status and various benefits. The Philippines has also used a rating system including

example, the 1973 Mexican law to promote Mexican investment and regulate foreign investment reserves certain activities for the state or local private firms and limits future foreign investment to a maximum of a 49 percent participation in all areas not covered

net valued-added and balance-of-payments effects. In Indonesia under the 1967 foreign investment law, foreign ownership must be extinguished within 30 years of entry. If capital is entirely foreign, the enterprise must allow for national capital participation after a specified period. Burma has banned Chinese and Indian businesses and Indonesia has limited all but its nationals from distribution and marketing activities. In the Philippines, only its citizens can engage in retail trade. See Robinson, *The Engagement of Host Government Interests Upon the Entry of Foreign Business*, in *INTERNATIONAL BUSINESS-GOVERNMENT AFFAIRS* 40-41 (Fayerweather ed. 1973); Galloway and Kapoor, *Asia: Problems and Prospects for MNC*, 6 *COLUM. J. WORLD BUS.* 33, 34-37 (1971). Malaysia is seeking to give Malays, as distinct from local Chinese or Indians, a larger share of jobs and equity in foreign subsidiaries. *Malaysia A Get-Tough Policy on Foreign Control*, *BUS. WEEK*, Jul. 7, 1975, at 32; *Christian Science Monitor*, Jul. 24, 1975, at 13, col. 1; Hartley, *Undeveloping Nation? Malaysia Scares Away Foreign Capital with Rules for Redistributing Wealth*, *Christian Science Monitor*, Sept. 22, 1975, at 24, col. 1.

See also P. O. Ahimie, Secretary of Finance, Federal Ministry of Finance, Nigeria, *GROUP OF EMINENT PERSONS* 158-163 (1974); Sir Ronald Walker, Special Advisor to Government of Australia on Multinational Corporations, *GROUP OF EMINENT PERSONS* 437-438 (1974). The Australian Industrial Development Corporation has provided funding to secure greater participation by Australian residents in the ownership and control of corporations engaged in Australian industry. Sir Ronald Walker, Paper Prepared for Group of Eminent Persons on Behalf of Australia 12 (1973).

Under the Foreign Investment Review Act of 1973 (Foreign Investment Review Act of 1973 21-22 E113-2, c. 46 (1973)) the Canadian government has screened proposed foreign takeovers to secure for Canada the maximum benefit from foreign capital. The test used in screening turns on whether the takeover of a Canadian business firm's investment will be of significant benefit to Canada. The screening agency in the Ministry of Industry, Trade and Commerce also attempts to bargain with participants for improved future performance. Beginning on October 15, 1975, foreign direct investment in new lines of business in Canada, including expansion by companies already operating in Canada, were screened to insure that the proposed investment generates significant benefits for Canada. The government also issued a new 14 point code of conduct for foreign companies in Canada. Provincial leaders in Canada are disturbed because of possible curtailment of industrial growth in their areas. A majority of Canadians must also serve on the boards of directors of foreign controlled corporations. Over the past 15 years Canada has also excluded foreigners from control of banks, book and magazine publishing, and radio and television broadcasting. The Canadian Development Corporation seeks to promote new Canadian controlled corporations by pooling management skills and capital, thereby providing a Canadian alternative to foreign subsidiaries. Fayerweather, *Canadian Foreign Investment Policy*, 17 *CALIF. MANAGEMENT REV.* 74 (1975); Hartt, *Who is Affected by the New Law?*, Arnett, *What Activities Are Screened: Takeovers and New Business*, Hon. Lestair Gillespies, *Objectives of the New Legislation*, Abell, *The Foreign Investment Review Act: Reaction of the Investment Communities in Canada and Abroad*, in *CANADIAN FOREIGN INVESTMENT REVIEW SEMINAR* (Sponsored by Richard De Boo Limited & Tax Management Inc.) (1974). Patton, *An Overview of Canadian Policy Towards U.S. Investment in*

by previous legislation and decrees.⁸² An administrative body, the National Foreign Investment Commission, may increase or decrease the maximum percentage of foreign capital for certain geographical areas and economic activities. The 1973 law also requires that foreign investors receive approval by the National Foreign Investment Commission to acquire more than 25 percent of a local company's capital or over 49 percent of its fixed assets. Rather than imposing rigid rules, Mexico encourages bargaining to take place between the government and multinational corporations.

The Mexican government recommends but does not require that foreign subsidiaries offer part of their shares (preferably a major part) for purchase by the Mexican public.⁸³ Thus the Mexican statute follows the general non-retroactive pattern of foreign investment control legislation. Exceptions, of course, exist which mandate divestment. For example, Jamaica requires that its nationals obtain 51 percent of certain foreign controlled commercial banks within a specified time period.⁸⁴

Developing nations have also imposed other restrictions on

Canada, 1 J. CONTEMP. BUS. 11-15 (1972). Franck and Gudgeon, *Canada's Foreign Investment Control Experiment: The Law, the Context and the Practice*, 50 N.Y.U. L. REV. 76 (1975); Note, *The Canadian Foreign Investment Review Act: Red, White and Gray*, 5 L. & POLICY INT'L BUS. 1018 (1973); McMillan, *After the Gray Report: The Tortious Evolution of Foreign Investment Policy*, 20 MCGILL L.J. 213 (1974). Cooney, *A Cold Shoulder — Clampdown by Canadians on Investing by Aliens Alarms Multinational Firms*, Wall Street Journal, May 7, 1975, at 38, col. 1; *Trudeau's New Rules for Foreign Investors*, BUS. WEEK, Aug. 24, 1975, at 58; Trumbull, *Canada Tightens Investing Screen*, N.Y. Times, Jul. 19, 1975, at 33, col. 1; Wall Street Journal, Jul. 21, 1975, at 6, col. 1; Zehr, *Canadian Review of Foreign Investments to Be More Comprehensive in Phase 2*, Wall Street Journal, Oct. 1, 1975, at 19, col. 2. See generally *Trudeau's Balancing Act: Economic Nationalism — With Continued U.S. Ties*, BUS. WEEK, Nov. 30, 1974, at 60; and Couzin, *The Canada Development Corporation: A Comparative Appraisal*, 17 MCGILL L.J. 405 (1971). Of recent concern has been the control of the editorial content of the Canadian editions of Time and Reader's Digest. See *Borders, Canada Involved in Press Dispute*, N.Y. Times, Mar. 21, 1975, at 5, col. 1; Trumbull, *Bill on Foreign Publications Introduced in Canada*, N.Y. Times, Apr. 19, 1975, at 6, col. 1; *Breasted, Canada Plans Action on U.S. Publishers*, N.Y. Times, Apr. 30, 1975, at 18, col. 1; Trumbull, *Canadians Begin a News Magazine*, N.Y. Times, Oct. 26, 1975, § 1, at 17, col. 1; Trumbull, *Canada Likes U.S. TV-Without Ads*, N.Y. Times, Nov. 2, 1975, § 3, at 3. Burns, *Canada to Curb TV Ads Made in U.S.*, N.Y. Times, Nov. 30, 1975, § 1, at 1, col. 3; Wall Street Journal, Dec. 4, 1975, at 4, col. 2.

⁸² Sainz, Under-Secretary for Industry and Commerce of Mexico, GROUP OF EMINENT PERSONS 24-25 (1974); Werret, *Mexico: Drawing in the Reins on Foreign Investment*, 9 COLUM. J. WORLD BUS. 68 (1974).

⁸³ Sainz, *supra* note 82, at 25, 31.

⁸⁴ Jamaica, H. S. Walker, Permanent Representative of Jamaica to the U.N. in Geneva, GROUP OF EMINENT PERSONS 424 (1974).

multinational corporations including requirements that nationals comprise a specified percentage of a subsidiary's personnel, management, and board of directors. Limits have been imposed on profit repatriation and local borrowing.⁸⁵ The transfer of technology and transfer pricing have come under national regulation and scrutiny. Governments seek more information about the different components of the technology package multinational corporations provide. Countries aspire to control technology based on a realization that a failure to do so may doom a nation-state to a low status role in the present world system.

Nations have generally concluded that the global firms have levied exorbitant charges for technology they have transferred either to subsidiaries or local firms. Countries have sought to eliminate restrictive business practices including export restrictions. The 1972 Mexican law on the Transfer of Technology and the Use and Exploitation of Patents and Trademarks illustrates the desire to regulate the purchase of technology by means of disclosure, registration, evaluation, negotiation and control so as to prevent royalties deemed excessive and to eliminate contractual clauses which might impede local development. Under the Mexican statute, contracts and documents pertaining to the transfer of technology must be registered with the National Record of the Transfer of Technology. Agreements which, among other items, impose excessive royalties, restrict export of goods or services by the local technology user, limit the licensee's management powers or prohibit the use of complementary techniques, are not eligible for registry and have no legal effect.⁸⁶ Unlike the Mexican foreign investment law, the technology statute is retroactive. Companies were forced to rewrite contracts and present them to an administrative commission which has reduced royalty levels from a range of 5 to 15 percent of the licensee's annual sales to

⁸⁵ See, e.g., Vernon, *Future of the Multinational Enterprise*, in *THE INTERNATIONAL CORPORATION* 391-392 (Kindelberger ed. 1970); P. O. Ahimie, Secretary of Finance, Federal Ministry of Finance, Nigeria, *GROUP OF EMINENT PERSONS* 162 (1974).

⁸⁶ Sainz, *supra* note 82, at 25, 32; Wérrent, *supra* note 82, at 88, 94; see generally Lacy, *Technology and Industrial Property Licensing in Latin America: A Legislative Revolution*, 6 *INT'L LAW* 338 (1972); *Licensing: A Revolt Against Exorbitant Fees*, *BUS. WEEK*, Jul. 14, 1975, at 68; Medhord, *Foreign Investment in India*, in *FOREIGN INVESTMENT: THE EXPERIENCE OF HOST COUNTRIES* 280 (Litvak and Maule eds. 1970). In India collaboration agreements are subject to government approval which, in turn, are contingent on a limited term, maximum ceiling on royalty payments, and a limitation of export restrictions.

under 3 percent. Licenses costing over 3 percent have been approved for products with high research and development costs.⁸⁷

Governments are also moving into the thorny area of controlling transfer pricing. Difficulties to be surmounted include checking prices which must then be compared with world prices. Establishment of an arms-length standard may be impossible if the items are not freely traded on a world market. Nevertheless, host nations spot check areas most vulnerable to manipulation and use current infractions as grounds for reopening back tax returns. By enlarging the share of local equity held in a foreign subsidiary, it is hoped that nationals, assuming they possess the requisite business capacity and the time, will observe and check intrafirm pricing arrangements.

Unilateral efforts to regulate multinational corporations pose several problems. In addition to the cost, the administrative staff requirements, the training of negotiating personnel and the acquisition of more information on market opportunities may be beyond the reach of small countries. The possibilities of corruption, political influence, and nepotism exist. Nations also fear the loss of existing and, more importantly, future foreign direct investment as multinational firms seek out less restrictive nations.⁸⁸ As a result, nation-states have formed regional economic alliances to promote their interests.

C. *Regional Efforts*

Although impediments to regional cooperation abound (such as differences in backgrounds, resources, and ability of nationals) regional groupings strengthen the bargaining positions of developing countries and assist in evolving techniques suitable for dealing with the problems posed by global enterprises. A regional bloc can impose rules and extract concessions that few nation-states could have obtained alone. Regional arrangements also avoid competition for investments among members of a bloc that would weaken their hands in bargaining with global firms. Access to a regional free trade zone may offer an inducement for foreign in-

⁸⁷ BUS. WEEK, *supra* note 86.

⁸⁸ KOLDE, *THE MULTINATIONAL COMPANY* 199 (1974). A national effort to control multinational corporations requires periodic review and appraisal and a centralized agency to review the activities of such firms and develop criteria for projects and formulas to be followed. U.N., DEPT. OF ECON. AND SOC. AFFAIRS, *MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 83 (1973).

vestors, both present and future, to operate under the region's regulations.⁸⁹

A leading example of regional effort is Decision 24 of the Commission of the Cartagena Agreement promulgated in the early 1970's by the Andean Common Market, composed of Bolivia, Chile, Colombia, Ecuador, Peru and recently Venezuela. The Decision by the Commission has spun an intricate web covering foreign direct investment (both present and future), trademarks, patents, licensing agreements and royalties. The divestiture sections of the Decision are perhaps the most innovative approach, short of nationalization, to the problem of foreign control and dependency. Every existing foreign subsidiary must sell a majority of its stock to local investors, and new investors from outside the region must take minority positions, within 15 to 20 years, in order to be eligible for Andean Common Market trade concessions. If a multinational corporation wishes to survive in the Andean region it must comply with the divestiture requirements. Noncomplying firms will be at a disadvantage in competition with complying firms. Several sectors, for example banking, mass media, and domestic transportation, are closed to future foreign investment. Current foreign investors in such sectors are given a specified time period in which to divest themselves of at least a majority of their ownership to Andean nationals. Technology transfers and remittance of profits are also regulated and restrictive business practices (tie-in provisions and exports restrictions) are prohibited. Royalties are limited with the hope of encouraging price reductions and preventing foreign firms from using royalties to extract excess profits.⁹⁰ Despite the aims of regional arrangements to

⁸⁹ U.N., DEPT OF ECON. AND SOC. AFFAIRS, *supra* note 88, at 85-86.

⁹⁰ ANDEAN FOREIGN INVESTMENT CODE, July 17, 1971, 2 INT'L LEGAL MATERIALS 126; ANDEAN CODE ON MULTINATIONAL ENTERPRISES AND THE REGULATIONS WITH REGARD TO SUBREGIONAL CAPITAL, Dec. 9-18, 1971, 2 INT'L LEGAL MATERIALS 357. See generally COUNCIL OF THE AMERICAS, ANDEAN PACT DEFINITION, DESIGN, AND ANALYSIS (1973); Furnish, *The Andean Common Market's Common Regime for Foreign Investments*, 5 VAND. J. OF TRANSNAT'L L. 313 (1972); Diaz, *The Andean Common Market: Challenge to Foreign Investors*, 6 COLUM. J. WORLD BUS. 22 (1971); Valdez, *The Andean Foreign Investment Code: An Analysis*, 7 J. INT'L L. AND ECON. 1 (1972); Oliver, *The Andean Foreign Investment Code: A New Phase in the Quest for Normative Order as to Direct Foreign Investment*, 66 AM. J. INT'L L. 763 (1972); Moore, *Imperialism and Dependency in Latin America*, 15 J. OF INTERAMERICAN STUDIES & WORLD AFF. 21 (1973); Avery and Cochrane, *Innovation in Latin American Regionalism: The Andean Common Market*, 27 INT'L ORGAN. 181 (1973); *Multinationals Find the Going Rougher*, BUS. WEEK, Jul. 14, 1975, at 64, 65. Comment, *The Multinational Enterprise, The Context of Latin American Economic Integration: The Andean Agreement Model*, 11 SAN DIEGO L. REV. 245 (1973). On the impact of the Andean Pact ruling calling for a gradual conversion of foreign banks to enterprises dominated by

increase ownership by nationals of existing and future foreign subsidiaries, national implementation of broad policy goals may generate local variations and produce competition among members of the bloc. Respective nation-states may also offer inducements not in accord with the regional scheme. Administrative staffs must continually surmount the inadequacies of knowledge and a lack of trained manpower.⁹¹

III. THE RESPONSE OF MULTINATIONAL CORPORATIONS

As developing nations seek to obtain appropriate technology and management skills separate from foreign capital and achieve a larger share of ownership of foreign subsidiaries (including mandating fade-out divestment of existing and/or future foreign equity ownership positions), multinational firms have responded with a variety of new business arrangements including joint ventures, management contracts, and licensing agreements. The focus by developing countries on shifting the ownership position held by multinational firms may obscure the effort of such enterprises to perpetuate control over foreign ventures in which they participate. Furthermore, a developing country must carefully assess the costs and benefits of breaking up the package provided by multinational corporations and of the existing alternatives; particularly whether, if in the absence of foreign direct investment, capital may be raised domestically or through foreign borrowings.

A. Joint Ventures

A joint venture involves a partnership composed of public agencies, the government or local private interests in a developing country and a global firm.⁹² The contribution to the joint

Andean group ownership, see N.Y. Times, Aug. 13, 1975, at 19, col. 4. The Andean Pact also provides for the creation of state-owned regional multinational enterprises. This may be the first of a series of regional enterprises in developing countries which will invest overseas. EXECUTIVE SECRETARIAT FOR ECONOMIC AND SOCIAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, CONSIDERATION OF GOVERNMENTAL POLICY TOWARD TRANSNATIONAL ENTERPRISES IN LATIN AMERICA: A PRELIMINARY SURVEY 12 (1974).

⁹¹ U.N., *supra* note 88, at 85; Sunkel, Latin-American Faculty of Social Sciences, Santiago, Chile, GROUP OF EMINENT PERSONS 136 (1974); Martix, *Implementing Legislation and Judicial Trends of ANCOM Members*, in COUNCIL OF THE AMERICAS, ANDEAN PACT: DEFINITION, DESIGN AND ANALYSIS (1973).

⁹² See generally FRIEDMAN AND BEGUIN, JOINT INTERNATIONAL BUSINESS VENTURES IN DEVELOPING COUNTRIES (1971); FRIEDMAN AND KALMANOFF, JOINT INTERNATIONAL BUSINESS VENTURES (1961). TOMLINSON, THE JOINT VENTURE PROCESS IN

venture by a multinational corporation may include equity or debt funds, patents, trademarks, or essential operational factors such as a plant and equipment. In return, the global corporation seeks to share in profits and participate in policy making, planning and management functions. Multinationals may be limited in the amount of capital they can place in the joint venture and may, in some instances, participate in a contractual joint venture in which they make no capital investment.

Developing countries favor joint-venture arrangements which have been widely used in such nations.⁹³ It is hoped that such arrangements will facilitate the more rapid transmission of managerial know-how and appropriate forms of technology and will prevent abuses including excessive industrial concentration or improper political influences. The opening of equity ownership to local interests may, it is believed, promote more meaningful participation.

Joint ventures in Eastern European countries set an example to be followed by developing nations. Yugoslavia took the lead in amending its foreign investment law in 1967 to permit joint ventures. Western interests can receive equity positions in such joint ventures and own fixed assets in Yugoslavia, but a management committee composed of Yugoslav and foreign representatives must make all important management decisions by consensus. In the early 1970's, Hungary and Rumania authorized joint ventures. Western equity participation is limited to 49 percent ownership in Hungarian and Rumanian joint ventures; while in certain cases, in Yugoslavia, a foreign partner's equity share may exceed 50 percent. Hungary and Rumania have both restricted joint-venture arrangements to certain sectors of their economies. Equity investments in Hungary and Rumania do not permit Western partners to control fundamental management decisions.⁹⁴

INTERNATIONAL BUSINESS: INDIA AND PAKISTAN (1970); FRANKO, JOINT VENTURE SURVIVAL IN MULTINATIONAL CORPORATIONS (1971); STOPFORD AND WELLS, MANAGING THE MULTINATIONAL ENTERPRISE Ch. 9 (1972). See also Comment, *Joint Venture Corporations: Drafting the Corporate Papers*, 77 HARV. L. REV. 393 (1964). Gordon, *Joint Business Ventures in the Central American Common Market*, 21 VAND. L. REV. 315 (1968).

⁹³ See generally FRIEDMAN AND BEGUIN, JOINT INTERNATIONAL BUSINESS VENTURES IN DEVELOPING COUNTRIES (1971). An interesting analysis of General Tire's worldwide joint ventures is given in the statement of Thomas Fahey, Vice-President, Sales, General Tire International Company, GROUP OF EMINENT PERSONS 183-186 (1974).

⁹⁴ WOLF, EAST-WEST ECONOMIC RELATIONS AND THE MULTINATIONAL CORPORATION 74-76 (1973). See also Holt, *New Roles for Western Multinationals in Eastern Europe*, 8 COLUM. J. WORLD BUS. 131 (1973); Gabriel, *Adaptation: The Name of*

Global firms resist joint-venture arrangements, especially those entailing a minority ownership position. Multinational enterprises seek both majority ownership and voting control because of a parent corporation's desire to coordinate and integrate the worldwide production and marketing operations of a far-flung network of subsidiaries. Businessmen are wary of a governmental or public agency partner assuming a majority ownership position and making decisions which are not based on profit oriented criteria.⁹⁵

More sophisticated businessmen, however, see the need to enter into joint-venture arrangements to neutralize the political interests of local elites, bureaucrats and businessmen. Tapping local capital reduces the risk of foreign operations. Local businessmen may provide valuable information regarding local markets and products and constitute a source of government and labor contacts. Against these advantages must be placed the fact that the local partners share in the profits previously enjoyed solely by the multinational corporation. Local equity may be in scarce supply. The new local shareholders, who possess a different time frame and who desire a quicker dividend payout, pose new problems for the multinational enterprise including cost allocations between operations and reinvestment of joint-venture profits. The top heavy debt structure of a joint venture may be vulnerable to start-up and other short-term losses.

If the government of a developing country mandates that foreign investors may only establish minority ownership and voting positions in a joint venture, the multinational corporation may enter into special arrangements with the local majority partner or attempt to control the enterprise through a variety of techniques including technology and management contracts.⁹⁶ In industries in which technical change is critical, control may be exerted through a technology contract which provides that the multinational firm will supply key supervisory personnel or that such personnel will be

the MNC's Game, 7 COLUM. J. WORLD BUS. 7 (1972); Glickman and Sukijasovic, *Yugoslav Worker Management and its Effect on Foreign Investment*, 12 HARV. INT'L L.J. 260 (1971); Sukijasovic, *Foreign Investment in Yugoslavia*, in FOREIGN INVESTMENT: EXPERIENCE OF HOST COUNTRIES (Litvak and Maule eds. 1970); KRETSCHMAR AND FOOR, *THE POTENTIAL FOR JOINT VENTURES IN EASTERN EUROPE* (1972).

⁹⁵ Robinson, *Management Attitudes Toward Joint and Mixed Ventures Abroad*, 6 WESTERN BUS. REV. 14 (1962); FRIEDMAN AND BEGUIN, *JOINT INTERNATIONAL BUSINESS VENTURES IN DEVELOPING COUNTRIES* 383 (1971); STOPFORD AND WELLS, *MANAGING THE MULTINATIONAL ENTERPRISE* 152-153 (1972); Chandler, *Private Foreign Investment and Joint Ventures*, in *PRIVATE FOREIGN INVESTMENT AND THE DEVELOPING WORLD* (Ady ed. 1971).

⁹⁶ FRIEDMAN AND BEGUIN, *JOINT INTERNATIONAL BUSINESS VENTURES IN DEVELOPING COUNTRIES* 385 (1971).

satisfactory to the foreign investor.⁹⁷ A global firm may wield control through a management contract which provides for the placement of key management personnel from the parent corporations in operating posts because of local skill shortages.⁹⁸ Use of these and other techniques led two knowledgeable observers to conclude: "Nevertheless, although a number of foreign investors likewise feel that voting and technical control should always be linked, a majority of them consider their technical superiority an adequate means of exercising *de facto* control over the foreign joint ventures where they are in a minority position."⁹⁹

The local majority shareholders who lack a common purpose, have no interest in exercising control, or are on friendly terms with foreign interests, also facilitate the control aspirations of multinational corporations. A small local elite may repeatedly participate in the number of joint ventures in a nation because of the difficulty, if not the impossibility, of broadening the base of private local investor involvement. The elite group may be unresponsive to national priorities or governmental objectives thus providing ineffectual representation for national interests. A dispersion of a majority local ownership position may create a passive, non-unified group enabling a minority foreign interest concentrated in one or two foreign corporations to hold control.¹⁰⁰

More significantly from the viewpoint of developing countries, joint ventures may fail to cure the problems raised by manufacturing activities of multinational corporations. A recent study concluded that a joint-venture arrangement as contrasted with a wholly-owned foreign subsidiary may not, on balance, produce a greater contribution to national economic and social development.¹⁰¹

⁹⁷ *Id.* at 386.

⁹⁸ *Id.* at 387, 125, 126, 272, 273, 280, 284. Nestle and Unilever seek management control even if such firms occupy a minority ownership position. Thomas Fahey, Vice-President, Sales, General Tire International Company candidly noted, "In some of our companies where we have a minority participation, we supply the management and run the business as though it were ours because we have the best interest that it be successful." GROUP OF EMINENT PERSONS 189 (1974). See also BIVENS AND LOVELL, JOINT VENTURES WITH FOREIGN PARTNERS 43 (1966).

⁹⁹ See FREIDMAN AND BEGUIN, *supra* note 96, at 386.

¹⁰⁰ U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 60-61 (1974).

¹⁰¹ STOPFORD AND WELLS, MANAGING THE MULTINATIONAL ENTERPRISES 152-153, 159-166 (1973); U.N., DEP'T. OF ECON. AND SOC. AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES 29-30 (1974), UNCTAD, RESTRICTIVE BUSINESS PRACTICES 24-25 (1972). See also de la Torre, *Foreign Investment and Export Dependency*, 23 ECON. DEVELOPMENT AND CULTURAL CHANGE 133, 143-45, 149 (1974); Bonin, *The Multinational Firm as a Vehicle*

Joint ventures pay more for technical and managerial services in the form of royalties and other fees than do wholly-owned subsidiaries. A majority-owned subsidiary will generally receive greater access to the global distribution channels of its parent corporation than a joint venture. A multinational firm may also attempt to exercise more control over the export decisions and distribution patterns of a minority-owned joint venture in order to protect and enhance its global marketing strategy. Use of know-how and trade names may be restricted by contract to certain geographical areas. Joint ventures place a double burden on a local capital market by using the financial resources of local partners as well as tapping local credit sources. Although the amount of capital available for other investments may be reduced, the impact of using local capital to finance a joint venture depends on an assessment of how such local funds would otherwise have been deployed. Contrasted with these disadvantages, joint ventures generally pay lower prices than do wholly-owned foreign subsidiaries for intermediate goods purchased from multinational firms. Higher charges for know-how, trade names, and management and technical services and other overhead expenses may, however, counterbalance the diminished effectiveness of transfer pricing.

A developing country may wish to pay the economic price, at least in the short run, in an attempt to extricate itself from the yoke of dependency. To reduce the drawbacks of joint ventures, developing countries turned to careful scrutiny and appraisal of control techniques used by foreign interests, even those occupying minority positions. Several corporations may be invited to serve as the foreign partners for a venture. The bargaining position of developing countries in the regulation of joint ventures in the final analysis depends on several factors including the type of technology, the size of the local market and the number of multinational firms possessing the requisite technological, managerial or marketing skills.¹⁰² If a nation wishes to extract the benefits of multinational corporations, but avoid the encroachment of Western

for the *International Transmission of Technology*, in *THE MULTINATIONAL FIRM AND THE NATION STATE* 119 (Pacquet ed. 1972) (limitations on exports may exist more often in joint ventures and in licensing agreements than in parent-subsidiary relationships); BRASH, *AMERICAN INVESTMENT IN AUSTRALIAN INDUSTRY* 95-98, 207, 233, 257 (1966).

¹⁰² Because of its technological and marketing superiorities, IBM insists upon and has only wholly-owned foreign subsidiaries, even in Japan and India. FRIEDMAN AND BEGUIN, *supra* note 96, at 213-219.

ideas and values, establishment of industrial enclaves may also become necessary.

B. *Other Arrangements Excluding Foreign Direct Investment*

A country wishing to avoid foreign equity or debt investment may gain technological and managerial know-how by requiring multinational corporations to license technology or enter into management and marketing contracts.¹⁰³ The experience of Eastern European nations again provides a useful guide for developing countries.¹⁰⁴ Major contractual techniques used by Eastern European countries to achieve an inflow of intangible skills (managerial, administrative and technical) include technology licenses, turnkey contracts, production arrangements and management contracts. The licensing of technology, know-how and other forms of information involves the payment to firms, in cash or deliveries of products in kind, of fixed or variable fees (the latter linked to performance of the venture) over a limited time period. Contractual arrangements may be renegotiated at specified intervals. Turnkey concepts include a Western firm providing design and technology for a plant and furnishing more sophisticated equipment, while the local entity assumes responsibility for the construction of a plant and supplies less sophisticated technology. Foreign interests may construct an entire plant which local management then operates. Under a production arrangement a Western corporation supplies the necessary production technology and/or part of the product line. The Eastern partner furnishes part of the production line and perhaps some of the technology. The final product, under a production arrangement, may be jointly marketed or marketed by each partner in its own national market or in a regional

¹⁰³ U.N., DEPT. OF ECON. AND SOC. AFFAIRS, MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT 39 (1973); U.N., DEPT. OF ECON. AND SOC. AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES 27 (1974); GABRIEL, THE INTERNATIONAL TRANSFER OF CORPORATE SKILLS: MANAGEMENT CONTRACTS IN LESS DEVELOPED COUNTRIES (1967); Gabriel, *MNCs in the Third World: Is Conflict Unavoidable?*, 50 HARV. BUS. REV. 37 (1972); Robinson, *The Global Firm-to-Be: Who Needs Equity?*, 3 COLUM. J. WORLD BUS. 23 (1968); Robinson, *The Developing Countries, Development, and the Multinational Corporation*, 403 ANNALS 67, 77 (1972).

See also Galloway and Kapoor, *Asia: Problems and Prospects for the MNC*, 6 COLUM. J. WORLD BUS. 33-40 (1971); Behrman, *Foreign Investment and the Transfer of Knowledge and Skills*, in UNITED STATES PRIVATE AND GOVERNMENT INVESTMENT ABROAD 114 (Mikesell ed. 1962). Nehemkis, *Latin America: Testing Ground for International Business*, 13 CALIF. MANAGEMENT REV. 87, 92-94 (1971).

¹⁰⁴ WOLF, EAST-WEST ECONOMIC RELATIONS AND THE MULTINATIONAL CORPORATION 66-69 (1973).

trading area. A management or marketing contract may be employed. Under such an agreement a foreign corporation receives a fixed payment for future services rendered over a specified time period with possible provision for incentives for successful performance.¹⁰⁵

Unless forced to enter a market by transferring skills, not capital, the approach of multinational corporations' contractual arrangements varies depending on a number of factors. If a nation's market is too small to warrant the investment or if a firm lacks the capital to make an investment then contractual techniques will be favored. However, many corporations desire to make direct foreign investments. Firms possessing a technological lead or those having incurred substantial research and development expenditures generally evidence a lack of interest in licensing. In such instances, the parent wishes to control its technological and knowledge inputs. Such firms do not want to give away valuable know-how as part of the contractual arrangement. Although sufficient control may be achieved by contractual arrangements such corporations wish to supply an entire package, including capital. If a contractual arrangement would generate a return deemed inadequate, a firm may transfer less sophisticated technology or skills. Other multinational companies seeking to control market developments, including prices, profit remittances and allocation of resources to protect product standards and foreclose any threat to established market positions, avoid contractual arrangements.

A developing country which forces a multinational corporation to unbundle the package and transfer skills but not capital, faces at least two dangers. A certain percentage of firms will not enter into such agreements. Depending on the clout of such firms, they may seek to renegotiate the terms of entry. Other firms will utilize contractual arrangements involving formal or informal restrictions which, in fact, increase the cost of the arrangement. Such restrictions also permit the global firm, even in the absence of a capital investment, to control the local venture and utilize such operations as part of its worldwide system. The perpetuation of control occurs because the expertise and knowledge of multinational corporations creates a decision-making capacity beyond the monitoring ability of a local firm or a developing country.¹⁰⁶ Each contractual supplier may also raise the price of the

¹⁰⁵ For example, Fiat contracted to build an auto factory in the Soviet Union. *Multinationals: A Fiat is a Lada is a Zastava*, BUS. WEEK, Feb. 12, 1972, at 32.

¹⁰⁶ Baranson, *Technology Transfer Through the International Firm*, 60 AM. ECON. REV. 435 (1970). IBM desires wholly-owned subsidiaries so as not to dilute

ingredient furnished by realizing that the available return depends on the use of other factors not under its control.

To counteract the efforts of multinational firms to achieve control, governments have sought expert advice and have trained nationals to monitor operations and manage businesses. These steps have enabled nations to take the appropriate action against multinational entities engaging in restrictive business practices. Local employees, officers and directors must, of course, exercise effective surveillance. A lack of local capabilities and a continued need to import knowledge and technology may perpetuate the dependency syndrome.

C. Divestment

To secure both capital and intangible resources (management, marketing and technology) offered by multinational enterprises, experts have advocated that developing countries use a fade-out divestment scheme for future ventures and perhaps existing foreign subsidiaries.¹⁰⁷ The divestment arrangement contemplates the conversion of existing or future wholly-owned foreign subsidiaries into joint ventures in which local interests participate as equity owners or into a totally locally-owned business within a specified time period. The foreign investors' stake (including profit interests and ownership of intangible and tangible assets) will be sold or given to local investors. The divestment concept turns on obtain-

corporate decisions regarding prices, profit remittances, and international allocation of resources. *Id.* at 439. See also Behrman, *Foreign vs. Local Ownership*, 17 *WORLDVIEW* 39 (1974); Penrose, *School of Oriental and African Studies*, University of London, *GROUP OF EMINENT PERSONS* 336 (1974).

A multinational corporation may also bring pressure on its parent government to intervene in a variety of ways — military, trade and/or financial sanctions — or attempt to persuade international organizations to block loans. U.N., *DEPT OF ECON. AND SOC. AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES* 35, 41-42 (1974).

¹⁰⁷ See Hirschman, *How to Divest in Latin America, and Why*, *ESSAYS IN INTERNATIONAL FINANCE* No. 76, INTERNATIONAL FINANCE SECTION, DEPARTMENT OF ECONOMICS, PRINCETON UNIVERSITY (1969); but compare Behrman, *International Divestment: Panacea or Pitfall?*, 18 *LOOKING AHEAD* 1 (1970) and Prebisch, *Comment*, in *INTERNATIONAL CONTROL OF INVESTMENT* 171 (Wallace ed. 1974). See also INTERNATIONAL CHAMBER OF COMMERCE, *GUIDELINES FOR INTERNATIONAL INVESTMENT*, Article II(3)(c) (1972).

Boddeyn and Torneden, *U.S. Foreign Divestment: A Preliminary Study*, 8 *COLUM. J. WORLD BUS.* 25 (1973), state that from 1967 to 1971, there were 424 divestments by American corporations of active, foreign operations, including an increase from 29 in 1967 to 144 in 1971. Divestments have grown substantially in Mexico, Central America and South America. In 1967, 18.8 new establishments were created for each divestment; in 1971 the ratio dropped to 3.5 to 1.

ing the maximum advantage during the limited period when global firms will make (or have made) their key contribution. An assessment must therefore be made as to the point in time when the benefits provided by a foreign firm will diminish (or has diminished) so that a foreign-owned operation may revert, in whole or in part, to local ownership.

Although one study¹⁰⁸ revealed that 70 percent of the American companies surveyed might be candidates for fade-out arrangements in Latin America depending on the terms and conditions (which include a desire of foreign investors to retain a minority interest and to avoid divestment for a sufficiently long time period so as to obtain a return deemed adequate), businessmen generally view fade-out arrangements with considerable skepticism.¹⁰⁹ But the increasing debt loads and the capital shortages many multinational corporations are experiencing may force a reappraisal of divestment as a means of raising funds. Beyond a fear of an increase in state control and the specter of nationalization without adequate timely compensation, several significant problems are raised by mandating divestments. Global firms may fail to provide, on a continuing basis, the latest technology or the best management. A firm which tightly integrates a subsidiary into a global production and marketing system finds divestment unattractive. The inability to tie the activities of a subsidiary to the worldwide network may also impede foreign investment and also lessen the desirability, from a viewpoint of local interests, of operating a business after divestment. Faced with a limited amount of time in which to generate profits, global enterprises may seek "excessive" profits and repatriate earnings quickly putting pressure on a host country's balance of payments. If the divestment arrangement includes compensation for foreign investors, raising capital locally or borrowing funds may prove difficult whether undertaken publicly or privately. Decisions must be made on whether capital should be allocated to replace existing or future foreign investments rather than finance new domestically owned enterprises. Finally, local partners may play secondary roles (including activities such as sales, publicity, or labor relations) if foreign firms, owning a minority interest after divestment, control key

¹⁰⁸ Meeker, *Fade-Out Joint Ventures: Can It Work for Latin America?*, 24 INTER-AM. ECON. AFF. 25, 9-32 (1971). The firms surveyed, however, rejected the concept of a complete fade-out.

¹⁰⁹ See J. Irwin Miller in U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 135 (1974).

activities such as operations and financing.¹¹⁰ The apparent slowness with which the members of the Andean Common Market have pursued the divestment concept exemplifies the difficulties in implementing such a scheme, particularly in assessing and projecting the price to be paid and the point in time when the costs exceed the benefits provided by a foreign subsidiary. The need to absorb new technology and the ability to tap multinational corporations' access to foreign markets limits the desirability of a divestment scheme.

In seeking to reduce dependency and capture excess profits, developing countries must carefully assess the costs and benefits entailed in regulating the entry by and the manufacturing operations of multinational corporations. This requires accurate information. Nations will derive different cost-benefit ratios depending on the economic sector and the total situation within each country.¹¹¹

It has been estimated that if no foreign capital of any sort were used in Canada (and assuming a continuation of the existing production process, the existing capital-to-labor ratio applied to government and business, and maintenance of current Canadian official overseas loans and holdings of foreign exchange assets), Canadian gross domestic product would decline by over 16 percent and that gross national income would be reduced by 2.9 percent.¹¹² A nation must be willing to accept this outcome. Countries wishing to tap the skills and resources offered by global firms must establish a minimum level of return that will attract corporations. Those who attempt to disassemble the package provided by multinational corporations and separately price and obtain skills encounter a significant concern — will a nation generate sufficient

¹¹⁰ Behrman, *International Divestment: Panacea or Pitfall?*, 18 LOOKING AHEAD 1 (1970); INTERNATIONAL CHAMBER OF COMMERCE, MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT 5 (1974); Salera, *Liquidate U.S. Direct Investments?*, 24 INTER-AM. ECON. AFF. 31 (1970); UNCTAD, RESTRICTIVE BUSINESS PRACTICES 25 (1972) (prepared by Raymond Vernon); Ryutaro Komiya, U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 121 (1974). See also STOPFORD AND WELLS, MANAGING MULTINATIONAL ENTERPRISE 152-153, 178 (1972); Hans Schaffner, U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 148-149 (1974); Peterson, *Ancom: An Andean Paradox*, 6 COL. J. WORLD BUS. 29 (1971).

¹¹¹ See generally U.N., DEP'T OF ECON. AND SOC. AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES 24 (1974); Nye, *Multinational Corporations in World Politics*, 53 FOREIGN AFF. 155, 172 (1974).

¹¹² Hellervell and Broadbent, *How Much Does Foreign Capital Matter*, BC STUDIES (NO. 13) 38, 39 (1972).

capital for its developmental projects if it does not permit the entry of Western capital?¹¹³

In the absence of private foreign direct investment, a government could pursue several strategies to raise necessary capital. Long-term debt issues on the Eurodollar or other capital markets could be floated. Credits could be sought from international financial institutions.¹¹⁴ Reliance could be placed on centrally planned economies to provide capital. These strategies raise the specter of a new dependency. State owned corporations may be organized along regional lines. But a program to exclude private foreign investment rests on the assumption that a cessation of the economic drain caused by multinational corporations would create a new wellspring of local capital and that through rigorous economic planning the available capital could be allocated to certain sectors, particularly labor-intensive, export-oriented industries.

Beyond economic planning, a nation must establish its economic, social and human priorities and build a developmental plan around such goals. A nation may conclude that nationalization of foreign investments and economic isolation offers the best hope for achieving a desired social system. The lack of trained manpower may impose impediments. Foreign participation may be needed to maintain distribution channels and marketing outlets. In the absence of a vision excluding expansive developmental and infrastructure programs, a program of autarky may prove difficult but not impossible. The Egyptian example, however, does not provide a hopeful pattern for developing nations.¹¹⁵ From 1960 to 1974, Egypt operated a state controlled economy without any major foreign direct investment. Facing an acute scarcity of capital in 1974, Egypt revised its foreign investment legislation to allow multinational corporations to invest to produce items which Egyptian firms did not make or items for export in industrial enclaves.

¹¹³ See, e.g. Cooney, *A Cold Shoulder Clampdown by Canadians on Investing By Aliens Alarms Multinational Firms*, Wall Street Journal, May 7, 1975, at 38, col. 1.

¹¹⁴ But compare INTERNATIONAL CHAMBER OF COMMERCE, *MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT 15* (1974) which opposes international financial institutions granting credits to developing countries to nationalize foreign subsidiaries.

¹¹⁵ See Sklarewitz, *Industrial Pyramid? Socialist Egypt is Courting Foreign Investment*, BARRON'S, Oct. 6, 1975, at 11; Ulman, *Mideast Meets West to Bolster Its Economy, Egypt Courts Private Enterprise, Foreign Investors*, Wall Street Journal, June 5, 1974, at 30, col. 1; Crittenden, *Sadat's Effort to Attract U.S. Investors Is Mixed in Red Tape, Egyptian Style*, N.Y. Times, Oct. 29, 1975, at 55, col. 1. See also Hartley, *Changes in Canberra Australia's Labor Government, Plagued by Economic Ills, Is Veering to the Right*, Wall Street Journal, Aug. 13, 1975, at 1, col. 2 and *Global Report*, Wall Street Journal, Nov. 24, 1975, at 6, col. 2.

In addition to receiving tax incentives, foreign firms were authorized to repatriate profits and capital and were given protection from nationalization and waivers from import duties on machinery and raw materials. Export-oriented, labor-intensive industries will apparently receive other special favors.

Economic activities in many developing countries center not on manufacturing, but on raw materials. The next section analyzes efforts to establish national control over raw materials and the formation of producers' cartels to redress the abuses of dependency, particularly declining trade terms.

IV. RAW MATERIALS

A. National Strategy

With the growing awareness by developing countries of the value of their natural resources and the availability of information regarding the activities of the multinational corporations engaged in raw material extraction, governments pursued two nationally oriented strategies: Obsolescence bargaining¹¹⁶ and nationalization. Multinational corporations initially possessed greater bargaining power when they sought to tap the raw materials found in developing countries. Access to capital, technical skills and the world market enabled global firms to attain attractive concession terms. After a firm invested capital and made discoveries, its bargaining power declined.

Nations viewed the returns generated by multinational corporations as no longer appropriate to the risks. Government leaders perceived an economy heavily reliant on the exportation of one or two raw materials as vulnerable to changes in prices for such resources and to shifts in operations by global enterprises. Accompanying this sense of exploitation and dependency came a resentment of the isolation of foreign extractive enclaves.

Before significant steps could be taken to gain a larger share of the profits, a nation had to strengthen its bargaining power. Local individuals and public or private corporations acquired technical skill and marketing knowledge; the ability to generate capital grew. Host nations realized they could hire independent advisors.

Governments sought to renegotiate existing concession agree-

¹¹⁶ VERNON, SOVEREIGNTY AT BAY, Ch. 2 (1971); Mikesell, U.S. *Private Investment in the Extractive Industries of the Developing Countries: Changing Patterns and Attitudes*, in FOREIGN INVESTMENT: THE EXPERIENCE OF HOST COUNTRIES 355 (Litvak & Maule eds. 1970).

ments. Demands for contractual revisions came to be viewed as part of the game. Increased bargaining strength also affected new agreements. Companies in extractive industries began risking new investments on terms established by host governments that would previously have been regarded as unacceptable.

Beyond obsolescence bargaining, the concept of foreign concessions came under attack. Regimes seeking to demonstrate their power over multinational enterprises nationalized foreign holdings of raw material deposits.¹¹⁷

The national aspirations of developing countries, especially as manifested in the expropriation of foreign assets in extractive industries, faced two major challenges presented by multinational corporations. First, vertically integrated firms controlled processing facilities (for example, expensive aluminum smelters) and marketing networks outside a particular nation. A nation could mitigate foreign control of these facilities by using its bargaining position to force a firm to engage in more local processing prior to nationalization, allocating capital for the development of local processing after the nationalization of extractive operations, investing in local industries (for example, petrochemicals and fertilizer) which consume large quantities of indigenous raw materials, and developing its own marketing network and locating new trading partners, including countries with centrally planned economies and maverick Western nations.¹¹⁸ Recognizing a continued dependence on global petroleum firms, countries such as Venezuela, even after nationalization, have executed participation

¹¹⁷ Recent examples of nationalization include petroleum in Venezuela, (N.Y. Times, Aug. 31, 1975, at 27, col. 1); bauxite in Jamaica (Howe, *Jamaica Trying to Create Her Own Brand of Socialism*, N.Y. Times, May 16, 1975, at 2, col. 3); and iron ore in Peru, (Wall Street Journal, July 28, 1975, at 7, col. 1). In undertaking the iron ore nationalization, Peru's Minister of Mines and Energy, Jorge Fernandez Maldonado, charged Marcoa Mining Corp. with violating contracts with the government, wasting ore lodes and causing "serious damage to our country by actions typical of the immoral conduct that the greater multinational consortiums traditionally exercise." Wall Street Journal, July 28, 1975, at 7, col. 1; see also GIRVAN, FOREIGN CAPITAL AND ECONOMIC UNDERDEVELOPMENT IN JAMAICA (1971); and U.N., ECONOMIC AND SOCIAL COUNCIL, PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES, U.N. DOC. E/C/7/53 (1975).

¹¹⁸ Moran, *New Deal or Raw Deal in Raw Materials*, in A REORDERED WORLD; EMERGING INTERNATIONAL ECONOMIC PROBLEMS 168 (Cooper ed. 1973); Vernon, *Foreign Enterprises and Developing National in Raw Materials Industries*, 60 AM. ECON. REV. 122 (1970), but compare, TANZER, THE POLITICAL ECONOMY OF INTERNATIONAL OIL AND THE UNDERDEVELOPED COUNTRIES, Chs. 10, 11, 21, 22, 26 (1969). In considering whether to nationalize banana operations, the government anticipated continued reliance on multinational firms to market bananas. Riding, *Honduras Eyes Banana Take-Over*, N.Y. Times, July 29, 1975, at 38, col. 1.

agreements to secure the continued involvement of multinational corporations in the exploration for crude oil, for technical and managerial expertise, and the marketing of refined products.¹¹⁹

In certain industries (for example, copper), global firms, realizing the difficulties involved in recapturing oligopoly profits downstream after the nationalization of the extractive activities, turned to international alliances to bolster their position and ward off the threat of nationalization or to increase the compensation to be paid for nationalized assets. Kennecott pioneered such strategies by raising funds for new joint-venture projects from a consortium composed of host governments, customers in Europe and Asia and international financial institutions with repayment provided from the output of the project. This technique sought to place pressure on a nationalistic Chilean government not to void Kennecott's management contract or repudiate the government's guarantee for debt obligations of the joint venture. If a subsequent government failed to assume the guarantee obligations, then creditors could threaten and did in fact prosecute legal actions against commercial transactions involving the host nation. Thus, even if support by a home government was not forthcoming, other interests (customers and financial institutions) in different nations, in addition to Kennecott, had a direct stake in making certain a nationalistic government would not repudiate its obligations. The second part of Kennecott's plan involved lining up governmental supporters in its home country so that the threat of nationalization

¹¹⁹ With additional new petroleum capacity expected during the next 5 years, competition among sellers may intensify and accentuate the marketing problems for nations that have severed their connections with major oil companies. *The Oil Producers Cool Off on Nationalization*, BUS. WEEK, June 9, 1975, at 22; Wall Street Journal, April 14, 1975, at 6, col. 1. Under 1975 oil nationalization legislation, the Venezuelan government is permitted to make contracts or form joint ventures with private foreign firms. President Carlos Andres Perez of Venezuela maintained that the nationalized oil industry needed access to modern technology and foreign marketing networks. Joint-venture arrangements will probably emerge in 3 or 4 years when new exploration must be undertaken to bolster Venezuela's oil reserves. See Goodsell, *Venezuela Details New Oil Policy*, Christian Science Monitor, June 2, 1975, at 23, col. 1; Riding, *Foreign Oil Role in Venezuela Weighed*, N.Y. Times, June 23, 1975, at 43, col. 5; N.Y. Times, August 19, 1975, at 45, col. 2; Scherer, *Venezuela Maps Oil Nationalization*, Christian Science Monitor, Nov. 12, 1975, at 8; Wall Street Journal, Oct. 14, 1975, at 21, col. 3; Maidenberg, *Venezuela, Its Oil Within Grasp, Needs Foreign Concerns Refining Technology*, N.Y. Times, Nov. 3, 1975, at 57, col. 1; N.Y. Times, Aug. 31, 1975, at 27, col. 1; Forbes, *How Venezuela Spends Its Oil Riches*, FORBES, July 15, 1974, at 45; See also Smith, *Kuwait Buys Out Gulf and B.P.*, N.Y. Times, Dec. 2, 1975, at 57, col. 5; Wall Street Journal, July 11, 1975, at 8, col. 2; Wall Street Journal, Dec. 2, 1975, at 4, col. 1. See also N.Y. Times, Oct. 11, 1975, at 47, col. 5; *Brazil Invites Oil Hunters*, BUS. WEEK, Oct. 27, 1975, at 34.

would produce a face-to-face confrontation between the United States and Chile. Despite this involved web, Chile nationalized Kennecott's assets, but paid more in compensation than if such strategies had not been used.¹²⁰

B. Producers' Cartels

Oil producing nations formed the Organization of Petroleum Exporting Countries (OPEC) to raise the price of crude oil and to assist in securing national control over the production of petroleum. The success of OPEC in controlling prices and using such control as a political weapon led the nations producing other commodities to form cartels with the aim of unifying economic power to redistribute the world's wealth, to achieve local control and more domestic processing, to conserve diminishing resources, and to force changes in the foreign policies of consuming countries.

Based on the consumption of a seemingly inexhaustible supply of cheap Middle East oil — the artery of prosperity — the economies of the United States, Western Europe and Japan blossomed after World War II. Between 1950 and 1973, U.S. oil consumption rose from 2.37 to 6.3 billion barrels a year. In Japan, demand for imported oil rose from 100,000 barrels a day to almost six million barrels a day. Western European imports of oil rose to over 15 million barrels a day in 1973, up from 1.5 million barrels a day in 1950.¹²¹ Supported by the governments of the United States and the United Kingdom, seven multinational oil corporations (Exxon, Mobil, Texaco, Standard Oil of California, Gulf, Shell, and British Petroleum) controlled the production of oil and allocated markets for the sale of petroleum.¹²²

¹²⁰ Moran, *Transnational Strategies of Protection and Defense by Multinational Corporations: Spreading the Risk and Raising the Cost for Nationalization in Natural Resources*, 27 INT'L ORGAN. 273 (1973); See also Hoskins, *How to Counter Expropriation*, 48 HARV. BUS. REV. 102 (1970).

¹²¹ Barraclough, *The Great World Crisis*, N.Y. REVIEW OF BOOKS, Jan. 23, 1975, at 20, 22; and SZULC, *THE ENERGY CRISIS*, Part One (1974).

¹²² The cartel activities by oil corporations span much of this century. The 1928 Achnacarry Agreement enabled major oil firms to achieve a stable cartel. After World War II, the major oil corporations reestablished marketing and pricing agreements which were gradually eroded in the 1950's by independent American and European producers obtaining contracts for Middle East oil. To expand their markets, these independents turned to price cutting and lessened the effectiveness of the international oil corporations. See generally ADELMAN, *THE WORLD PETROLEUM MARKET* (1972), and SAMPSON, *THE SEVEN SISTERS* (1975).

After the formation of OPEC in 1960,¹²³ its member nations bided their time because of the abundance of oil and an inability to agree on production controls. OPEC members realized, however, that the economic survival and expansion of industrialized economies rested on a continuing supply of petroleum.

Events turned in OPEC's favor in 1973. An economic upswing was underway in industrial nations generally characterized by weak governments. In addition to a temporary tightness of the world oil supply, geographical concentration and political cohesion existed on the part of major exporters. The Shah of Iran and King Faisal of Saudi Arabia agreed to act in concert; King Faisal sought to exert his influence and to free Jerusalem from Israeli control, while the Shah desired to tap the wealth of his declining oil reserves. A relative abundance of wealth extended the time horizon of OPEC members, who generally produced oil for export and lacked significant internal interests pressuring for petroleum price reductions. In the short run, the lack of alternative sources of supply and the lack of a close substitute commodity facilitated the cartel's action. Under these conditions, the cartel of oil producing nations became a political and economic reality.

In the fall of 1973, OPEC unilaterally quadrupled the prices of crude oil exports, and posted additional price increases in 1974 and 1975.¹²⁴ The celebrated seven sister multinational oil corporations were reduced to the status of tax collectors for OPEC revenues. During the winter of 1973-1974, Arab members of OPEC embargoed petroleum shipments destined for the United States and the Netherlands and cut back shipments elsewhere to bring pressure on the Arab-Israeli situation.

The oil price increases contributed to the worldwide inflationary spiral, produced a fear that Arab interests would acquire massive amounts of Western industrial and real estate properties, and drove oil importing developing nations into a precarious financial position. Yet the fears of calamity flowing from OPEC actions must

¹²³ See ROUHANI, *A HISTORY OF O.P.E.C.* (1971), and SAMPSON, *supra* note 122; Krasner, *Trade in Raw Materials: The Benefits of Capitalist Alliance* in *TESTING THEORIES OF ECONOMIC IMPERIALISM* 184-187 (Rosen and Kurth eds. 1974); OPEC, *The Economics of the Oil Cartel*, *BUS. WEEK*, Jan. 13, 1975, at 77, 78; Kraar, *OPEC Is Starting to Feel the Pressure*, *FORTUNE*, May, 1975, at 186, 187. For an attack on the role of the oil companies in creating the "oil crisis" see RAND, *MAKING DEMOCRACY SAFE FOR OIL* (1975).

¹²⁴ For the 1975 round of price hikes, see *Wall Street Journal*, Sept. 29, 1973, at 3, col. 1; Farnsworth, *Countries of OPEC Agree to 10% Price in the Price of Oil*, *N.Y. Times*, Sept. 28, 1975, at 31, col. 1; *N.Y. Times*, Oct. 30, 1975, at 57, col. 5; *Wall Street Journal*, Nov. 4, 1975, at 4, col. 2.

be viewed critically. Recent estimates indicate that OPEC price hikes were responsible for 25 percent of the 1974 rise in the U.S. consumer price index. Because of the greater dependence of Japan and Western European countries on imported oil, such nations were harder hit. The OPEC price spiral caused about one-third to one-half of the inflation in such countries in 1974.¹²⁵ The smaller OPEC price rises in 1975 will have a correspondingly lesser impact on inflationary pressures.

The specter of worldwide disruption of financial markets and of a large concentration of funds and resources in the small number of OPEC hands seems misplaced. Although estimates differ, it is projected that by 1980 surplus revenues enjoyed by OPEC members will turn into annual deficits because of the growing number of imports by Middle East nations, especially for goods developed nations produce in order to develop infrastructures and raise living standards and because of the static demand for oil, the result of worldwide recessionary conditions and conservation measures.¹²⁶ By 1980, OPEC wealth will likely amount to 2.4 percent of the world's capital stock and a smaller percentage of the

¹²⁵ INT'L. ECON. POL. ASS'N. AND THE IEPA ADVISORY COMM. ON NATURAL RESOURCES, PETROLEUM AND FOREIGN ECONOMIC POLICY 3-4, (1975), (citing Annual Report of U.S. Council of Economic Advisors, February 1975); See also Lewis, *Getting Even*, N.Y. Times Magazine, Dec. 15, 1974, at 78 (The fourfold oil price increase added 1 to 2 percent to the U.S. cost of living in 1974, or about one-fifth of the overall price increases); and SAMPSON, *supra* note 122, at Ch. 13; SZULE, THE ENERGY CRISIS Ch. 16 (1974). For an estimate that OPEC price hikes boosted 1974 consumer price index in the United States by one-third see, *How OPEC Has Worsened U.S. Economic Woes*, BUS. WEEK, Oct. 13, 1975, at 34.

¹²⁶ The early estimates in size of OPEC surplus were exaggerated. OPEC surpluses probably will disappear by 1980. See, *Why OPEC's Rocket Will Lose Its Thrust*, FIRST NATIONAL CITY BANK, MONTHLY ECONOMIC LETTER, June 1975, at 11; N.Y. Times, Nov. 25, 1975, at 51, col. 6; Farnsworth, *Even OPEC Feels the Pinch*, N.Y. Times, Oct. 5, 1975, § 4, at 5, col. 1. (Estimates place the cumulative OPEC surpluses by 1980 at under \$200 billion); N.Y. Times, Oct. 25, 1975, at 39, col. 4; Lewis, *OPEC Riches, Even Revised, Bespeak Powers*, N.Y. Times, Apr. 20, 1975, § 4, at 1; Chenery, *Restructuring the World Economy*, 53 FOR. AFF. 242 (1975); But see N.Y. Times, June 17, 1975, at 43, col. 6, estimating cumulative OPEC surplus of \$449 billion by end of 1970's. The imponderables implicit in such predictions include future OPEC imports and the demand for oil. See generally INT'L. ECON. POL. ASS'N AND IEPA ADVISORY COMM. ON NATURAL RESOURCES, PETROLEUM AND FOREIGN ECONOMIC POLICY 7-10 (1975). The development plans of populous nations such as Iran and Algeria will only permit such countries to generate a small surplus, if any, while cash will probably continue to pile up to Kuwait, Saudi Arabia, and Qatar. Some OPEC members are turning to borrowing to meet the needs of their economic development plans. *The Oil Nations Go on a Borrowing Spree*, BUS. WEEK, July 28, 1975, at 26; Wall Street Journal, Aug. 4, 1975, at 4, col. 1; Barron's, Dec. 1, 1975, at 4, col. 3.

world's total financial and real assets.¹²⁷ These figures appear manageable. Furthermore, OPEC members probably will not acquire Western firms on a massive scale but will, more likely, use their oil revenues to develop their own industrial capacity and engage in the processing of crude oil for exportation, particularly in the form of petrochemicals.

One fear appears valid, namely, the plight faced by developing nations which import oil.¹²⁸ Inflationary pressures on goods imported from the West have also contributed to the predicament of poorer developing nations. OPEC members have diverted a portion of their revenues to so-called "fourth world" oil poor developing nations.¹²⁹ The extent of such loans and other financial

¹²⁷ Cooper, *The Invasion of the Petrodollar*, SATURDAY REVIEW, Jan. 25, 1975, at 10; Chenery, *Restructuring the World Economy*, 53 FOR. AFF. 242, 257 (1975).

¹²⁸ OPEC price hikes have increased the balance of payments deficits incurred by other developing nations which are heavily dependent on imported oil as an energy source. Abiaka, *The Energy Crisis and the LDS's*, 9 COL. J. WORLD BUS. 54 (1974). The Fourth World faces balance of payments deficit of \$35 billion in 1976, a substantial portion of which is attributable to the high cost of oil. Estimates of the trade deficit in 1976 run to \$57 billion. N.Y. Times, Sept. 19, 1975, at 51, col. 7; Barron's, Oct. 27, 1975, at 4, col. 4. If developing countries import less petroleum, their developmental plans must be scaled down. Increases in the prices of food and fertilizers strained the resources of developing countries. Chenery, *Restructuring the World Economy*, 53 FOR. AFF. 242, 246 (1975). See generally BROWN, BY BREAD ALONE (1974).

¹²⁹ In 1974, eight OPEC nations contributed \$2.5 billion for development assistance through OPEC-controlled agencies and placed \$3.5 billion in international financing institutions, particularly the International Monetary Fund Special Oil Facility to finance the payment imbalances of IMF members. INT'L. ECON. POL. ASS'N. AND IEPA ADV. COMM. ON NAT. RES., PETROLEUM AND FOREIGN POLICY 8 (1975); Friedman, *The New World of the Rich-Poor and the Poor-Rich*, FORTUNE, May, 1975, at 244, 247; Clark, *The Waiting Game*, Wall Street Journal, Mar. 4, 1975, at 40, col. 1; Christian Science Monitor, May 21, 1975, at 7, col. 1; Wall Street Journal, Jan. 19, 1975, at 10, col. 2; N.Y. Times, Nov. 18, 1974, at 49, col. 2. OPEC members aided Fourth World through the Arab fund for Economic and Social Development, Islamic Development Bank, Special Arab Fund for Africa and the African Development Bank; Cooley, *Abu Dhabi Becoming Major "Third World" Donor*, Christian Science Monitor, Jul. 23, 1975, at 7, col. 3; Aziz, *Islamic Bank — Will It Siphon Petrodollars from West?*, Christian Science Monitor, August 7, 1975, at 3, col. 3. Arab members of OPEC set up a fund to compensate poorer Arab nations and created an Arab petroleum services company. De Onis, *Arab Oil Nations Will Aid Others*, N.Y. Times, May 5, 1975, at 49, col. 4. Venezuela has eased the burden of oil bills by selling oil for one-half cash and the balance in the form of low-interest long term loans. Venezuela has also made substantial contributions to the Inter-American Development and Caribbean Development Banks. Maidenberg, *Venezuela Asserts Her Oil Power*, N.Y. Times, Apr. 27, 1975, § 3, at 2, col. 3; Maidenberg, *Venezuela is Aiding Poor Nations on Oil*, N.Y. Times, Sept. 15, 1975, at 27, col. 7.

World Bank estimates place actual cash disbursements under new and old aid commitments at \$10 billion in 1975; Dale, Jr., *Rise in Aid from Oil Nations*

support raises considerable doubt as to the financial viability of such developing nations.

The long-term viability of OPEC faces several questions.¹³⁰ First, if worldwide demand for petroleum declines or remains static in coming years, new oil supplies (such as the North Sea and North Slope) under the control of industrialized nations will come into production and may drive down the price of petroleum from its present levels.¹³¹ However, these new supplies are high cost sources propelling these nations (United Kingdom, Norway, United States) to seek a floor price and not drive the price of oil back to 1973 levels.¹³² Second, the cartel faces unused capacity which is a major source of friction among member nations. But Western economies appear to be rebounding and the United States is becoming more dependent on OPEC to meet its energy requirements.

To date, the petroleum cartel has not collapsed but has served as a model of developing nations exporting other raw materials.¹³³

Reported, N.Y. Times, Aug. 24, 1975, § 1, at 16, col. 3. See also N.Y. Times, Aug. 8, 1975, at 33, col. 7.

The Shah of Iran has proposed a special aid fund to aid developing nations by means of an assessment on each barrel of oil produced for next 5 years to go into a low-interest loan fund for specific projects in developing countries. Oakes, *Shah is Offering New Plan To Aid Developing Nations*, N.Y. Times, Sept. 24, 1975, at 1, col. 1; Teltsch, *Iran Replies Skeptically to U.S. Economic Offers*, N.Y. Times, Sept. 3, 1975, at 1, col. 1.

¹³⁰ See e.g., Varon & Takeuchi, *Developing Countries and Non-Fuel Minerals*, 53 FOR. AFF. 497 (1975); REPORT OF THE SENATE SUBCOMMITTEE ON MULTINATIONAL OIL CORPORATIONS AND U.S. FOREIGN POLICY (1975); Fixler and Ferrar, *OPEC — Will It Work?*, 9 COL. J. WORLD BUS. 47 (1974).

¹³¹ The possibility of military action to avoid strangulation of industrialized Western countries and Japan was raised by Secretary of State Henry A. Kissinger, *Kissinger on Oil, Food and Trade*, BUS. WEEK, Jan. 13, 1975, at 66, 69. A plan for an aggressive military takeover of certain OPEC production and reserve areas in the Persian Gulf was advocated by Tucker, *Oil: The Issue of American Intervention*, COMMENTARY, Jan. 1975, at 21 (1975); and Tucker, *Further Reflections on Oil and Force*, COMMENTARY, June 1975, at 45 (1975). But see Stone, *War for Oil?*, N.Y. REVIEW OF BOOKS, Feb. 6, 1975, at 7.

¹³² See Kraar, *OPEC Is Starting to Feel the Pressure*, FORTUNE, May 1975, at 186, 187, 279, 280; Lewis, *Is It Time to Sob for the Seven Sisters? Not Yet*, N.Y. Times, Sept. 21, 1975, at 4, col. 3. See also, SAMPSON, *THE SEVEN SISTERS*, Ch. 14 (1975). OPEC nations will probably let the companies continue to sell for OPEC members to prevent under-the-table attempts to increase sales by respective member nations of OPEC.

¹³³ During the 1920's, a number of producing firms (or sometimes producing governments) entered into commodity agreements to drive up prices by means of export controls and quotas. Lacking sufficient market power, the agreements failed to prevent dramatic declines in commodity prices during the Great Depression. The intergovernmental commodity agreements of the 1930's in tin, rubber,

In quick succession, nations have formed cartels or associations for a variety of raw materials, including bauxite (International Bauxite Association), tin (International Tin Agreements), coffee (International Coffee Council), and copper (Intergovernmental Council of Copper Exporting Countries).¹³⁴ The cartels seek to

and wheat aimed to benefit producers through export restrictions and taxes. World War II brought an end to these agreements. The decline in prices after the Korean War produced a series of intergovernmental agreements in wheat, sugar, tin and coffee designed to halt plummeting prices and reduce price instability. These agreements included interests of producing and consuming nations. For example, the 1962 International Coffee Agreement, signed by over 50 consuming and producing countries, established export quotas. Arrangements governed the world coffee market until 1972 when the economic provisions of the agreement lapsed. See generally WALLACE AND EDMISTER, *INTERNATIONAL CONTROL OF RAW MATERIALS* (1930); ROWE, *PRIMARY COMMODITIES IN INTERNATIONAL TRADE* (1965); LAW, *INTERNATIONAL COMMODITY AGREEMENTS*, Chs. 2 & 3 (1974); Krumme, *International Commodity Agreements: Purpose, Policy and Procedure*, 33 GEO. WASH. L. REV. 784 (1963); KNOIG, *The Quest for Stabilization Policy in Primary Producing Countries*, 11 KYKLOS 224 (1958); LAW, *International Commodity Agreements: Policies and Problems*, 4 J. OF ECON. ISSUES 87 (1970); LAW, *Stabilization of Prices of Primary Products: A Review Article*, 24 INTER-AM. ECON. AFF. 27 (1970); Swerling, *Problems of International Commodity Stabilization*, 63 AM. ECON. REV. 65 (1963). For specific commodities see FOX, *TIN: THE WORKING OF A COMMODITY AGREEMENT* (1974); Barkerman, *The International Tin Agreements*, 9 J. WORLD TRADE L. 495 (1975); Wasserman, *Fourth International Tin Agreement*, 5 J. WORLD TRADE L. 355 (1971); FISHER, *THE INTERNATIONAL COFFEE AGREEMENT: A STUDY IN COFFEE DIPLOMACY* (1972); Krasner, *Business-Government Relations: The Case of the International Coffee Agreement*, 27 INT'L ORGAN. 495 (1973); LAW, *Coffee: Structure, Control and Development*, 27 J. INTER-AM. ECON. AFF. 69 (1973); Cordell, *The Brazilian Soluble Coffee Problem: A Review*, 9 Q. REV. OF ECON. & BUS. 29 (1969); Kravis, *International Commodity Agreements to Promote Aid and Efficiency: The Case of Coffee*, 1 CANADIAN J. OF ECON. 295 (1968); Wasserman, *International Wheat Agreement*, 5 J. WORLD TRADE L. 360 (1971); Farnsworth, *International Wheat Agreement and Problem, 1949-1956*, 70 Q. J. OF ECON. 217 (1956); and Farnsworth, *Commodity Power*, N.Y. Times, May 21, 1975, at 61, col. 1.

¹³⁴ On bauxite, see Wall Street Journal, Apr. 23, 1975, at 1, col. 6; N.Y. Times, Nov. 11, 1975, at 49, col. 2; N.Y. Times, Jun. 4, 1975, at 53, col. 1. On tin, see N.Y. Times, Jun. 21, 1975, at 33, col. 2; *The U.S. May Join the Commodities Club*, BUS. WEEK, Sept. 15, 1975, at 23; on coffee, see N.Y. Times, Jul. 14, 1975, at 37, col. 2; N.Y. Times, Jun. 25, 1975, at 58, col. 2; Wall Street Journal, Nov. 13, 1975, at 26, col. 4; N.Y. Times, Dec. 4, 1975, at 63, col. 5; Prinsky, *Brewing Agreement*, Wall Street Journal, Nov. 21, 1975, at 1, col. 6; Lemoux, *The World Politics of Coffee*, NATION, Aug. 2, 1975, at 75; On iron, see N.Y. Times, Apr. 3, 1975, at 53, col. 4. The Association of Iron Ore Exporting Countries which includes members from developed and developing countries, is not committed to attempting to set prices or influence world markets. It is difficult to increase iron ore prices because the United States, Sweden, Canada, and Australia mine one-half of the non-Communist world's iron ore. On copper, see N.Y. Times, Nov. 20, 1975, at 61, col. 2; Wall Street Journal, Oct. 20, 1975, at 16, col. 4; N.Y. Times, Nov. 18, 1975, at 49, col. 6.

See also, Stewart, *Asians Studying OPEC, Consider Plans for Cartels*, N.Y. Times, Jan. 26, 1975, § 3, Part 2, at 47, col. 1; Goodsell, *Sugar, Other Cartels Seek*

achieve a common pricing strategy and to prevent multinational corporations from playing one country against another.

Although the bauxite producers cartel probably has the greatest possibility for success, raw material cartels face a multitude of problems. In a non-growth recessionary period, cartels find it difficult to increase prices. The financial staying power of many raw material producing countries differs from, and is inferior to, that of oil exporting nations. Many developing nations must produce, export and sell their raw materials or commodities or face financial ruin, especially in times of mounting oil prices. For commodities requiring more labor than petroleum for their production, cutbacks in output spell increased unemployment. Some commodities, such as bananas, cannot be stored. Inability of a cartel to control a sufficiently large share of world output or reserves, geographical and political diversity, and the lack of shared experiences among producers create impediments. The problem of internal dissention, particularly the allocation of production quotas, is always present. Fear that price increases will generate a decline in demand (the degree of price elasticity) or a shift to the consumption of near substitute materials hampers a cartel, as does the possibility of the development of natural or synthetic substitutes and greater efforts at recycling. A cartel may also encourage new producers to enter the industry and force importing nations to stockpile raw materials to be released if a cartel increases prices.¹³⁵ Only in the case of petroleum does the cost of the raw material constitute a large percentage of the selling price.

to *Keep Prices High*, Christian Science Monitor, Jan. 6, 1975, at 2, col. 2; Lewis, *Raw Materials: New Effort at Stable Prices*, N.Y. Times, May 18, 1975, § 3, at 6, col. 3.

¹³⁵ Krasner, *Oil is the Exception*, 14 FOR. POLICY 68 (1974); Mikesell, *More Third World Cartels Ahead?*, 17 CHALLENGE 24 (1974); Tilton, *Cartels in Metal Industries*, 44 EARTH AND MINERAL SCIENCES 41 (1975); U.S. COUNCIL ON INT'L. ECON. POL., CRITICAL IMPORTED MATERIALS 25 (1974); Varon and Takeuchi, *Developing Countries and Non-Fuel Minerals*, 52 FOR. AFF. 492 (1974); *World Roundup*, BUS. WEEK, Nov. 24, 1975, at 40; Strauss, *Why Commodity Cartels Won't Work*, BUS. WEEK, Jun. 30, 1975, at 20. *But see* Bergsten, *The Threat is Real*, 14 FOR. POLICY 84 (1974); Bergsten, *New Era in World Commodity Markets*, 17 CHALLENGE 34 (1974). The success of other cartels may also turn on whether OPEC members will contribute financial support. Venezuela offered to finance stockpiling or destruction of surplus coffee stocks. Maidenberg, *Venezuela Asserts Her Oil Power*, N.Y. Times, April 27, 1975, § 3, at 2, col. 3. But several Arab nations withdrew their promised financing of CIPEC (Intergovernmental Council of Copper Exporting Countries), N.Y. Times, Aug. 25, 1975, at 41, col. 1; *World Roundup*, BUS. WEEK, July 21, 1975, at 32. In some metals, for example copper, developed countries, such as Canada, Australia, and South Africa are substantial producers. However, Australia has joined the bauxite cartel.

Despite these problems, in addition to petroleum, bauxite appears to be the raw material most suitable for cartelization. Forty percent of the world's production of bauxite is concentrated in four Caribbean countries — Jamaica, Surinam, Guyana and the Dominican Republic. The four Caribbean nations together with Australia and the Soviet Union aggregate over 75 percent of the world's output.¹³⁶ Six multinational firms, Alcoa, Kaiser, Reynolds, Alcan, Pechney and Alusuisse account for over 80 percent of the smelting capacity in the non-communist world. As with petroleum, the existence of a few large, vertically integrated firms facilitates the operation of a cartel.¹³⁷ Such corporations can pass on added costs, including the cost of raw materials, to consumers. Developed nations are heavily dependent on the importation of bauxite. In addition to an increasing demand for bauxite, price hikes seemingly do not produce a decline in demand. Bauxite also lacks a readily available low priced substitute. The cartel, however, faces one critical problem, namely the difficulty in fixing the price for bauxite because of differences in quality among bauxite deposits and the lack of an accepted benchmark standard. Because of the dependence of some nations, such as Jamaica, on the foreign exchange generated by bauxite exports, it appears unlikely that nations will hold significant amounts of bauxite off the world market.¹³⁸

V. TRANSNATIONAL APPROACHES: TOWARDS A NEW WORLD ORDER

A. Raw Materials

Riding the wave of OPEC's success, yet cognizant of the long-run ability of developed countries to generate new sources of supply, locate substitutes, engage in conservation and recycling, and build stockpiles, developing nations in 1974 and 1975 sought to develop a new international economic order based on their apparent position of power. From this effort emerged a far reaching attempt to redistribute income, decision-making, and power in the world, to minimize severe jolts to economies which accompany

¹³⁶ The ten members of the International Bauxite Association 145-146 (1975) (Jamaica, Surinam, Guyana, Dominican Republic, Haiti, Ghana, Guinea, Sierra Leone, Yugoslavia and Australia) control approximately 75 percent of the world's production of bauxite. Wall Street Journal, Apr. 23, 1975, at 1, col. 6.

¹³⁷ See generally, ADELMAN, *THE WORLD PETROLEUM MARKET* (1972).

¹³⁸ See Ward and Wagner, *Commodity Cartels, Economic Rent, and the United States*, 1 J. OF ECON. 142, 144 (1975); but compare Bergsten, *The New Era in World Commodity Markets*, 17 CHALLENGE 34 (1974); UNCTAD, *RESTRICTIVE BUSINESS PRACTICES* (study by R. Vernon) U.N. Doc. E. 72. 11. D. 16 at 9 (1972).

violent swings in world commodity prices and to achieve wider opportunities for industrialization in developing countries.

The quest for the new international economic order, after the success of OPEC, began in 1974 with the adoption by the United Nations General Assembly of the Declaration on the Establishment of a New International Economic Order in May and the Charter of Economic Rights and Duties of States in December. After asserting that each nation-state possesses full permanent sovereignty, not subject to any form of external coercion, over its natural resources and all economic activities, Third World nations called on developed nations to share resources with poor countries and alter a system in which developing countries, which constitute 70 percent of the world's population, obtain only 30 percent of the world's income.¹³⁹ One hundred and ten nations met in Dakar, Senegal in February 1975, and reached a consensus on concrete proposals for creating a new international economic order.¹⁴⁰ The Lima Declaration of the Second General Conference of the United Nations Industrial Development Organization, held in March 1975, incorporated many of the Dakar proposals.¹⁴¹

As part of the new international economic order, attention was focused on a program to regulate raw material and commodity markets through a series of agreements. Devices proposed by developing countries to raise or support prices and allocate production include the use of buffer stocks (that is, agreements by producing and consuming nations to engage in purchases and sales to keep prices within fixed ranges),¹⁴² fixed floor and

¹³⁹ U.N., *Program of Action on the Establishment of a New International Economic Order*, May 9, 1974; U.N. Doc. A/Res/3202; Charter of Economic Rights and Duties of States, Dec. 12, 1974, 12 U.N. Monthly Chronicle 108 (Jan. 1975).

¹⁴⁰ The Dakar Declaration, Conference of Developing Countries on Raw Materials (Dakar, Senegal, February, 1975) U.N. Doc. TD/B/C.1/L45.

¹⁴¹ Report of the Second General Conference of the United Nations Industrial Development Organizations, (Lima, Peru, March, 1975) U.N. Doc. Dr./D/Conf. 3/31.

¹⁴² The U.N. Conference on Trade and Development has advocated an integrated commodities plan based on a central fund to finance international buffer stocks of selected commodities, except food grains. Report by the Secretary-General of UNCTAD, AN INTEGRATED PROGRAMME FOR COMMODITIES, Dec. 9, 1974, U.N. Doc. TD/B/C.1/166; Report by the Secretary-General of UNCTAD, AN INTEGRATED PROGRAMME FOR COMMODITIES: THE ROLE OF INTERNATIONAL COMMODITY STOCKS, Dec. 12, 1974, U.N. Doc. TD/B/C.1/166/Supp. 1 and Dec. 13, 1974, U.N. Doc. TD/B/C.1/166/Supp. 1/Add.1; Report by the Secretary-General of UNCTAD, AN INTEGRATED PROGRAMME FOR COMMODITIES: A COMMON FUND FOR THE FINANCING OF COMMODITY STOCKS, Dec. 12, 1974, U.N. Doc. TD/B/C.1/166/Sup.2; Report by the Secretary-General of UNCTAD, AN INTEGRATED PROGRAMME FOR COMMODITIES: THE ROLE OF MULTI-

ceiling prices, various compensatory and supplementary financing systems,¹⁴³ and the indexing of commodities which would gear prices of commodities and raw materials exported by developing nations to the cost of manufactured goods that Third World countries purchase from developed nations. Agreements among governments of developing countries and developed nations would fix the supply and price of raw materials. The agreements would also set a framework within which multinational corporations would operate, thus reducing the role of global firms particularly in extractive industries.

Faced with a need to structure programs to meet the demands of members of OPEC and to preserve and bolster Western pre-eminence in the world capitalist system, United States Secretary of State Henry A. Kissinger turned from a strategy of confrontation¹⁴⁴ to one seeking cooperation with developing nations to force

LATERAL COMMITMENTS IN COMMODITY TRADE, Dec. 13, 1974, U.N. Doc.No. TD/B/C.1/166/Supp.3; Report by the Secretary-General of UNCTAD, AN INTEGRATED PROGRAMME FOR COMMODITIES: COMPENSATORY FINANCING OF EXPORT FLUCTUATIONS IN COMMODITY TRADE, Dec. 13, 1974 U.N. Doc. TD/B/C.1/166/Supp.4. See also Wasserman, *Commodities: An Integrated Approach*, 9 J. WORLD L. 584 (1975); Wesserman, *Multi-Commodity Approach to International Agreements*, 9 J. WORLD TRADE L. 463 (1975); Sulzberger, *Inflation and a Cartel War*, N.Y. Times, May 25, 1975, at 15, col. 1. For background on UNCTAD, see generally GOSOVIC, UNCTAD: CONFLICT AND COMPROMISE (1972).

¹⁴³ See, e.g., Report by the Secretary-General of UNCTAD, AN INTEGRATED PROGRAMME FOR COMMODITIES: COMPENSATORY FINANCING OF EXPORT FLUCTUATIONS IN COMMODITY TRADE, Dec. 13, 1974, U.N. Doc. TD/B/C.1/166/Supp.4. Pursuant to the 1975 Rome Convention, the European Economic Community and certain countries in Africa, the Caribbean and the Pacific agreed to a guarantee program, which would be given according to the level of development, for specified non-mineral products except iron ore. In the event export revenues obtained from specific products sent to the Common Market decline below a certain level, the Common Market will compensate affected country(s) for part of the resulting loss. Anable, *Europe and "Third World" in Trade Accord*, Christian Science Monitor, Mar. 12, 1975, § B, at 3, col. 1.

¹⁴⁴ The United States House of Representatives rejected proposals for a Federal agency to act as sole purchasing agent for U.S. oil imports under which oil purchased through secret competitive bidding could be resold to private firms. Proponents hoped that secret competitive bidding for licenses to import oil into the United States would force cartel members to cut prices to get a larger share of U.S. markets. Such a strategy failed to consider the possibility of an OPEC boycott or the submission of similar bids by OPEC members. A Federal agency to take over the function of importing oil would also present the following problems: capital costs, lack of experience and the possibility of constituting a larger focus for a political attack. Wall Street Journal, Jun. 11, 1975, at 2, col. 3. See also Lichtblau, *Uncle Sam Would Be A Weak Oil Bargainer*, N.Y. Times, Apr. 20, 1975, § 3, at 14, col. 2; N.Y. Times, Sept. 15, 1975, at 27, col. 1. Secretary Kissinger also wanted the United States and other oil consuming nations to set a common floor price on oil imports to ensure energy development in the United States and full conservation even if OPEC tried to undercut such efforts by

down oil prices.¹⁴⁵ A preparatory meeting between consuming and producing nations in Paris in April 1975 fell apart because the United States wanted to focus only on energy, while developing nations wanted to broaden the agenda to include all raw materials and development. The April 1975 conference witnessed a coalescence of the views of OPEC members and non-oil producing developing countries that the agenda should include protection of the purchasing power of developing countries' export earnings and the indexing of raw material exports.¹⁴⁶ Secretary Kissinger's willingness in May 1975 to broaden the discussion between producing and consuming countries to include all issues of concern to developing nations and to consider international arrangements for greater price stability of each commodity on a case-by-case basis,¹⁴⁷ paved the way for Secretary Kissinger's more detailed

slashing oil prices. It was hoped that such a plan would serve as an inducement to oil producers to agree on long-term, lower-cost arrangements with oil consumers. Gwertzman, *Kissinger Unveils U. S. Plan to Spur New Fuel Sources*, N.Y. Times, Feb. 4, 1975, at 1, col. 4; Keatley, *Kissinger Discloses Strategy on Energy Aimed to Break OPEC's Economic Power*, Wall Street Journal, Feb. 4, 1975, at 5, col. 3; Wall Street Journal, Feb. 14, 1975, at 3, col. 2; Smith, *Kissinger Oil Price Plan Finds Industry Skeptical*, N.Y. Times, Feb. 5, 1975, at 4, col. 2; but compare Parisi, *The Case Against A Price Floor for Oil*, BUS. WEEK, Apr. 14, 1975, at 51. American efforts to build an adequate petroleum stockpile also present cost problems. Other nations might begin to stockpile unless the United States made its stockpile available. Proposals abound for reduction of the demand for petroleum products, increasing domestic production and developing substitute energy sources. A Federal corporation might also be created to drill for petroleum on the most promising oil acreage held by the Federal Government. The U.S. Treasury Department favored a free market approach and opposed a generalized system of commodity agreements aimed at fixing prices. Wall Street Journal, Jul. 10, 1975, at 2, col. 3; *Statement of Gerald O. Parsky, Assistant Secretary of the Treasury before Subcommittee on International Trade, Investment and Monetary Policy of House Committee on Banking, Currency and Housing*, Jul. 9, 1975.

¹⁴⁵ The plight of the Fourth World (oil-importing, developing countries) evokes American interest because of the potential of such nations as markets to absorb exports of manufactured goods and for new foreign direct investment.

¹⁴⁶ Ulman, *Algeria Suggests the Oil Conference Hold "Parallel" Talks on Other Raw Materials*, Wall Street Journal, Apr. 9, 1975, at 7, col. 2; Farnsworth, *Energy Talks at Impasse: U.S. and Algeria at Odds*, N.Y. Times, Apr. 15, 1975, at 47, col. 7; Wall Street Journal, Apr. 18, 1975, at 9, col. 2.

The Third World supported and continues to support OPEC for at least three reasons: Developing nations hope to be oil exporters, they want OPEC's support for their own cartels and because nearly all developing nations bear the scars of independence and humiliation. *The Third World Leans Toward OPEC*, BUS. WEEK, Sept. 8, 1975, at 28.

¹⁴⁷ N.Y. Times, May 14, 1975, at 1, col. 6; Wall Street Journal, May 14, 1975, at 8, col. 2; Farnsworth, *U.S. Affirms Shift on World Prices*, N.Y. Times, May 22, 1975, at 1, col. 5; Wall Street Journal, May 28, 1975, at 3, col. 2; Ulman, *U.S. Is Set to Discuss New Arrangements on Individual Commodities Case-by-Case*, Wall Street Journal, May 29, 1975, at 4, col. 1; Farnsworth, *Kissinger Offers New*

proposals to the September 1975 Special Session of the United Nations General Assembly and for the December 1975 Conference on International Economic Cooperation.

With reference to commodity trade and production and the stability of the export earnings of developing countries, in September 1975, Secretary Kissinger recommended the establishment of a consumer-producer forum for each key commodity to promote the efficiency, growth and stability of the respective market.¹⁴⁸ He supported liberalization of the International Monetary Fund's terms for financing of buffer stocks and the creation within the International Monetary Fund of a developmental security facility to stabilize overall export earnings by giving loans to sustain development programs in the face of export fluctuations. Funds available for loans would total \$2.5 billion per year with an aggregate maximum of \$10 billion.¹⁴⁹ Representatives of developed and developing nations convened the December 1975 meeting of the Conference on International Economic Cooperation. Four commissions — energy, raw materials, development and finance — will explore these issues in an arena less marked by political confrontation and will formulate practical recommendations reaching beyond issues involving petroleum prices and supplies.¹⁵⁰

U.S. Aid Plan, N.Y. Times, May 29, 1975, at 1, col. 4; Godsell, *U.S. Yields on Raw Materials Linkup*, Christian Science Monitor, May 28, 1975, at 3, col. 1; Speech by Secretary of State, Henry A. Kissinger before the Kansas City International Relations Council, May 13, 1975; Speech by Secretary of State, Henry A. Kissinger before the Meeting at the Ministerial Level of the International Energy Agency, May 27, 1975; Speech by Secretary of State, Henry A. Kissinger before the Ministerial Council of the Organization for Economic Cooperation and Development, May 28, 1975; N.Y. Times, May 29, 1975, at 19, col. 1; Hofmann, *Kissinger Offers Poor Lands Links to Richer Lands*, N.Y. Times, Sept. 2, 1975, at 1, col. 3.

¹⁴⁸ N.Y. Times, Sept. 2, 1975, at 20. The U.N. Resolution adopted at the close of the September 1975, United Nations General Assembly Special Session called for a six-point program to improve market structures in the field of raw materials and commodities exported by developing countries; including, (1) international stocking and other market arrangements for securing stable, remunerative and equitable prices for these commodities, and (2) widening and enlarging existing facilities for compensatory financing of export revenue fluctuations. The resolution also called for continued study by the UNCTAD Secretariat of indexing schemes. N.Y. Times, Sept. 17, 1975, at 10, col. 4. Secretary Kissinger refused to agree to indexing and desired to avoid international price-support mechanisms for basic commodities. He also proposed an international system for nationally held grain reserves to meet food shortages and famines. See N.Y. Times, Sept. 25, 1975, at 51, col. 7; N.Y. Times, Nov. 2, 1975, § 1, at 7, col. 1.

¹⁴⁹ N.Y. Times, Sept. 2, 1975, at 20, col. 3.

¹⁵⁰ Farnsworth, *France Invites 27 Lands to Meet on Economic Ills*, N.Y. Times, Sept. 16, 1975, at 1, col. 6; Farnsworth, *Paris Meeting of Rich and Poor Submit*

With the heightened prospects for ongoing discussions between producing and consuming nations, several problems must be faced with regard to increasing or stabilizing raw material prices. Developing countries seek to end exploitation and to obtain a fair price for their raw material exports.¹⁵¹ How such prices will be set, for which raw materials, and by what institutions remain to be established.

Such agreements among developing and developed nations, if successful, would provide a floor under world prices thereby contributing to worldwide inflationary pressures.¹⁵² Indexing, in particular, freezes prices at arbitrary levels. Arrangements to hold up prices in periods of falling demand may reduce demand for such commodities still further. Composition of the index basket must be agreed upon. Utilization of buffer stock mechanisms involves the difficulties of projecting the future size of the necessary buffer stock in light of long-term supply and demand patterns and elasticities, as well as the allocation of quotas among producing and consuming nations, at different production levels. How should the burden of contributing buffer stocks by consuming nations be divided — for example, according to their respective shares of consumption?

Despite these difficulties, commodity stabilization arrangements offer benefits to both producing and consuming nations. Producing nations seek stable (and hopefully increasing) prices to maximize governmental revenues and avoid strains on their ability to meet social demands. Consuming countries want assured access to supplies at prices which will prevent the upsetting of business plans necessitating readjustments in price levels, quantities available for sale and sales patterns. The mutuality of benefits flowing from a commodity stabilization system will probably lead to an agreement among nations. Price levels and production quotas and/or buffer stocks arrangements can be arrived at through negotiations which, of course, will include political and

Two Lists for Paris World Economy Talks, N.Y. Times, Oct. 17, 1975, at 15, col. 1; N.Y. Times, Oct. 17, 1975, at 15, col. 1.

¹⁵¹ As a useful working definition, exploitation may be defined as forming part of an exchange of goods and services when (1) the goods and services exchanged are quite obviously not of equal value, and (2) one party to the exchange uses a substantial degree of coercion. MOORE, REFLECTIONS ON THE CAUSES OF HUMAN MISERY AND UPON CERTAIN PROPOSALS TO ELIMINATE THEM (1972).

¹⁵² Segments of labor and industry within each nation-state capable of achieving parity with rapidly mounting commodity prices will further exacerbate the inflationary spiral.

economic factors.¹⁵³ Negotiations of a series of pacts in unison would enable nations to balance concessions. An integrated approach may reduce the total cost because it is unlikely that all covered commodities would require price support at the same time. Such agreements require international arrangements, open to all nations, which will meet, through compromise, the needs of both developing and developed countries, and which will take into consideration the value of raw materials and commodities to the consumer and the alternate costs of substitute sources. Consideration may also be given to the indexing against the impact of inflation. The most critical question is not the mechanics for supplanting the market mechanism, but the distribution of the fruits generated by the efforts of producing nations to counter-vail the power of multinational corporations and consuming countries. The new arrangements will adversely affect nations and other unorganized consumers which are heavily dependent on the importation of a wide range of raw materials, including agricultural products. Increases in prices of raw materials will yield benefits for major raw material exporters such as the Soviet Union, South Africa, Canada and Australia, which do not fit the stereotype of developing nations. In short, commodity price supports may not facilitate the transfer of income from rich to poor countries. World food shortages further increase the power of the United States, which dominates the food producer's oligopoly.

B. *Manufacturing Operations*

Confrontation between consuming and producing countries over the price and the availability of raw materials has temporarily obscured the efforts of developing nations to control the manufacturing operations of multinational corporations. The United Nations has been active with regard to investigation of global enterprises, and the creation of new bodies and commissions to engage in research and to consider and recommend a variety of means to regulate global firms.

The Economic and Social Council of the United Nations in 1972 requested the Secretary General to appoint a Group of Emi-

¹⁵³ See Keynes, *The International Control of Raw Materials*, 4 J. INT'L ECON. 301 (1974). The Keynes-United Kingdom proposal in 1942 contemplated the establishment of a separate international organization which all members of the United Nations would be invited to join. In addition to councils for each commodity, a Council of Commodity Control would supervise price and output policies and the size and management of commodity output.

ment Persons to study the role of multinational corporations and their impact on the developmental process and their implications for international relations and to submit recommendations for international action.¹⁵⁴ The Group of Eminent Persons in its report recommended that the Economic and Social Council of the United Nations discuss issues related to multinational corporations at least once a year and that a commission on multinational corporations be created under the Economic and Social Council.¹⁵⁵ The Group further advocated the establishment of an information and research center to perform two functions: Make available information to assist developing countries in dealing with global firms and provide substantive and administrative services; including the collection, analysis and dissemination of information for the proposed commission on multinational corporations.¹⁵⁶

In August 1974, the United Nations set up an Information and Research Center to obtain needed information and analyze and disseminate such information to nation-states. This was followed by the establishment of a permanent United Nations Commission on Transnational Corporations in December 1974 which would act as a forum within the United Nations for the comprehensive consideration of multinational enterprises; including promoting an exchange of views, conducting inquiries, making studies, preparing reports, assisting the Economic and Social Council in developing a set of recommendations to form the basis of a code of conduct, and preparing proposals relating to the regulation and supervision of multinational corporations.¹⁵⁷

The United Nations has taken the lead in attempting to gather information on and formulating a code of conduct for multinational enterprises. Implicit in such steps are a variety of policy alternatives and various mechanisms for implementation. At least three possible routes could have been chosen: Disclosure, international incorporation, and transnational standards for corporations, home countries and/or host nations. The United Nations has chosen to pursue the first and the third paths. The foundation of transnational policy for the regulation of multinational firms rests on their disclosure of information and on the collection,

¹⁵⁴ U.N. DEP'T OF ECON. AND SOC. AFFAIRS, *THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS* 3 (1974).

¹⁵⁵ *Id.* at 52.

¹⁵⁶ *Id.* at 53-54.

¹⁵⁷ COMMITTEE ON TRANSNAT'L CORPORATIONS, *REPORT OF FIRST SESSION*, Supplement No. 12, U.N. Doc. E/5655 E/C.10/6, at 1 (1975).

assessment, and dissemination of such data.¹⁵⁸ With the present lack of knowledge regarding the economic, political and social impact of global firms, particularly in view of the lax disclosure requirements imposed by nations other than the United States, information gathering as a first step is laudable. Two caveats must be noted. First, although a need for more information exists, corporations may have valid reasons (for example, business secrecy) for confidentiality. A line must, therefore, be drawn which will respect legitimate corporate needs, but not allow firms to hide behind a screen of business secrecy. Secondly, in gathering the data, certain preliminary judgments must be made to pinpoint the most critical information; including implicitly, the developmental paths of nation-states, the costs and benefits of multinational firms, the allocation of such costs and benefits and the objectives for and means of implementing transnational regulation. Promiscuous gathering of data probably will be self-defeating. But greater disclosure and data gathering (for example, on restrictive business practices and interaffiliate transactions) form a first step in a pattern of international control and indirectly provide a means of substantive regulation.

Beyond disclosure, multinational corporations could be formally internationalized. Instead of national incorporation and regulation, an international corporate law could be developed pro-

¹⁵⁸ *Id.* at 3-5, 10-12. The Commission has requested as a high priority task that the Information and Research Center determine what information is available on multinational corporations and where such information is located. *Id.* at 3. For the disclosure recommendations of the U.N. Group of Eminent Persons regarding agreements and corporate performance, see U.N., DEP'T OF ECON. AND SOC. AFFAIRS, *THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS* 95-97 (1974).

See also U.N., *MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 87 (1973), which contemplates the gathering, analysis and dissemination of data on: (1) The inter-affiliate flows of goods and services and their pricing; (2) the international distribution of specific activities, technology and skills, generation, managerial and equity control; (3) the actual financial flow of international direct investment (apart from capitalized know-how/transfer of secondhand equipment); and, (4) the impact of foreign subsidiaries on governmental policies (tariff, restrictive business practices, credit availability, access to alternative sources of supply of goods and services). Ralph Nader has suggested that the United Nations send out a questionnaire to 200 top multinationals and host governments to obtain data on: (1) Who owns what land, mineral and other resources in each country; (2) the amount, origin and nature of new investment; (3) the firm's total income; (4) payments received on royalties, patents, licenses and management contracts from foreign subsidiaries; (5) interlocks with governments, together with the credit and debt relationship; and, (6) taxes paid. Ralph Nader, *GROUP OF EMINENT PERSONS* 93 (1974). See generally Behrman, *Conflicting Constraints*, 4 *COL. J. WORLD BUS.* 43-46, 50-55 (1974).

viding for international incorporation of certain global firms. One proposal envisages the establishment of an international companies law, administered by a supranational body composed of representatives from signatory nations, which would exercise supervisory authority over internationally chartered corporations.¹⁵⁹ Proposed restrictions on internationalized corporations are of particular concern. A company chartered under the proposed international companies law would agree to be bound by its provisions. Each signatory state would agree neither to impose additional restrictions on chartered corporations nor expropriate the subsidiaries of such corporations without prompt payment of adequate compensation. In short, by placing the entire scope of corporate activities under international surveillance and regulation, the proposed law would protect the firm from interference by host nations. The share ownership, board membership and top management of such corporations would also be internationalized. By dispersing ownership of the parent corporation, such an entity might no longer be regarded as the sole instrumentality of a particular nation.

The suggestions for global chartering suffer from several impediments. Although the proposed law would contain restrictions on corporate activities, as would a code of conduct, developing countries would not support lax, imprecise standards and inadequate enforcement machinery. The inability of nation-states to impose additional restrictions on global firms constitutes an impediment, as does lack of precision in the process of selecting representatives to the supranational body.¹⁶⁰ In short, such a proposal would protect the existing position of multinational firms.

The heart of the present United Nations' efforts center on drafting a code of conduct for transnational enterprises. A code

¹⁵⁹ See Ball, *Cosmocorp: The Importance of Being Stateless*, 2 COL. J. WORLD BUS. 25 (1967); Ball, *Making World Corporations into World Citizens*, WAR/PEACE REPORT 8 (1968); Ball, *Proposal for an International Charter*, in GLOBAL COMPANIES 170-71 (Ball ed. 1975). The United Nations has proposed a variant; namely, that multinational enterprises satisfying certain criteria and agreeing to observe certain criteria and certain requirements would be registered with an agency of the United Nations. In the event a dispute arises between a host country and such multinational firms, a United Nations body would conduct an independent study and render a report. U.N., MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT 94 (1973). See also, Clausen, *The Internationalized Corporation: An Executive's View*, 403 ANNALS 12, 21 (1972) and A. Toynbee, *On the Way: Companies More Powerful Than Nations*, 7 NEWS & WORLD REP. 38, 41 (1971).

¹⁶⁰ Rubin, *Corporations and Society: The Remedy of Federal and International Incorporation*, 23 AMER. L. REV. 263 (1973).

of conduct envisages the establishment and acceptance of basic principles which would serve as guidelines for the activities of corporations. A proposed General Agreement on Multinational Corporations forms a starting point for the consideration of a code of conduct.¹⁶¹ Patterned after the General Agreement on Tariffs and Trade, the proposed agreement would lay down a limited set of principles to be administered by an international agency possessing the power to investigate questions submitted by corporations or nation-states and make non-binding recommenda-

¹⁶¹ Goldberg & Kindleberger, *Toward a GATT for Investment: A Proposal for Supervision of the International Corporation*, 2 L. & POL. IN INT'L BUS. 295, 318 (1970). But see Rubin, *Multinational Enterprise and National Sovereignty: A Skeptic's Analysis*, 3 L. & POL. IN INT'L BUS. 1 (1971); Statement, Onitiri, Director, Institute of Social and Economic Research, University of Ibandan, Nigeria, GROUP OF EMINENT PERSONS 108 (1974), who notes that a GATT type of agreement regulating the relations between multinational firms and host countries will follow major changes in the structure of the economic relationships between developed and developing countries.

Robinson, *The Developing Countries, Development and the Multinational Corporation*, 403 ANNALS 67, 78-79 (1972), proposed a General Agreement on Capital and Technology Transfer that would, among other items, encompass: (1) Political neutrality of foreign-owned firms in host countries (failure to maintain such neutrality would void parent-government risk guarantees; a firm could only influence politics by public statements, and covert activity of a political nature would constitute a per se violation); (2) adherence by multinational firms to all local laws; (3) host governments would recognize foreign ownership of the tangible assets and intangible rights of management control for 20 years, unless a shorter time period was agreed to (the investor/contractor would adhere to entry conditions unless adherence was made impossible by a host government or a change in circumstances beyond the control of the foreign investor); (4) full force would be given to tax incentives and holidays introduced by other members to foreign business interests; (5) the parent government would tax earnings at capital gains rates or not more than 50 percent, whichever is less; and, (6) disputes regarding rules would be referred for interpretation to an international forum created under the Agreement.

Jacques Maisonrouge, President, IBM World Trade Corp., supported a code containing five points: (1) Total or predominant employment of host nationals in subsidiaries; (2) multinational representation at headquarters and on boards; (3) multinational stock ownership; (4) adequate guidelines on transfer pricing; and, (5) judgment of a company's performance, particularly in a developing country, based to a degree on its performance in area of social responsibility. Jacques Maisonrouge, President, IBM World Trade Corporation, GROUP OF EMINENT PERSONS 68-69 (1974).

Sir Val Duncan, Chairman and Chief Executive Officer of Rio Tinto Zinc Corp. outlined to EMINENT PERSONS a code of good corporate behavior comprising: (1) A progressive degree of local autonomy in decision making, subject to very minimum co-ordination at the center; (2) employing as high a proportion of nationals of any host country as possible, including senior management; (3) having nationals of host country serve as a majority of the board of directors of each oversea corporation; (4) being sensitive to reasonable aspirations of the host nation — being good corporate citizens; and, (5) giving the population of a host country the opportunity to participate in major enterprises of that country

tions which would, hopefully, be accepted by the affected parties on a voluntary basis. Signatory states and perhaps multinational corporations could consult and bargain regarding policy departures from the agreement and also discuss problems and procedures to facilitate the settlement of disputes. From a few generally accepted principles, it is hoped that an international treaty of substantial coverage would emerge. The precedents developed by the agency would also form a basis on which to build a supranational system.

after the major risk stage has been surmounted. Sir Val Duncan, Chairman and Chief Executive Officer of Rio Tinto Zinc Corp., GROUP OF EMINENT PERSONS 174, 175 (1974).

The Under-Secretary for Industry and Commerce of Mexico, favored a code of conduct which did not impair sovereignty of recipient countries. Possible provisions in such a code of conduct would require that foreign investment complement national investment. Multinational corporations could not replace local corporations or deal in fields adequately covered by them, but would have to have a positive effect on balance of payments (especially through the increase of exports), promote increased employment and adequate remuneration, hire and train technicians and administrative staff from host country, utilize national products as much as possible in preparing final products, finance operations from outside sources, contribute to the development of less developed economic zones of a host country, supply the best and most appropriate technology and contribute to local research and development, have a favorable effect on the quality and price level of production, respect the social and cultural values of the host, identify with interests of the host nation, and not distort consumption patterns or monopolize national markets. Sainz, Under-Secretary for Industry and Commerce of Mexico, GROUP OF EMINENT PERSONS 27-28 (1974). See also P. Liotard-Vogt, Managing Director, Nestle Alimentana S.A., GROUP OF EMINENT PERSONS 283 (1974); Lombardi, President, International Chamber of Commerce, GROUP OF EMINENT PERSONS, 297-300 (1974), who concluded that broad principles will influence the attitude of multinational corporations and produce changes in their behavior. Efforts by the OECD to harmonize policies and coordinate activities, generate information and a means for testing the validity of a code of conduct. The OECD has attempted to informally coordinate the antitrust policies of member countries through a committee of experts on restrictive business practices, which periodically issues descriptive reports and recommendations to member governments to take measures against practices deemed harmful. Intergovernmental coordination of policies on extraterritoriality also has been successful. Rubin, *The Multinational Enterprise and National Sovereignty: A Skeptic's Analysis*, 3 L. & POL. IN INT'L BUS. 1, 14 (1971). The International Chamber of Commerce has developed the GUIDELINES FOR INTERNATIONAL INVESTMENT (1972), which makes suggestions for the behavior of governments and corporations (for example, encouraging local equity ownership, local participation in management, and promotion of local individuals to positions of responsibility). Self imposed guidelines which are expressions of general concepts are subject to varying interpretations and are of limited efficacy. U.N., MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT 78 (1973). For a prior effort by the United Nations to formulate a treaty regulating multinational corporations, see HAVANA CHARTER FOR AN INTERNATIONAL TRADE ORGANIZATION, U.S. Dep't of State Pub. No. 3117 (Commercial Pol. Series 113, 1948). For an itemization of codes covering governmental and corporate behavior see BEHRMAN, CONFLICTING CONSTRAINTS ON MULTINATIONAL ENTERPRISE 43-50 (1974).

The advantages of a code and then a treaty include overcoming the slow, costly efforts to meet the problems raised by global firms through case-by-case bargaining between a nation-state or a regional organization and a multinational corporation.¹⁶² Multinational firms would, furthermore, know what is expected of them, at least on the issues which comprise the code. Signatory nation-states would legally be committed to arrangements covering foreign direct investment, unaffected by pressures from special local interests or the temptation to rely on discriminatory or retroactive ad hoc measures in regulating multinational corporations.

Agreement on basic principles remains difficult in view of the current lack of common interests between developed and developing countries and differing perceptions of the economic, political, and social impact of multinational enterprises. The first meeting of the United Nations Commission on Transnational Corporations in March 1975 produced a split between developed nations and developing countries on the scope and content of a code of conduct and on whether such a code would apply to host governments as well as to private and/or public enterprises engaged in foreign direct investments.¹⁶³

In view of the position of multinational corporations in support of a code of conduct establishing general guidelines, developing and developed nations can probably agree on a narrow range of issues¹⁶⁴ including barring activities of global firms which adversely affect competition (for example, the takeover of or the merger with an existing local firm),¹⁶⁵ requiring an end

¹⁶² Rostow, *The Need for a Treaty*, in GLOBAL COMPANIES 160-61 (Ball ed. 1975). Initially only a few developing countries would sign the treaty, but Rostow believes others would sign if the original signatories find the results "favorable." See also U.N. MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT 93 (1973).

¹⁶³ COMMISSION ON TRANSNATIONAL CORPORATIONS, REPORT ON THE FIRST SESSION, U.N. Doc. E/5655 E/C.10/6, at 9-10 and 18-22 (1975). (Annex 1, *List of Areas of Concern Regarding the Operations and Activities of Transnational Corporations*, Note Submitted by the Group of 77; Annex 11, *Areas of Concern which Relation to Relations Between Transnational Corporations and Governments*, Note Submitted by the Delegations of France, Federal Republic of Germany, Italy, United Kingdom, United States).

¹⁶⁴ Secretary of State Henry A. Kissinger, Speech to United Nations on Sept. 1, 1975, N.Y. Times, Sept. 2, 1975, at 20, col. 1.

¹⁶⁵ Solomon, *International Control of Investment in the Trade Sector*, in INTERNATIONAL CONTROL OF INVESTMENT (Wallace ed. 1974); U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 86-87 (1974); see also, Farnsworth, *O.E.C.D. Asks Data on Big Companies*, N.Y. Times, Oct. 27, 1975, at 41, col. 8.

to discrimination in employment based on sex, age, religion, race, and ethnic origin, requiring that qualified local personnel be employed or be trained for employment,¹⁶⁶ and imposing an obligation on multinational enterprises to obey local laws and refrain from illegal intervention in the domestic affairs of host countries.¹⁶⁷ Although the code should permit multinational corporations to continue to represent their views to government officials in host countries (at least on those issues which directly affect their interests), it is recommended that the code prohibit multinational corporations from: (1) bribing government officials, directly or indirectly, through the use of agents in host nations; (2) engaging in local political controversies or identifying themselves with any political entity in host nations including a ban on contributions to government officials, political parties or candidates; and (3) engaging in intervention, directly or indirectly, in the domestic affairs of a host government. International agreement could also be secured on the prohibition of certain restrictive business practices by multinational firms in connection with licensing of technology.¹⁶⁸ Representing the interests of global

¹⁶⁶ Farnsworth, *O.E.C.D. Asks Data on Big Companies*, N.Y. Times, Oct. 27, 1975, at 41, col. 8.

¹⁶⁷ Secretary of State Henry A. Kissinger, Speech to United Nations, N.Y. Times, Sept. 2, 1975, at 20, col. 1. Farnsworth, *O.E.C.D. Asks Data on Big Companies*, N.Y. Times, Oct. 27, 1975, at 41, col. 8. On the general topic of political intervention see U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS* 45-47 (1974). See also Solomon & Linville, *Transnational Activities of American Multinational Corporations and United States Government Regulation: A Policeman for the World's Moral Standards*, forthcoming, 17 B.C. IND. & COMM. L. REV. — (1976).

¹⁶⁸ Secretary of State Henry A. Kissinger, Speech to the United Nations, N.Y. Times, Sept. 2, 1975, at 20, col. 1. INTERNATIONAL CHAMBER OF COMMERCE, *MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT* 22-24 (1974). The United Nations Group of Eminent Persons recommended a prohibition on unjustified export market allocations and the creation of a framework to revise existing arrangements. U.N. *THE IMPACT OF MULTINATIONAL CORPORATIONS* 56 (1974). Technology transfer guidelines should consider what is being transferred (such as basic research, engineering designs, technical service) and formulate what objectives should be encouraged; for example, self-sufficiency of products and processes and/or research and development in host nations. The cost of such restrictions on multinational enterprises and host countries should also be considered. INTERNATIONAL CHAMBER OF COMMERCE, *MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT* 203 (1974). Secretary Kissinger also supported the creation of an International Industrialization Institute to sponsor and conduct research, and an International Center for the Exchange of Technological Information to act as a clearing-house for sharing research and findings relevant to development. Secretary of State Henry Kissinger, Speech to United Nations, Sept. 1, 1975, N.Y. Times, Sept. 2, 1975, at 20, col. 1.

A critical issue for a code of conduct would turn on whether to require a

firms, developed countries may seek to distinguish restrictive practices in fixing prices from those involving the allocation of exports. Industrialized nations may also resist subjecting existing technology contracts to current and future periodic review and posing a limitation on amount of royalties or fees. In view of national and regional endeavors in the area of restrictive business practices, the value of an agreement on such principles is doubtful.

Beyond this limited range of items, agreement on a code of conduct may be more difficult because of either technical questions involved or differing viewpoints on the allocation of costs and benefits of multinational firms. For example, the mere statement that multinational corporations shall not engage in transfer pricing establishes little. Even after more data is gathered on the extent and effects of transfer pricing, standards and regulations covering a wide range of situations in different industries must be established. The multitude of means for transferring income must be considered. Guidelines of universal applicability appear nearly impossible. A just price for tens of thousands of terms cannot be found. An arm's length standard of pricing is not helpful in instances of prices set by a few firms. Determination of the costs, particularly the allocation of research, administrative, and overhead expenses is difficult. Agreement on the allocation of a stream of revenue among nations may also prove difficult. A code of conduct dealing with transfer pricing should leave implementation to national or regional bodies, with provisions for an international agency to facilitate the collection, analysis, and distribution of data on transfer pricing.¹⁶⁹

Although taxation has traditionally fallen within the area of local concern, agreement may be reached on a single, universal

parent corporation to deploy technologies and production processes capable of most efficiently employing local factors of production. Competition from other multinational firms may constitute a more effective way to force foreign investors to experiment with more suitable technologies.

¹⁶⁹ See U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 56, 89 (1974). But compare *INTERNATIONAL CHAMBER OF COMMERCE, MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT* 12, 35-36 (1974) which advocates the creation of an arbitration process to which governments and multinational corporations would have access rather than arbitrary accounting rules and standards for, what are by definition, special situations. See also, Vaitos, *Comment*, in *INTERNATIONAL CONTROL OF INVESTMENT* 127-128 (Wallace ed. 1974). For an analysis of the various facets of international agreements by functional areas see BEHRMAN, *CONFLICTING CONSTRAINTS OF MULTINATIONAL ENTERPRISES* 55-67 (1974).

income tax on the global profits of a multinational corporation, with tax liability assessed by each jurisdiction in which a firm operates in proportion to the profit of the entire enterprise, irrespective of where the profit nominally appears.¹⁷⁰ Such a tax system would remove the incentive to engage in transfer pricing and other manipulations of income. At least two obstacles exist. First, a formula on which taxation will be based (for example, sales, profits, assets, and a percentage of dollar payrolls) must be devised in each country. Secondly, many developing host countries currently use tax incentives and subsidies (as well as favored access to credit and restrictions on unions and strikes) as a means to attract foreign direct investment. In the future, this may lead to home nations imposing countervailing restrictions on host tax inducements. Host countries may in turn attempt to avoid these home country retaliatory efforts.¹⁷¹ Whether developing countries will presently agree on a restriction on tax inducements appears problematic. Perhaps home country retaliatory policies may force a more conciliatory approach. National and regional efforts reducing flexibility in transfer pricing may also force multinational firms to perceive the advantages of international tax collaboration.

Revision of the patent system, such as the creation of an international patent bank to which public institutions would donate patents which would be licensed to developing countries without payment of royalties, appears difficult. Developed nations and multinational corporations will probably press hard in opposing changes in the patent system and argue that the patent as a monopoly forms an incentive for innovation. As access to the highest, most modern forms of technology probably does not meet the development needs of many Third World countries, revisions of the patent system may fade into the background. The ability to tap intermediate forms of technology, particularly the labor-intensive

¹⁷⁰ U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS 91-95 (1974). See also PENROSE, THE LARGE INTERNATIONAL FIRM IN DEVELOPING COUNTRIES 273 (1968); PENROSE, *International Economic Relations and Large Firms*, in THE GROWTH OF FIRMS, MIDDLE EAST OIL AND OTHER ESSAYS 273 (Penrose ed. 1971); VERNON, SOVEREIGNTY AT BAY 276 (1971). But compare INTERNATIONAL CHAMBER OF COMMERCE, MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT 37-38 (1974). See generally, U.N., DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, THE IMPACT OF MULTINATIONAL CORPORATIONS IN DEVELOPMENT AND ON INTERNATIONAL RELATIONS TECHNICAL PAPERS: TAXATION, ST/ESA/II (1974), especially Shoup, *Taxation of Multinational Corporations* at 33-35.

¹⁷¹ Bergsten, *Coming Investment Wars?*, 53 FOR. AFF. 135, 141-142 (1974).

variety and unpatented know-how, may be much more vital for developing countries. If high technology is deemed critical, nations or regional groupings should consider national or regional legislation that provides greater discrimination in the granting of patents, particularly regarding the standard of usefulness. They should also provide for the compulsory licensing of patents in the event of non-utilization by foreign firms.¹⁷²

The difficulties inherent in devising principles for assessing the costs and benefits of multinational enterprises and in agreeing on the allocation of costs and benefits among nation-states and corporations,¹⁷³ as well as the drafting of technical solutions to general guidelines, present formidable barriers to the early adoption of a meaningful code of conduct or a more formal international agreement on transnational enterprises. Corporate behavior deemed desirable may vary with the circumstances and may therefore be difficult to codify. Nations differ in development priorities, national interests, economic, social and political objectives, attitudes and ideology to foreign direct investment, levels of governmental sophistication, and resource endowments. Industries differ in structures and patterns of behavior. The interest of labor in developed nations and developing countries must, of course, be considered. Developing nations, because of the importance of raw materials in a world facing resource scarcities, believe their bargaining position is improving. They probably do not want to enter into compromise arrangements involving current institutional norms or dispute-resolving mechanisms as a point of reference or to accede to a surrender of their sovereignty. Developed countries probably will resist demands of developing countries for exclusive domestic jurisdiction over multinational corporations, including litigated matters, compensation for nationalization, and for a prohibition of a home country from interceding in a dispute between a multinational firm and the host government.¹⁷⁴

¹⁷² U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 56 (1974); U.N., *DEPT. OF SOCIAL AND ECONOMIC AFFAIRS, THE ACQUISITION OF TECHNOLOGY FROM MULTINATIONAL CORPORATIONS BY DEVELOPING COUNTRIES* 45 (1974).

¹⁷³ Other difficult areas include ownership and fadeout policies, procedures and methods for nationalization, the amount and the timing of the payment of compensation, and environmental questions (including the assessment of social costs and allocation of such social costs).

¹⁷⁴ Commission on Transnational Corporations, Report in the First Session, U.N. Doc. E/5655 E/C 10/6 (1975), Annex I (List of Areas of Concern Regarding the Operations and Activities of Transnational Corporations, Note Submitted by the Group of 77) at 18-19. Latin American governments wish to deny local rights and remedies to any foreign-owned subsidiary if such entity or its

The resolution of issues may evolve in the following stages: Taking the easy areas first, building up capabilities and trust, then handling the difficult questions. The United Nations probably still constitutes the best arena for dealing simultaneously with the wide variety of issues and for using the results of investigations undertaken by that body.

Even if guidelines and specific approaches could be agreed upon, the problems of devising a satisfactory supervising agency and enforcement mechanism must be resolved. A centralized regulatory agency may be unresponsive to future needs. Regulation by a branch of the United Nations or a newly created international agency might prove too weak. A United Nations-based agency might be regarded as likely to be too inefficient and slow, but developing countries would probably feel more comfortable with an agency within the United Nations system. For this reason, multinational corporations and developed countries may desire a regulatory body not connected with the United Nations. Existing international organizations, such as the United Nations, might resent the intrusion of a new regulatory body. The vested inter-

parent called on the home government of the parent (or any foreign government) in a dispute with the host nation.

The possibility of a multinational corporation pressuring a home country led to the creation of the Calvo doctrine pursuant to which a subsidiary would refrain from appealing to its home government for protection or support. U.N., *MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 81, n.15 (1973), summarizes the development of the Calvo doctrine as follows:

To prevent appeals by aliens to their home governments for diplomatic intervention on behalf of their contract rights, a number of Latin American states, during the latter part of the 19th century, adopted a policy of writing into their contracts with aliens a clause, known as the "Calvo Clause," the general tenor of which was that the alien agreed that any disputes that might arise out of the contract were to be decided by the national courts in accordance with national laws and were not to give rise to any international reclamation.

International arbitration tribunals and mixed claims commissions have differed on their interpretations of the clause — some have upheld it as a bar to the interposition of the alien's home government, others maintain that the act of an alien cannot restrict rights of his government under international law.

For background on the Calvo Clause see HACKWORTH, *INTERNATIONAL LAW* 635-54 (1943); Summers, *The Calvo Clause*, 19 VA. L. REV. 459 (1933); Note, *The Calvo Clause: Its Current Status as a Contractual Renunciation of Diplomatic Protection*, 6 TEX. INT'L L.F. 289 (1971).

To promote acceptance of the Calvo doctrine by home countries, host nations could guarantee: (1) Economic rights to foreign subsidiaries, (2) non-discriminatory treatment as compared with national enterprises, and (3) procedures for compensation following nationalization formulas to determine the level of compensation. U.N., *MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 81-82 (1973).

ests of established international organizations will lead to pressures for an agency under the United Nations umbrella. Developing nations could find that the international regulatory agency, whether or not under the auspices of the United Nations, may develop a sympathy for the entities regulated, with business interests superceding the public interest charge of the regulators. Multinational corporations will oppose any meaningful restrictions as an impediment of their flexibility. Transnational regulation, like regional grouping, limits ability to play one nation against another. The press of contradictory national regulations may, however, lead multinational firms to search for transnational uniformity.

Agreement must also be reached on the functions of an international regulatory agency. Such an agency could perform several possible functions; including, consultation, gathering of information with the possible power to compel the production of documents, promulgation of detailed regulations with the power to enforce such standards, investigation and the making of nonbinding reports, arbitration of disputes and reaching decisions which nation-states and multinational corporations are obligated to effectuate.¹⁷⁵ As evidenced by the refusal of many developing nations, particularly those in Latin America, to sign the Convention on the Settlement of Investment Disputes between States and Nationals of Other States formulated by the Executive Directors of the World Bank, Third World nations remain unwilling to surrender autonomy to a dispute-resolving mechanism which they view as being dominated by developed nations.¹⁷⁶ Conversely, if the cards are perceived

¹⁷⁵ See Vagts, *Formal and Structural Problems of International Organization for Control of Investment*, in *INTERNATIONAL CONTROL OF INVESTMENT* 235 (Wallace ed. 1974).

¹⁷⁶ The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States created the International Centre for Settlement of Investment Disputes. The Convention was designed to facilitate the flow of funds to developing countries by providing arbitration and conciliation facilities to deal with investment disputes between governments of signatory states and nationals (private investors) of other signatory states. *CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES*, Submitted to Governments by the Executive Directors of the International Bank for Reconstruction and Development (Submitted March 18, 1965; Entered into Force October 14, 1966). For the reaction of Latin American countries, see, e.g., Szasz, *The Investment Disputes Convention and Latin America*, 1 VA. INT'L L.J. 256 (1971); Diaz Alejandro, *Direct Foreign Investment in Latin America*, in *THE INTERNATIONAL CORPORATION* 338 (Kindleberger ed. 1970).

Major capital importers wish to retain sole domestic jurisdiction over foreign direct investment.

Although the United States and Jamaica are signatories to the Convention,

to be stacked in favor of developing countries, developed countries will probably manifest intransigence.

Other problem areas involved in setting up an international regulatory agency include the financing of the agency, the composition of the membership of the agency (for example, Should multinational corporations be eligible for membership?), the selection of a voting system (on an equal or weighted basis), and the collateral question of who will have the controlling voice in the choice of top administrators. In the end, Third World nations may perceive that an international agreement may only legitimize the activities of multinational corporations,¹⁷⁷ giving such entities added respectability without producing any significant benefits beyond national or regional controls.

*C. Other Efforts to Control Multinational Firms
and to Improve the Position of Developing Countries*

In view of the problems inherent in securing meaningful international regulation in the near future, control over the manufacturing activities of multinational corporations depends, in addition to national and regional regulations of host countries, upon the efficacy of generating more information and publicity, creative use of the United Nations system apart from international control and regulation, sensitizing home nations to problems presented by multinational corporations, strengthening the transnational position of labor unions, and increasing the financial assistance for developing nations through aid and tariff concessions by developed countries. The information on the impact of multinational corporations developed by the United Nations Information and Research Center will strengthen the negotiating position of developing countries. Model contracts, with standardized provisions, could be created to regulate relations between a foreign corporation and a host country. The United Nations Center could also furnish advisory services to developing countries including the evaluation of the fairness of new private foreign direct investment projects and

Jamaica has refused to participate in a current arbitration proceeding before the Centre involving taxes on bauxite. Jamaica has taken the position that a legal dispute arising directly out of an investment relating to minerals or other natural resources is not subject to the convention. N.Y. Times, Oct. 2, 1975, at 61, col. 1. It is politically unrealistic to think that developed countries will refrain from assisting multinational corporations headquartered in their country, by diplomatic support and investment guarantees.

¹⁷⁷ Vaitos, *Comment*, in *INTERNATIONAL CONTROL OF INVESTMENT* 127-28, 130 (Wallace ed. 1974).

technical advice on how to handle existing investments. In addition to reviewing a proposed contract and comparing it with other agreements used by such a multinational firm (or another corporation in the same industry) in other countries, the Center or another United Nations agency might act as a broker to assess the benefits offered by each party and present alternatives it views as fair in the allocation of costs and benefits. Such a body could also identify for developing countries the most desirable strategies in dealing with multinational corporations and prepare model contracts. Such mechanisms may assist in dispelling mistrust and so permit bargaining on the basis of a clearer concept of self-interest and evolve fair terms for investments and operations by multinational enterprises.¹⁷⁸

Home nations, such as Sweden, have taken the initiative in regulating foreign direct investments abroad by corporations domiciled in such nations with a view to the possible impact on host nations. For example, a Swedish firm must obtain authorization from the Bank of Sweden whenever it wishes to make direct investments abroad¹⁷⁹ or to borrow money in foreign countries to finance investments outside Sweden. Sensitizing the governments of developed nations to problems raised by multinational corporations in developing countries may bring additional

¹⁷⁸ U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 74 (1973). A U.N. agency might offer mediation and conciliation services in the event of disputes between a nation-state and a multinational corporation. Senator Jacob Javits (R-N.Y.), a member of the U.N. Group of Eminent Persons, stated that he opposes the U.N. acting as a party to adversary negotiations between a host country and a multinational firm. He regarded it as an inappropriate, unrealistic role considering the wide spectrum of required expertise. U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 107 (1974). Business groups also oppose a U.N. role in negotiations between developing governments and multinational corporations. USA-BIAC COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISE, *A REVIEW OF THE REPORT OF THE GROUP OF EMINENT PERSONS TO STUDY THE ROLE OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS* 18-19, 25-26 (1974). Negotiations should also consider the impact on income distribution in developing countries. Technical assistance would strengthen the position of a host nation, lessen dependency and redress the inequality of power. U.N., *MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 87-88 (1973).

¹⁷⁹ See SWEDISH INSTITUTE, *CURRENT SWEDEN-MULTINATIONAL FIRMS — SWEDISH VIEWPOINTS* 2 (1975); see also Ersman & Gardlund, *In Sweden, Investment Abroad is a Moral Issue*, 5 COL. J. WORLD BUS. 26 (1970). Social conditions (including behavioral standards, non-discrimination in employment, promotion or division of work, and attitudes toward trade union activities) and benefit conditions (training, social security and social welfare) are included as part of the Swedish system of investment guarantees which are made available only to investments which, it is felt, will improve the economic development of the host country.

regulation. Such domestic control over American multinational corporations may only have a limited impact because of the inter-linking arrangements between big business and government officials.

Labor unions comprise another possible source of countervailing power. Multinational corporations threaten unions in a variety of ways. A national union's task of influencing management is made more difficult because of the problem of identifying and affecting a decision-making seat outside a nation. A union may also be unfamiliar with the personnel and organizational traits of the management of global firms. A union faces difficulties in obtaining financial data on the profitability of and the wages paid by the total enterprise and each subsidiary. Multinational corporations allegedly possess the ability to shift, temporarily or permanently, production facilities and/or arrange for the use of multiple production facilities thereby weakening a national union's power. In particular, switching production to developing countries may undermine a union's power. The financial staying power of a multinational corporation with many profit centers enables such an entity to withstand a local strike better than a union with one profit center.¹⁸⁰ Unions assert that foreign direct investment results in a reduction of employment and a skewing of income in the United States.

The assertions of union leaders, however, are overstated. Some managements have decentralized responsibility for labor negotiations. Even if decision making over labor matters is centralized, top management may carefully consider the views of the executives of its subsidiaries. The loss of its fixed investment (such as plant and machinery) and imposition of financial penalties (such as severance pay) under the laws of a host nation retard the assumed flexibility of multinational corporations to shift operations. A transfer of production or other operations to a plant which lacks geographical proximity or sufficient excess capacity may not prove feasible. The ability of a union to stop production

¹⁸⁰ Blake, *Trade Unions and the Challenge of the Multinational Corporation*, 403 ANNALS 34, 36-37 (1972); U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 77-79 (1974); Lea, *Multinational Companies and Trade Union Interests*, in THE MULTINATIONAL ENTERPRISE 156-57 (Dunning ed. 1971); Masetti, Secretary, World Federation of Trade Unions, GROUP OF EMINENT PERSONS 318 (1974); Roberts, *Multinational Collective Bargaining: A European Prospect*, 11 BRIT. J. INDUS. RELATIONS 1 (1973); Comment, *National Labor Unions v. Multinational Companies: The Dilemma of Unequal Bargaining Power*, 11 COL. J. TRANSNAT'L L. 124-26 (1972); Seham, *Transnational Labor Relations: The First Steps Are Being Taken*, 6 L. & POL. IN INT'L BUS. 337, 340-44 (1974).

in one critical part of the vertically integrated operations of a global firm may give a union considerable bargaining power.¹⁸¹

Labor unions have undertaken a threefold response to multinational firms. First, they have advocated national legislation in developed home countries (for example, reducing tax incentives for foreign direct investment) aimed at weakening the position of multinational corporations. Second, international trade union secretariats have been created to engage in research, information, and advisory activities (for example, to gather collective bargaining agreements in an industry throughout the world). This information provides guidance to a union in bargaining with the subsidiary of a multinational corporation. Secretariats also sponsor conferences and seminars, co-ordinate union activity, and establish permanent world councils composed of representatives of workers which have engaged in consultations with employers.¹⁸² Third,

¹⁸¹ INTERNATIONAL LABOR ORGANIZATION, *MULTINATIONAL ENTERPRISES AND SOCIAL POLICY* 90, 146 (1973); INTERNATIONAL CHAMBER OF COMMERCE, *MULTINATIONAL ENTERPRISES AND THEIR ROLE IN ECONOMIC DEVELOPMENT* 26-27 (1974); U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 137 (1974); see KUJAWA, *INTERNATIONAL LABOR RELATIONS MANAGEMENT IN THE AUTOMOTIVE INDUSTRY* (1971).

¹⁸² Unions representing workers in same or related industries in different countries collaborate through international trade union secretariats. Unions which represent workers in different industries are affiliated through international confederalism. For further information on international trade union secretariats, see U.N., *MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT* 79 (1973). See also INTERNATIONAL LABOR ORGANIZATION, *MULTINATIONAL ENTERPRISES AND SOCIAL POLICY* 96-99 (1973); Blake, *Trade Unions and the Challenge of the Multinational Corporations*, 403 *ANNALS* 34, 39-41, 43-44 (1972); Lea, *Multinational Companies and Trade Union Interests*, in *THE MULTINATIONAL ENTERPRISE* 156-57 (Dunning ed. 1971); Weinberg, *The Multinational Corporation and Labor*, in *THE NEW SOVEREIGNS* 96-99 (Said & Simmons eds. 1975); Cox, *Labor and Transnational Relations*, 25 *INT'L ORGAN.* 554 (1971).

The variety of strategies employed by international trade secretariats include: (1) Helping in the organization and strengthening of unions, including the encouragement of mergers of national unions; (2) bridging religious/ideological differences; (3) training in union procedures and techniques; (4) exchanging information; (5) providing assistance in negotiations; (6) assisting in strikes, including direct financial assistance, pressure on world corporate headquarters by a home country union, boycotts and demonstrations; (7) taking action against the strategic plants of multinational firms; (8) synchronizing contract expiration dates; (9) establishing worldwide corporation councils to coordinate activities of unions representing workers in all countries where a multinational firm operates; (10) standardizing demands (for example, hours of work and working conditions); (11) holding joint meetings with a multinational firm; and (12) engaging in joint bargaining with a global firm or firms. Weinberg, *The Multinational Corporation and Labor*, in *THE NEW SOVEREIGNS* 96-99 (Said & Simmons eds. 1975). The International Federation of Chemical and General Workers (ICF) formed a standing committee to coordinate union negotiations in France, Italy, the

labor has pursued a variety of international bargaining approaches. A union in a firm's home country may support employees in foreign subsidiaries by bringing pressure on the parent corporation, giving financial assistance for organizing activities, engaging in strikes and boycotts, and refusing to work overtime.¹⁸³ The po-

United States and Western Germany including an agreement that a contract would not be signed until the national unions had been informed and that the corporation would not be allowed to shift production to avoid the impact of a strike. No attempt was made to pursue common objectives. TUGENDAHT, *THE MULTINATIONALS* 185-88 (1972). For a different view of the ICF, see Northrup & Rowan, *Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass and Rubber Tires*, 9 COL. J. WORLD BUS. 49 (1974). On the involvement of the ICF in the 1972 attempt by Akzo Group, a Dutch chemical company, to close a number of plants in its Enka Glanzstoff Division, see *Multinationals: A Step Toward Global Bargaining*, BUS. WEEK, Oct. 28, 1972, at 52; See also Seham, *Transnational Labor Relations: The First Steps Are Being Taken*, 6 L. & POL. IN INT'L BUS. 337, 359, 360 (1974). On the involvement of ICF with Michelin, see Farnsworth, *Big Business Spurs Labor Toward a World Role*, N.Y. Times, Dec. 26, 1972, at 53, col. 1; Ulman, *Multinational Firms Face a Growing Power*, Wall Street Journal, April 23, 1973, at 1, col. 6. But compare Northrup & Rowan, *Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass and Rubber Tires*, 9 COL. J. WORLD BUS. 112 (1974).

On the importance of the exchange of information, see Seham, *Transnational Labor Relations: The First Steps are Being Taken*, 6 L. & POL. IN INT'L BUS. 337, 354-55 (1974). See also Jones, *Labor Unions' Role At Multinationals Found Still Limited*, N.Y. Times, April 21, 1975, at 45, col. 4; Warner & Turner, *Trade Unions and the Multinational Firm*, J. INDUS. RELATIONS June 1972, at 143; Windmuller, *International Trade Union Organizations: Structure, Functions, Limitations*, in INTERNATIONAL LABOR 81 (Burkin, Dymond, Kassalow, Meyers & Myers eds. 1967).

A company council enables workers' representatives from a firm's plants throughout the world to meet, exchange information, and coordinate negotiations. TUGENDHAT, *THE MULTINATIONALS* 185 (1971). A concession given in one country forms the basis of bargaining everywhere. Examples of workers councils include councils for leading auto makers set up by International Metalworkers Federation, and company councils in the chemical, rubber, paper, textile fiber, glass, ceramic and atomic energy industries, created by the International Federation of Chemical and General Workers' Union. Seham, *Transnational Labor Relations: The First Steps Are Being Taken*, 6 L. & POL. IN INT'L BUS. 337, 352-53 (1974).

¹⁸³ See generally INTERNATIONAL LABOR ORGANIZATION, *MULTINATIONAL ENTERPRISE AND SOCIAL POLICY* 100-02 (1973). A joint confrontation of labor unions in two countries with St. Gobain (French glass maker) was engineered in 1969 by the ICF in support of wage negotiations in which subsidiaries of St. Gobain were engaged.

Unions claimed a subsidiary, Enka Glanzstoff of Akzo Group, wanted to close its European synthetic fiber production in 1975 and move such operations to lower-wage countries. The ICF has set up an Akzo World Council to monitor the company's actions. The ICF hopes to force formal transnational union negotiations with Akzo, while the corporation wants to hold separate talks with unions in the Netherlands, West Germany, and Belgium to implement the firm's unilateral decision to curtail operations. Kemezis, *A Multinational vs. United Nations*, N.Y. Times, Nov. 2, 1975, § 3, at 1, col. 1; *Multinationals Bargaining on an*

sition of each national union has been reinforced through coordinated bargaining which involves putting forth similar demands and seeking, among other things, common contract termination dates for contracts at all the facilities of a corporation.¹⁸⁴ The ultimate aim is centralized multinational collective bargaining which will encompass similar wage rates and working conditions. Unions seek an international code of conduct creating a universal set of fair labor standards to mitigate substandard labor conditions in developing countries, including wages, and to impose similar standards of health and safety in home and host countries.¹⁸⁵

Serious impediments exist which curtail extensive coordination activities and collective bargaining by transnational unions. These obstacles include differences in national bargaining procedures, that is, between industry-wide bargaining and enterprise level bargaining, other national legal provisions governing unions, social, political and historical factors (including the political orientation and ideology of many non-American unions), diverse national systems of social benefits and the regulation of business, differences in the functions and structures of unions, and the manner in which a union represents its members. International union arrangements must also overcome the traditional orientation of union leaders who think in national terms. National union leaders may also dislike delegating policy formulation to an international union and may oppose making sacrifices for workers in other countries who may be regarded as competitors for jobs. The attitude of rank

International Scale, BUS. WEEK, Oct. 27, 1975, at 38; *Multinationals*, BUS. WEEK, Nov. 3, 1975, at 46. See also Litvak & Maule, *The Union Response to International Corporations*, in INDUSTRIAL RELATIONS 62, 66-68 (1972); Janssen, *Global Clout — How One Man Helps Unions Match Wits with Multinationals*, Wall Street Journal, June 17, 1974, at 1, col. 1; Townsend, *Unions Hope for World Front in Disputes with Multinationals*, Christian Science Monitor, Nov. 18, 1975, at 1, col. 2.

¹⁸⁴ INTERNATIONAL LABOR OFFICE, MULTINATIONAL ENTERPRISES AND SOCIAL POLICY 67-68 (1973). The management of multinational corporations maintain that no transnational collective bargaining has occurred. TUGENDHAT, THE MULTINATIONALS 186 (1971). However, some corporations have met with multinational union representatives. TUGENDHAT, THE MULTINATIONALS 186 (1971); Comment, *National Labor Unions v. Multinational Companies: The Dilemma of Unequal Bargaining Power*, 11 COLUM. J. TRANSNAT'L L. 124, 149-51 (1972).

¹⁸⁵ For a summary of trade union views, as expressed by international organizations in policy pronouncements, see INTERNATIONAL LABOR OFFICE, MULTINATIONAL ENTERPRISES AND SOCIAL POLICY 83-87 (1973). Unions also look to the ILO for help in securing a code of conduct requiring multinational firms to recognize union rights throughout the world. The requirements also could be imposed on a home nation to ensure that multinational corporations under its jurisdiction adhere to basic labor standards throughout the world. U.N., THE IMPACT OF MULTINATIONAL CORPORATIONS 79-80 (1974).

and file workers to colleagues in other countries remains a discouraging factor.¹⁸⁶

The quest for universal fair labor standards (wage parity and harmonious working conditions) may create an elite, local labor force of unionized workers employed by multinational corporations in developing countries. Instead of raising wages for this select group, a future international agreement might require multinational firms to turn over to the governments of developing countries the difference between the going wage rates for similar types of work in such industry in the developing nation and the country in which the enterprise is headquartered. Such a sum could then be invested in infrastructure improvements which would benefit a wider group of people.¹⁸⁷

Facing an acute capital shortage, oil-importing developing countries seek to meet their needs through three means. First, the lowering or removal of tariffs and/or import quotas imposed by developed nations on manufactured products from Third World countries¹⁸⁸ could help not only the balance of payments position but also might assist in reducing unemployment in de-

¹⁸⁶ See, e.g., GENNARD, *MULTINATIONAL CORPORATIONS AND BRITISH LABOUR: A REVIEW OF ATTITUDES AND RESPONSES* 48 (1972) — 53 percent of workers at Chrysler of Canada surveyed were willing to go on strike in support of fellow workers in the United States, but only 10 percent and 9 percent respectively of Chrysler workers surveyed in England and Mexico would do so. For an analysis of the obstacles to international union coordination, see INTERNATIONAL LABOUR OFFICE, *MULTINATIONAL ENTERPRISES AND SOCIAL POLICY* 103 (1973); Weinberg, *The Multinational Corporation and Labor*, in *THE NEW SOVEREIGNS* 93-95 (Said & Simmons eds. 1975); Blake, *Trade Unions and the Challenge of the Multinational Corporation*, 403 *ANNALS* 34, 44-45 (1973); Curtin, *The Multinational Corporation and Transnational Collective Bargaining*, in *AMERICAN LABOR AND THE MULTINATIONAL CORPORATION* 203-15 (Kojawa ed. 1973); Comment, *National Labor Unions vs. Multinational Companies: The Dilemma of Unequal Bargaining Power*, 11 *COLUM. J. TRANSNAT'L L.* 124-26 (1972). For differences in types of bargaining, see Curtin, *The Multinational Corporation and Transnational Collective Bargaining*, in *AMERICAN LABOR AND THE MULTINATIONAL CORPORATION* 203-15 (Kojawa ed. 1973); INTERNATIONAL LABOUR ORGANIZATION, *MULTINATIONAL ENTERPRISES AND SOCIAL POLICY* 103 (1973).

¹⁸⁷ Sturmthal, *The Changing Role of the ILO*, *MONTHLY LABOR REVIEW*, May 1970, at 51. On creation of a labor union, see INTERNATIONAL LABOUR OFFICE, *MULTINATIONAL ENTERPRISES AND SOCIAL POLICY* 148 (1973); U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 76 (1974).

¹⁸⁸ Speech by Henry A. Kissinger to the United Nations Sept. 1, 1975, in *N.Y. Times*, Sept. 2, 1975, at 20, col. 1, indicated that the United States would introduce a generalized tariff preference for the manufactured goods of developing nations. *N.Y. Times*, Nov. 25, 1975, at 51, col. 3; but compare, *N.Y. Times*, Nov. 27, 1975, at 59, col. 2.

See also U.N. *Summary of Development Text*, *N.Y. Times*, Sept. 17, 1975, at 10, col. 5; and U.N., *THE IMPACT OF MULTINATIONAL CORPORATIONS* 65 (1974).

veloping countries. Developed nations taking such a step correspondingly weaken their balance of payments position and increase the competition faced by their domestic manufacturing firms. An international agreement might allocate shares of the world market for manufactured products. Developing nations will seek to use their ability to permit access to raw materials on favorable terms as the lever to gain tariff concessions.

Second, existing and new international financial institutions could make available more funds through loans and grants to Third World countries.¹⁸⁹ For example, efforts by the International Monetary Fund and the World Bank include making more funds available to countries, mainly developing nations, to pay higher oil and food costs, creating a subsidy account to make very low interest loans to the poorest countries and lower than normal interest rate loans to creditworthy nations.¹⁹⁰ Allocation of the

¹⁸⁹ Secretary of State Kissinger called for the creation in the International Monetary Fund of a development security fund to make loans of up to \$2.5 billion a year to meet export deficits experienced by developing countries. He also advocated the establishment of an International Fund for Agricultural Development to mobilize capital resources for an international program of research, technical assistance and information exchange, and for the development of better systems of control, transportation and long management. On the establishment of a trust fund to benefit developing countries and an International Fund for Agricultural Development, see U.N. *Summary of Development Text*, N.Y. Times, Sept. 17, 1975, at 17, cols. 6 & 18. But primary reliance, Secretary Kissinger indicated, should be placed on stimulating the flow of private capital to developing nations. Secretary Kissinger supported an increase in the capital of the World Bank's International Finance Corporation from \$100 to \$400 million. To support private enterprise in developing countries, he proposed the creation of an International Investment Trust to mobilize private capital for investment in local enterprises. The International Finance Corporation, it is proposed, would manage the trust. Investments in the trust would be safeguarded by the \$200 million loss-reserve fund jointly provided by the governments of developed, developing and oil-producing nations. Speech by Henry A. Kissinger to the United Nations, Sept. 1, 1975, in N.Y. Times, Sept. 2, 1975, at 20, col. 1.

¹⁹⁰ See Silk, *OPEC Nations Flex Monetary Muscles*, N.Y. Times, Aug. 31, 1975, § 3, at 1, col. 1; and N.Y. Times, Aug. 8, 1975, at 35, col. 5; Dale, Jr., *Monetary Bodies Facing Decisions*, N.Y. Times, Sept. 6, 1975, at 27, col. 1; Dale, Jr., *Growing Debt of Poor Faces IMPI*, N.Y. Times, Sept. 5, 1975, at 35, col. 5.

For various alternatives propounded by the Trilateral Commission, see TRILATERAL COMMISSION, *NORTH-SOUTH ECONOMIC RELATIONS* 9, 13 (1974). OPEC, with a GNP of \$150 billion, should put up one-half the funds, while the United States, Western Europe and Japan, with an aggregate gross national product of \$2 trillion, should put up the other half. TRILATERAL COMMISSION, *OPEC, THE TRILATERAL WORLD*, 11, 15, 19 (1974). OPEC should advance one-third of the funds to service their loans to Fourth World countries; with the United States, in return for its lesser contribution, receiving up to \$1 billion in additional U.S. exports. In advocating a third window at the World Bank to loan \$3 billion per

proportion of funds to be advanced by OPEC members and the developed countries (United States, Western Europe, and Japan) must be resolved before aid to the Fourth World can be undertaken on a massive scale.

Developing countries, particularly OPEC member nations, also want a greater voice in the running of world monetary organizations in return for increased financial contributions. The United States has 23 percent and 21 percent of the voting rights, respectively, in the World Bank and the International Monetary Fund. The OPEC nations want to step up their voting rights to 15 percent in the World Bank and 10 percent in the International Monetary Fund.¹⁹¹ The United States and other industrialized nations, however, are reluctant to lose control over international financing agencies through their ability to veto significant actions. Meaningful participation for OPEC nations may rest on gaining control of the Executive Board of the World Bank on which the United States, Western Europe and Japan presently hold a majority position.

Third, to achieve development objectives developing countries continue to call for more direct public aid and investment from developed nations, hopefully unencumbered with restrictive strings such as tied aid.¹⁹² Sweden has emerged as the first

year at 3 percent interest for general development programs and specific projects, the Trilateral Commission placed a greater burden on such a subsidy program on highly liquid OPEC members rather than on industrialized nations who are not currently very liquid. THE TRILATERAL COMMISSION, OPEC, THE TRILATERAL WORLD, AND THE DEVELOPING COUNTRIES: NEW ARRANGEMENTS FOR COOPERATION, 1976-1980 19, 13, 15 (1975).

For an analysis of the World Bank, see MASON & ASHER, *THE WORLD BANK SINCE BRETTON WOODS* (1973); LEWIS & KAPUR, *THE WORLD BANK GROUP: MULTILATERAL AID AND THE 1970's* (1973); McNAMARA, *ONE HUNDRED COUNTRIES, TWO BILLION PEOPLE* (1973).

¹⁹¹ Silk, *OPEC Nations Flex Monetary Muscles*, N.Y. Times, Aug. 31, 1975, § 3, at 1, col. 1; Gannon, *IMF Gold Sales Pact Clears Way to Wider Accord*, Wall Street Journal, Sept. 2, 1975, at 3, col. 1. See also THE TRILATERAL COMMISSION, OPEC, THE TRILATERAL WORLD AND THE DEVELOPING COUNTRIES: NEW ARRANGEMENTS FOR COOPERATION 1976-1980, 6, 18, 19 (1975); U.N. *Summary of Development Text*, N.Y. Times, Sept. 17, 1975, at 10, cols. 4-8; Report of Group of Experts on the Structure of the United Nations System, A NEW UNITED NATIONS STRUCTURE FOR GLOBAL ECONOMIC COOPERATION, U.N. Doc. E/AC 6219 (1975).

¹⁹² The official U.N. goal is that development assistance from developed countries will equal 0.7 percent of such respective nation's gross national product. U.N. *Summary of Development Text*, N.Y. Times, Sept. 17, 1975, at 17, col. 6. Secretary of State Henry A. Kissinger emphasized that the developing world must depend on private loans and investments, not public aid, to meet its capital needs. However, the Ford Administration has asked Congress to double U.S. bilateral agricultural assistance in the 1977 fiscal year. Speech by Henry A.

industrial nation to spend seven-tenths of one percent of her gross national product on foreign aid; the Netherlands and Norway are also approaching the same percentage figure.¹⁹³ As a corollary, developing nations also seek a cancellation or reduction of the rising level of indebtedness.¹⁹⁴ Rather than an abrogation, a restructuring of debt maturities may evolve.

VI. CONCLUSION

The widening gap in the standard of living between developed and developing countries during the post-World War II period¹⁹⁵ and the desire to overcome the humiliation, inferiority and feeling of being ignored (resulting from colonialism and the impact of multinational corporations after independence) has led Third World countries to engage in national and collective efforts (by regional, transnational, and economic producing groups) to redistribute income and improve their status. Two different scenarios must be analyzed: The consequences of a successful effort and the possible results of an unsuccessful endeavor by developing countries.

Building on the experience of the oil cartel organized by petroleum exporting countries, Third World nations possessing vital raw materials, at least in the short run, possess considerable negotiating leverage. Using such a bargaining position, developing countries may attempt to control and regulate multinational corporations which in the past have transferred wealth and re-

Kissinger to the United Nations, Sept. 1, 1975, in N.Y. Times, Sept. 2, 1975, at 20, col. 1. For an analysis of foreign aid, see Frank, Jr. & Baird, *Foreign Aid: Its Speckled Past and Future Prospects*, 29 INT'L ORGAN 133 (1975). See also MIKESELL, *THE ECONOMICS OF FOREIGN AID* (1968); Griffin & Enos, *Foreign Assistance: Objectives and Consequences*, 18 ECON. DEV. & CULTURAL CHANGE 313 (1970); Weisskopf, *The Impact of Foreign Capital Inflow on Domestic Savings in Underdeveloped Countries*, 2 J. INT'L ECON. 25 (1972); FRANK, BHAGWATI, SHAW & MALMGREN, *ASSISTING DEVELOPING COUNTRIES, PROBLEMS OF DEBTS: BURDEN SHARING, JOBS AND TRADE* (1972); Papanek, *Aid, Foreign Private Investment, and Growth in Less Developed Countries*, 81 J. POL. ECON. 120 (1973); NELSON, *AID, INFLUENCE AND FOREIGN POLICY* (1968); HAYTER, *AID AS IMPERIALISM* (1971); Frank, *Optimal Terms of Foreign Assistance*, 78 J. POL. ECON. 1106 (1970).

¹⁹³ Weinraub, *Sweden Meets Third-World Aid Goal*, N.Y. Times, Oct. 27, 1975, at 4, col. 4.

¹⁹⁴ Wall Street Journal, Dec. 1, 1975, at 6, col. 3.

¹⁹⁵ The income in the richest industrial countries is 13 times as high as in the poorest developing nations. Francis, *World Bankers Scan Economic Future*, Christian Science Monitor, June 19, 1975, at 13, col. 2. See generally PEARSON, *PARTNERS IN DEVELOPMENT* (1969); MYRDAL, *THE CHALLENGE OF WORLD POVERTY* (1970).

sources from poorer to richer countries, and secure concessions and reparations from developed nation-states. In a world of growing resource scarcities, major industrial nations and multinational entities will compete for investment outlets and raw material sources producing friction between such nations and permitting a greater share of the world's wealth to gravitate to developing countries. In short, economic power may supplant military power as the decisive factor in transnational relations.

The transnational quest for increasing income and status stresses a growing equality among nation-states, not individuals. In a world of coercion by developing nation-states, little is said about the individual within the new society and the paths of development he may follow. The focus rests on governments reaching compromises with corporate interests and other governments and delineating spheres of exclusive and shared interests. Apparently, most developing nations wish to continue to live in an interdependent world with industrialized nations and global firms. The model of economic interdependence coupled with advances in communications and transportation envisages a weakening of nation-states. Developing countries are attempting to counter the impact of interdependence by seeking, through individual and collective strength, to tap the benefits of multinational enterprise (such as managerial skills and technical expertise) yet avoid the costs. It remains uncertain whether industrial nations and multinational corporations will co-opt the movement for equality. The example of concessions given to workers in the United States during the 1930's, including the recognition of collective bargaining, social security and higher minimum wages, does not provide a hopeful precedent that meaningful reform will occur in the transnational system during the last quarter of the 20th century. Little redistribution of income has occurred on the national level utilizing countervailing power, but labor has received more because the pie has become larger. Developing countries may only extract concessions (such as stabilization of commodity prices, regulation of the most harmful practices of multinational corporations, freer access for manufactured products in the markets of developed nations, and increased financial assistance) which do not endanger the continued vitality of the world capitalist system. Countervailing measures may only squeeze consumers, including many in developing countries. Continued control of technological advances by industrial countries may doom developing countries to perpetual dependency even if foreign direct investment is controlled or restricted. The key to a new

world system may be the control over the flow of information, not capital.

This raises the question of the developmental paths to be pursued by Third World nations. Many nations produce one or two raw materials and engage, to a greater or lesser degree, in manufacturing operations for local consumption and for exportation. A rational plan for development must rest on an assessment of the value of what a nation produces, the means to increase prices of such goods and services, and the likelihood of increasing demand (such as opening new markets) or reducing costs (by decreasing wages, an unpalatable alternative, or utilizing new technology). In the short run, it is difficult for a country dependent on the exportation of a single raw material to curtail such operations and turn to another line of endeavor. During the transition period, a country may remain part of the interdependent world capitalist system even if the ownership and production of the resource comes under state control. However, a nation should investigate unmet needs on a national, regional, and worldwide basis, and direct its capital allocations to meet such needs.

The more difficult question is whether a nation should pursue a road of economic autarchy based on participatory political and work organization structures, with only a minimum amount of international trade and investment.¹⁹⁶ Instead of pursuing the rainbow of a Western industrial society (which has generally resulted in the depopulation of rural areas and brought unemployment and underemployment to the urban multitude concentrated in metropolitan centers), a developing nation might seek to build a labor-intensive agrarian society based on the use of local resources and on relatively primitive or intermediate technology in which the population would be mobilized for large-scale projects. The mix

¹⁹⁶ John Maynard Keynes based his position in opposition to world interdependence through trade on three arguments: (1) Free trade in the nineteenth-century did not ensure peace, but ended in World War I and the Great Depression; (2) the spread of modern technology facilitates the local production of basic needs; and, (3) the world capitalist system would bar national experimentation in alternate forms of social, political and economic organization. During the Great Depression and World War II when contact was broken between the industrialized west and the nations of Latin America, the region rapidly industrialized and urbanized. GRIFFIN, *UNDERDEVELOPMENT IN SPANISH AMERICA* 269-70 (1969). The leading example of a self-reliance approach is The People's Republic of China. The Khmer Rouge in Cambodia is attempting to disperse people to the country and build a strong agricultural base. Schanberg, *Cambodia Reds Are Uprooting Millions as They Impose a "Peasant Revolution"*, N.Y. Times, May 9, 1975, at 1, col. 8; Kamm, *Cambodian Refugees Tell of Revolutionary Uprooval*, N.Y. Times, July 15, 1975, at 1, col. 6.

between agricultural and industrial sectors, the latter more capital-intensive, would require careful control and planning as well as the ability to stop the exodus from the land and to uproot people from the evergrowing shanty towns. Whether this path of development can be accomplished on a voluntary basis remains doubtful. However, a chance exists that a more humane, participatory track may be implemented in the absence of a legacy of authoritarian industrial structures.¹⁹⁷

By turning from the industrial model and the system of interdependence, a nation may also strive to avoid the growing burden of inflation, spread through the medium of goods and services exported from developed countries. The inflationary spiral may intensify the inequalities inherent in the present transnational structure. Regardless of the path of development selected, curtailing surging population expansion should constitute a prime goal for Third World nations.

As developing nations strive for equality or even global hegemony to take revenge for past humiliation and dependency, developed countries will perceive such endeavors as destroying the present world capitalist system. Increasing prices for raw materials, for which there may be an ever mounting demand, a decline in the standard of living, the increase of unemployment in the manufacturing sectors as multinational firms transfer manufacturing facilities to poorer lands, and the proliferation of nuclear weapons in Third World hands pose, for some, the specter of a gloomy period for Western industrialized society.¹⁹⁸ Facing the alleged need of authoritarian discipline to control industrialization, to restrain individual consumption, and to provide for a fair sharing of wealth, the demand may arise for increased resistance to the aspirations of developing countries or at best for granting only meaningless concessions which do not weaken the position of industrialized nations or reduce their income or growth. Despite the questions¹⁹⁹ raised as to the ethical validity of the emerging transnational welfare system, marked by redistribution of income and status, significant benefits would accrue to industrialized

¹⁹⁷ MARCUSE, *ONE-DIMENSIONAL MAN* 47 (1964). For an example of the developmental problems, see Northrup, *Third-World Dilemma, Zambia, Hit by Expensive Oil, Cheap Copper, Trying to Change One-Commodity Economy*, Wall Street Journal, Sept. 5, 1975, at 24, col. 1. But compare Riding, *Mexico Heedless of Peasant's Plight*, N.Y. Times, Dec. 1, 1975, at 1, col. 5. See also Wall Street Journal, Nov. 25, 1975, at 26, col. 3.

¹⁹⁸ See generally HEILBRONER, *AN INQUIRY INTO THE HUMAN PROSPECT* (1974).

¹⁹⁹ Tucker, *Egalitarianism and International Politics*, 60 COMMENTARY 27 (1975).

nations in meeting Third World nations; namely, a reduction of worldwide tensions. The price, however, may be too great a burden on the world capitalist system, and on the U.S. multinational corporations in particular.

Simply put, can the American society exist without the continued expansion and growth of foreign activities of multinational enterprises?²⁰⁰ There appears to be no reason why the United

²⁰⁰ For an analysis of the need for foreign direct investment and corporate expansion to preserve the global ability to maintain the oligopoly advantage enjoyed by American corporations, see Moran, *Foreign Expansion as an 'Institutional Necessity' for U.S. Corporate Capitalism: The Search for a Radical Model*, 25 *WORLD POL.* 369, 384 (1973).

Moran, *Foreign Expansion as an 'Institutional Necessity' for U.S. Corporate Capitalism*, 25 *WORLD POL.* 369, 386 (1973) concludes:

But there is something fundamental to American corporate capitalism — the capitalism of tightly held technology, uncertain information, large economies of scale, and unstable imperfect competition . . . that creates strong pressures for foreign investment. As long as American corporations exercise their virtues of inventiveness and aggressiveness, their government will feel intense, even frantic pressures to create and preserve an international system that facilitates foreign economic expansion.

See also Magdoff, *The Logic of Imperialism*, 1 *SOCIAL POLICY* 20 (1970).

For other views on whether the end to foreign direct investment in overseas activities of American corporations will necessarily lead to a collapse of capitalism in the United States, see Miller, Bennett & Alapatt, *Does the U.S. Economy Require Imperialism*, 1 *SOCIAL POLICY* 13 (1970) who state, at 17-18:

Our conclusion — subject to closer study of the import question — is that the [United States] economy as a whole does not have a heavy dependence upon activities in low-income nations [*italics omitted*].

. . . [W]e are unconvinced that the U.S. economy so depends on overseas activities that it must protect them, even by military actions.

Rather, our point is that this activity alone is not so dominating within our economy that political groups could not develop and offset the demands made by narrow, economically motivated interest groups. We do not think that the economy would collapse if particular economic interest groups were unable to control overseas U.S. political military activities in certain areas.

See also Goldstein, *U.S. Economic Penetration of Western Europe*, in *TESTING THEORIES OF ECONOMIC IMPERIALISM* 214, 217 (Rosen & Kurth eds. 1974).

Weisskopf, *Capitalism, Socialism, and the Sources of Imperialism*, in *TESTING THEORIES OF ECONOMIC IMPERIALISM* 61-62 (Rosen & Kurth eds. 1974), states:

Should one of these economies suddenly be deprived of access to its foreign investment assets, it is unlikely that macro-economic prosperity would be threatened.

The obligation to replace some foreign investments by new domestic alternatives would no doubt inflict some losses on the economy as a whole and substantial losses on particular firms, but there is every reason to believe that an economy could remain buoyant with a somewhat lower level of direct private investment abroad.

A Wharton School survey of 45 top U.S. corporations revealed that about 85 percent think that pulling out of foreign operations would be catastrophic or

States must continue to build a system at the expense of individuals located in other nation-states thereby widening the gap between the affluent and impoverished areas. The present system, which opens the United States to future blackmail attempts by raw materials cartels, may adversely affect domestic employment and income distribution. The coming new era may present a time of promise as well as peril for Western civilization. Curtailment of individual consumption may lay the basis for the creation of new values and institutions. The disintegration of the old order may be painful, especially for those possessing status and privilege, but consideration should be directed to the period of rebirth of Western society, particularly the rationale for vast political and economic organizations. In the new environment, self-managed economic institutions may flourish in the Western world as part of a movement for a decentralized participatory society. Greater use of labor-intensive techniques may alleviate growing concerns regarding unemployment, energy and capital shortage, and the omnipresent danger of pollution. The new economic and political institutions may also develop to meet the deep needs for personal fulfillment and concern for others. In short, the emerging transnational order may lay the basis for the liberation of people everywhere and for an escape from old, lifeless institutions and values

cause permanent damage to their company. Perlmutter, Root & Plante, *Responses of U.S.-Based MNC's to Alternative Public Policy Futures*, 8 COLUM. J. WORLD BUS. 78 (1973).

In a capitalist economy characterized by limited expansion overseas, the role of the military establishment and military spending remains uncharted. Weisskopf, *Capitalism, Socialism, and the Sources of Imperialism*, in TESTING THEORIES OF ECONOMIC IMPERIALISM 69-77 (Rosen & Kurth eds. 1974), asserts that the best way to stop "imperialism" is to build socialism. See also Weisskopf, *Dependence and Imperialism in India*, 5 REV. OF RADICAL ECON. 53 (1972), who also urges a revolutionary transformation of class structure, otherwise a developing country faces a choice between economic stagnation or economic dependence. Weisskopf argues that a centrally planned economy in a home country would not need foreign markets to compensate for an inadequate demand at home or for foreign investments to absorb surplus capital. Goods demanded by consumers in such a society may require less imported raw materials. Such countries, therefore, are less likely to engage in imperialistic activities. However, a centrally planned economy operating at a continued high level of industrialization might still need the same amount of raw materials. The exploitative behavior of the Soviet Union, as a centrally planned economy with reference to its satellite nations, does not offer much assurance that a change in economic institutions will solve the attempt of one nation to dominate others. See Whitney, *Russian Imperialism Today*, in ECONOMIC IMPERIALISM 262 (Boulding & Muker eds. 1972); STRACHEY, THE END OF EMPIRE 292-306 (1964); HALLOWELL, SOVIET SATELLITE NATIONS: A STUDY OF THE NEW IMPERIALISM (1958); See generally BARNET, ROOTS OF WAR Ch. 8 (1973).

in the West. Thus, the new era may present, over the long term, an unmatched opportunity to transform Western civilization.

In the short run, moreover, a multitude of challenges exist in the United States to tap the expansionistic drives of multinational corporations. Perhaps the most pressing is the need to develop the technological and practical possibilities for a new energy source such as solar energy or coal gasification. Attention should be given to the development of synthetic substitutes for raw materials in short supply domestically. Joint public and private efforts could undertake the necessary research and implement the steps to insure a sufficiency of resources for the new society. America's mounting urban needs such as housing, mass transportation and waste disposal also present new dimensions for business development at home as well. What may be required is a cessation of U.S. tax incentives for foreign direct investment and the channeling of private investment through economic planning and funding, to areas of public need.²⁰¹ Support of technological innovation in nonmilitary research and development areas is especially appropriate.

The danger of a unilateral inward turn by the United States is that Western European and Japanese firms will fill the void. The American public must choose either to pursue policies which rebound to the advantage of United States multinational corporations or to meet domestic needs and build a more humane society, albeit a less competitive one, vis-à-vis other industrialized nations.

Thus far it has been assumed that gains flowing to developing countries will cause losses for industrialized nations. But the quest for transnational equity, the redistribution of income and status, the development of new institutional arrangements, the control of foreign direct investment, and the regulation of multinational enterprises may produce benefits for developing and developed countries and global firms. One example is the role played by the Industry Cooperative Program of the Food and Agriculture Organization, an affiliate of the United Nations, to reduce conflict between developing countries and transnational corporations in the field of agribusiness.²⁰² The Industry Cooperative Program

²⁰¹ Solomon & Belzer, *Looking Ahead: Capital Shortages, Tax Policy and Economic Planning*, forthcoming, N.D. LAW. (1975).

²⁰² See Turner, *Multinationals, The United Nations and Development*. 7 COLUM. J. WORLD BUS. 13 (1972); SECRETARIAT OF THE INDUSTRY COOPERATIVE PROGRAM, MULTINATIONAL ENTERPRISE AND THE DEVELOPING WORLD, THE ROLE OF THE INDUSTRY COOPERATIVE PROGRAMME (1973); J.A.C. Hugill, Chairman, Industry Cooperative Program, GROUP OF EMINENT PERSONS 207 (1974); Vicker, *New Partners*

acts as a catalyst and provides a supporting framework for a dialogue to take place within the United Nations among governments of Third World nations and business entities. The Program facilitates an exploration of the reasons for conflicts and attempts to develop specific remedies which will produce benefits for developing countries and multinational corporations. Although marked by many failures as well as successes, the Industry Co-operative Program may serve as a model for cooperative government-business endeavors under the auspices of the United Nations in other areas.

The bedrock of the emerging transnational order will probably require Western countries and multinational firms to negotiate with, not dictate to, developing nations. Ideally each nation (or more realistically those possessing an economic advantage in the form of raw materials, a competitive manufacturing sector, a large and rapidly growing market, or all three) should be free to assess the degree of interdependence with the world capitalist system it deems optimal and determine the price it is willing to pay for the perceived benefits.²⁰³ Each nation should be able to control its economy and development. The alternatives open to each nation should be based on meaningful, accurate information which is freely available. Charting how joint gains will be perceived and shared remains to be developed as well as measuring the equitable distribution and management of the world's wealth and the acceptable level of resource transfers that will meet the hopes of poorer nations.

Another bleak possibility must be mentioned. Developing

Multinational Firms Help Poorer Nations to Boost Food Output, Wall Street Journal, Mar. 18, 1975, at 1, col. 6. But compare, DeMarco & Sechler, *Agribusiness Goes Abroad: Corporate Myths in a Hungry World*, in *THE FIELDS HAVE TURNED BROWN, FOUR ESSAYS ON WORLD HUNGER* 67 (Marco & Sechler eds. 1975).

For an assessment that agribusiness multinational corporations have failed to meet problems of hunger and malnutrition, see Berg, *Industry's Struggle with World Malnutrition*, 50 HARV. BUS. REV. 130 (1972). Agriculture, in developing countries, has become subordinated to the needs of developing countries or industries. The solution to the problem of world hunger may require a fundamental restructuring of agrarian institutions and an increase in food production by developing countries. See generally Schertz, *World Food: Prices and the Poor*, 52 FOR. AFF. 511 (1974); BROWN, *BY BREAD ALONE* (1974).

²⁰³ Nye, *Two Views of World Order*, in *GLOBAL COMPANIES* 166 (Ball ed. 1975); UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *MULTINATIONAL CORPORATIONS* 59 (1973) stated:

The key issue is not whether the home country should hamstring or do away with the multinational corporations, but how their behavior may be influenced so as to correspond more closely to a set of enlightened national and international objectives.

nations, excluding OPEC, are drifting to economic stagnation and possible bankruptcy and anarchy over the next 5 to 10 years. Even if Western nations seek to meet the needs of developing countries, their rising expectations may continue to render the remaining inequities intolerable, thus leading to an ever spiraling list of demands. The desperate position of Fourth World nations and the possible future collapse of the oil cartel may propel developing countries to turn to ever more authoritarian political regimes and to disruptive actions including defaulting on indebtedness, terrorism and nuclear blackmail. Short-term palliatives to stabilize the international order may only postpone, but not avoid, the day of reckoning. Frantz Fanon regarded violence as part of the decolonization process.²⁰⁴ An individual participating in violent action could, according to Fanon, rid himself of inferiority and submissiveness and could be transformed psychologically so as to become capable of creating a new society. The effort of Third World nations to change from being an object of history to being its subject through liberating acts of violence may destroy Western society and perhaps the entire world. As Nkrumah bleakly concluded: "The danger is now not civil war within individual states provoked by intolerable conditions within those States, but international war provoked ultimately by the misery of the majority of mankind who daily grow poorer and poorer."²⁰⁵

²⁰⁴ See generally FANON, *THE WRETCHED OF THE EARTH* 35-103 (1968).

²⁰⁵ NKUMAH, *NEO-COLONIALISM, THE LAST STAGE OF IMPERIALISM* 259 (1969).