

1976

## Global Consensus and Economic Development: The Kissinger Proposals

L. Robert Primoff

---

### Recommended Citation

L. Robert Primoff, *Global Consensus and Economic Development: The Kissinger Proposals*, 10 INT'L L. 711 (1976)

<https://scholar.smu.edu/til/vol10/iss4/10>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## Global Consensus and Economic Development: The Kissinger Proposal†

Following several years of increasing tension and confrontation between the developed and developing countries, and the West's declining influence in economic and political matters, Secretary of State Kissinger's proposals (contained in a speech read by Ambassador Moynihan) to the Seventh Special Session of the United Nations General Assembly on September 1, 1975, represented a serious United States effort to preempt solutions to the massive economic problems of the developing world.

It is safe to say that few if any of the propositions advanced in the Secretary's address would have found much support in the Western World as recently as 20 years ago, when even the concept of a United Nations Capital Development Fund encountered a barrier of stiff resistance on the part of the Western capitalist membership. That, in so brief a time frame, the Kissinger plan should have been evoked is a startling commentary on the shift in economic and political forces which has eroded the once pre-eminent Western position.

It is the objective of the present paper to review the major themes in the Kissinger program so that their scope, impact and potential effectiveness can be assessed.

The Secretary's proposals were aimed at the following problem areas:

A. *The Stabilizing of Export Earnings* through the establishment of a Development Security Facility in the International Monetary Fund (IMF), to make loans to developing countries which would finance shortfalls in export yields and sustain development programs despite export fluctuations. The poorest countries would be permitted to convert such loans into grants, this

---

\*L. Robert Primoff is a member of the bar of New York and is a partner in the firm of Primoff & Primoff.

†This article is based upon a Report prepared for the Committee on International Economic Organizations of the Section, by a subcommittee established to review the Kissinger proposals. The subcommittee consisted of L. Robert Primoff, Chairman, Guy F. Erb, R. Michael Gadbaw, Robert E. Jones, Professor Robert F. Meagher, Serle Ian Mosoff, Professor Bruce L. Rockwood and Robert C. Wesley.

program being financed by sales of IMF gold, with the proceeds being channeled through the proposed \$2 billion IMF Trust Fund. A substantial increase is contemplated in the amount of the IMF quota, which may be withdrawn, both annually and in the aggregate.

*B. Increasing the Developing Countries' Access to Capital Markets.* This objective would be sought by expanding the programs of the World Bank and Regional Development Banks, including a \$6 billion expansion of the Inter-American Development Bank, replenishment of the Asian Development Bank, and United States participation in the African Development Fund. The resources of the International Finance Corporation (IFC) would be increased from \$100 million to \$400 million, and an International Investment Trust created to raise capital for local private and other enterprise, with a \$200 million loss reserve provided for the protection of investors.

*C. Resolution of Energy Problems,* through the creation of an International Energy Institute to provide a forum between consumers and producers on energy development.

*D. Technology Assistance in Agriculture and Industry,* by expansion of the Consultative Group for International Agricultural Research, the creation of an International Industrialization Institute (industrial technology research) and an International Center for Exchange of Technological Information (clearing house). Guidelines would be prepared for the transfer of technology.

*E. The Regulation of Transnational Corporations* through the adoption of rules and guidelines, accompanied by international legislative harmonization in the areas of taxation and restrictive business practices and the promotion of fact-finding, arbitral procedures and other third-party facilities.

*F. Improvement of the World Trading System,* with special trade treatment for developing countries under Multilateral Trade Negotiations, including preferences, special non-tariff barrier rules (along the lines of the Tokyo Declaration), reduced tariffs for tropical products, and generalized tariff preferences for manufactured goods.

*G. A Global Approach to Problems of Commodity Trade and Production* by creating an international system of nationally-held grain reserves (a 30-million-ton reserve of wheat and rice), the selective creation and utilization of international buffer stocks with liberalized financing therefor on a commodity by commodity basis, to prevent, among other things, gyrations in world prices; the creation of consumer-producer forums for each commodity, particularly copper; the negotiation of international commodity agreements (i.e., on tin, coffee, cocoa, sugar); and the mobilization by the World Bank group of \$2

billion in private and public capital to expand worldwide capacity in minerals and other critical raw materials.<sup>1</sup>

H. *The Poorest Nations* would be given special consideration by means of the \$2 billion gold Trust Fund (vide "A", above) and development assistance through low interest loans from the World Bank and the International Development Association (IDA) which the United States would help to replenish; the early establishment of an International Fund for Agricultural Development (total funding of \$1 billion with the United States share set at \$200 million; and a contribution by the United States of 60 percent of the World Food Conference target of 10 million tons.

I. *The Political Dimension* would contemplate a change in the quotas and voting powers in the IMF and the World Bank, and a restructuring of the United Nations system.

### Commentary

The "Kissinger Proposals" viewed both in retrospect and in the light of subsequent developments can probably best be understood as a holding action in the face of a growing onslaught against the West in the form of statism, attempted destruction of the market economy, and coercive steps aimed at massive and largely involuntary transfers of wealth to the developing world, all accompanied by increasing erosion of political freedoms. The proposals can be evaluated most appropriately in terms of their success in stemming the onslaught. To that end let us turn now to an examination of each of them.

### Stabilizing of Export Earnings

The developing world complains that the free market system permits massive cyclical fluctuations in world prices for commodities, resulting often in price swings which disastrously affect their balance of payments position and their development programs. In terms of competing economic concepts—free vs. controlled markets—two fundamental approaches to the problem are (a) control of commodity prices through intervention of one sort or another, or (b) compensating for export shortfalls without tampering with the functioning of the market.

The Kissinger proposals, of course, were aimed at the latter approach. The proposed Development Security Facility (which was to replace the IMF compensatory financing facility) was quietly dropped around the end of 1975; but many of its essentials were implemented by an improved IMF compensatory financing facility. This facility, which advances extra drawing credits to devel-

---

<sup>1</sup>This would be one of the goals expected from expansion of the World Bank and other capital sources referred to in the text, *supra*.

oping countries when export earnings drop, has in the past been somewhat restrictive, but was significantly improved in favor of developing countries at the Jamaica meeting of IMF in January, 1976. The overall drawable amount was increased to 75 percent of a member's quota, and 50 percent of the quota might be taken down in any 12-month period. Moreover, exceptions are now possible in the case of major emergencies, and the facility can be triggered at an earlier stage of export shortfall than was previously the case.

It had been thought that this expansion would increase 1976 use of the facility by not more than \$1 billion over the \$275 million total for 1975. However, for the first four months alone of 1976, about \$800 million had already been provided.<sup>2</sup> On an annual basis, this rate of use would provide developing States with more than the entire amount taken down during the preceding 12 years. It is interesting to note that a serious miscalculation in the amount of export shortfalls to be anticipated was also made by the Lomé Convention nations, whose STABEX plan establishes a \$450 million fund to make loans against such shortfalls.

For the poorest countries (some 61 nations with per capita income of under \$350 per year), Kissinger had proposed converting compensatory financing loans into grants, establishing therefor a \$2 billion Trust Fund financed by profits to be realized by IMF through sales of 25 million ounces of IMF gold at market value, over a four-year period. This plan, although somewhat modified,<sup>3</sup> is now in implementation. (On June 2, 1976 the IMF auctioned off 780,000 ounces at \$126 per ounce, for a profit of about \$65 million, and on July 14 auctioned a second 780,000 ounces at about \$122 per ounce for a profit of almost \$63 million).

At the Jamaica Conference of the IMF in January, 1976 which attempted with some success to replace the Bretton Woods System with a reformed international monetary system (including, inter alia, legalization of floating exchange rates which have existed de facto for several years),<sup>4</sup> the IMF Interim Committee agreed to increase total resources of the Fund by one-third—about \$12 billion—by raising the quotas of the 128 member states. Since quotas determine both voting power and foreign exchange drawable from the Fund, this particular change automatically gives all members access to more IMF credit for balance of payments financing, estimated at about \$1.5 billion to the developing countries in 1976. Pending final ratification of the changes (which

---

<sup>2</sup>On the other hand, the special Oil Facility supervised by IMF, which loaned \$7.5 billion to nations badly hit by the oil price increase, ended its two-year life in April, 1976.

<sup>3</sup>The IMF will sell 25 million ounces, but will put the profit from sale of only 17.5 million ounces into the Fund, the balance of the profit being given directly to the countries involved according to their quotas.

<sup>4</sup>These reforms and the compensatory financing changes discussed above, are almost wholly unsatisfactory to the UNCTAD Secretariat. See, e.g., *Report by the Secretary-General of UNCTAD to the Conference*, TD/183, p. 53, 14 April 1976.

take 18 months), quotas have been increased by 45 percent, primarily to assist the developing countries, but not limited to them.<sup>5</sup>

### **Increased Access to Capital Markets**

Progress has been achieved in expanding the facilities of the World Bank and regional banks: The World Bank's Executive Board (all 127 member nations are on the Board) has approved an \$8.3 billion increase in capital, which will increase the amounts the Bank can lend for development projects.<sup>6</sup> The Bank's 1975 borrowing, mainly by direct placement, was nearly twice the preceding year, and its loan commitments exceeded \$4 billion. Because of its anticipated rate of growth in lending, the increase is welcomed.

A \$6 billion increase in the resources<sup>7</sup> of the Inter-American Bank has been authorized both by its Board and the United States Congress (whose approval is necessary). Of this amount, \$4 billion (of which the United States share is \$1.2 billion) is spread over three years commencing in 1976; \$1.3 billion (of which the United States share is \$450 million) will be contributed in 1978; and \$1 billion is earmarked for the "soft-loan" window over three years commencing in 1976 (of which the United States share is \$600 million). "Soft" loans are made at 2 percent or 4 percent depending on the borrowing country's condition.

The State Department has announced that the United States is actively engaged in discussions on replenishment of the Asian Development Fund and Bank, and that the United States will make an initial contribution of \$15 million to the African Development Fund.

The proposal for a major expansion of the resources of the International Finance Corporation (IFC) from \$100 to \$400 million symbolizes the West's insistence that private capital play a substantial part in development, and that development assistance be available for private enterprises in developing countries. The IFC, the World Bank's "Investment Banker," is expected to encourage the development of raw materials, and especially minerals.

In May, 1976 IFC's Board of Directors approved a \$480 million increase in paid-in capital,<sup>8</sup> which would raise the latter to about \$588 million, when approved by 75 percent in voting strength of IFC's Governors. In the case of the United States (which has about 27 percent of the voting power), it is Congress which must approve, and also vote any appropriation that may be required. That approval is expected, with payment of the funds commencing in the Fall. IFC also has substantial retained earnings (about \$70 million at 6/30/75)

---

<sup>5</sup>Italy, for example, may take advantage of the increased benefits.

<sup>6</sup>At the same time, however, at the insistence of Treasury Secretary Simon, interest rates on Bank loans were increased effective June 1.

<sup>7</sup>"Resources" includes both Capital and the Fund for Special Operations, the former being about 2/3 and the later 1/3.

<sup>8</sup>Of which the U.S. share would be about \$110 million.

which are available for determining its authorized lending limits.

Similarly aimed at encouraging private capital participation in local enterprises (both public and private) was Kissinger's proposal to create the International Investment Trust, managed by the IFC. A unique aspect of this trust would be the creation of a \$200 million loss reserve to insure investors against loss. IFC has been "actively engaged" in examining this proposal.

### **Resolution of Energy Problems**

A major Kissinger proposal at the Seventh Special Session was the creation of an International Energy Institute to bring together consumers and producers in a forum devoted to energy development. To date, this has not been achieved, although it has led to the creation of a new international organization of major importance, the Conference on International Economic Cooperation (CIEC).

Efforts by the West as early as April, 1975 to create an international energy conference were rejected by the developing countries in concert with OPEC, which insisted that any such conference encompass all major areas of dispute between the developed and developing countries (i.e., commodities, development, financing and energy), and not be limited to energy matters alone.

Between October and December, 1975, the United States "backed down from its original insistence that the agenda be limited to energy matters,"<sup>9</sup> and agreed to the holding of a conference of 27 States plus the EEC to create four separate commissions on energy, raw materials, development and financing) which would function simultaneously as part of the "North-South" dialogues. The meeting, held in December, 1975, launched the new organization as CIEC. The delegates were ministerial representatives of member States, who pledged their governments to an in-depth examination of major issues and to report recommendations to a second CIEC ministerial meeting to be held a year later. The four commissions meet on a systematic basis through the year.

Although the United States had originally viewed the other three commissions (other than energy) merely as "energizers giving impetus and support to work being done on the crucial problems of raw materials and development in other international forums," it now appears that CIEC may provide a preferred and less confrontational forum for attempted resolution of all North-South problems.

The experience at the recent UNCTAD IV meeting in Nairobi, at which the West was stymied (although no group won a real victory) and the major United

---

<sup>9</sup>TIME Magazine, 12/22/75, pp. 37-38. Under Secretary of State for Economic Affairs Charles W. Robinson, however, reported to the House Committee on International Relations in February, 1976 that "Secretary Kissinger proposed a compromise that proved acceptable to all participants . . . creation of separate, functional commissions to deal with energy and other North-South economic issues simultaneously."

States proposal casually rejected,<sup>10</sup> no doubt has encouraged the change in the United States view of CIEC.<sup>11</sup>

### Technology Assistance

Proposals with respect to the transfer of technology consisted mainly of creating national and international institutions serving to develop and exchange technology needed by developing countries, and preparing guidelines for the transfer of technology.

The first area has been largely unimplemented. The UNCTAD IV Meeting called upon the developed countries to encourage national institutions to develop and disseminate appropriate technology, and called also for the establishment of national and regional centers for the development and transfer of technology.

The development of appropriate guidelines for the transfer of technology (a "Code of Conduct for the Transfer of Technology," to use the Third World's language), was confided to the UNCTAD IV Meeting by the Seventh Special Session of the General Assembly for, *inter alia*, decisions "on the legal character of such a code" (i.e., obligatory or non-obligatory).

The Nairobi Meeting decided to establish still another intergovernmental group of experts,<sup>12</sup> open to all member States, to formulate draft provisions, mandatory or voluntary, and to convene a United Nations Conference under UNCTAD before the end of 1977 to adopt a final code and make all necessary decisions on its binding legal nature.

### The Regulation of Transnational Corporations

The Kissinger proposals included considerable reference to the problems of transnational corporations. Since 1972, the transnational corporation has been a favorite whipping boy of United Nations organizations, and particularly of UNCTAD. Compare for example the language of General Assembly Resolution 2626 (XXV), October 24, 1970:

Developing countries will adopt appropriate measures for inviting, stimulating and making effective use of foreign private capital, taking into account the areas in which

---

<sup>10</sup>E.g., reluctant agreement by the West (by consensus) to a resolution adopting an "integrated program for commodities" and called for a "negotiating conference" no later than March, 1977 on, *inter alia*, a "common fund" for buffer stocks of 10 commodities, and rejection of the U.S. proposal for an International Resources Bank. See page 30 *infra*.

<sup>11</sup>UNCTAD, or at least its Secretariat, is also waging the battle of the fora: "But the United Nations has remained, and must continue to remain, the focal point for the consideration of the development issue. . . ." *Report by the Secretary-General of UNCTAD to the Conference*, TD/183, p. 16, 14 April 1976.

<sup>12</sup>TD/RES/89 IV, 6/10/76. Various groups of experts have met before under UNCTAD's auspices. Last year two sets of experts produced two drafts. The developing countries' experts produced a binding code (TD/B/C.6/AC.1/L.1/Rev.1, 5/16/75 and TD/B/C.6/AC.1/L.6, 11/25/75); and the developed countries' experts produced a non-binding code (TD/B/C.6/AC.1/L.2, 5/9/75).



such capital should be sought and bearing in mind the importance for its attraction of conditions conducive to sustained investment. . . . Efforts will be made to foster better understanding of the rights and obligations of both host and capital exporting countries, as well as of individual investors.

with UNCTAD Resolution 56 (III), May 19, 1972:

[UNCTAD] Affirms the sovereign right of developing countries to take the necessary measures to ensure that foreign capital operates in accordance with the national development needs . . .

Expresses its concern at . . . excessive utilization of local financial resources as well as the effects of certain marketing contracts among foreign companies that disrupt competition in the domestic markets, and their possible effects on the economic development of the developing countries . . .

The Commission on Transnational Corporations, which held its first session in March, 1975, was established by the Economic and Social Council in December 1974.<sup>13</sup> The Commission held its Second Session in Lima on March 1-12, 1976. Although much of the inter-governmental negotiation at the Lima meetings was conducted in closed session, it is known that the Third World split and was therefore unable to push through a confrontation attack on transnationals. The split was largely due to the substantial number of developing countries which had come to feel that transnational corporations offer the best chance for development of resources and technology transfer. Although the Commission's Report stresses that preparation of a Code of Conduct was the number one priority, no agreement was reached on whether the Code should be binding or voluntary, or whether it should be limited to transnationals' conduct or also include that of host countries. An intergovernmental working group was established to submit an annotated outline of such a Code to the Third Session of the Commission in the Spring of 1977, it being intended that a full draft will be submitted to the Commission at its Fourth Session a year thereafter. Even the position of UNCTAD's Secretariat appears to have softened, presumably as a result of the Third World split mentioned above.<sup>14</sup>

Any Code of Conduct which threatens nationalization without fair compensation, or (as a last resort) recourse to an impartial tribunal, is, of course, unlikely to encourage transnational investment.<sup>15</sup>

<sup>13</sup>ECOSOC Resolution 1913 (LVII), 12/5/74.

<sup>14</sup>(Although) there are both positive and negative aspects to their (transnational corporations) present role . . . Any global strategy for development, any new international economic order, must take into account their present and future roles." (*Report by the Secretary-General of UNCTAD to the Conference*, TD/183, p. 43, 4/14/76).

<sup>15</sup>Among the numerous international documents that contain this threat are *Declaration on the Establishment of a New International Economic Order* (G.A.R. 3201 (S-VI), ¶ 4(e), 5/1/74); *Charter of Economic Rights and Duties of States*, (G.A. Res. 3281 (XXIX), Article 2(c), 12/12/74); and the *Lima Declaration and Plan of Action*, ¶ 32, adopted by UNIDO 3/26/75 (ID/CONF.3/31).

On June 21, 1976 the 24-Member Organization for Economic Cooperation and Development (OECD) adopted a Code of Conduct for multinational firms. Although voluntary, the Code is strict, and is expected to carry considerable weight, both moral and political. In essence, bribery and other illicit practices are strongly condemned; broad disclosure of corporate conduct, certain operational information and organization is required; and unfair trade practices are barred. Multinationals are expected to respect local law regarding financial, tax and industrial relations policies, and to conform to the general aims and priorities of the host country with regard to social and economic aims, development, ecology and the transfer of technology.

OECD has thus stolen a bit of the thunder from the Commission on Transnational Corporation and the latter's specialized group, the Centre on Transnational Corporations, by producing a Code of Conduct at least 18 months before the Commission could hope to do the same. It is an open secret that the Centre's Executive Director, Klaus Sahlgren, is unhappy about the OECD Code.

One of the unspectacular but key proposals made by Secretary Kissinger was the recommendation regarding the promotion of fact-finding, arbitral procedures and other third-party facilities to settle foreign investment disputes. The softening position of the Third World on transnationals and the growing realization that private investment capital is vitally important to development, might conceivably create a climate in which fact finding and other third-party facilities can be established to some extent. But recent attitudes of the developing countries have been hostile in the extreme to any concept of supplanting local tribunals or local law; and although the need for capital investment is very great, and although transnationals will be reluctant to invest without some assurance that a fair hearing is guaranteed, it does not seem likely that great progress will be made in this area.

A paper submitted by ten Latin American and Caribbean States, including Brazil, Mexico and Venezuela to the Second Session of the Commission on Transnational Corporations, vigorously reiterates the *Calvo* doctrine, including a requirement that transnationals renegotiate concession agreements without recourse to third party tribunals, stating<sup>16</sup>

A natural consequence of the subjection of foreign enterprises to national legislation is the existence of an exclusive competence on the part of the courts of the host country to hear any case of litigation that arises from the application of this legislation. On occasion, the foreign enterprise presumes to escape the jurisdiction of the host State by means of private agreements in which it is stipulated that any controversy that may arise concerning the activities of the enterprise shall be resolved by the courts of the country of origin or of a third State, or that they will be submitted to international arbitration. These types of agreements are not acceptable and, in more than one case, are considered nullified of all right by the national laws.

---

<sup>16</sup>E/C.10/16, Annex IV, p.27.

### **Trade and Development**

The Kissinger proposals in this area involved special treatment for developing countries in trade, through preferences, concessions and eased non-tariff barriers, as well as generalized tariff preferences for manufactured goods. As stated by Kissinger, on January 1, 1976 the United States instituted a Generalized System of Preferences (GSP) under which 2,724 products from developing countries will enter the United States duty free for a period of ten years.

The potential value for developing countries under the GSP is tremendous: total trade in the products eligible for favorable treatment is about \$25 billion, or a quarter of all United States imports. But the Nairobi meeting did not consider these preferences sufficient.<sup>17</sup>

The remaining Kissinger proposals are still in the talking stage, partly as a result of disagreement between the EEC and the United States as to the amount of tariff cuts (the United States favors higher cuts), and a dispute as to whether agricultural goods should be lumped with industrial goods (favored by the United States).

Kissinger's Nairobi speech to UNCTAD IV on May 6, 1976 disclosed that "intensive negotiation" was under way in the multilateral trade negotiations on tariff treatment of tropical products, and that United States tariff regulations in this area would be implemented as soon as agreement was reached on the tropical product package. He also reiterated the United States position favoring preferences to the developing countries in respect of non-tariff barriers, and especially reduction of tariffs against processed raw materials from such countries.

### **Commodity Trade and Production**

Currently the main issue between the developed and developing world is the commodity trade. Weighed against the desire of the developing countries to obtain better prices for raw materials (which, of course, constitute their major source of income) and to stabilize their export receipts from year to year, is the determination of the developed countries to preserve the market system and to avoid the higher prices that consumers would certainly pay if there were intergovernmental intervention in the market or concerted action on the part of the producers. Encouraged by the success of the OPEC countries in 1973, commodity-producing developing countries have repeatedly pushed through the General Assembly and other international fora resolutions urging and justifying such concerted action.<sup>18</sup>

---

<sup>17</sup>*Report by the Secretary-General of UNCTAD to the Conference*, TD/183, pp.37-38; UNCTAD Resolution 96(IV), 31 May 1976, TD/RES/96(IV).

<sup>18</sup>See, e.g., *Lima Declaration and Plan of Action*, ¶ 60(f) (ID/CONF.3/31).

The OPEC experience has nudged the West into offering solutions, many of which are incorporated in the Kissinger proposals, including establishment of consumer-producer forums for each commodity; individual international commodity agreements where appropriate; the use of international buffer stocks to help stabilize violent swings in export prices; and the liberalization of compensatory financing to provide needed additional foreign exchange on a loan basis to developing countries struck by export shortfalls.

The key issue at the UNCTAD IV Meeting in Nairobi last May was the so-called "Integrated Commodity Programme" of the UNCTAD Secretariat. Briefly, the "Programme" includes establishment of stabilizing arrangements for at least 18 commodities, including creation of international buffer stocks of at least 10 such commodities,<sup>19</sup> pricing arrangements, export quotas and other production controls, and multilateral long-term supply and purchase commitments; further expansion of the compensatory financing facilities of IMF to mitigate the effects of export shortfalls; and, key to the whole proposal, establishment of a "common fund" to finance purchase of the aforementioned buffer stocks.

The "Programme"—and especially the "common fund"—virtually brought the UNCTAD conference to a standstill. It split the developed countries into several divergent groups and, sparked by sharp and vocal disagreement between the Department of State and the Treasury Department, contributed to the loss for the United States of much Western support.

Although the United States has cautiously accepted the concept of buffer stocks, and vigorously pushed for more liberal compensatory financing facilities, it has always been strongly opposed to any lumping together of different commodities, whatever the particular measure involved. For this there are two reasons: First, the United States believes that every commodity has unique problems and must be treated separately. Second, while (except in the case of petroleum) there is little chance for successful extortionate demands based upon a single commodity (because of synthetics, substitutes, etc.), the risk increases with the number of commodities involved. It would be difficult for the United States and other Western countries to find substitutes for, or do without, a dozen or more basic commodities at the same time. UNCTAD's Secretary-General, Gamani Corea, long accustomed to aligning himself with the Third World,<sup>20</sup> explains that:

On the side of the producer countries, there has hitherto not been sufficient capacity to exercise leverage through recourse to alternative actions . . . [a] case-by-case

---

<sup>19</sup>Bananas, bauxite, cocoa, coffee, copper, cotton, hard fibers, iron ore, jute, manganese, meat, phosphates, rubber, sugar, tea, tropical timber, tin and vegetable oils. The commodities underlined are considered appropriate for buffer stocking.

<sup>20</sup>U.N. Secretary-General Kurt Waldheim has similarly, for many years, disavowed any commitment to impartiality on issues between the developed and developing world.

approach [does] . . . not allow the developing countries to exercise pressure in common . . .<sup>21</sup> (emphasis supplied).

But the common fund became a symbol at Nairobi for the developing countries. As a member of the British delegation said: "The third world has hoisted the common fund as their flag and they will just not take it down."

At its final plenary session, the Conference adopted by consensus a developing country resolution on an Integrated Programme for Commodities. The common fund, although previously always by definition a part of the "Integrated Programme," was *not* specially adopted. Rather, in somewhat hazy language, the participants agreed to take steps "towards the negotiation of a common fund," including the convening of preparatory meetings followed by the calling of a "negotiating conference" on a common fund no later than March, 1977.<sup>22</sup>

Although joining in the consensus, the United States and certain other developed countries made a number of reservations. A key United States reservation made it clear that the United States did not view itself bound even to attend a "negotiating conference" on establishment of a "common fund":

A decision on a financial relationship among buffer stocks will need to be considered in the light of developments on individual funds. However, since there may be advantages in linking resources of individual buffer stocks<sup>23</sup> we will participate without any commitment in preparatory meetings to examine whether further arrangements for financing of buffer stocks including common funding are desirable. After these preparatory discussions we will decide on participation in any negotiating conference.

Notwithstanding the reservations, even the limited results of the Nairobi Conference on commodity issues must be viewed as a defeat for the market philosophies of the West which the Kissinger proposals aimed at defending.

Very large quantities of buffer stocks are required to influence swings in commodity prices effectively. This necessitates substantial financing.<sup>24</sup> The UNCTAD Secretariat has estimated that the cost for the ten basic commodities would be \$6 billion, half initially and half later. It is doubted by some observers that this figure would be sufficient.

---

<sup>21</sup>*Report by the Secretary-General of UNCTAD to the Conference*, 4/14/76, TD/183 pp.20-21.

<sup>22</sup>TD/RES/93 (IV) 6/10/76.

<sup>23</sup>U.S. acceptance of the buffer stock principle is evidenced by the fact that it has signed the International Tin Agreement which seeks stabilized prices within agreed limits primarily by buffer stock buying and selling (the agreement also permits export controls to defend the floor price). The U.S. has also indicated that it would sign a cocoa agreement which relied primarily on buffer stock operations to stabilize prices. The new cocoa agreement included other controls unacceptable to the U.S.

<sup>24</sup>At Nairobi, Kissinger suggested various sources of financing: direct contribution by participants, export taxes, and commercial borrowing guaranteed by the participating countries or "through the existing facilities of international institutions."

Secretary Kissinger also proposed liberalization of the IMF buffer stock financing facility so as to assure its availability without reducing other drawing rights; but adequate financing from IMF's Buffer Stock Facility has not yet become available.

Kissinger had proposed a series of individual international commodity agreements (tin, coffee, cocoa and sugar). Only the tin and coffee agreements have been signed by the United States (they are awaiting Senate action). The United States is not a member of the existing sugar agreement, and produces about half of its own needs. The negotiating conference on the new sugar agreement is scheduled for this year in Geneva, but will probably be deferred until Spring 1977. The United States is expected to participate fully in these negotiations.

Finally, the Kissinger proposals called for the establishment on a priority basis of a consumer—producer forum for copper. At a series of ad hoc meetings in Geneva on March 23-27, 1976, thirty major copper producers and consumers agreed to establish a permanent forum. Proposals are to be submitted by an interim committee to the UNCTAD Secretariat before October, 1976. The Secretariat is then to call another consultative session before December, 1976.

### **The Poorest Nations**

In addition to the gold-sale Trust Fund for the poorest nations (par. H above), Kissinger proposed a substantial (5th) replenishment of the International Development Association (IDA) of the World Bank Group. The IDA lends funds for 50 years at .75 percent, and began to commit funds from its 4th replenishment only in 1975. Kissinger's proposal was conditioned upon OPEC members making significant contributions to IDA. Heretofore, only Kuwait has contributed, but several other OPEC States are now discussing participation in the 5th replenishment. Congress may not be willing, however, to allocate funds for IDA on the timetable or in the amounts recommended by Kissinger.

Another of the Secretary's proposals called for establishment of the International Fund for Agricultural Development (IFAD) "to mobilize massive new concessional resources for research, technical assistance and agricultural development" aimed at increasing the third world's food production. IFAD was first proposed by the OPEC countries at the Rome World Food Conference in November 1974, and Kissinger proposed a United States contribution of \$200 million if other nations would contribute enough to reach a total of \$1 billion. IFAD will come into existence when the \$1 billion goal has been reached. This should be soon, because over \$930 million has already been pledged, \$400 million by OPEC and \$530 million by the West (of which the United States contribution is \$200 million). The \$1 billion target is expected to be reached by September, 1976.

IFAD will be a specialized agency of the United Nations with autonomy in policy and operations; and its articles will combine elements both of the United Nations type organization and the international financial organizations like the World Bank. IFAD is expected to have a major impact on increasing and improving world agricultural development and food production.

### **Political Dimension**

Two of the major issues in this area have been the voting power of the developing countries in the World Bank Group, and the restructuring of the United Nations system.

The January, 1976 meeting of the IMF in Jamaica increased the quotas and, of course, voting powers, of the OPEC nations from approximately 5 percent to 10 percent. (Under IMF rules, increasing a member's quota also increases its voting power, substantially but not entirely to the same degree). As Kissinger had indicated, this reduced the quotas of the developed countries, from about 73 percent to 68 percent. The United States voting percentage was thereby reduced to below 20 percent, but at the same time, IMF rules were amended to increase from 80 percent to 85 percent the vote necessary for certain key decisions, thus preserving United States veto power. The foregoing actions are subject to ratification. Developing countries want an increase in their quotas from 22 percent (excluding OPEC) to 40 percent. OPEC's share in the World Bank's capital has also been increased, as part of the \$8 billion increase in the Bank's overall capital (which has already been noted above) from 5.08 percent to 9.22 percent.

The 29th Session of the United Nations General Assembly asked the Secretary-General to convene a small group of high-level experts to study and propose changes in the United Nations system so as to improve international economic development, among other things. This diverse group, which included Professor Richard N. Gardner of Columbia University as Reporter, and Al Noor Kassum (Tanzania) as President, produced a unanimous Report.<sup>25</sup> The Report was one of the materials cited by the unanimous resolution of the Seventh Special Session of the General Assembly<sup>26</sup> as a basis for continued study of the restructuring plans. The Kissinger proposals "welcomed" the Report and agreed that the United States would give it serious consideration.

Among other things, the Report indicated a certain dissatisfaction over UNCTAD's increasing authority at the expense of ECOSOC, with the concomitant overlapping expense and bureaucracy. It suggested that UNCTAD be phased out, its trade functions taken over by a new comprehensive trade

<sup>25</sup>A *New United Nations Structure for Global Economic Co-operation*, E/AC.62/9 (1975).

<sup>26</sup>G.A. Res/3362 (S-VII), p.15, 9/19/75.

organization, and ECOSOC revitalized so as to reassume direct responsibility in the economic and development areas.

The Experts' Report, of course, is not favored by the UNCTAD Secretariat which has produced voluminous documentation supporting its own *raison d'être*. It is noteworthy that Item 16 of the Agenda for the Nairobi meeting, which was prepared by the Secretariat and deals with UNCTAD institutional issues,<sup>27</sup> cites numerous resolutions and documents as background for debate and vote, including General Assembly Resolution 3362<sup>28</sup> (see the second footnote on the preceding page, and the accompanying text), but omits any reference to the Experts' Report.

The Conference adopted without dissent an institutional resolution calling for considerable strengthening of UNCTAD, including a veiled suggestion that UNCTAD should be the "comprehensive" trade organization referred to on the preceding page. (It should be noted that the word "comprehensive" in this context includes the functions now performed by GATT). UNCTAD (the United Nations Conference on Trade and Development) was established on December 30, 1964, by a Resolution<sup>29</sup> of the United Nations General Assembly, as a subsidiary organ thereof under Article 22 of the United Nations Charter. It was created because of dissatisfaction on the part of the Third World with economic and development progress being made under the auspices of the Economic and Social Council (ECOSOC), the organ of the United Nations charged with policy guidance in economic and social affairs.<sup>30</sup>

UNCTAD and its Secretariat are totally dedicated to establishment of the so-called "New International Economic Order" and implementation of the so-called "Charter of Economic Rights and Duties of States." Like the General Assembly, UNCTAD has no executive or enforcement powers, and its decisions are not binding. Nonetheless, because of the overwhelming majority it normally musters for Third World programs and policies, and the zealotry of its Secretary-General, it is a force to be taken seriously.

The lack of impartiality at the Secretariat level of various organizations within the United Nations system has been a problem for the West. In UNCTAD, the phenomenon is particularly serious because the attack there is stronger and is led by a Secretariat which is wholly sympathetic to one side in the confrontation, and can utilize all of the staff resources with respect to issues which are of great importance.

For example, the Secretary-General of UNCTAD has stated:

The more recent period has seen the system itself in deep crisis. It has received such severe shocks as to call into question its ability to continue as before and to satisfy the

<sup>27</sup>TD/182, 4/8/76, pp. 21-22.

<sup>28</sup>See note 26, *supra*.

<sup>29</sup>Assembly Resolution 1995 (XIX).

<sup>30</sup>U.N. CHARTER, Arts. 60 and 61 through 72.



needs of even the developed countries . . . [These events] . . . have challenged the validity of major facets of the prevailing framework in the developed countries themselves.<sup>31</sup>

A host of factors underlie these failures [to finalize international commodity agreements]. For the consuming countries there was a strong disinclination to establish government intervention in "free markets"—a disinclination born of a system and an ideology which reflects the dominance of private interests<sup>32</sup>

The UNCTAD Secretariat has, curiously, taken a position more confrontational than that taken by the Group of 77 at the recent meeting in Manila, especially on the subject of the Soviet bloc's past and present contributions to the Third World. In this respect, the Report of the Secretary-General of UNCTAD, cited above, omits virtually all comments in the Manila Declaration that could be considered as critical of the Soviet bloc.<sup>33</sup>

At the Nairobi meeting, the United States proposed establishment of an International Resource Bank (IRB). The IRB would be financed by the West and by OPEC (with a funding total of \$1 billion), and would raise private capital in the West for direct financing of raw material development projects in developing countries. Commodity bonds would be issued on security. To satisfy both investor and the host country as to the terms of the investment and local activities, including development of managerial, technological and marketing capabilities (and sharing of output on an agreed basis), IRB, the investor and the host country would work out a detailed arrangement in advance. IRB would guarantee performance by both investor and host country in accordance with the agreement.

The IRB proposal was defeated in a highly political atmosphere by a vote of 33 against, 31 in favor, and 90 not voting. A joint statement of Secretaries Kissinger and Simon barely concealed the U.S. annoyance:

The United States went to UNCTAD IV at Nairobi in a serious and cooperative spirit . . .

A substantial number of the 33 votes against were the Socialist countries, whose contribution to the development of the poorer countries of the world is negligible.

Forty-four countries cooperated in this effort by abstaining on the International Resource Bank and forty-six absented themselves—almost all of which were the developing countries. This does not augur well for the future of the dialogue of the worldwide development effort. The United States, whose role is so vital, does not expect when it makes major efforts to cooperate, that its proposals will be subject to accidental majorities . . . The LDCs must not lend themselves to parliamentary manipulation by those states who contribute nothing to the development of the poor nations of the world . . .

we will continue to elaborate [our] proposals in appropriate fora . . .<sup>34</sup>

<sup>31</sup>*Report of the Secretary-General of UNCTAD to the Conference*, TD/183, 4/14/76, p.10.

<sup>32</sup>*Id.*, p.20.

<sup>33</sup>*Compare Manila Declaration and Programme of Action*, TD/195, 2/12/76, § 8, ¶¶ 3, 4, 5 & 10, with *Report of the Secretary-General of UNCTAD to the Conference*, TD/183, 4/14/76, pp.69-73.

<sup>34</sup>Kissinger has indicated that the IRB proposal will be raised at CIEC meetings.

## Whither Now?

Confrontation, so noticeably relaxed at the Seventh Special Session of the General Assembly, has returned. Whether or not it has been exacerbated by the UNCTAD Secretariat, it seems fair to say that for the time being the preferred United States forum will be the Conference on International Economic Cooperation (CIEC).<sup>35</sup>

Secretary Kissinger's proposals represent the West's stance in defense of principles regarded in most of the developed countries as fundamental. The significance of those proposals is directly related to the success they have enjoyed in containing the determined onslaught against those principles.

The Kissinger approach has sought to preserve a more or less free market structure, coping with Third World economic problems by concessional aid in the form of grants and loans to compensate for disruptions and for export shortfalls in the developing world, while at the same time generating new mechanisms, systems and resources to allow the developing countries to reach acceptable levels—all within the economic system espoused by the West. But it is clear that the West has not moved sufficiently fast to stem the tide. Most of the hundred or so new countries have followed or turned to totalitarian, statist and/or socialist structures internally, and are joined in a relatively monolithic bloc to bring about an international economic structure as planned and controlled as possible.

Lawyers, and international lawyers especially, should be concerned about these developments because international law includes "international custom, as evidence of a general practice accepted as law" and the "general principles of law recognized by civilized nations."<sup>36</sup> Constant repetition of Third World doctrines, especially when cast in quasi-legal forms such as "Declarations" and "Charters" and supported by 100 or more sovereign States, will doubtless continue to be relied upon, as in the past, by the anti-Western group, as evidencing a generalized acceptance of their approach, no matter how bitterly contested by those nations whose position is solidly grounded on the traditional creative process of norms of international law.

---

<sup>35</sup>In his London address on June 25, 1976 to the International Institute for Strategic Studies, Secretary Kissinger said:

[The industrial democracies] should regularly consult and work in close parallel in major international negotiations and conferences. The Conference on International Economic Cooperation, the multilateral trade negotiations, U.N. General Assembly special sessions, world conferences on food, population, environment or housing, and UNCTAD all can achieve much more if the industrial democracies approach them with a clear and coherent purpose.

Is it accidental that CIEC leads the list of fora and UNCTAD ends it?

<sup>36</sup>Statute of the International Court of Justice, Art. 38, ¶¶ 1 b. and c.

