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Changing the Rules: International Law and the Developing Countries: The ABA Workshops of 1977

The desire of the less developed countries (LDCs) to improve their economic position vis-à-vis the developed countries has taken many forms, but the one of most interest to international lawyers is their attempt to change the existing rules of international law. Those efforts have surfaced in the United Nations General Assembly, in the deliberations of specialized U.N. agencies, such as The United Nations Conference on Trade and Development (UNCTAD) and in other general and regional organizations, such as The World Industrial Property Organization (WIPO) and the Andean Pact.

To the extent that these efforts may result in new or changed treaties, conventions or norms of customary international law, they will necessarily be of concern to the organized bar in the United States. Consequently, the American Bar Association's Section of International Law has created a Committee on International Law and the Developing Countries, to consider those proposals for change as they occur and to recommend positions upon them for the consideration of the Association's House of Delegates.

Among the most controversial of the subjects are those of exploitation of natural resources, expropriation of foreign investments and transfer of technology. Some examples follow.

The United Nations Charter of Economic Rights and Duties of States

The Preamble to the Charter of Economic Rights and Duties of States[1] has as one of its purposes "the acceleration of the economic growth of developing

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[1]For the full text see 9 INT'L LAW., No. 2, April 1975, p. 389.

countries with a view to bridging the economic gap between developing and developed countries."

With respect to exploitation of natural resources, regulation of foreign investment and expropriation of foreign property, Article 2 provides:

> 1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.
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> 2. Each State has the right:
>
> (a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No state shall be compelled to grant preferential treatment for foreign investment;
>
> (b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph:
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> (c) To nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

The House of Delegates of the American Bar Association considered these provisions a sufficient threat to international law that it adopted a resolution urging the United States not to support the Charter if it did not provide:

> (1) that in the exercise of their economic rights and the fulfillment of their economic duties states must act in accordance with international law, and
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> (2) that it shall not be interpreted in any way to derogate from international law or to prejudice any negotiations on international law.[2]

No such correctives were approved at the United Nations, and the Charter was adopted December 12, 1974, by a vote of 120-6-0 over the opposition of the United States, the United Kingdom and other industrialized countries.[3]

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[2]INT'L LAW., No. 2, April 1975, p. 405.

[3]For a fuller discussion see C. N. Brower and J. B. Tepe, Jr., *The Charter of Economic Rights and Duties of States: A Reflection or Rejection of International Law?* 9 INT'L LAW., No. 2 April 1975, p. 295, *et seq.*, G. W. Haight, *The New International Economic Order and the Charter of Econcomic Rights and Duties of States,* 9 INT'L LAW., No. 4, Fall 1975, p. 591, *et seq.* Brower, *The Charter of Economic Rights and Duties of States and the American Consitutional Tradition: A Bicentennial Perspective on the New International Economic Order,* 10 INT'L LAW., No. 4, Fall 1976, 701 *et seq.*

The New International Economic Order

Resolution 3201 (S-VI) adopted by the General Assembly on 1 May 1974 under the title "Declaration on the Establishment of a New International Economic Order" contains in Article 4, the following provisions:

> 4. The new international economic order should be founded on full respect for the following principles:
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> * * *
>
> (e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;
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> * * *
>
> (g) Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of these countries;
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> * * *
>
> (n) Preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of international economic co-operation whenever possible;
>
> (o) Securing favourable conditions for the transfer of financial resources to developing countries;
>
> (p) Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies;
>
> (e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subject to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right.

The Proposed UNCTAD Code on Transfer of Technology

Another area of disagreement between the developed and less developed countries has been in the area of transfer of technology. In the 1975 UNCTAD conference, an expert from Brazil, on behalf of the group of 77, tabled a draft outline of a preamble to an International Code of Conduct on Transfer of Technology[4] which contained in part the following provisions:

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[4]T.D. C.B. 6/AC.1/L.6 26 November 1975.

The Contracting Parties.

(i) *Recognizing* the paramount role of science and technology for socio-economic development of all countries, and in particular, in the acceleration of the development of the developing countries;

(ii) *Convinced* that technology is a part of universal human heritage and that all countries have the right of access to technology in order to improve the standards of living of their peoples;

(iii) *Recognizing* the need to facilitate and encourage the growth of the scientific and technological capabilities of all countries, especially the developing countries;

(iv) *Believing* that an adequate transfer of technology should become an effective instrument for the elimination of economic inequality among countries and for the establishment of a new and more just international economic order;

(v) *Believing further* that it is the duty of all countries to promote the transfer of technology, whether proprietary or otherwise, on favourable terms, conditions and prices in accordance with the national policies, plans and priorities of the developing countries;

(vi) *Drawing* attention to the need for expanding the unrestricted flow of necessary technological information and in particular to facilitiate the flow of information on the availability of alternative technologies and for the election of appropriate technologies suited to the specific needs of the developing countries;

(vii) *Considering* the need to strengthen the bargaining position of the developing countries vis-à-vis the suppliers of technology;

(viii) *Affirming* the Code of Conduct for the transfer of technology shall be universally applicable to all countries and calling upon all countries to ensure that their enterprises, whether private or public, shall conform in all respects to the provisions of the Code of Conduct in all transactions involving transfer of technology;

(ix) *Reaffirming* their belief that an international legally binding instrument according to these principles is the only form capable of effectively regulating the transfer of technology...

(x) *Agree* on the adoption of this international legally binding Code of Conduct on transfer of technology.

On the other hand, an expert from Japan, on behalf of the developed countries, ("the Group B nations") submitted a draft outline which in its statement of objectives proposed a voluntary code, as follows:

A. *First, it is essential to distinguish clearly between the responsibilities of the parties to a transfer of technology...*

A Code should clearly indicate those matters which are the concern of enterprises and those which are more properly the concern of governments.

B. *Such a Code should be an international instrument of a non-binding character.* It is the responsibility of governments to promote all appropriate means of facilitating the transfer of technology. An international Code should permit each government to so act, leaving it full and complete freedom of decision, including the right to legislate on the subject of technology transfer, within the framework of international law.

C. *The provisions of a Code should be of a general and voluntary nature.* As a result of the diversity of the situations and the parties involved, every transfer of technology is an individual case. Specific rules would immediately result in their frequently being inappropriate or counterproductive.

The Effect of Resolutions as Creating International Legal Norms

In attempting to establish new rules of international law, the developing countries have sought to establish the principle that resolutions of the General Assembly or other United Nations organs carry the force of law, binding United Nations members. Legal representatives of the developed countries have strenuously resisted this contention. The issue is not free from doubt.

The best-known restatement of the sources of international law is found in the statute of the International Court of Justice, which, in Article 38, lists those sources as:

> a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
> b. international custom, as evidence of a general practice accepted as law;
> c. the general principles of law recognized by civilized nations;
> d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Resolutions of the Security Council are binding upon all member states of the United Nations by the express terms of the Charter; but there is considerable difference of view as to whether General Assembly resolutions can, in and of themselves, form a basis for establishment of a norm of customary international law. On this subject, eminent legal scholars have expressed differing views. Note, for example, the following by Rosalyn Higgins:

> With the development of international organizations, the votes and views of states have come to have legal significance as evidence of customary law. Moreover, the practice of states comprises their collective acts as well as the total of their individual acts; and the number of occasions on which states see fit to act collectively has been greatly increased by the activities of international organizations. Collective acts of states, repeated by and acquiesced in by sufficient numbers with sufficient frequency, eventually attain the status of law. The existence of the United Nations — and especially its accelerated trend towards universality of membership since 1955 — now provides a very clear, very concentrated, focal point for state practice.[5]

Likewise, Professor Louis B. Sohn has written that:

> The organs of the United Nations can by their interpretations of the Charter broaden the scope of the United Nations, especially when there is unanimous agreement on the subject, or at least no open disagreement. While a San Francisco Committee has pointed out that "if an interpretation made by an organ of the Organization or by a committee of jurists is not generally acceptable it will be without binding force," the United Nations has been willing to proceed on the basis of the corollary principles that an interpretation which is generally acceptable (i.e., was adopted unanimously, or without any negative vote or, without a vote, by consensus) is binding on all the Members.[6]

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[5]HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS, Oxford University Press 1963, p. 2.

[6]Sohn, *The Development of the Charter of the United Nations: the Present State,* in THE PRESENT STATE OF INTERNATIONAL LAW. I.L.A. 1973, p. 50.

And:

> All these declarations[7] are not ordinary international treaties or conventions and were not subject to ratification. Nevertheless, there is a wide consensus that these declarations actually established new rules of international law binding upon all States. This is not treaty-making but a new method of creating customary international law.[8]

In a recent arbitration proceeding, *Texaco Overseas Petroleum Company and California Asiatic Oil Company v. The Government of the Libyan Arab Republic,* the Sole Arbitrator, René-Jean Dupuy, was faced with the issue of the effect of Libyan decrees purporting to nationalize oil properties and interests granted under certain Deeds of Concession. In so doing, the Arbitrator analyzed the effect of the nationalization provision of the Charter of Economic Rights and Duties of States (Article 2) and the Declaration on the Establishment of a New International Economic Order (Article 4, paragraph (e)).

The Arbitrator decided as follows:

> The general question of the legal validity of the Resolutions of the United Nations has been widely discussed by the writers. This Tribunal will recall first that, under Article 10 of the U.N. Charter, the General Assembly only issues "recommendations," which have long appeared to be texts having no binding force and carrying no obligations for the Member States....
>
> Refusal to recognize any legal validity of United Nations Resolutions must, however, be qualified according to the various texts enacted by the United Nations. These are very different and have varying legal value, but it is impossible to deny that the United Nations' activities have had a significant influence on the content of contemporary international law. In appraising the legal validity of the above-mentioned Resolutions, this Tribunal will take account of the criteria usually taken into consideration, i.e., the examination of voting conditions and the analysis of the provisions concerned.[9]

Analyzing the votes upon the two resolutions, the Sole Arbitrator concluded that since the vote was far from unanimous upon them, they did not create binding obligations. In particular, he pointed out that:

> The conditions under which Resolution 3281 (XXIX), proclaiming the Charter of Economic Rights and Duties of States, was adopted also show unambiguously that there was no general consensus of the States with respect to the most important provisions and in particular those concerning nationalization...[10]

and further

[7]Declaration on Principles of International Law concerning Friendly Relations among States in accordance with the Charter of the United Nations; Declaration of Legal Principles Governing the Activities of States in the Exploration of Outer Space; Declaration of Principles governing the Seabed and the Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction.

[8]*Ibid* p. 52.

[9]Texaco Overseas Petroleum Company and California Asiatic Oil Company v. the Government of the Libyan Arab Republic, International Arbitration, Award on the Merits, Finding No. 83.

[10]*Ibid,* Finding No. 85.

> [W]hile it is now possible to recognize that resolutions of the United Nations have a certain legal value, this legal value differs considerably, depending on the type of resolution and the conditions attached to its adoption and its provisions. Even under the assumption that they are resolutions of a declaratory nature, which is the case of the Charter of Economic Rights and Duties of States, the legal value is variable. Ambassador Castañeda, who was Chairman of the Working Group entrusted with the task of preparing this Charter, admitted that "it is extremely difficult to determine with certainty the legal force of declaratory resolutions," that it is "impossible to lay down a general rule in this respect," and that "the legal value of the declaratory resolutions therefore includes an immense gamut of nuances."[11]

The ABA Workshops

The foregoing summary of the more controversial provisions of charters and codes being pressed by the developing countries suggests strong differences of view with respect to such questions as:

1. Is it proper that foreign enterprises operating in developing countries be exclusively subject to the national laws of those countries without regard to prior treaties, conventions, international agreements and customary international law?
2. Should the norms for the transfer of technology to the developing countries be revised, and, if so, should such revisions be effected voluntarily or compulsorily?

In an effort to inform lawyers in the United States concerning the arguments relating to these questions, the American Bar Association's Section of International Law conducted two workshops in Washington, D.C. and Houston, Texas in the spring of 1977 under the supervision of its Committee on International Law and the Developing Countries. The names and titles of the participants are set forth in the appendix to this article. What follows is a summary of the comments made by certain of the participants, not in the order in which they were presented, but as their views relate to the specific questions discussed.

The Economic Situation of the Less Developed Countries

STEPHAN MINIKES, Senior Vice President of the Export-Import Bank of the United States, reminded the participants that the main needs of the developing countries are capital, capital equipment and overseas markets for their exports. Prior to 1973, when the sharp increase in oil prices occurred, the developing countries were able to pursue consistent economic development policies; but by 1974 the sharp rise in import prices, followed by a fall in export earnings, required governments to decide whether to rely on cutting im-

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[11] *Ibid,* Finding No. 86.

port volume or to borrow, at risk of future curtailment. They mainly decided to borrow and their payments deficits jumped from $9 billion in 1973 to $34 billion in 1975. By now their long-term debt and short-term debt is about $157 billion, about 40 percent of which is from private banks. They will obviously not be able to repay their debts in the foreseeable future, but the critical question is whether they will be able to service their debts.

One of the largest issues facing developing countries is the demand for transfer of resources from the industrialized countries. In 1958, the World Council of Churches recommended that the industrialized countries allot 1 percent of their combined national income to transfers to developing countries. By now, total financial flows from the industrial countries exceed 1 percent of their GNP, but the aid portion in 1975 equaled only .36 percent and for the United States, Italy and Japan, aid represented even less — .25 percent.

Another important issue is by what means and when payment rescheduling or other measures should be used to ease the developing countries' debt problem. How successful developing countries are in arranging adequate financing will affect their attitude toward issues in the North-South dialogue in general. If the belt tightening required is too politically costly, which it may be in some countries, these countries may return to a policy of confrontation rather than negotiation.

Mr. Minikes likewise pointed out that there are two interrelated questions: First, what benefits do we, the industrial countries, derive from trade relationships with the developing countries, and second, what economic benefits do the developing countries derive from their relationships with us? There are four areas in our mutual economic relationships. In the first two — international trade and raw materials — we derive the most economic benefit. In the second two — investment and capital equipment and technology transfer — the developing countries expect compensating benefits.

In 1976 the industrial nations exported to the developing countries almost $100 billion, representing about 15 percent of their total exports. U.S. exports to developing countries totaled about $30 billion, roughly one-third of the world total and about 25 percent of total U.S. exports. Capital equipment amounted to well over one-third of the industrial country exports to the developing countries.

Developing country exports to industrial nations totaled about $90 billion in 1976, of which only $25 billion was to the United States. Food, primarily coffee and sugar, represents about one-third of the developing countries' exports to the industrial countries, and raw materials such as copper, vegetable oil and fibers represent another one-third. The developing countries seek to share in the advantages of producing more technologically sophisticated goods. This explains their positions on transfer of technology and preferential trade treat-

ment. They are, moreover, pressing for expansion of a generalized system of preferences, and are dissatisfied with their position as simple producers of raw materials, wishing to become involved with subsequent fabrication. To that end three key goals of developing countries are the stabilization of commodity prices, insure steady growth in export earnings over a long term, and greater participation in downstream processing.

In 1975 the UNCTAD secretariat unveiled an integrated program for commodities, calling for (1) agreements to set price ranges for certain developing-countries' commodity exports; (2) an associated common fund to finance the purchase of buffer stocks needed to support target prices; (3) schemes to facilitate developing countries' involvement in downstream production; and (4) appropriate measures for greater participation by developing countries in the transport, marketing and distribution of raw and intermediate materials.

The developing countries are likely to continue to restrain and limit investment by industrial nations in their raw and intermediate materials sectors. It is in the area of investment and capital flow and the related area of technology transfer that the developing countries hope and expect to benefit from their relationship with the industrialized countries. In order to grow, the developing countries must invest; this requires capital imports. Part of the required financing will be in the form of aid; the remainder will be in the form of debt or direct investment. While industrial countries also benefit from investment and capital flow to the developing countries, in the form of interest receipts and profit remittances, those benefits are not nearly as large as are desired or imagined. Borrowings from official sources are at an average interest rate of less than 4 percent. Interest charges on borrowing from private capital markets average less than 9 percent and profit rate repatriations are not more than 10 percent.

On the other hand, the industrial countries are looking for returns for their investment and lending not only in the form of profit and interest, but also in the form of increased exports and access to raw and intermediate materials; but this linking of investment and capital flows to exports and resource exploitation is troublesome to the developing countries.

Many developing country leaders genuinely believe that multinational firms act counter to developing country interests by concentrating on extractive industries and not developing indigenous technological and managerial skills. Multinational corporations are also accused of draining off scarce domestic savings and profits. Developing countries are also suspicious that foreign subsidiaries located in their countries import goods from parent companies at inflated prices, while exporting goods to the parent at undervalued prices, hiding profit repatriation.

Transfer of Technology

WILLIAM J. ROCHE, Vice President, Secretary and General Counsel of Texas Instruments Incorporated, speaking from the standpoint of his company, which is a multinational technological growth company, indicated that his company is highly protective of its technology, releasing it to foreign markets only under special conditions. He pointed out that when we speak of technology sales or technology transfer, we are speaking of three things:

1. Technology products — the products which result from technology.
2. Technology know-how — the key to the technology which entails the transfer of detailed process and equipment information; and
3. Patent licensing — the permission to manufacture another's product, which may not involve the transfer of technology know-how.

The philosophy of his company in these areas was set forth as follows:

> We believe that no transfer of high technology should occur unless it is in a manner which provides a flow of sufficient funds to U.S. technology owners to enable them to continue the research and development necessary to maintain the technological leadership which makes future profitable sales possible.
>
> We are especially careful about know-how sales to state owned competitors, for they are able to enter foreign markets without any severe pricing restraint, whereas a free enterprise competitor must have a price which yields a profit.
>
> It is TI's firm practice to license its technology know-how only to wholly owned subsidiaries, then only in those countries where it is confident that its proprietary nature is relatively secure.

Mr. Minikes emphasized that if the developing countries are to mature economically, they must have access to modern technology. While they may not be able to develop highly skilled workers in fields such as aerospace or computers, there are other manufacturing sectors such as steel and fabricating in which, though the process may be highly technical and the equipment quite complex, much of the work can be performed by relatively unskilled labor or exploitation of natural resources which are relatively abundant.

The developing countries have proclaimed the right of every country to benefit from the advances and developments in science and technology. Their latest demands, set forth in the Nairobi session of UNCTAD, include adoption of a legally binding code of conduct for technology transfers; the guarantee that technology supply is complete; reduction of cost and placing of time limits on licensing agreements, and full utilization in future development of indigenous technology; and finally, establishment of institutions to promote technical cooperation among the developing countries, including technology data banks to facilitate an exchange of information. It is an understatement to observe that these are very contentious issues. Mexico, Brazil and Japan have been outspoken on some aspects of technology transfer, but most countries have given only general support for the proposals because they are not sure which ones should be adopted.

DRA. MARIA DE LOURDES JIMENEZ DE PADIERNA, Counsel, Office of the Director General of the National Registry for the Transfer of Technology, (Secretariat of Industry and Commerce), in Mexico, set forth the view of the developing countries regarding the need to modify the norms for the transfer of technology to the less advantaged countries, in this manner:

Legal transactions, either domestic or international, are based on the principle of equal standing of both parties involved, However, in the real world the party selling, licensing, leasing, lending, etc., is generally the one with more bargaining power. When this difference in bargaining power is too great, then instead of reducing the gap between the powerful and weak, dependence and inferiority is increased. When these unjust transactions become commonplace it is time for the legal system to revise its norms and issue new legal standards to reduce or if possible to eliminate this disparity.

Technology can be described as an essential element toward the achievement of a more accelerated national development and as a means to improve the standard of living of the people. It is, therefore, in the interest of all nations to regulate and control the transfer of technology as a way to fulfill national, economic and social goals. According to Doctor Jiménez de Padierna there were three periods of regulation of the transfer of technology in the different countries of the world, as follows:

1. A period of laissez-faire where minimum regulation and government intervention was the rule to be followed.

The high cost of developing technology made this almost a monopolistic power of industrialized nations. The developing countries relied on importation of foreign technology, and their weak bargaining power and absence of a will to find structures to assimilate foreign technology created distortion in the consumption pattern for the people and increased their economic dependence upon foreign nations.

2. The second state in the process of regulating transfer of technology is what can be called the "restrictive." The different countries of the world started to adopt unilateral measures to diminish restraints and obstacles hindering the free flow of technology. In the normal commercial transaction they used tariffs, import quotas, foreign regulations, product standards, etc. If a transfer is made through foreign, direct investment they use laws regulating such investment, tax incentives, and government subsidies or guarantees, availability of local financing. If licensing is chosen, the control instruments can be regulation of contractual agreements by a screening and registration process, foreign exchange regulation, availability of credit and finance to local licensees, patent policy, and antitrust and fair trade regulations. The screening and registration of licenses in technical agreements is a way of controlling and implementing the national technological policy. This is

not restricted to developing countries but includes some industrialized nations such as Japan, Canada, Australia and Spain which have adopted measures to control the flow of technology and trade. India, Argentina, Mexico and Brazil and the Andean group have all passed laws which establish an official registry whose purpose is the screening of transfer of technology agreements to reduce excessive payments and eliminate restrictive business abuses which encouraged and increased greater dependence on foreign technology.

The latest trend in the international field regarding the need to establish a more just economic order has been to recognize the important role technology plays in achieving these objectives. The international community has recognized that technology is a part of the universal human heritage and that all countries must have the right to its access in order to improve their standard of living; that the transfer of technology can play an effective role in the elimination of poverty and economic inequality among countries; and, finally, that it can contribute toward the establishment of a new international economic order.

3. Stage 3 is the passing from a restrictive stage to a multilateral regulatory stage. This kind of world is what UNCTAD and other UN organizations are working for. The negotiations on fomulating an international Code of Conduct for transfer of technology are now taking place under the auspices of UNCTAD. The nations meeting in Geneva have all agreed on the need of establishing international rules to regulate the technology transfer process. The points of discussion are now centered around the contents and scope of application that the code must have.

Following Doctor Padierna's discussion, a panelist indicated that there is a general impression that the developing countries believe that there is not only a moral duty but a legal duty for the developed countries to come into the developing countries and transfer their technology and their profits to the developing country. He raised the question: Are the developing countries really saying that developed countries must impose on their own corporations by law the duty to go into the developing countries and assist them?

DR. JOSE CHIRIBOGA, General Counsel of the Inter-American Development Bank, stated in response:

We never expect that a government should force an enterprise to go to another country just to spread know-how for reasons which are not important and do not concern the self interests of the one who goes to the other country. But we must think at the same time, that any enterprise that does go to another country to exploit natural resources should go prepared to provide to the other country not only its share of the rational exploitation of the natural resources, but also to provide the share of the know-how, so that the country eventually in the future will be able to do, by itself, exploitation of those natural resources. We don't believe that the spreading of know-how is just a voluntary

act. The voluntary act is going into the country. But once you go there, once you want to exploit the natural resources, you have to be prepared to participate with the host country in spreading the knowledge and the means to carry out the development of the country and the natural resources.

Investment

MR. ROCHE pointed out that a company can exist only if it makes a reasonable profit. Any potential investor must be convinced that, all other things being equal, his prospective investment can be reasonably expected to return a profit at least equal to what the same investment would produce with the same degree of risk elsewhere. Otherwise, he won't invest. Some developing countries believe that the word profit means that the corporation is taking advantage of the host nation. They fail to recognize that an investment program can bestow benefits on the host country and permit the investor to prosper.

An investor's next consideration after profit is how he will be taxed, and after that, what can be done with the profit after tax; may it be reinvested freely to expand the business, or would expansion be treated as a new investment for which further approval would be needed? Can he remit his profits abroad or are there exchange control laws? The host countries' attitude towards private investment is the key ingredient in the multinational's decision to invest or not to invest.

The legal and political factors which an investor considers critical are, of course, the risk of expropriation, stability of government, protection of trade secrets, participation in the Paris convention, taxation policy, among others.

ROBERT M. MOORE, ESQ., Vice President and General Counsel of Castle & Cooke, Inc., made the following points:

There is a misapprehended view, embraced in many quarters, that the principal cause of developmental and fiscal problems in the emerging nations can be traced to multinational corporations; and that the cure can be found in hobbling them.

The problem must be approached from several frames of reference. Companies engaged in agricultural or commodity production generally entered the host countries prior to 1930, whereas those concerned with manufacturing or assembly involve situations that did not emerge until about the time of World War II. Another dimension can be found in the type of host country involved. The governments of South and Central America were almost all independent from the earliest period, whereas those in Africa were generally territorial or protectorate and those in the Far East were something of both. Third, there are differences in the level of development in the country to which the multinational corporation goes. To date, the majority of investment by multinational

corporations has been in developed world countries; however, the majority of the problems have arisen in the underdeveloped countries.

> It has been said that no husband has the time, energy, or ingenuity to do all of the things a jealous wife suspects him of. I think the same can be said of the multinational corporation. In today's world of intensive regulation in its home country and abroad, and even fiercer competition from companies all over the world, few corporations or corporation executives have either the inclination or the time to do a fraction of the things that they are suspected of doing.

Multinational corporations are perceived to be beyond effective governmental control both at home and abroad. This is not accurate. Each government possesses broad powers to tax; to impose data systems for collection of financial and economic information; to regulate through permits and authorizations; to prescribe limits of competitive activities; and to choose the types of companies, or types of activities or investments, it will allow.

It is also contended that decision-making on important social and economic questions rests solely with the multinational; and, therefore, the host country is hostage to decisions made outside its boundaries by the multinational enterprise. While it is true that many decisions must be made on the basis of global economics, the host country is not impotent. For one thing, the fact of an existing investment is one of the heaviest factors in the decision-making process. For example, many American corporations caught with investments in Cuba at the advent of Castro found that good business judgment dictated the continued maintenance of their operations and investments in Cuba.

The decision-making process is not simple in agricultural enterprise, commonly found in tropical and semi-tropical areas. Soils, drainage, accessibility to ports and markets and cost of labor all may determine the location of a new operation or the choice of expansion of an existing operation. With extracting enterprises, the existence of mineral, metal or timber is a determining factor. In the case of assembly or manufacturing plants, they require a growing middle class and a potential market in or accessible to the host country.

Mr. Moore said he had little sympathy with the argument over transfer pricing. If the facility is a branch of a parent based outside the country, then regardless of the price paid to the branch for its product, the ultimate profits of the entire operation flow directly or indirectly to the parent. Since it is a fact that the income tax levels of most developing countries are considerably below those of developed ones, wherever possible the parent company will allocate as much profit to the host company as the Internal Revenue Services of its own country will allow. In the case of a subsidiary, the result might involve a few more steps, but will be the same. What companies are facing is a desire on the part of the host government to participate in the total profits of the enterprise on the basis of the ultimate price realized, in spite of the other countries and agencies involved in achieving that price. Such a desire is manifested long after

the venture is started, when the risk of failure has passed, and is rarely accompanied by any willingness to compensate for the technology and access to world markets.

The final complaint concerns the question of foreign ownership and the fact that dividends and proceeds leave the country never to return. Most proponents have a desire for direct government participation, but considering this position from the standpoint of the debt structure and imbalance of payments which most underdeveloped countries carry, can and should they afford to devote their precious reserves to governmental purchase of multinational interests? More importantly, would they be willing to pay a fair price for them? Would they be able to assure the necessary investment, attract and train capable management and secure the access to the world markets that are required for success? He thinks the answer to each question is, no. Mere ownership of material articles without the knowledge of how to organize, develop and utilize them for the production of goods and services needed (which is where the multinational corporation is most experienced) is meaningless.

Consider what multinational investment requires:

First, a multinational enterprise must have security in its investment and be able to predict the possibility of achieving its expectations. Whenever the public welfare requires a taking of the property of a multinational corporation, this must be done solely and truthfully for the public good and there must be just, prompt, and effective compensation.

Second, the less developed countries must recognize the necessity for regulation to be nondiscriminatory as between nationals and non-nationals when it allows foreigners to invest in activities within its borders.

Third, there must be a clear enunciation of the role to be permitted and demanded of the multinational corporation. The standards of conduct should be required of all corporations, domestic and foreign.

Finally, no company seriously feels that it is above the government of the country in which it abides or conducts an operation. The United States government is not going to spend much time protecting its investments or affairs abroad. However, there are extreme variations in the strength and integrity of many governments. No corporation would be reluctant to submit to the governmental system of a host country if it were assured of fair treatment. What is desired is that host countries indicate their own good faith by wholeheartedly embracing the principles of international law. Their intentions can be proved by agreeing to participate in system of nonrestrictive appeals to various international tribunals, allowing an effective remedy if due process is denied, or if international rules are ignored.

Mr. Moore added that Senator Jacob Javits, in his dissenting comments to the report of the Group of Eminent Persons, pointed out that the two principal

assumptions of most assaults on transnational enterprises are that in underdeveloped countries government involvement is preferable to private initiative and that governments know and will always act in the best interest of their citizens. Senator Javits stated, "Based on long experience I must seriously question both assumptions."

LIC. CIPRIANO GOMEZ LARA, Executive Secretary of the National Commission for Foreign Investments, and Director General of the National Registry of Foreign Investments, Secretariat of Patrimony and Industrial Development, Mexico City, Mexico dealt with the 1973 law of Mexico concerning foreign investment, in the following terms:

The 1973 law represents the first attempt to unify the dispersed regulations related to foreign investment. Its main objective is to promote Mexican investment and to regulate foreign investment. The law provides rules on foreign investments, including provisions to acquire established Mexican companies and to regulate their control. It creates the National Foreign Investment Commission, establishes special trusts regarding real estate property on the borders and coastlines and establishes the National Registry of Foreign Investment, providing for general rules and penalties for violations of the law. Certain investments are reserved exclusively to the Mexican government, including petroleum, petrochemicals, nuclear energy, mining, electrical power, railroads, telegraphic and radio-telegraphic communications.

The following activities are reserved exclusively to Mexicans: radio and television, urban transportation, intercity transportation, national airline and maritime transportation, exploitation of forest resources and distribution of gas fuels.

In investments permitted to foreigners, the percentage ownership by foreigners may not exceed 49 percent; however, the law permits this limitation to be modifed by the National Foreign Investment Commission if the proposed investment is convenient for the economy of Mexico.

The list of criteria on established foreign investments and/or expansion permits covers the following aspects of foreign investment: complementation of national investment; whether it might displace national companies that are operating well, or enter fields of activity properly covered by national companies; its net effect on the balance of payments and on the increase of exports; the generation of employment; the proposed utilization and training of properly paid Mexican technical and administrative personnel; the potential consumption of national raw materials and parts in the manufacturing process; the degree of external financing required for the porposed venture; the diversification of investment sources and the need to foster regional and subregional integration in Latin America; the contribution of these investments to the development of the less developed zones and regions of our

country; assurance that the proposed investment should not have a monopolistic position in the national market; the existing capital structure in the field of economic activity in which the investment is proposed; its technological contribution to research and development in Mexico; its effect upon the level of local prices and the quality or production; the preservation of the social and cultural values of the country; the importance of the proposed activity within the national economy; and finally, its identification with the interests of Mexico and its relation to centers of economic decision abroad.

Renegotiation of the original arrangement can be achieved if circumstances change; this is done on a case-by-case basis.

PROFESSOR BEVERLY MAY CARL of Southern Methodist University Law School then made the following intervention:

There is a familiar American contract concept called "adhesion contract"[12] where the bargaining power of the participants is unequal. Our courts frequently will not enforce provisions of adhesion contracts if the court believes the provision is unduly onerous for the individual on the other side. To some degree, for the last one or two hundred years, less developed countries permitting foreign investment and foreign technology were in the position of a consumer in an adhesion contract case.

Even today, in a negotiation situation, the multinational corporation has the highly trained technicians and the managment skills, as well as highly trained American lawyers, foreign lawyers and foreign technicians. The less developed countries need the investment and the technology but often lack the comprehensive negotiating skills and power.

Likewise, foreign lawyers from developing countries come to the United States to study, but when they go back and work, it is frequently for a subsidiary of a developed country corporation or a large law firm in their own country which also represents developed country corporations. Who is going to represent the people of the less developed countries in the hard negotiating situation? What the LDCs are doing is attempting to create a sort of countervailing power by turning to the nation-state. They have the resources which we want and they have started enacting a whole series of laws—the Mexican Investment Laws, the divestment provisions of the Andean Code, the Argentine Statute, etc.

We should look at the new laws as a series of negotiating positions or a series of offers under which the less developed countries are willing to let the

[12]"Adhesion contract" is a handy shorthand description of standard form printed contracts prepared by one party and submitted to the other on a "take it or leave it" basis. The law has recognized there is often no true equality of bargaining power in such contracts and has accommodated that reality in construing them.
Standard Oil Company of California v. Parkins 347 F.2d 379 (1965), note 5.

multinational corporation come in on certain conditions. Is that offer going to work? To a large degree, we do not yet know.

If a country passes a law saying that no technical assistance agreement will be good for more than five years, maybe that is not going to work because the technology will not flow. If a country passes a law saying you must have at lease 50 percent local ownership, will it stop the flow of investment? "I tend to look at these laws as experimental negotiating positions." Will the divestment provisions of the Andean Code work? Maybe the corporations will decide after a period of experience that it is better to go in under those circumstances because they know what the rules of the game are, rather than going in and five years later being expropriated; where they know that within "*X*" number of years they have got to sell their shares to local people. We will have to find out which laws work and which won't. Let them experiment with these kinds of offers and see what works. Maybe ten or twenty years down the line the world community will know enough to say: we agree that these are the conditions under which the international investment community should operate.

DR. NEIL MCMULLEN, an economist of the National Planning Association, reviewed the economic situation of the developing countries with respect to transfer of technology as follows:

Technology seems to be the way you would combine science, engineering and management to get more production out of the input; labor and investment is what you're aiming for with technology. There is a conflict inherent in the production of technology. On one hand in order to get the production or application of technology, you need to provide inducement or reward to the inventors and the investors who will take the risk of applying it and marketing it. On the other hand, once the technology is developed and well known, in order to get the widest possible application of it you have to charge a very low price. Therefore, on the one hand you want to reward the person who produces the goods very highly because it is a usable thing, while on the other hand you want it distributed widely, so you want to charge very little. The solution for this is for the government to subsidize certain research such as medical research which is subsidized through the National Institutes of Health.

It is important in talking about transfer of technology to concentrate not merely on distribution of it, but on setting up some kind of mechanism so it can continue to be produced, i.e., so that it will be a "renewable resource."

Secondly, everyone overestimates what technology, as the industrialized countries have it, can do for developing countries. Certain techniques and know-how are known to people in the industrialized country but will not necessarily work in the developing countries or even in another industrialized country such as Japan. For example: lumber is one of the greatest resources in Brazil but it is tropical hardwood and the technique used in lumbering in the industrialized northern hemisphere will not work in Brazil. They are going to

have to develop their own technique. A second example is road building. In the industrialized countries, we use labor saving techniques, whereas in developing countries they use a lot of labor and economize on capital and energy.

The solution to technology in the LDC lies in the development and application of intermediate technology specifically applied on tropical soils, tropical climates, and the needs of people who live in largely tropical areas.

Two questions present themselves:

1. How do you cope with the problem of providing incentives to people who produce and develop the technology so that it is a renewable resource?

2. What can be done to develop intermediate technologies as opposed to transferring what would be largely inapplicable technologies?

Should Codes for the Transfer of Technology be Voluntary or Binding?

DOCTOR DE PADIERNA expressed the following views on this:

An issue to be discussed at the General Assembly of the UN scheduled for early 1978 is the legal nature such international codes must adopt. The developing countries (the group of 77) support a universal code with binding force on nations and citizens. The developed nations, which are identified as "group B" or nations of market economy, proposed a set of universal guidelines to which states can voluntarily submit without any legal binding force. Their draft is an instrument that simply restates and urges a wider observation of generally accepted ethics of modern commercial practice. Developing countries' basic postulates of a code are as follows:

First: The Code must be universal, that is, intended to be applicable to all countries and to all enterprises, whether supplying or receiving technology.

Second: The Code of Conduct should be an international legally binding instrument in order to insure that its provisions are fully and universally implemented in all countries regulating the transfer of technology. They believe that the instrument will be useless if this point is not unanimously approved by all countries concerned.

Third: The Code must be taken as an instrument to strengthen national laws and administrative procedures that already exist in the field. Under no circumstances can the code be interpreted to annul national legislations, but rather, the intention is to universalize some of the principles already included in those national legislations, and provide for some of the deficiencies they may pose as a consequence of the diversity and disparity currently existing. The code purports to offer uniform solutions to common problems since there are certain essential elements in the transfer of technology process that can be abstracted therefrom, and are independent from the characteristics of the subjects participating in such process.

Fourth: As a consequence of the above, the Code of Conduct must include a series of fundamental principles for buyers and sellers that will allow the transfer of technology to be carried out under reasonable and fair terms regarding prices and conditions, avoiding unreasonable, restrictive and other unfair commercial practices.

This purpose may be attained in several manners. For instance, stating which clauses should be obligatory in the contracts, or forbidding the inclusion of others, granting fiscal incentives in certain cases, hindering of outflow of foreign exchange on contracts that have not been registered, etc.

In the opinion of the developing countries, the Code should include in its fundamental principles not only the result of the existing commercial practices, but also the legal practices that are being enforced in various countries like India, the Andean Group, Argentina, Mexico, Brazil, and Spain.

Likewise, the legal systems of some developed countries with market economies may be illustrative with respect to the suppression of restrictive commercial practices that hinder the free technological flow, such as the provisions of the Antitrust Laws of the United States, Article 85 of the Treaty of Rome which established the European Economic Community, and the Antidumping Code of the General Agreement on Tariffs and Trade.

Whatever basic principles countries decide to include in the Code, two postulates must guide their selection:

A) The conviction that science and technology are a common patrimony of humanity and that access to knowledge is a right that all countries have in order to improve the standard of living of all their citizens, and that

B) The international transfer of technology should be facilitated in such a way that it may become an instrument to eliminate poverty and inequalities and to achieve a new and more equitable international order from an economic and social point of view.

Fifth: Finally, they believe a basic postulate regulating the code of transfer of technology is, that in order to obtain voluntary adherence of all countries to the provisions of the Code, it must be flexible enough to incorporate all the interests involved, and maintain the necessary equilibrium among the different points of view that will surely secure the adoption of a code that satisfies all.

It may be asked, how is it possible that an international Code of Conduct, whose intention is primarily to protect the interest of receivers, may also be useful to suppliers?

The answer to such a question can be given as follows:

(1) Suppliers of technology will benefit because through the international Code of Conduct, the rules of the game for technological transactions may be pre-established, therefore, promoting international legal security and certainty.

(2) If the rules are set forth clearly, precisely, and in advance, the flow of technology will be increased and facilitated, since each party to the transaction will know beforehand how to negotiate its interests. Thus, if the flow of technology is increased, greater returns for the supplier are obtained and receivers will accelerate their economic development.

(3) If the transfer of technology takes place in a less imperfect market, the elimination of poverty will follow, and thus, economic equality among nations can be achieved, working toward world peace and social tranquility, goals that are pursued by all nation states.

(4) Finally, industrialized nations must also depend on importation of technology for their development to some degree. Thus, they too will benefit from having an international code that is basically geared toward the protection of the receivers of technology.

On the question, "Why would an international Code of Conduct regulating technology transfer help United States private industry?" Doctor de Padierna stated that she thinks there are advantages to the developed countries to accept the Code and have the Code for the transfer of technology. The first advantage would be for the rules of the game to have legal certainty at an international level. The pre-establishment of these norms or rules is of interest to the developing countries as well as the developed countries, whether transferor or transferee—every country which in a greater or lesser manner requires or needs to acquire technology. This code which is oriented toward the protection of the acquirers of technology also protects the enterprises in a developed country that requires technology from another one. Also if the higher rules of the game are agreed upon in advance, the flow of technology will be increased because both parties in a negotiation will be able to prepare their arguments in the negotiations to accomplish the objectives that each of them seeks. If a balanced position is reached among the various parties in a game of transfer of technology, work may be done in the establishment of international peace and social tranquility because wealth will be distributed in a more equitable and just manner.

WILLIAM ROCHE then observed that, in opposition to the United States determination that international Codes of Conduct be purely voluntary, developing nations have remained adamant that such codes be legally binding. Regardless of our wishes, however, there would be no way to prevent a nation's incorporation of a once voluntary code into its body of statutory law. Further, a country might require adherence to the code as a condition precedent to doing business within its jurisdiction. In the absence of some international enforcement or binding arbitration it would appear certain that such codes would lack the binding force of treaty such as that which holds the European Common Market together.

Should a Host Country Be Entitled to Apply Its Own National Laws to Foreign Enterprises Without Regard to Traditional International Law Norms?

MARK JOELSON, ESQ. stated on this question:
In considering the attitude of the group of 77, in particular, and the developing world generally, about international law, they consider customary international law a dirty word because it is a term that has been inserted in the past to defend the continuation of the situation that they are trying to get out of.

One question relates to whether or not a party, including a country, ought to live up to a promise that it has made in either a treaty or in a concession agreement. It is one of the basic premises of international law that promises have to be kept. This is a larger application of the traditional notion of contract doctrine. The problem is that in some situations, under traditional contract doctrines, there are times that a party is entitled to get out of an agreement. And there are other times when that party is entitled to damages as a consequence of either the way the agreement was entered into or the way that the agreement has been implemented. The LDCs in many situations believe that their actions are justified by the evolution of circumstances that under common law notions for us would have given rise either to an opportunity for the contracting party to rescind the agreement or maybe have damages awarded. They have in many situations chosen to assert their prerogatives because of the existence of sovereign power. In many cases the LDCs have not taken the opportunity which under more traditional norms of international and contract law would have been theirs simply because in some cases they do not have the will, or occasionally because of political embarrassment, and on other occasions because of lack of resources sufficient to mount a case in the way we understand it, instead of opting for an easier way out.

PROFESSOR CHARLES GUSTAFSON of Georgetown University Law School indicated that he has sympathy for the idea of there being some "tilt" on behalf of the less developed nations, but he has difficulty evaluating this as between national and international law. How do the LDCs reconcile the argument made for the application of national law with the demand made in UNCTAD and elsewhere for the development of new international norms that are internationally enforceable? There must either be a period of retrogression to let national law prevail or else we have to continue to grope for international law that does in fact have primacy over national codes and national attitudes.

RICHARD BURGES PERRENOT, ESQ. pursued the question as to whether foreign investors should be subject to the national laws of the host countries. Here, he said, the investor is concerned with national laws and not really with treaties and conventions. When an investor is being advised legally as to whether he can engage in his business, he wants to know what the labor laws

are, what the taxes are and whether he can repatriate his capital. He is not generally concerned with treaties, which deal in too general terms. Often, when he goes into a country under those laws, he enters into what the civil law countries call an administrative contract, which is a non-negotiable contract of adhesion. What the investor then expects is that the contract will be observed and that he will receive equal treatment under the national laws. The terms of the treaty are not really of concern at that point. They only come into question when his contract has been violated. Then he seeks treaty protection.

Private enterprise in the developed countries is sufficiently imaginative and flexible to live with almost any system of law as long as it is reasonably certain and predictable; but his experience has been that the biggest problem in dealing with the developing countries is the total uncertainty and unpredictability of the law, no matter how precise the law may be in its written terms. In North Africa and the Middle East, the law as written has nothing to do with the solution of the problems. Each developing country has a right to develop its own internal system of law, but there has to be certainty that the law in existence at the time a company goes into the country will not be changed arbitrarily to alter completely the rules of the game on the basis of which the company made its original decision to invest or transfer technology.

Conclusion

The comments of the participants in the Workshops make it apparent that the less developed countries are determined to achieve a better economic position both in the exploitation of their natural resources and in bringing about more rapid transfer of technology from the industrialized countries. The adoption by United Nations organs of codes and charters which attempt to impose binding norms of international conduct in these fields is meeting with continuing resistance from the industrialized countries, speaking on behalf of their private enterprises, and, in particular, multinational enterprises.

As a result, observers of the current scene at the United Nations report that progress in the multilateral effort to codify the transfer of technology from rich to poor countries has been minimal:

> Although the LDCs and international labor groups have been pressing for legally binding codes, business leaders and most industrialized countries are convinced that voluntary guidelines, such as those drawn up by the OECD and the ILO, are the only practical way of proceeding.[13]

Meanwhile, the LDCs, particularly the more sophisticated ones like Mexico and Brazil, are enacting national laws to regulate foreign investment, transfer of technology and exploitation of natural resources. Whether such laws will

[13]DUNN, THE INTERDEPENDENT, UNA—USA, November 1977.

encourage or discourage foreign participation in economic development of the host countries is as yet unclear. It is unlikely that the governments of industrialized countries will ever agree to compel their private enterprises to invest or transfer their technology to LDCs. On the other hand, probably transnational enterprises can "live with" national laws and regulations if they are enforced with certainty and nondiscriminatorily, i.e., equally as between domestic enterprises and foreign enterprises.

What is needed in the continuing North-South dialogue is less confrontation and more willingness on the part of each side to recognize the problems of the other and to work toward practical compromises which will protect the interests of both. When, from time to time, the organized bar in the United States may be faced with the need to take positions upon specific proposals relating to international law and the developing countries, we should be willing to see both sides of the issue and strive for fair and realistic compromises, rather than rigid insistence upon the status quo.

Appendix A

American Bar Association
Section of International Law

AGENDA

Workshop on International Law
and
The Developing Countries

Thursday, March 31, 1977
Hay-Adams Hotel, Washington, D.C.

First Session

Moderator: Charles N. Brower, Esq.
Washington, D.C.

Is it proper that foreign enterprises operating in developing countries be exclusively subject to the national laws of those countries without regard to prior treaties, conventions, international agreements and customary international law?

Speakers: Jose Chiriboga, Esq., General Counsel
Inter-American Development Bank
Washington, D.C.

Stephan M. Minikes, Esq.
Senior Vice President,
Export-Import Bank of the United States
Washington, D.C.

William J. Roche, Esq.
Vice President, Secretary
and General Counsel
Texas Instruments, Incorporated
Dallas, Texas

Luncheon Speaker:

Sir Alexander Kirkland Cairncross
The Master, St. Peter's College
Oxford University

Second Session

Moderator: Professor Don W. Wallace, Jr.,
Director, Institute for International and
Foreign Trade Law, Washington, D.C.

Should the norms for the transfer of technology to the developing countries be revised, and, if so, should such revisions be effected voluntarily?

Speakers: Dr. Fred C. Ikle, Former Director
of the U.S. Arms Control and
Disarmament Agency,
Washington, D.C.

Stephan M. Minikes, Esq.
Senior Vice President,
Export-Import Bank of the United States,
Washington, D.C.

Dra. Maria de Lourdes Jiménez de Padierna, Counsel, Office of the Director General of the National Registry for the Transfer of Technology, Secretariat of Industry and Commerce, Mexico City, Mexico

* * * *

Panelists: J. Philip Anderegg, Esq.
Forest Hills, New York

Richard P. Brown, Jr., Esq.
Philadelphia, Pennsylvania

Professor Charles Gustafson
Univ. of Georgetown Law Center
Washington, D.C.

Mark R. Joelson, Esq.
Washington, D.C.

Neil McMullen, Esq.
National Planning
Association

Lyon L. Brinsmade, Esq.
Houston, Texas

Planning Committee: Leonard J. Theberge, Esq., Chairman
Washington, D.C.

Edison W. Dick, Esq.
Washington, D.C.

Michael Beasley
Washington, D.C.

Appendix B

American Bar Association
Section of International Law

AGENDA

Workshop on International Law
and
The Developing Countries

Thursday, April 7, 1977
The Warwick Hotel, Houston, Texas

First Session

Moderator: Charles N. Brower, Esq.
Washington, D.C.

Is it proper that foreign enterprises operating in developing countries be exclusively subject to the national laws of those countries without regard to prior treaties, conventions, international agreements and customary international law?

Speakers Lic. Cipriano Gomez Lara,
Executive Secretary of the National Commission for Foreign Investments, and Director General of the National Registry of Foreign Investments,
Registry of Foreign Investments,
Secretariat of Patrimony and Industrial Development, Mexico City, Mexico

Robert M. Moore, Esq.
Vice President and General Counsel,
Castle & Cooke, Inc., San Francisco, California

Stephan M. Minikes, Esq.
Senior Vice President,
Export-Import Bank of the United States
Washington, D.C.

Luncheon Speaker: Mr. Robert R. Herring,
Chairman of the Board and Chief Executive Officer,
Houston Natural Gas Corporation,
Houston, Texas

Second Session

Moderator: Ewell E. Murphy, Jr., Esq.
Houston, Texas

Should the norms for the transfer of technology to the developing countries be revised, and, if so, should such revisions be effected voluntarily?

Speakers: Lic. Cipriano Gomez Lara
Executive Secretary of the National Commission for Foreign Investments, and Director General of the National Registry of Foreign Investments, Secretariat of Patrimony and Industrial Development, Mexico City, Mexico

Richard E. Alexander, Esq.
Chicago, Illinois

Stephan M. Minikes, Esq.
Senior Vice President,
Export-Import Bank of the United States,
Washington, D.C.

* * * *

Moderators and Panelists:

John F. Lynch, Esq.
Houston, Texas

Charles N. Brower, Esq.
Washington, D.C.

Walter W. Brudno, Esq.
Dallas, Texas

Professor Beverly May Carl
School of Law, Southern Methodist University
Dallas, Texas

Lic. Luis J. Creel, Jr.
Mexico City, Mexico

Lic. Alexander C. Hoagland, Jr.
Mexico City, Mexico

Ewell E. Murphy, Esq.
Houston, Texas

Richard B. Perrenot, Esq.
El Paso, Texas

Planning Committee: Lyon L. Brinsmade, Esq., Chairman
Houston, Texas

Mont P. Hoyt, Esq., Vice Chairman
Houston, Texas