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New Directions in United States Food Aid: Human Rights and Economic Development

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I. INTRODUCTION

The concept of human rights encompasses not only political rights, but also economic and social rights.[1] Certainly the most basic among these rights is the freedom from hunger and malnutrition.[2] The United States, as the world's largest produ-

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1. *See generally* the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, Annex, 21 U.N. GAOR, Supp. No. 16 49-52, U.N. Doc. A/6316 (1966).

For the most recent statement of the United States policy advocating this concept of human rights, see SENATE COMM. ON AGRICULTURE, NUTRITION, & FORESTRY, 95TH CONG., 2D SESS., NEW DIRECTIONS FOR U.S. FOOD ASSISTANCE, A REPORT OF THE SPECIAL TASK FORCE ON THE OPERATION OF PUBLIC LAW 480 42-45 (Comm. Print 1978) [hereinafter cited as SPECIAL TASK FORCE REPORT]. *See also* Foreign Food Assistance of the United States, Report of Secretary of Agriculture Bergland to John J. Gilligan, Chairman, Development Coordination Comm. (Sept. 29, 1977).

2. Article 11 of the International Covenant on Economic, Social and Cultural Rights, *supra* note 1, at 50-51, states:

> 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
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> 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
>
> (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

cer and exporter of agricultural commodities, bears an especially important responsibility in meeting these needs.[3] In this respect, this nation's commitment to the conquest of hunger and malnutrition is a critical indicator of our overall sincerity towards human rights.

Food aid, as well as all other forms of assistance, however, does not exist in a vacuum. It is affected by a great variety of domestic and international pressures which are both political and economic in nature. This situation is unavoidable in a world marked by fierce ideological differences and increasingly scarce natural resources. Nevertheless, it is the moral obligation of the United States to anticipate these factors as best we can, rather than haphazardly to react to every political and economic pressure, and to do our utmost for the cause of human rights within these constraints.

Another aspect of the general problem, often overlooked, is the complex task of administering food aid programs. In both donor and recipient countries, disputes over food aid development strategies and approaches, resource allocations, and "bureaucratic turf," sometimes renders the "war on hunger" a painstakingly slow process which often appears self-defeating.[4]

This paper will discuss, in the political, economic, and bureaucratic context, recent and proposed legislative changes in the U.S. food aid program. These changes embrace food aid as a development mechanism, food security, and human rights. Before discussing these points in detail, however, it will be use-

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(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

3. Sol M. Linowitz, Chairman, Presidential Commission on World Hunger, recently stated:

> The war against hunger must be a universal campaign, waged on many fronts simultaneously by many diverse actors. Americans have a leading role to play. The U.S.A. is the largest producer of food in the world today. It has vast scientific, technical and managerial resources to contribute. In fact, the challenge of eliminating hunger calls upon the characteristic U.S. traits of ingenuity, optimism and humanitarian concern.

Wash. Post, Mar. 11, 1979, at C6, col. 6.

The Presidential Commission on World Hunger was created by Exec. Order No. 12,078, 43 Fed. Reg. 39,741 (1978).

4. Anderson, *The Human Right Not To Be Hungry*, Wash. Post, Apr. 2, 1978, at C7, col. 5.

ful to outline the historical and legislative background of U.S. food aid efforts.[5]

II. U.S. FOOD AID PROGRAM—A BRIEF OVERVIEW

A. *History*

The U.S. food aid program is structured around the Agricultural Trade Development and Assistance Act of 1954,[6] better known as Public Law 480 or the Food for Peace Program.

P.L. 480 was an outgrowth of: (1) the need to dispose of huge grain surpluses built up in this country after World War II; (2) the desire to develop export markets for agricultural commodities; and (3) the desire to combat communist propaganda and criticism of U.S. wealth in a poor and hungry postwar world.[7] Humanitarian motives were also an important factor, but it was these first three elements from which P.L. 480 drew its primary support.

Significant amendments to P.L. 480 were made in 1959[8] and 1964.[9] These amendments were primarily concerned with the administration of P.L. 480. Of greater importance, however, was the Food for Peace Act of 1966.[10] This Act was the turning point in the U.S. food aid program: for the first time, Congress made it clear that along with encouraging agricultural and economic development, building commercial markets for U.S. exports, and supporting U.S. foreign policies,[11] the humanitarian purposes of P.L. 480 were to receive primary consideration. The disposal of surplus agricultural products was no longer the *raison d'être* of P.L. 480.[12]

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5. For greater detail on this subject see U.S. DEP'T OF AGRICULTURE, P.L. 480 CONCESSIONAL SALES (Foreign Agric. Econ. Rep. No. 142 Dec. 1977) [hereinafter cited as P.L. 480 CONCESSIONAL SALES]; SENATE SUBCOMM. ON FOREIGN AGRICULTURAL POLICY, FOOD FOR PEACE, 1954-1978—MAJOR CHANGES IN LEGISLATION, 96TH CONG., 1ST SESS. (Comm. Print 1979) [hereinafter cited as FOOD FOR PEACE].

6. Pub. L. No. 480, 68 Stat. 454 (codified at 7 U.S.C. §§ 1691, 1691a, 1701-36 (1976)).

7. FOOD FOR PEACE, *supra* note 5, at 1-3; P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 1-3.

8. Act of Sept. 21, 1959, Pub. L. No. 86-341, 73 Stat. 606.

9. Act of Oct. 8, 1964, Pub. L. No. 88-638, 78 Stat. 1035.

10. Pub. L. No. 89-808, 80 Stat. 1526 (1966).

For a general explanation of the major changes made by the Food for Peace Act of 1966 see FOOD FOR PEACE, *supra* note 5, at 8-11.

11. P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 4. *See* SPECIAL TASK FORCE REPORT, *supra* note 1, at 6-8.

12. The Food for Peace Act of 1966 also made one other very important mechani-

Subsequent amendments to the Act continued to place increased emphasis on the humanitarian and developmental aspects of food aid.[13] Reacting to what was perceived as grave abuses in the program, Congress restricted the amount of food aid made available to countries not among the poorest of the poor.[14] Presently, the law requires that seventy-five percent of the food aid commodities provided each fiscal year under Title I of P.L. 480 be delivered to countries that: (1) meet the poverty criterion established for International Development Association financing; and (2) are affected by an inability to secure sufficient food for their immediate requirements through their own production or commercial purchases from abroad.[15]

In addition to these minimum programming requirements, Congress has recently focused upon the use of food aid as a development mechanism. The International Development and Food Assistance Acts of 1975[16] and 1977[17] created new statutory authority and criteria for the application of food aid to chronic development problems. The latter act also injected the issue of

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cal change in P.L. 480: Under the original legislation, P.L. 480 concessional sales were made for local, mostly unconvertible, currencies. By 1959, it became clear that the U.S. was rapidly building up huge reserves of foreign currencies with which very little could be done. Therefore, the 1959 amendments authorized sales for U.S. dollars and the 1966 Act provided for the total phasing out of local currency sales by 1971. Since 1971, sales have been made solely for U.S. dollars or convertible foreign currencies. FOOD FOR PEACE, *supra* note 5, at 5-8; P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 3-4. However, in some countries large amounts of local currencies still remain under U.S. control. P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 29-31; HOUSE COMM. ON INTERNATIONAL RELATIONS, USE OF U.S. FOOD RESOURCES FOR DIPLOMATIC PURPOSES—AN EXAMINATION OF THE ISSUES, 94TH CONG., 2D SESS. (Comm. Print 1977) [hereinafter cited as FOOD RESOURCES FOR DIPLOMATIC PURPOSES].

13. *See* the Foreign Assistance Act of 1974, Pub. L. No. 93-559, 88 Stat. 1795; International Development and Food Assistance Act of 1975, Pub. L. No. 94-161, 89 Stat. 849; and International Development and Food Assistance Act of 1977, Pub. L. No. 95-88, 91 Stat. 533. For a general explanation of the changes made by these and other amendments see FOOD FOR PEACE, *supra* note 5, at 12-19.

14. The abuses referred to centered upon the use of food aid for political and military purposes. In particular, during the early 1970s, large percentages of the P.L. 480 program were being used to support and finance the war in Southeast Asia. FOOD RESOURCES FOR DIPLOMATIC PURPOSES, *supra* note 12, at 26-29. The diversion of P.L. 480 commodities to political/military purposes was further aggravated by the 1973-1974 grain shortage that followed the Russian wheat deal of 1972. This shortage of commodities ties drastically reduced the overall level of P.L. 480 programming during this period. SPECIAL TASK FORCE REPORT, *supra* note 1, at 7.

15. 7 U.S.C.A. § 1711 (Supp. 1979).

16. Pub. L. No. 94-161, 89 Stat. 849 (1975).

17. Pub. L. No. 95-88, 91 Stat. 533 (1977).

human rights and food aid into the statute itself. The content and administration of these amendments is discussed more fully below.

In summary, the legislative history of P.L. 480 indicates that Congress intends that U.S. food aid policies be governed primarily by humanitarian and developmental considerations. The political and economic factors affecting this program, however, are still important, both in terms of domestic political support for the P.L. 480 program and its impact upon international affairs. Nevertheless, the legislation rightfully views these various factors as being mutually compatible. To the extent that they are not compatible in any given situation, it is incumbent upon the administrators of the program to exercise prudent judgment in weighing the various factors involved.

B. *Mechanics of P.L. 480*[18]

1. *Statutory Framework*

At the present time, there are three basic programs run under P.L. 480. First, Title I of the Act provides that sales of agricultural commodities may be made on a concessional basis to "friendly" countries for U.S. dollars or convertible foreign currency.[19] Once a Title I agreement has been approved, the importing country purchases the commodity in the United States commercial market on a competitive bid basis. Through a prearranged system with the Commodity Credit Corporation,[20] the commodity supplier receives payment in U.S. dollars. The Corporation then is repaid by the importing country over a period of twenty to forty years.[21] The grant element in this type of financing transaction is estimated at sixty percent.[22]

18. For a detailed explanation of mechanics and policy aspects of a P.L. 480 transaction see P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 13-29; and SPECIAL TASK FORCE REPORT, *supra* note 1, at 64-94.

19. 7 U.S.C.A. § 1703(b) (Supp. 1979).

20. The Commodity Credit Corporation is a Federally owned corporation operated under the direction of the Secretary of Agriculture. 15 U.S.C. §§ 714-714m (1976).

21. Sales for dollars are made pursuant to a maximum repayment period of 20 years with a two-year grace period on the first principal installment. Credit for repayments to be made in convertible foreign currency may be extended over a maximum of 40 years with a grace period on principal payments of up to 10 years. P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 15-18.

22. P.L. 480 CONCESSIONAL SALES, *supra* note 5, at 12.

Ideally, this system will acclimate food aid recipients to United States' trade practices, and as these countries become more developed, they will gradually become commercial customers of United States commodities. This is one of the stated objectives of the Act.[23]

Another important aspect of Title I transactions is that, in most cases, Title I commodities are sold in the recipient countries, thereby generating local currencies. The Act requires that the P.L. 480 agreement specify the manner in which such proceeds will be utilized. That is, such uses must be "self-help" measures designed to enhance agricultural development, rural development, nutrition, or population planning.[24]

Second, Title II permits the donation of food commodities to needy countries. Commodities generally are donated either to the poorest of countries or to countries which have suffered a major disaster. More than three-fourths of the commodities donated under this program are channeled through the U.N. World Food Program and nonprofit voluntary agencies such as CARE and the Catholic Relief Services.[25] It is felt that these agencies provide the best means for assuring that the commodities in question will be distributed directly to the poor.

Finally, Title III of the Act, which embodies the food for development provisions, was added by the International Development and Food Assistance Act of 1977.[26] The concept of food for development contained in Title III, as well as the policy issues involved, is discussed in detail below.

2. *Administrative Framework*

Most of the administrative functions required under the Act are granted to the President. By Executive Order No. 10,900,[27] dated January 5, 1961, the functions of the President have been delegated to various cabinet officers, most notably the Secretary of Agriculture, the Secretary of State, the Secretary of the Treasury, and by subdelegation, the Administrator

23. 7 U.S.C. § 1691 (1976).

24. 7 U.S.C. § 1709 (1976); 7 U.S.C.A. § 1706(b)(2) (Supp. 1979).

25. P.L. 480, § 201(b), sets specific statutory quantities that must be channelled through these organizations. 7 U.S.C.A. § 1721(b) (Supp. 1979).

26. Pub. L. No. 95-88, 91 Stat. 533 (1977) (codified at 7 U.S.C.A. §§ 1727-1727f (Supp. 1979)).

27. 3 C.F.R. 429 (1959-1963 Compilation).

of the Agency for International Development. This Executive order has never been significantly revised despite the numerous amendments to P.L. 480 and their decided impact upon the basic legislative intent.[28]

Technically, primary responsibility for the administration of P.L. 480 rests with the Secretary of Agriculture. However, most major P.L. 480 policy decisions are made by consensus of the Food Aid Subcommittee of the Development Coordination Committee. The primary actors in this process are the Department of Agriculture,. the Agency for International Development, the Department of State, the Office of Management and Budget, and to a lesser extent, the Department of the Treasury and the Department of Commerce. On a day-to-day basis, policy and administrative responsibilities are shared by the Department of Agriculture and the Agency for International Development.

In practice, the decisionmaking process in P.L. 480 is very complex and time-consuming. This result is only natural considering the number and diversity of interests affected by food aid programming. Nevertheless, bureaucratic bottlenecks hindering the ultimate objectives of the P.L. 480 program must be minimized. To this end, the Special Task Force on the Operation of P.L. 480, established by the International Development and Food Assistance Act of 1977, has recommended a simplification of the P.L. 480 administrative structure.[29]

III. FOOD AID AND HUMAN RIGHTS

President Carter, more than any other American president, has taken up the cause of human rights. Congress also has responded to the present emphasis on human rights with enactment of the International Development and Food Assis-

28. An updated and more streamlined delegation of authority under P.L. 480 would clearly be desirable. As a practical matter, however, it may be impossible to achieve this goal without first resolving the difficult bureaucratic problem of how U.S. foreign aid should be administered. Prior to his death, Senator Hubert H. Humphrey proposed a reorganization for the administration of U.S. foreign assistance. This proposal will be brought again before the Congress during the 96th Congress, 2d Session. Therefore, it is possible that significant changes will be made in the administration of food aid assistance in the near future. In reference to possible changes see SPECIAL TASK FORCE REPORT, *supra* note 1, at xii-xvii.

29. SPECIAL TASK FORCE REPORT, *supra* note 1, at 96-115.

tance Act of 1977. This Act added the following section to P.L. 480:

> SEC. 112. (a) No agreement may be entered into under this title to finance the sale of agricultural commodities to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial of the right to life, liberty, and the security of person, unless such agreement will directly benefit the needy people in such country. An agreement will not directly benefit the needy people in the country for purposes of the preceding sentence unless either the commodities themselves or the proceeds from their sale will be used for specific projects or programs which the President determines would directly benefit the needy people of that country. The agreement shall specify how the projects or programs will be used to benefit the needy people and shall require a report to the President on such use within 6 months after the commodities are delivered to the recipient country.
>
> (b) To assist in determining whether the requirements of subsection (a) are being met, the Committee on Agriculture, Nutrition, and Forestry of the Senate or the Committee on International Relations of the House of Representatives may require the President to submit in writing information demonstrating that an agreement will directly benefit the needy people in a country.
>
> (c) In determining whether or not a government falls within the provisions of subsection (a), consideration shall be given to the extent of cooperation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or of the Organization of American States.
>
> (d) The President shall transmit to the Speaker of the House of Representatives, the President of the Senate, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, in the annual presentation materials on planned programming of assistance under this Act, a full and complete report regarding the steps he has taken to carry out the provisions of this section.[30]

This provision of law raises a number of questions: how does one determine which countries are gross violators of human rights? Is this a realistic approach to the human rights

30. 7 U.S.C.A. § 1712 (Supp. 1979).

problem? Is such an approach compatible with military and foreign policy needs and objectives?

In practice, no P.L. 480 recipients have been formally labeled as gross violators of human rights. However, if the recipient is considered a "problem" country, then language meeting the requirements of section 112 is inserted into the P.L. 480 agreement. This determination is made by an interagency human rights review committee headed by the Deputy Secretary of State, which reviews all proposed P.L. 480 agreements. Of course, in the words of the Special Task Force Report, "[t]hese provisions in the agreement make no mention of human rights *per se*, . . . and a nation in signing such an agreement is in no way admitting to any wrongdoing in the human rights area."[31] It is through this mechanism, however, that the Administration has sought to strike a proper balance between the requirements of the law and the realities of international affairs. Nevertheless, an informed observer might conclude that the insertion of such language into an agreement effectively categorizes that country as a violator of human rights. Some observers, therefore, question the efficacy and propriety of using food aid agreements as a means of publicly branding countries as violators of human rights.

Food aid is intended not only to feed hungry people, but also to generate internal development so that a country may eventually move away from concessional status. Accomplishment of this objective, however, requires the cooperation of the importing government. In this respect, the salutary and beneficial effects in terms of human rights must be weighed against the negative political and diplomatic consequences that might result from naming a country a violator of human rights. It would appear that a case-by-case approach might be more appropriate in these situations. However, the statute is mandatory and does not permit such an approach.[32]

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31. SPECIAL TASK FORCE REPORT, *supra* note 1, at 43.

32. The ramifications and pitfalls of linking human rights and economic concessions may be seen in the net effect of the Jackson-Vanik Amendment to the Trade Act of 1974, codified at 19 U.S.C. 2432 (1976). Briefly, this amendment tied the granting of economic concessions, such as most-favored-nation status to "nonmarket economy countries," *i.e.*, the U.S.S.R., to freedom of emigration.

The U.S.S.R., however, pursuant to the Jackson-Vanik Amendment renounced the 1972 U.S.-U.S.S.R. trade agreement as interfering with their domestic affairs.

A recent report of the Congressional Research Service[33] confirms these observations with respect to the linkage of human rights and foreign aid. The report concluded that "though public pressures and direct leverage can be effective instruments of human rights policy, quiet diplomatic efforts and indirect hints of linkage between human rights conditions and U.S. support are often likely to be more successful."[34] The report further states that:

> [T]he record on direct and explicit use of foreign assistance as leverage to bring about specific improvements in human rights conditions is hardly encouraging. In only five or six instances did we find evidence that actual or explicitly threatened reductions in aid played a significant role in bringing about changes in human rights conditions. Direct pressures seem often to provoke counterproductive reactions. Chile, Argentina, Ethiopa and the Philippines represent cases in which such pressures clearly contributed to significant deterioration of bilateral relations.[35]

Food aid, by its very nature, is a unique method of foreign assistance. As is pointed out elsewhere in this paper, the thrust of the U.S. food aid program has moved decidedly in the direction of developmental and humanitarian objectives. Given this emphasis, it would seem that all U.S. food aid should be made available in a manner that satisfies the criteria of section 112. In this respect, U.S. food aid would in every instance further the general human rights objective of reducing hunger and malnutrition. Therefore, linking food aid with the political aspects of human rights should not be necessary since the impact of food aid on the economic aspects of human rights, *i.e.*, freedom from hunger and malnutrition, ought to be sufficient in and of itself to support food aid programming.

Therefore, in respect to freedom of emigration, the amendment had a severely negative effect. For example, from 1972 to 1975 emigration from the Soviet Union increased to about 30,000 persons per year. After the passage of the Jackson-Vanik Amendment and the Soviet renunciation of the Trade Agreement, this figure dropped to less than 10,000 per year. *See generally* Note, *An Interim Analysis of the Effect of the Jackson-Vanik Amendment on Trade and Human Rights: The Romanian Example*, 8 LAW & POL'Y INT'L BUS. 193 (1976).

33. Human Rights and U.S. Foreign Assistance, Experiences and Issues in Policy Implementation, Report of the Foreign Aff. and Nat'l Def. Division, Cong. Research Serv., for the Senate Comm. on Foreign Relations (Feb. 27, 1979).

34. *Id.* at vii.

35. *Id.* at x. *See also* FOOD RESOURCES FOR DIPLOMATIC PURPOSES, *supra* note 12, at 28-29.

IV. FOOD AID AND ECONOMIC DEVELOPMENT

The International Development and Food Assistance Act of 1977[36] established an innovative mechanism for generating economic development through the use of food aid. This Act restructured Title III of P.L. 480 to provide for the complete forgiveness of P.L. 480 repayment obligations if the recipient country undertakes agreed upon "additional" development efforts. The administration of this title over the past two years has brought to the surface a number of serious legal and policy issues that will affect not only Title III agreements but also the general direction of the entire P.L. 480 program.

A. *Statutory Framework of Title III*

Title III is not a separate food aid program; rather, Title III provides an alternative method by which Title I debt obligations may be satisfied.[37] The *quid pro quo* for the extinguishment of the debt obligation is the additional development efforts of the recipient country.

In basic form, the concept of Title III is quite straightforward. Section 302 provides that the President may designate a developing country as eligible for Title III if such country:

(1) needs external resources to improve its food production, marketing, distribution, and storage systems;

(2) meets the criterion used to determine basic eligibility for development loans from the International Development Association of the International Bank for Reconstruction and Development;

(3) demonstrates the ability to utilize effectively the resources made available under the Title III agreement; and

(4) indicates the willingness to take steps to improve its food production, marketing, distribution, and storage systems.[38]

A country designated as eligible and wishing to participate in a Title III food for development program formulates, "with the assistance (if requested) of the United States Govern-

36. Pub. L. No. 95-88, 91 Stat. 533 (1977).

37. Therefore, Title III is subject to all of the requirements of Title I, as well as those requirements contained in Title III itself. *See* 7 U.S.C.A. §§ 1727, 1727b(b) (Supp. 1979).

38. *Id.* § 1727a(b).

ment," a multiyear development proposal.[39] The proposal must include: (1) an annual value or amount of proposed agricultural commodities to be financed under Title I of P.L. 480; and (2) an annual plan for the intended uses of the commodities or for the funds generated from the sale of such commodities for each year such funds are to be disbursed. The proposal also should specify the nature and magnitude of problems to be affected by the effort, and should present targets in quantified terms, insofar as possible.[40]

The statute further requires the proposal to demonstrate how the Title III development program will be integrated into and complement the country's overall development plans and other forms of bilateral and multilateral development assistance.[41] The Title III development plan must not replace any other development activity.[42] This requirement is generally described as the "additionality requirement."

Upon review and approval of the development proposal by the United States, the U.S. and the recipient country enter into a Title III agreement. A Title III agreement consists of two annexes attached to a standard Title I agreement. Annex A contains the standard language found in all Title III agreements: it sets forth the obligations of the U.S. and the importing country, as well as establishing mechanisms for reviewing and implementing the "development proposal."[43] Annex B contains the detailed development proposal that the parties agreed upon. This Annex varies with each agreement. It stipulates the projects for which funds generated from the sale of the commodities furnished under the basic Title I agreement may be disbursed. Normally, funds generated from the sale of the commodities in the recipient country are placed in a special account. The funds then are disbursed from the special account as needed to carry out the agreed upon development projects. These disbursements are treated as payments against the underlying Title I debt obligations.[44]

39. *Id.* § 1727b(a).
40. *Id.*
41. *Id.* § 1727b(b).
42. *Id.* § 1727b(c).
43. *Id.* § 1727b.
44. *Id.* § 1727d.

B. *Genesis of Title III*

Title III is the culmination of congressional efforts dating back to the Food for Peace Act of 1966 to make P.L. 480 truly responsive to the problems of nutrition and development.[45] Efforts to make Title III more effective are continuing both within the Administration and the Congress.[46]

On the other hand, Title III is also a response to what is generally perceived as a failure of Title I agreements to effectively address the problems of hunger and malnutrition, either through the manner in which P.L. 480 commodities were distributed within the recipient country or through "self-help" measures carried out through the use of the local currency generated by the sale of the P.L. 480 commodities in the recipient country. All too often, Title I commodities were sold commercially within the recipient country, and the proceeds therefrom have been utilized for general budget support rather than specific development activities.[47] Section 201 of the International Development and Food Assistance Act of 1978 voices not only the concerns of Congress but also the concerns of many other observers:

> SEC. 201. The Congress finds that food assistance provided by the United States to developing countries under Title I of the Agricultural Trade Development and Assistance Act of 1954

45. The Food for Peace Act of 1966 required for the first time the inclusion of "self-help" measures in P.L. 480 agreements. 7 U.S.C. § 1709 (1976). *See* FOOD FOR PEACE, *supra* note 4, at 8-11.

The International Development and Food Assistance Act of 1975 contained a precursor of Title III. Section 205 of the Act permitted "grant backs" to recipient countries which would use the local currency proceeds of P.L. 480 commodities for agreed upon development purposes. No agreement was ever signed under this authority, and with the passage of Title III in 1977 this provision of P.L. 480 was repealed. Pub. L. No. 94-161, 89 Stat. 849, 850-51 (1975) (current version at 7 U.S.C.A. § 1706(b)(2) (Supp. 1979)).

46. *See, e.g.*, §§ 202-203 of the International Development and Food Assistance Act of 1978, Pub. L. No. 95-424, 92 Stat. 955 (codified at 7 U.S.C.A. §§ 1727c-1727d (Supp. 1979)), which made Title III more attractive for relatively least developed countries, as defined by UNCTAD, by allowing the United States to pay transportation costs and permitting excess Title III disbursements in any given year to be applied against preexisting P.L. 480 debt obligations. It is expected that Title III will again be amended in 1979 to make the program more responsive to the needs of developing countries.

47. The use of local currencies generated from the sale of P.L. 480 commodities for general budget support is not *per se* objectionable. Such support can be very beneficial in countries undertaking significant development activities.

> often is distributed within those countries in ways which do not significantly alleviate hunger and malnutrition in those countries. In order to determine how United States food assistance can be more effectively used to meet the food needs of the poor in developing countries, the President shall submit to the Congress not later than February 1, 1979, a report (1) explaining why food assistance provided to developing countries under Title I of the Agricultural Trade Development and Assistance Act of 1954 is not more successful in meeting the food needs of those suffering from hunger and malnutrition, and (2) recommending steps which could be taken (including increasing the proportion of food assistance which is furnished under Titles II and III of that Act) to increase the effectiveness of food assistance under that Act in meeting those needs.[48]

It is against this background that Title III came into being.

C. *Implementation of Title III*

To date, four countries have entered into Title III agreements: Bolivia, Bangladesh, Honduras, and Egypt. In addition, Title III agreements with a number of other countries have been proposed. The consideration of these proposals

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48. Pub. L. No. 95-424, 92 Stat. 937, 954 (1978) (codified at 7 U.S.C.A. § 1711 (Supp. 1979)).

The President's report to Congress, submitted February 23, 1979, pursuant to the above section, demonstrates a critical problem in the administration of P.L. 480, *i.e.*, the report fails to directly address the question raised by section 201. The report is merely a vague narrative of what has been accomplished under Title I agreements and how progress is being made toward making Title I more developmental. It does not address, in any fashion, the use of Title I for general budget support or, in a historical context, the abuses of the program in Southeast Asia and in other countries.

In this respect, it is clear that the authors of the report simply do not agree with the conclusions of section 201, or that they disagree with the underlying philosophy of section 201, *i.e.*, that U.S. food aid programs must be strictly scrutinized in order to assure that P.L. 480 commodities are contributing directly to the alleviation of hunger and malnutrition. This basic philosophical conflict between administrators of P.L. 480 and the legislative branch is probably based on a number of factors: (1) the need to accommodate political and diplomatic considerations, which may render strict scrutiny of P.L. 480 programs difficult or impossible; (2) the perception among administrators that tight control over the use of P.L. 480 commodities, or the proceeds generated therefrom, is not practicable or desirable; and (3) a tendency for development professionals to emphasize intangible "policy changes," while the thrust of the legislation is clearly to encourage the undertaking of concrete development projects.

As a result of this tension between the administration of the program and the legislative intent, Congress has increasingly placed specific restraints upon P.L. 480, thereby attempting to channel the program into areas which more clearly reflect the legislative intent. This process has produced a program which is incredibly complex and difficult to operate. From the recipient's point of view, the constraints of the programs are so great as to measurably reduce the attractiveness of participating.

has brought to the fore a number of issues that touch upon extremely important questions not specifically contemplated by the statute. Thus, as is the case with almost every legislative enactment, the administrative interpretation and implementation of Title III will determine whether Title III will achieve its ultimate purpose of enhancing economic development.

1. *Generation of Title III Proposals*

The statute clearly contemplates that Title III proposals will be developed primarily by the recipient country.[49] Specifically, the statute states that a "country designated as eligible and *wishing* to participate in a Food for Development Program shall formulate, with the assistance (*if requested*) of the United States Government, a multiyear proposal which shall be submitted to the President."[50] (Emphasis added.) In addition, the statute states that one of the criteria for eligibility to participate in a Title III program is that the recipient country "indicate the willingness to take steps to improve its food production, marketing, distribution, and storage systems."[51]

However, most Title III proposals are being developed, not by the recipient countries, but by the Agency for International Development (AID), in its missions in the field and in Washington. This situation is the result of: (1) the relative unattractiveness of Title III in comparison with Title I; and (2) the endorsement of "interventionism" by some food aid programmers.

First, Title III appears relatively unattractive in comparison with Title I. Title I offers concessional credit of up to forty-year terms with a ten-year grace period on payments of principal. The grant element of a Title I agreement is approximately sixty percent, and as it has developed over the years, there are relatively few, if any, effective restrictions on the use of local currency proceeds.

Title III, in contrast, requires a strict accounting of local currency proceeds, as well as the continued monitoring of progress made under the Title III agreement. In this context, the

49. Inherent in this concept is the assumption that Title III is sufficiently attractive to induce developing countries to participate. As will be discussed later in the text, this assumption may well be incorrect.

50. 7 U.S.C.A. § 1727b(a) (Supp. 1979).

51. *Id.* § 1727a(b).

prospect of achieving complete debt forgiveness holds little attraction in comparison with a Title I repayment schedule of forty years, especially when it is taken into consideration that most governments have a time horizon of only a few years at most.

Second, food aid programmers have often followed what may be described as an "interventionist" policy. That is, in many cases programmers have insisted upon including policy changes by the recipient country as the centerpiece of Title III agreements, often over the objections of the potential recipient. For obvious reasons then, such agreements are not attractive to officials of the recipient country, who rightfully view U.S. insistence on important policy changes as encroaching upon their own authority as well as the sovereignty of their country.

It is questionable whether the emphasis on policy changes is in harmony with the intent of Title III. First, Title III clearly contemplates that recipient countries will enter into Title III agreements willingly. Emphasis on policy changes as the central feature of Title III agreements seems to run contrary to this objective in many instances. Second, the entire tenor of Title III focuses upon specificity both in the Title III agreement itself and in its implementation. In many cases, however, policy changes do not lend themselves to specificity. In this respect, the emphasis on policy changes resembles, to a certain degree, the "self-help" measures of Title I. As explained above, Title III was enacted in large part as a reaction against the manner in which Title I had been administered. Third, in many instances, policy changes do not actually require added resources either in the form of the commodity itself or in the form of local currency proceeds from the sale of the commodity. Title III, however, clearly contemplates that additional, tangible development will be generated through the use of additional resources provided by the Title III commodity. Policy changes not directly connected to or supported by the provision of the Title III commodity would therefore appear to be outside the scope of the statute.

This is not to say that policy changes cannot or should not play an important role in Title III programs. However, Title III is clearly project oriented, both in its language and basic purpose. The administrative emphasis on policy changes as op-

posed to projects, while not precluded by the statute, appears somewhat inconsistent with the basic orientation of Title III.

2. *Additionality Requirement: Policy Changes vs. Development Projects*

The issue of policy changes and development projects is again met in dealing with the requirement of "additionality." Briefly, the statute requires that a Title III program complement, but not replace, assistance authorized by the Foreign Assistance Act of 1961, or any other program of bilateral or multilateral assistance, or under the development program of the country desiring to initiate a Food for Development Program [*sic*]."[52] The issue presented, therefore, is whether policy changes, in and of themselves, may satisfy the additionality requirement.

For example, a number of proposals, in their original form, contemplated the use of Title III commodities in grain stabilization operations known as open market sales (OMS) systems. Simply put, the recipient government would agree to policy changes in which the government would undertake to stabilize the price of grain by purchasing it at a minimum procurement price during times of plenty, thereby helping local farmers, and by selling stocks built up in this manner during lean times. The commodities from Title III would be added to government stocks.

In their original form, these proposals allowed a complete forgiveness of the Title I-Title III repayment obligation upon receipt of the Title III commodity by the recipient government. The policy change to implement the OMS system, under such a proposal, would satisfy the requirement of additionality. Since the statute does permit the use of the commodities for the development program, the appropriate point at which debt forgiveness is triggered would be when the transfer of title to the commodity occurs.

Such a proposal, on its face, appears to fulfill the requirements of Title III. In substance, however, this proposal does not differ from a Title I "self-help" measure, especially when it is considered that local currency proceeds will be generated by OMS sales. Although the legislative history and the statute are not clear as to how the commodities themselves may be used

52. *Id.* § 1727b(c).

to trigger debt forgiveness, it would seem apparent from the structure and purpose of Title III that the use of the commodity satisfies Title III requirements only where it generates development directly without first generating local currency proceeds (*e.g.*, food-for-work and direct maternal feeding). OMS systems do not fall into this category.

Second, and more important, the use of local currency proceeds for additional development projects is not inconsistent with the implementation of policy changes, whether or not those policy changes are themselves additional. Indeed, it is more logical to assume that specific development projects should be included so as to build the physical infrastructure upon which the policy changes are based.[53] In an OMS system, such projects may include additional and better quality storage capacity, improved internal distribution systems, increased fertilizer production, and so forth.

Furthermore, it appears illogical to argue, as some food aid programmers have done, that the undertaking of policy changes *and* additional development projects is too much to ask of the recipient country. First, proposed policy changes are generally presented as both very significant, and difficult for the government of the recipient country to implement. If this is the case, it is illogical to assume that the use of the local currency proceeds to carry out additional development projects, such as the construction of additional storage, is beyond the capabilities of the recipient government. In fact, the only logical basis for such an argument is that the recipient government will have insufficient inducement to carry out the proposed policy changes if it is unable to use the local currency proceeds for general budget support. However, this problem is precisely one of the abuses at which Title III is aimed.

Second, policy changes do not exist in a vacuum. They must be based on a sound internal infrastructure. To this extent, development projects should precede or coincide with policy changes, rather than the reverse. Also, it seems more appropriate for the United States to provide developing countries with the physical resources necessary to carry out development

53. To the extent that the additional policy changes themselves require local currency expenditures, the use of local currency proceeds from the sale of the Title III commodity qualifies for debt forgiveness.

projects, rather than attempting to dictate internal development policies to such countries.

Thus far, this issue has been resolved by requiring that local currency proceeds be applied to development projects.[54] However, in the absence of further legislative guidance, this issue promises to remain in the forefront of Title III programming.

3. *Additionality Requirement: Augmentation of the Special Account*

In a number of countries, food commodities from P.L. 480, as well as other sources, are sold at a subsidized rate. In such situations, generations of local currency proceeds are insufficient to offset the Title I-Title III repayment obligation. To remedy this "problem," some food aid programmers propose that recipient governments be permitted to augment the "special account" in order to provide enough local currency to achieve total debt forgiveness. However, neither the statute nor the legislative history addresses the question of subsidized sales. Therefore, a question exists as to whether the statute permits augmentation of the special account.[55]

On the one hand, funds used to augment the special account are not "[f]unds generated from the sale of [Title III] agricultural commodities . . . ."[56] On the other hand, there is nothing to prevent a country from creating a government corporation, analogous to the Commodity Credit Corporation, that would first "purchase" the commodity at its full fair market value.

Of more importance, however, is whether the augmentation of the special account really reflects the input of additional resources, which the commodities are meant to represent. The consumption of subsidized commodities cannot be considered an additional resource which is available to development programs. The augmentation funds must come from the general budget of the recipient. It is questionable, in view of the fungi-

54. Whether these projects need be "additional" is still in dispute.

55. It is clearly permissible under the statute not to have augmentation of the special account. In such an instance, debt forgiveness would equal, assuming proper disbursements for eligible uses, the amount of local currency generated. The remaining debt would be repaid in accordance with ordinary Title I procedures.

56. 7 U.S.C.A. § 1727d(a) (Supp. 1979).

bility of money, whether this action does not, in fact reduce a country's ability to undertake its own development program. If such a reduction did occur, the additionality requirement would not be met.

In practice, where augmentation is permitted,[57] language inserted in the Title III agreement states that the augmentation funds will not be taken from or in any way reduce the recipient country's development budget. Nevertheless, there is probably no effective way to verify this requirement.[58]

4. *Prefinancing of the Special Account*

Some recipient countries have expressed a desire to "prefinance" the special account by placing local currencies into the account prior to the sale of a Title III commodity. The arguments in favor of prefinancing are persuasive; tying financial arrangements to commodity shipments and sales may not lend themselves to efficient synchronization with a development program. Conversely, prefinancing allows the recipient country to have the financing mechanism for its food for development program fully operational at a specified time. Prefinancing also permits the recipient country to embark upon its development program earlier than would otherwise be possible.

Prefinancing, however, is not specifically provided for in the statute. Funds used to prefinance the special account technically are not "funds generated from the sale of the commodities." More importantly, it is difficult to see how the use of such funds for development projects prior to the arrival of the commodity in the recipient country can meet the requirements of additionality. That is, how can an "additional" development project be undertaken in the absence of the additional resources which are represented by the commodities?

This leads to a second question pertaining to the source of funds used for prefinancing the special account. As is the case with augmentation, it will probably be impossible to verify that

57. In fact, it would appear that augmentation is becoming an administrative requirement, although the statute does not dictate such a result.

58. One might also question the ultimate purpose of augmentation. Its proponents generally argue that its purpose is to guarantee that the U.S. will receive the most development "bang" for its P.L. 480 Title I-Title III commodities. On the other hand, those who question the wisdom of augmentation generally characterize it as a method of assuring the recipient country complete debt forgiveness, despite the obvious danger of violating the additionality requirement.

prefinancing funds have not reduced the recipient country's development budget or, conversely, that the local currency proceeds generated from the eventual sale of the commodities will replace funds taken from the government's development budget to prefinance the special account.

As a practical matter, prefinancing is permitted only to a very limited degree. For example, prefinancing has been allowed but at a time no earlier than when title to the commodities passes to the recipient country.[59] The value of the prefinancing also may not exceed the value of the commodities actually shipped. That is, disbursements from the special account will not be eligible to offset debt obligations until the commodity actually arrives in the recipient country.

These restrictions, however, are not final authority and it is conceivable that they will be liberalized to a significant degree. The benefits and flexibility of prefinancing are substantial and ought not to be foregone if reasonable assurances can be obtained that the additionality requirement will be met. However, the potential pitfalls of prefinancing should be approached very cautiously. Also, further legislative guidance in this area should be sought.[60]

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59. Generally, property title passes at the U.S. port of shipment.

60. In fact, it does appear that further legislative guidance will be forthcoming. The report of the Committee on Foreign Affairs of the House of Representatives on the International Development and Cooperation Act of 1979 contains the following statement:

> *Prefinancing*
>
> Additionally, in connection with interpretation of the section 305 legislative requirement that the proceeds from the sale of Title III commodities be applied against the participating country's repayment obligations, the Committee does not intend this requirement to preclude the possibility of prefinancing. In order to be able to undertake its Title III development activities without having to wait until purchase authorizations are issued and the recipient country legally takes title to the commodities, the participating country may, on a year by year basis, deposit local currencies into the special account and make disbursements in an amount equivalent to the value of the Title III commodities for each year of the Title III agreement. However, in cases where prefinancing of this type is utilized, the participating country must assume the risk that, if the purchase authorizations are not negotiated for any reason, the participating country will not be eligible for the repayment benefit specified in section 305 [codified at 7 U.S.C.A. § 1727d (Supp. 1979)].

H.R. REP. No. 79, 96th Cong., 1st Sess. 31-32 (1979).

D. *Criticism of Title III*

Criticism of Title III generally comes from two divergent points of view. On the one hand, critics of P.L. 480 attack Title III as a wholesale giveaway. These critics take an extremely pessimistic view of the ability or the willingness of the U.S. food aid bureaucracy to administer Title III in a manner consistent with the legislative intent. They correctly point out that Title III objectives could be accomplished through strict implementation of Title I "self-help" measures. In the absence of better performance under Title I, these critics see little reason to believe that the marginally greater attractiveness of Title III will induce behavioral changes either in the recipient countries or in the U.S. food aid bureaucracy.[61]

In contrast, food aid programmers and development theorists criticized the entire structure of Title III, and P.L. 480 in general, as totally unrealistic in meeting economic development needs of the Third World. These critics view the extreme complexity of P.L. 480 and Title III in particular as preventing the effective use of food aid to generate economic development. They point out that managerial skills are very scarce in Third World countries and conclude that such skills should not be squandered in futile attempts to satisfy the endless requirements of P.L. 480. Moreover, they see little or no utility in compelling recipient countries to conform to these requirements.

In all fairness, then, it must be stated that some food aid programmers and development theorists view the statutory requirements of P.L. 480 as stumbling blocks to be avoided to the greatest extent possible, rather than as policy statements of the Congress to serve as guideposts in administering the statute. The extreme complexity of the P.L. 480 program lends credence to these views.

It is not, however, the purpose of this paper to pass judgment on these contending points of view. It is enough to point

61. This view was only confirmed when a Title III proposal came from a country that repeatedly failed to implement agreed upon self-help measures under Title I agreements. The Title III proposal contained a number of policy changes and other measures that had been self-help measures in previous Title I agreements never before implemented.

out that they exist and represent a significant source of tension within the administration of the program.

V. FOOD SECURITY

It is beyond the scope of this paper to discuss in detail the wide variety of proposals for food security schemes which have been put forth.[62] Rather, this portion of the paper will focus upon presently existing food aid commitments, as well as legislative proposals to develop food reserves.

A. *The Problem of Hunger and Malnutrition*

The question of food aid security is of pressing importance. Statistics clearly indicate that while food production is advancing well ahead of population growth in developed countries, food production in developing countries is barely keeping pace with their population growth.[63] Compounding the problem is already existing widespread hunger and malnutrition. It is estimated that nearly two billion people in the developing countries are undernourished.[64]

It is evident from these facts that the developing countries will become increasingly reliant upon food transfers from the developed countries. These transfers may take the form of commercial imports and food aid.

It is equally clear that most developing countries do not have the financial assets to meet their food deficits adequately through commercial imports alone.[65] The remainder must be met through food aid in one form or another. In the past year, food aid commitments equaled about nine million tons, or about twenty percent of the estimated imports by developing countries.[66] As food deficits expand, food aid programming should expand accordingly.

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62. SPECIAL TASK FORCE REPORT, *supra* note 1, at 17-25.

63. From 1968 to 1977, food production in industrialized democracies increased an average of 2.7% per year while population increased 1% per year. In contrast, developing countries, excluding Communist Asia, achieved a food production increase of 2.95% per annum as compared to a population increase of 2.6% per annum. *World Population Silent Explosion*, 78 DEP'T STATE BULL. (Oct., Nov., Dec. 1978). *See* FOREIGN FOOD ASSISTANCE OF THE UNITED STATES, *supra* note 1, at I-1 to -5.

64. *World Population Silent Explosion*, *supra* note 63, at 1 (Nov. 1978; Foreign Food Assistance of the United States, *supra* note 1, at I-1 to -5.

65. *World Population Silent Explosion*, *supra* note 63, at 1 (Nov. 1978).

66. SPECIAL TASK FORCE REPORT, *supra* note 1, at 10.

B. *Food Aid Commitments*

1. *International Efforts*

In 1974, when food shortages in many parts of the world reached crisis levels, the U.N. World Food Conference called upon the developed nations of the world to establish a goal of ten million metric tons of food aid per year.[67] The United States supports this goal.[68] Nevertheless, little has been done since that time to translate this goal into a workable system of food aid commitments and reserves to guarantee a steady flow of food aid in adverse, as well as favorable, conditions. To a certain extent, relatively good harvests around the world since 1974 may have lulled donors and recipients alike into complacency.[69]

For example, the present Food Aid Convention of the International Wheat Agreement obligates donor members to make available a total of only 4,226,000 metric tons of food aid each year. The individual amounts are as follows:

	Metric Tons
Argentina	23,000
Australia	225,000
Canada	495,000
European Economic Community	1,287,000
Finland	14,000
Japan	225,000
Sweden	35,000
Switzerland	32,000
United States of America	1,890,000[70]

At the same time, little progress has been made toward establishing an international system of reserves to stabilize grain prices and guarantee access to supplies even in times of short supply. Recent negotiations on a new International Wheat Agreement, which would establish such reserves, have collapsed, and there is little prospect that they will be revived.[71]

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67. *Id.*

68. 7 U.S.C. § 1691a (1976).

69. *See* statement of Rep. McHugh in H.R. REP. No. 348, 95th Cong., 1st Sess. 350, 352-53, *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 1704, 1918.

70. Of the 1.9 million tons delivered by the United States between July 1976 and June 1977, 49% was programmed under Title II. U.S. DEP'T OF AGRICULTURE, FOOD FOR PEACE: 1977 ANNUAL REPORT ON PUBLIC LAW 480, at 45 (1978).

71. *See* Wash. Post, Apr. 11, 1979, at A26, col. 1.

2. *U.S. Food Aid Commitment*

The problem with respect to U.S. food aid commitments is summed up very succinctly by the "availability" criteria of section 401(a) of P.L. 480:

> No commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carryover, and anticipated exports for dollars as determined by the Secretary of Agriculture at the time of exportation of such commodity, unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act.[72]

In effect, this provision designates food aid as the lowest level priority use for U.S. food commodities. Outside of the very limited exception for urgent humanitarian purposes, commodities may *not* be programmed under P.L. 480 unless stocks are adequate to meet domestic needs and export demands. This provision of law, which protects consumer and producer interests, substantially reduces the value of U.S. food aid commitments to recipient countries since they cannot depend upon a steady flow of U.S. food aid. The problem is demonstrated by the impact of world grain shortages in 1972 and following years.[73]

During the 1960s, P.L. 480 annual shipments averaged about 14.5 million metric tons. Since that time, the level of P.L. 480 programming in terms of quantity of commodities[74] has declined precipitously to the point where during the past six years grain shipments averaged less than five million tons per year, with a low of three million tons in 1974. Despite the intentions of the Carter administration to increase food aid programming substantially, programming levels appear to have leveled off at around 6.0-6.3 million tons per year.[75]

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72. 7 U.S.C.A. § 1731(a) (Supp. 1979).

73. For a more detailed analysis of this subject and the figures found in the text see SPECIAL TASK FORCE REPORT, *supra* note 1, at 49-52, 127-28.

74. P. L. 480 authorizations are made in terms of dollars. Consequently, in times of rising prices, the same level of monetary expenditures will result in a lower level of quantities programmed.

75. In the report Foreign Food Assistance of the United States, *supra* note 1, at VI-5, the Secretary of Agriculture recommends increasing food aid tonnages by 50%, or, if possible, by 100% (a level of 12.6 million metric tons) by 1982. In fact, programming in 1977, 1978, and 1979 averaged somewhat above 6 million metric tons on an annual basis. SPECIAL TASK FORCE REPORT, *supra* note 1, at 52-53.

The sluggishness in real growth of levels of food aid programming, as well as the overall reduced levels when compared with the levels of the 1960s, is a reflection of: (1) generally rising effective demand for U.S. agricultural exports; and (2) domestic farm policy decisions to reduce the amount of foodstuffs grown by the United States. Simply stated, the volume of food aid has declined dramatically as the opportunity costs of providing such aid have increased.[76]

Given the basic population trends and food production levels outside the United States, it is unrealistic to assume that the opportunity costs of providing food aid will decline in the foreseeable future. The only other methods of relieving pressure upon levels of food aid programming would be either: (1) to allocate much larger sums of money for the purchase of P.L. 480 commodities; or (2) to relax farm production controls, thereby increasing available supplies while decreasing the price of commodities available for the P.L. 480 program.

Neither solution is acceptable at this time. Fiscal and inflationary pressures undoubtedly preclude substantial increases in P.L. 480 expenditures. Conversely, political pressures probably preclude any reduction in grain prices through supply increases, especially when it is considered that grain prices have already been at relatively low levels over the past three years. Under these conditions, only marginal increases in levels of P.L. 480 programming may be expected during the next few years.

The ultimate question confronting food and agriculture policymakers today is how can policies which reduce the availability and raise the price of basic foodstuffs in a hungry world be morally justified.[77] The United States has clearly embarked upon a concerted policy of supply management.[78] The central features of this program are:

1. Implementation of acreage limitations on U.S. production to avoid building "excess" stocks of grain; and

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76. Hanrahan & Kennedy, *International Considerations in the Development of Domestic Agricultural and Food Policy*, in U.S. DEP'T OF AGRICULTURE, AGRICULTURAL FOOD POLICY REVIEW 130, 135 (1977).

77. *See* Anderson, note 4 *supra*.

78. *See* Foreign Food Assistance of the United States, *supra* note 1, at VIII-1 to -2.

2. Creation of farmer-held reserves and commercially held stocks of about 30 million metric tons of grain.[79] At the same time, it is clear that the first consumption sector to suffer in a supply reduction program is the food aid sector. Although P.L. 480 shipments have always been small "relative to total use they have varied directly with the level of 'excess supplies.' "[80]

It is simplistic to view this issue as one of food production versus poor and hungry people. The U.S. agricultural sector is extremely complex, and any changes in the level of P.L. 480 programming will have a significant effect upon U.S. agriculture.[81] Furthermore, whether greater levels of food aid are accomplished through increased expenditures or through modifications of agricultural policies, any increase in food aid represents a real cost which society must bear. The proper question, then, is not whether the United States can morally justify reduced food production in a hungry world, but rather whether the United States is contributing its fair share towards reducing hunger and malnutrition in the world.

American agriculture is the most productive in the world, but it can only maintain its productivity so long as producers are adequately compensated. It is not possible to constantly run the agricultural sector of our economy at 100% capacity without causing severe dislocations in all sectors of our economy. Therefore, the long run interests of consumers, both rich and poor alike, are best served by a healthy farm economy operating at sustainable levels. Experience over the past fifty years has shown that production controls are at times necessary to maintain a healthy farm economy.

Of course, agricultural policy should take into account food aid needs. Such needs are an important consideration. Nevertheless, they are only one among a number of factors which must be considered. No single factor can or should dominate agricultural policy decisions.

3. *Emergency Food Aid Security*

An important subsidiary question to the general issue of

79. *See*, 7 U.S.C.A. § 1445e (Supp. 1979).

80. SPECIAL TASK FORCE REPORT, *supra* note 1, at 52.

81. *Id.* at 52-60.

food aid policy is how best to avoid the 1973-1975 disaster when unexpected shortfalls and commercial purchases drastically reduced the amount of food available for food aid purposes. The Carter administration's response was to propose the creation of an International Emergency Wheat Reserve (IEWR).

As proposed by the Administration, the reserve would have consisted of six million tons of wheat. Stocks of wheat from this reserve could only be used when short supply situations, such as existed in 1973-1975, prevent normal food aid programming. The concept of such a reserve received substantial support in the fall of 1977; however, a Senate provision establishing the reserve was deleted from the 1977 farm bill by the conference committee.[82]

Thereafter, a number of bills were introduced in both the Senate and the House to establish an IEWR in one form or another. The bills were considered by the Senate Agriculture Committee, the House Agriculture Committee, and the House International Relations Committee during the spring and summer of 1978.

The House Committees eventually reported substantially identical bills, both very similar in substance and form to the Administration proposal. The Senate Agriculture Committee, however, reported a radically different bill creating an international emergency food fund. Conceptually, the fund was to provide money to purchase extra commodities in times of short supply. The basic philosophy of the bill's sponsors was that there is no such thing as "short supply" if the price is right.[83]

The Senate bill was unacceptable to the Administration, and neither the House nor the Senate took any further action on this subject.

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82. S. CONF. REP. NO. 418, 95TH CONG., 1ST SESS. 183-84 (1977).

83. Farmers look very disfavorably upon any kind of government-held reserves after the experience of the 1960s when government-held reserves were used to hold down commodity prices. These suspicions, then, are visited upon the IEWR, which is heavily laden with restrictions on the release of stocks—stocks too small to affect market prices in any appreciable manner.

Another factor is that in 1977 grain prices were very low, and any device, such as the IEWR, that would have taken grain off the market looked very attractive to farm state representatives. However, by late 1978 grain prices had stabilized, and, accordingly, the IEWR looked less attractive.

For more information on this specific topic see Jones, *World Food Fund: You Can't Eat Money*, Wash. Post, Aug. 31, 1978, at A15, col. 1.

VI. CONCLUSION

As seen from the above discussion, the U.S. food aid program has been in a constant state of evolution since its inception in 1954. The program continues to be beset by a myriad of considerations, many contradictory and conflicting. It is the interplay of these factors that generates the momentum by which P.L. 480 continues to develop and evolve.

It is most encouraging to note that this evolution continues in the direction of greater emphasis upon the humanitarian and developmental aspects of P.L. 480. At the same time, the overall level of P.L. 480 programming in comparison with previous years is somewhat discouraging. Therefore, the prognosis for the program is rather unclear. The quality and quantity of food aid are mutually necessary and complementary aspects of the food aid program. Whether both objectives can be accomplished simultaneously remains to be seen.