REFLECTIONS ON CURRENT ATTEMPTS TO REVISE INTERNATIONAL LEGAL STRUCTURES: THE NORTH-SOUTH DIALOGUE—CLASH OF VALUES AND CONCEPTS, CONTRADICTIONS AND COMPROMISES

*Pedro Roffe**

I. INTRODUCTION: A NEW INTERNATIONAL ECONOMIC ORDER

A summary of the main issues of contention in the North-South dialogue is to be found in the Declaration of a New International Order (NIEO) and in the Programme of Action for the Establishment of this new order as adopted by the Sixth Special Session of the General Assembly of the United Nations in May 1974.[1] These instruments essentially contain the basic demands of developing countries in areas relating to raw materials and primary commodities, the international monetary system and financing of the developing countries, industrialization, transfer of technology, regulation and control over the activities of transnational corporations, promotion of co-operation among developing countries and assistance in the exercise of permanent sovereignty of States over natural resources.

The action programme for the NIEO results from a long process of analysis of these problems and from international attention brought about by the developing countries through their efforts and frustrations within the United Nations system, and in particular since the creation of the United Nations Conference on Trade and Development (UNCTAD) in 1964. The issues and demands embodied in the programme of action for the NIEO have been considered as constituting a fundamental challenge to the present rules governing international economic relations. Those demands were presented by what was viewed as a very united group of countries which considered that by launching this major enterprise, fundamental changes would occur at the international level.

*P. Roffe is a staff member of the Technology Division of the United Nations Conference on Trade and Development (UNCTAD) in Geneva. The views expressed here are personal and are not necessarily those of UNCTAD.

[1] G.A. Res. 3201, (S-VI) U.N. GAOR, Supp. (No. 1) 3, U.N. Doc. A/9559 (1974); G.A. Res. 3202, (S-VI) U.N. GAOR, Supp. (No. 1) 5 U.N. Doc. A/9559 (1974).

Soon after the adoption of the NIEO the international community approved the Charter of Economic Rights and Duties of States, also a major initiative of developing countries.[2]

This process initiated a gamut of important negotiations on subjects such as the integrated programme for commodities and the establishment of a common fund, a code of conduct for transnational corporations, a set of rules and principles on restrictive business practices, a code of conduct for the transfer of technology, and the revision of the Paris Convention for the Protection of Industrial Property.

Based on the demands made by developing countries, a search for better avenues of international relations did start. This programme has been the first comprehensive attempt to restructure the international legal framework from universal participation as well as international cooperation. Past attempts were isolated expressions of dissatisfaction and concern about the traditional principles and rules governing transnational economic activities.

This paper considers specific aspects[3] of the North-South dialogue in their relationship with a number of negotiations presently taking place within the United Nations system. It deals with issues such as national treatment, special treatment to developing countries, non-discrimination, applicable law and settlement of disputes, and the international law making process. Emphasis is laid upon different perceptions of problems, particularly with reference to the negotiations mentioned above.

II. SPECIAL AND PREFERENTIAL TREATMENT AND THE NATIONAL TREATMENT

Developing countries are aiming at setting up new rules in the sphere of economic activities that, to a certain extent, will redress past inequalities and will reestablish some balance in their relations with developed countries. The question of special or preferential treatment to developing countries has been one important tenet in recent international discussions. This special treatment was recognized in Part IV of GATT and secured important recognition by its consolidation in the General System of Preferences

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[2] G.A. Res. 3281, 1 U.N. GAOR, Supp. (No. 31) 50, U.N. Doc. A/9631 (1974).

[3] *See* Diaz-Alejandro, *Delinking North and South: Unshackled or Unhinged*, in RICH AND POOR NATIONS IN THE WORLD ECONOMY 86 (A. Fishlow ed. 1980) for a broad presentation of issues in their economic and political context.

(GSP).[4] Initiatives launched by developing countries in this domain cover a wide spectrum of activities[5] such as the recognition of special treatment in the Paris Convention for the Protection of Industrial Property, in transfer of technology in general and in the regulation of restrictive business practices.[6]

The difficulties encountered by developing countries in their attempts to obtain universal sanction for the principles of special and preferential treatment have been great. Developed countries have expressed their willingness to consider a concession of special treatment in some fields but without detracting from the principle of national treatment. National treatment and non-discrimination are basic concepts nurtured by developed countries, not only on the basis of their presumptive fairness but also because they are regarded as constituent standards of international law. National treatment and non-discrimination are carefully guarded norms of interstate trade. Numerous bilateral agreements on friendship, commerce and navigation, and more recently a series of bilateral treaties on reciprocal guarantees for foreign investment have these principles at the core of the agreement.[7] Developed countries maintain that national treatment constitutes a "minimum standard" of international law which might be extended by the companion concept of "most favoured nation" status.

Special or preferential treatment to nationals of developing countries and the concept of national treatment appear to be contradictory principles, difficult to reconcile if taken to their extreme consequences. In the various negotiations related to the NIEO, developed countries have been meticulous in avoiding any fundamental departure from the national treatment principle.

In this connection it is hard to conceive of the various proposals finally being negotiated within the NIEO as being radical departures from the national treatment principle. In their earlier conception, many of these proposals actually constituted exceptions

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[4] *See* Report by the UNCTAD Secretariat, "*The Generalized System of Preferences*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT [hereinafter referred to as UNCTAD] Doc. TD/124 (1968) and T. Graham, *The U.S. Generalized System of Preferences for Developing Countries: International Innovation and the Art of the Possible*, 72 A.J. INT'L L. 513 (1978).

[5] *See* G.A. Res. 3281 § 19, 1 U.N. GAOR, Supp. (No. 31) 50, U.N. Doc. A/9631 (1974).

[6] *See, e.g.*, UNCTAD, Report of the Third Ad Hoc Group of Experts on Restrictive Business Practices on its fifth session, U.N. Doc. TD/B/C.2/AC.6/18, at 10 (1978).

[7] *See* INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, INVESTMENT LAWS OF THE WORLD: THE DEVELOPING NATIONS (1972).

to national treatment. In the revision of the Paris Convention some important proposals are being introduced into the text to improve the situation of developing countries. National treatment is one of the basic rules of the Paris Convention for the Protection of Industrial Property of 1883.[8]

A proposal for a revised Article 5A of the Paris Convention is under consideration.[9] Article 5A relates to the exploitation of patents in the granting State and the protection of imports. According to the new proposal, developing countries would enjoy special treatment by being permitted to grant, under more liberal conditions, non-voluntary licenses where the patented invention is not worked in the respective country. However, it is to be pointed out that the special treatment in this case would not amount to a derogation of the national treatment principle since the rules would apply equally to foreigners and nationals within the territory of the patent granting State. A different proposal being discussed is the incorporation in the Convention of a scheme of preferential fees on patents and other industrial property rights granted to nationals of developing countries. The initiative, if finally adopted, would constitute a departure from the concept of non-discrimination.[10]

In the negotiation on the code of conduct for the transfer of technology, governments have recognized the need to grant special treatment to developing countries. The ideas contained in the relevant section of the draft code take into consideration the needs and problems of developing countries in facilitating and encouraging the initiation and strengthening of their scientific and technological capabilities.[11] The thrust of these provisions is of a best effort nature, calling upon developed countries to undertake measures to favour developing countries. They constitute an important expression of international cooperation but they are not intended to alter the principle of national treatment. One of the objectives of the draft code of conduct for the transfer of tech-

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[8] *See* G. BODENHAUSEN, GUIDE TO THE APPLICATION OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY AS REVISED AT STOCKHOLM IN 1967, at 27 (1968).

[9] *See* WORLD INTELLECTUAL PROPERTY ORGANIZATION [hereinafter referred to as WIPO] U.N. Doc. PR/PIC/11/2/Rev. 2, for the new proposal for Art. 5A of the Paris Convention.

[10] *See* Report by the UNCTAD Secretariat, *The Impact of Trademarks on the Development Process of Developing Countries*, U.N. Doc. TD/B/C.6/AC.3/3 (1977) on the revision of the Paris Convention.

[11] *See* UNCTAD, *Draft International Code of Conduct on the Transfer of Technology*, U.N. Doc. TD/CODE TOT/14 (1979).

nology is the establishment of general and equitable standards on which to base the relationships among parties and governments concerned, taking into consideration their legitimate interests, and giving due recognition to the special needs of developing countries for the fulfillment of their economic and social development objectives. These special needs of technology acquiring countries materialize in the provisions dealing with restrictive practices in transfer of technology transactions and in the chapter concerning the obligation to be responsive to the economic and social development objectives of the respective countries, particularly of the technology acquiring country, in the negotiation and conclusion of technology transfer agreements. No doubt in this context national treatment is preserved but the ideas incorporated into the draft code reflect new perceptions of the law and clear recognition of social and economic development issues.

In multilateral attempts at regulating the activities of transnational corporations (TNCs) the national treatment principle has been an essential consideration for the parties concerned. The guidelines of the OECD for TNCs are governed by this principle.[12] The Commission on Transnational Corporations' code of conduct is also discussing the principle and its incorporation in a future code seems to be certain.[13] It has been proposed that TNCs should be accorded equal treatment vis-à-vis national enterprises in situations where the operations of TNCs are comparable to those of domestic enterprises.[14] Accordingly, the right of establishment could be conditioned, but not the enjoyment of equal treatment once the TNC is established in the host country. The national treatment principle regarding TNCs might pose some difficulties. Does national treatment under comparable circumstances refer to the rights and obligations of the branch, subsidiary or affiliate in a given country vis-à-vis a domestic enterprise, or does it refer to the treatment accorded to a local company as compared to the whole economic entity of the TNC?

The question of TNCs also raises other issues of rather old vintage in international law. Diplomatic protection has been con-

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[12] *See* OECD, *Guidelines for Multinational Enterprises*, DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES (1976), *reprinted in* 15 I.L.M. 297 (1976), 75 DEP'T STATE BULL. 83 (1976).

[13] *See* COMMISSION ON TRANSNATIONAL CORPORATIONS [hereinafter referred to as CTNC], *Report of the Intergovernmental Working Group on the Code of Conduct*, U.N. Doc. E/C.10/31, at 7 (1977).

[14] *See* CTNC, *Code of Conduct Formulations by the Chairman*, U.N. Doc. EC/C.10/AC.2/8 (1978).

sidered an important ingredient of customary international law[15] thereby permitting governmental intervention by the home country in cases of violation of the standards of treatment of aliens. Developing countries, particularly Latin American countries, have been reluctant to accept the consequences of diplomatic protection thus admitting an original national dispute on economic questions to become an interstate confrontation.[16]

Developed countries see diplomatic protection as a component of the "international standard" in the sense that when the latter is not fully respected the former acquires full validity. From another perspective it could be argued that for capital/technology-importing countries, particularly developing countries, diplomatic protection could represent a negation of "equality of treatment" as a "maximum" standard in the sense that *stricto jure* places foreign entities in a better position than nationals which cannot resort to further protection in cases of denial of justice. This argument could seem a weak one in light of reciprocity in favour of nationals of the host country which might seek diplomatic protection when doing business abroad. This is, in fact, the assumption of many bilateral treaties between developed and developing countries that recognize national treatment and equal opportunities to all nationals of the respective countries.[17] The only difficulty with this argument is that equal opportunities do not exist in actual life and that precisely because of lack of sufficient capacity, enterprises of developing countries do not, as a matter of course, do business abroad. This would not prevent them doing so in the future and thereby to be in a position to claim national treatment and reciprocity in similar circumstances.

The latter point might not necessarily be applicable to all developing nations among which there are differences in levels of development and in the number of enterprises that might have the ability of doing business transnationally.

From the point of view of capital/technology-exporters, the national treatment principle is a fair and sound legal principle.

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[15] *See* U.S. Department of State Press Release No. 630 of December 30, 1975, *reprinted in United States: Department of State Statement of Foreign Investment and Nationalization*, 15 I.L.M. 186 (1976).

[16] D. SHEA, THE CALVO CLAUSE (1955).

[17] *See* note 7 *supra*. "Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favorable than that accorded to nationals and companies of any third country with respect to engaging in all types of business activities in connection with their investment . . ." Article 3(z) *The Encouragement and Reciprocal Protection of Investment*, 18 I.L.M. 44 (1979).

> The international law of state responsibility for wrongs to aliens, as it has developed over the past two centuries, has served to set a reasonable minimum standard of treatment for those who travel, live, or do business in foreign lands, thus facilitating trade and travel. Sohn and Baxter well summarize: 'It is the purpose of the law of State responsibility to extend the protection of international law to those who travel or live abroad and to facilitate social and economic ties between States. No State, regardless of its political or economic philosophy, can remain indifferent to mistreatment of its nationals abroad. In an interdependent world the well-being of many countries rests upon an influx of foreign funds and managerial skills, the owners of which must be given effective protection against unjust persecution or discrimination.'[18]

For countries pursuing industrialization and economic development in general, national treatment in full application poses some constraints, particularly when the aspirations are to change the present international division of labour. For developing countries the national treatment principle without qualifications constitutes the consolidation of the status quo and no fundamental alteration to the present rules of the game that the NIEO intends to change.[19]

This is an area where a major gap separates the North and South. Sound reasons support the positions of capital/technology-exporters and capital/technology-importers. The question before the international community in search of better means for international cooperation is where should this process of building up a new international economic system strike a just and fair balance between the conflicting interests?

It should be pointed out that the considerations made above refer to transnational economic activities. A subject of a completely different nature concerns international standards for the security and liberties of persons, where no exceptions could be conceived, in the author's view, to the respect of sound international standards of justice. International standards concerning security of property interests should attempt to give full recognition to the

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[18] W. BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS 851 (3rd ed. 1971).

[19] *See* Ad Hoc Group of Governmental Experts on the Revision of the Paris Convention, *Declaration on the Objectives of the Revision of the Paris Convention*, 15 INDUSTRIAL PROPERTY 47 (1976): Paragraph 4 of the Declaration states that "[a]s far as revision of the Paris Convention is concerned, consideration is to be given to certain defined cases in which exceptions and/or correctives to the principles of national treatment and independence of patents, and preferential treatment for developing countries, should be allowed."

special needs of host countries ensuring at the same time a proper balance between these needs and the respect of due process of law, non-discrimination and absence of arbitrariness. The parameters could seem vague and too general but is the so-called "international standard" less vague and more precise?

III. LAW AND JURISDICTION

The law applicable to foreign collaboration agreements, particularly concerning transfer of technology, as well as the question of settlement of disputes are also subjects of conflicting approaches between the South and the North. There is a tendency for industrialized countries to consolidate, within certain limits, the principle of contractual freedom in this specific area. Parties should be free to choose the law governing the formation, validity, performance and interpretation of the agreement. This freedom should also apply to the choice of court before a dispute is brought.[20]

Developing countries, namely Latin American countries, have insisted on the national jurisdiction of the host country. Consequently the applicable law should be the law of the host country as well as the latter's courts in case of disputes. Developing countries have also expressed some reluctance to the complete acceptance of arbitration as a means for the final settlement of disputes.[21]

Host country jurisdiction could be sustained on the basis of equal treatment. Foreign entities claiming national treatment should be subject to the same system of law as domestic enterprises. Besides questions of national sovereignty, host country jurisdiction is defended on the basis of protection of nationals from lack of knowledge of other legal systems and the cost of proceding in a foreign jurisdiction.

In favour of contractual freedom within this sphere several reasons are advanced. National treatment is only a minimum standard of behaviour. Even if it is true that enterprises should be treated on an equal footing, foreign enterprises, when engaging in collaboration agreements, enter into transactions which are not

[20] *See Draft International Code of Conduct, supra* note 11. For reference to positions of groups of countries, *see Applicable Law and Settlement of Disputes*, UNCTAD Doc. TD/AC.1/13 and *Restructuring the Legal and Juridical Environment: Issues under Consideration*, UNCTAD Doc. TD/237.

[21] *See* Szasz, *The Investment Disputes Convention and Latin America*, 11 VA. J. INT'L L. 256 (1971); Wesley, *The Procedural Malaise of Foreign Investment Disputed in Latin America: From Local Tribunal to Factfinding*, 7 L. & POL'Y IN INT'L BUS. 813 (1975).

strictly national, they are international operations difficult to localize under one specific system of law. Precisely because of the specific nature of the transaction, parties should be free to determine the legal system which will more perfectly fit the particular transaction.[22] Other arguments raised in favour of the contractual freedom of choice of law and jurisdiction are of a more political nature: national courts of host countries could be biased in favour of nationals, discriminating against foreign parties; lack of trust in national jurisdiction of host countries, particularly of new countries with an incipient legal system.

The question of applicable law and jurisdiction is a critical issue in the North-South dialogue. For the South the question is a mixed problem of reasserting national sovereignty and being accepted as equals in the community of nations. For the North the issue forms part of the package of safeguards and guarantees to be obtained for their nationals when doing business in developing nations. The perception of the problem varies and therefore the solution becomes more complicated. This is indeed a crucial area where international law needs to evolve appropriate standards which could accommodate the conflicting interests of importing and exporting countries.

IV. SOME CONFLICTING ASPECTS IN THE INTERNATIONAL LAWMAKING PROCESS

In some areas of the NIEO the nature of the instrument to be submitted to the international community has not been determined. It is important to note in this regard the fact that developing countries, which have repeatedly mistrusted classical principles of international law because these were established at a time when they were not fully fledged members of the international community, have expressed reliance on traditional instruments of international law, such as treaties or other forms of legally binding instruments. Developed countries, on the other hand, have manifested preference for voluntary instruments that do not have a legally binding character.[23]

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[22] On the question of internationalization of contracts, *see* "International Arbitral Tribunal: Award on the Merits in Dispute Between *Texaco Overseas Petroleum Company/ California Asiatic Oil Company* and the *Government of the Libyan Arab Republic*," *reprinted in* 17 I.L.M. 1 (1978).

[23] *See* Davidow and Chiles, *The United States and the Issue of the Binding or Voluntary Nature of International Codes of Conduct Regarding Restrictive Business Practices*, 72 AM. J. INT'L L. 247 (1978).

Reasons behind the preference for voluntary guidelines are of a varied nature. The new proposed instruments would cover areas where there are difficulties in setting up clear and precise international standards. They also comprise questions subject to private decisions where governmental action by developed countries is very limited. In some cases the proposals affect basic national standards or principles of international law which could not be altered without prior adjustments. At the same time, developed countries assert that international commitments, not necessarily in the form of an international treaty, are important enough to build up new orientations and promote a better understanding of conflicting issues.

It has been advanced that in the context of the so-called new international development law, by the time a treaty is concluded, signed and ratified, it could have less practical value than a simple resolution of an international organization.[24] J. Cartañeda is of the view that it is in the interest of developing countries to facilitate and simplify the methods of creating and modifying international law. The mechanics of treaty making is the conservative agent of international law. "Unquestionably this is so, since it operates as a veto against change . . . . In one form or another, all new international rules require prior acceptance by the international community, and this necessitates a considerable time lapse."[25]

States cannot be forced to accept or adhere to conventions which do not accommodate their national interests, even in a stage of development of international law where unanimity is not a dominating factor. Possible solutions to the divergent positions might be found in limiting the objectives of some of the instruments providing for binding commitments solely in areas where the international community has sufficiently matured to accept new standards and to leave aside for further elaboration those areas where no present accommodation is possible. Regarding those other aspects of the present negotiations where no compromise could be envisaged at the present stage, other options should be explored for permitting their future incorporation and possible international codification. These options might consider the establishment of adequate institutional machinery for monitoring the application and development of the agreed standards and for exploring possibilities of incorporating new rules and standards in

[24] M. FLORY, DROIT INTERNATIONAL DU DÉVELOPMENT 69 (1977).

[25] Cartañeda, *The Underdeveloped Nations and the Development of International Law*, 14 INT'L ORGANIZATION 38 (1961).

the body of international law in the form of binding or non-binding commitments.[26]

A striking difference between the negotiations being carried out under the NIEO label and other multilateral negotiations is that the NIEO negotiations represent initiatives of developing countries that, for the first time in international lawmaking, are pursuing the establishment of new legal instruments to correspond to their needs and conditions. In this regard, developing countries have been active contributors, at least in the initial stages, of this new process. In previous negotiations they have been, generally, passive actors in scenarios prepared and activated by more experienced nations. In this sense, past negotiations were more homogeneous between participants using a more consistent language and more familiar common legal concepts. Under the NIEO negotiations, new actors come to the stage and some legal values and concepts commonly used by the classical players begin to be questioned or they are not accepted as universally applicable.

Legal concepts from other legal systems are brought into the negotiations for universal acceptance. Developing countries resist this incorporation of ideas apparently alien to their legal systems. This applies to basic legal concepts, some of them without any policy implication, as well as to other legal notions difficult to translate into other legal systems.

There are some concepts introduced in international negotiations which incorporate imprecisions, vagueness and a number of escape clauses to provisions intended to set up a sound standard of behaviour. The critique has been addressed also to developing countries on this precise account: "There is also a desire to incorporate in [international law] certain principles that have been usually regarded in the West as political rather than legal and that, by their very generality and flexibility of application, lend themselves to manipulation. The non-Western nations tend to use such general principles as weapons in their efforts to do away with the remnants of Western domination in both political and economic spheres."[27]

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[26] Institutional machinery for the implementation of the codes of conduct for transnational corporations and the transfer of technology and for the rules and principles on restrictive business practices are under consideration.

[27] O.J. LISSITZYN, INTERNATIONAL LAW TODAY AND TOMORROW 74 (1965).

There are also attempts in international negotiations to incorporate national legal policies as a means of translating them into universal legal standards. Difficulties arise when national policies clash and undue insistence on one type of approach impedes the elaboration of new principles based on more sound ground whereby various approaches could converge. To this area belong concepts, common in many industrialized countries but foreign to some new members of the international community. Concepts such as "accepted commercial practices," "rule of reason," "fair and honest business practices," "commonly accepted international standards," "proprietary nature of trade secrets and secret know-how," "fair and reasonable commercial practices," very often produce difficulties and misunderstandings.

V. FUTURE: SOME FINAL REMARKS

The establishment of a new international economic order has proved to be a complex enterprise. The aspirations of some members of the international community of radically transforming the rules of international relationships proved to be a far-reaching goal not easy to attain in the immediate future. Developing countries were not fully aware at the moment of launching the NIEO of the difficulties, sacrifices, and internal changes that the NIEO might bring about. Neither were they equipped, as a group, with the negotiating capacity required to bring to a successful end the various initiatives associated with the NIEO.

At the same time, as a result of possible frustrations with multilateral initiatives, for certain internal contradictions, and also by responding to foreign policy imperatives, some developing countries have entered into bilateral arrangements with developed countries that apparently seem to contradict some of the positions maintained in international fora by the body of developing countries.[28] This type of bilateral approach is also a reflection of the

[28] *See* note 7 *supra*. In 1957 a U.S. State Department official made the following relevant remarks.

> The experience of the Department of State over many years has convinced us that the bilateral treaty of friendship, commerce, and navigation offers the most practical means of affording treaty protection to American investors abroad. Multilateral negotiations have been found to produce unsatisfactory results, and the reasons are not difficult to perceive. There are great variances among nations as to the degree to which they are prepared to bind themselves legally to accord fair treatment, even among those which in fact accord fair treatment in practice. Some countries with federal constitutions, including Australia, Canada, and the United States, have special problems which limit the commitments they can

basic dilemma confronting developing capital/technology-importing countries, between the building up of a so-called investment climate and the need for self-sufficient economic development.

Five years have elapsed since the proclamation of the NIEO. The balance indicates no major progress in the adoption of new legal instruments. However, the NIEO proposals have initiated a fundamental dialogue between the North and South. The process has demonstrated that there are some difficult problems which cannot at present be solved. The dilemma, in some cases, is artificial but more often it represents the existence of conflicting values where a reasonable compromise is not possible to achieve. In these cases, only a formal accommodation could be envisaged, avoiding the most sensitive issues where no satisfactory solution could be obtained.

The NIEO, created as a means of enhancing international cooperation and the recognition of interdependence, has very often encountered hurdles based on national sovereignty. Developing countries, the main force behind the NIEO, frequently raise the argument of national sovereignty as a factor impeding the acceptance of some international standards. This appears as a contradiction and sometimes as a serious obstacle for the consolidation of new principles or rules for international cooperation.

Industrialized countries, after some preliminary hesitation, accepted the challenge posed by developing countries and entered into the negotiations leading to a restructuring of the international economic system. This did not mean an indiscriminate acceptance of the demands of developing countries. It was also to the advantage of developed countries to participate actively in this process as a means of obtaining eventual positive gains, either in the form of consolidating existing practices or in the form of sound standards of behaviour on the part of developing countries as a quid pro quo for possible concessions.

The NIEO has been basically a learning process where developing countries for the first time have attempted to put forward initiatives and solutions on crucial North-South problems. The problems have not necessarily proved to be new ones in international

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undertake. Efforts at general uniform arrangements tend to break down over the differences among individual countries and their varying legal systems and economies. Consequently, bilateral negotiations, during which adjustments can be made to take care of individual differences, may be expected to produce the best results as far as United States interests are concerned . . ."

reprinted in H. STEINER and D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 343-4 (1968).

law. The control of the new initiatives have not always remained in the hands of developing countries. The possible results are also difficult to foresee but the tempo and momentum show that the outcome would constitute a step forward in a better direction,[29] but within the limits of necessary compromise, renouncements and accommodation in the most sensitive conflicting areas.

One conclusion that might be drawn from the present state of the NIEO negotiations and the problems encountered in this process is that the political, economic and developmental choices make solutions difficult to evolve. Capital/technology-exporting countries seek guarantees, certainty in the law and predictability. Capital/technology-importing countries would recognize that these are reasonable objectives but the issue is how to reconcile them with policies of selective or total delinkage—as economists like to say—as well as the promotion of a national scientific and technological base, improvement of domestic management and, globally, needs for foreign capital or technology. The law will continue to be in a state of flux as long as these apparently contradictory objectives are not settled and priorities not well determined.

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[29] For opposing views, *see* S. Amin, *De L'Avenir des Relations Economiques Internationales*, IFDA DOSSIER (April 6, 1979).

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