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The Charter of Economic Rights and Duties of States and the New International Economic Order

ANDRES ROZENTAL*

I. INTRODUCTION: CREATION OF THE CHARTER

On December 12, 1974, the Twenty-ninth Session of the United Nations General Assembly adopted the Charter of Economic Rights and Duties of States by an overwhelming vote of 120 in favor, 6 against, and 10 abstentions.¹ The Charter's passage was the culmination of a two-year effort begun in 1972 at the Third Session of the U.N. Conference on Trade and Development (UNCTAD), where President Luis Echeverría of Mexico proposed to

. . . reinforce the precarious legal foundations of international economy, . . . removing economic cooperation from the realm of good will and rooting it in the field of law by transferring consecrated principles of solidarity among men to the sphere of relations among nations.²

The international order which emerged in the postwar era has been unable to satisfy the most basic aspirations of the majority of the world's peoples. The accession to independence of a multitude of nations in Africa, Asia, and the Caribbean has created an entirely new set of problems and demands affecting the international community, especially in the field of economic relations. Established systems, based on colonial domination and a relative autonomy of major economic forces, progressively gave way to a growing realization that survival necessitated not only cooperation, but also the linking of economic factors into a complex scheme of interdependence among the nations of the world, each with its vital role to play.

This new state of affairs has not benefited those countries whose needs are the greatest. Far from being able to achieve a smooth transition from its state of dependence and economic immaturity, the developing world has been faced with a growing lack of food, clothing, education, and medicine—the minimum requirements for subsistence at a level of primitive well-being. The raw materials and other resources systematically exploited by the richer, more powerful States for their own benefit are of little or no

* Representative of Mexico to the United Kingdom; former Representative to the UNCTAD Working Group on the Charter of Economic Rights and Duties of States.

1. G.A. Res. 3281, 29 U.N. GAOR, Supp. 31, at 50, U.N. Doc. A/9631 (1974) [hereinafter cited as Charter of Economic Rights and Duties].

2. U.N. Doc. A/PV. 2315, at 67 (1972).

use to poorer countries who are without the technology necessary to extract them in their natural form, or to process and refine them into more valuable finished products.

The developed countries' prosperity has been based on a rapid technological revolution, almost constant full employment, an enormous growth in trade among themselves, and an unlimited supply of raw materials at prices determined largely by the consumer countries. It is hardly surprising, therefore, that by 1972 there had been a net decrease, compared with 1955, in the levels of cooperation between the developed and the developing countries.³ In addition, developed market economy States, with less than one-fourth of the population of developing countries, consumed 90 percent of the latter's supply of non-ferrous metals, 80 percent of their oil and natural rubber, and over 50 percent of their raw cotton, vegetable oils, and sugar.⁴ Obviously, this situation could never be conducive to the healthy growth of the international economic system; nor can it form the basis for an equitable distribution of existing resources among the developing countries with their rapidly growing populations.

It is against this background that, at the start of the 1960's, the United Nations Economic and Social Council, on the authority of chapters IX and X of the U.N. Charter, decided to establish a Conference on Trade and Development.⁵ In May 1976, UNCTAD will hold its fourth session in Nairobi. Although progress has been made on some basic issues, the forthcoming session will face essentially the same situation that has existed over the last 15 years: the increasing economic gap between the rich and the poor countries and the growing imbalance in the terms of trade between them.

During the 1970's pressures on the existing situation have increased. The serious crises which currently face mankind, and which go beyond those related to food, population, and oil, have made it imperative to institute fundamental normative changes in the existing international economic order to redress this unhealthy, skewed relationship. If both developed and developing countries are to achieve the noble goals of increased prosperity and a higher standard of living for all, they need a framework of stability and order. A climate conducive to economic and social progress is essential to developing countries' accomplishing the accelerated growth necessary to bridge the economic gap separating them from the developed world. As President Echeverria has suggested,⁶ countries also need to transform the relations among themselves in the economic sphere from the realm of

3. Statement by G. Corea, Secretary-General of UNCTAD, in *Problems of raw materials and development*, U.N. Doc. TD/B/488 at 1 (1974).

4. *Id.* at 6.

5. ECOSOC Res. 917, 34 U.N. ECOSOC, Annexes, Agenda Item No. 4, at 7 (1962).

6. Note 2 *supra*.

1976]

loosely-defined, imprecise specific rules can be applied.

II. DESIGNS, ORI-

The initial premise that the situation in international law is the most severe critics of the quo or any system based on it must therefore be discarded. At the world community, applying relatively immediate and long-term measures. Merely expressing desire for similar resolutions passed by the UN has not fulfilled expectations. World countries' two largest disputes among nations over continued unwillingness to take long-range, and major problems which affect the economic order has demonstrated, at least in the "third world," that the beginning of a new era.

A. *The Design of the Conference*

Mexico's proposed Charter of the International Economic Order, or a resolution similar to it, adopted by bodies such as the Economic and Social Second Committee of the UN, would be a practical instrument, for it would define the rights and obligations governing the international economic order. It would also constitute a basis for further negotiations regarding those aspects of the international economic order which require more consideration than that which has been given to the document of this nature.

7. Cf. White, *A New International Economic Order*.

8. For a detailed study of a proposal for a more equitable economical structure of the international economic order, see the report of UNCTAD (1973).

9. It was at the third session of the Conference on Trade and Development held in Mexico in 1973 that the proposal for a Charter of the International Economic Order was first presented.

technology necessary to extract and refine them into more valuable products.

has been based on a rapid technological development, an enormous growth in the supply of raw materials at the expense of other countries. It is hardly surprising that there has been a net decrease, compared with the developed and the developing market economy States, with less developed countries, consumed 90 percent of their metals, 80 percent of their oil and 70 percent of their raw cotton, vegetable oils, and rubber. This could never be conducive to the economic system; nor can it form the basis for the distribution of resources among the developing populations.

At the start of the 1960's, the United Nations began to take action under the authority of chapters IX and X of the Charter. In 1964, it held a Conference on Trade and Development, which held its fourth session in Nairobi. The Conference discussed the basic issues, the forthcoming changes in international trade relations that have existed over the last two decades between the rich and the poor countries. The terms of trade between them have changed, and the situation has worsened. The gap between the rich and the poor countries has increased. The gap, and which go beyond those of the rich countries, made it imperative to institute a new international economic order. If both developed and developing countries are to achieve the goals of increased prosperity and social progress, a new framework of stability and social progress is essential. The accelerated growth necessary to achieve this from the developed world. As for the developing countries, they also need to transform the economic sphere from the realm of

UNCTAD, in *Problems of raw materials* (1962).

Agenda Item No. 4, at 7 (1962).

loosely-defined, imprecise intentions to a normative order under which specific rules can be applied to given situations.

II. DESIGNS, ORIGINS, AND FORMULATION OF THE CHARTER

The initial premise that more action is necessary to improve the existing situation in international relations is acceptable to most, if not all, of even the most severe critics of the Economic Charter. Maintenance of the status quo or any system based on an unregulated, laissez-faire philosophy must therefore be discarded. A new economic order,⁷ applicable to all States in the world community, appears to be the only solution which can effect a relatively immediate and far-reaching change in the existing situation. Merely expressing desires, requests, intentions, or hopes is inadequate; similar resolutions passed earlier by the United Nations have resulted in unfulfilled expectations. Examples of such dashed hopes are the Third World countries' two largely ignored Development Decade Strategies, disputes among nations over the granting of development assistance, and the continued unwillingness of developed nations to undertake a concerted, long-range, and major program designed to redress the more serious imbalances which affect the economic order. This catalogue of earlier failures has demonstrated, at least to the Third World, that only a total "revolution" in the attitudes of all nations towards existing injustices would truly guarantee the beginning of a new era in our mutual relations.⁸

A. The Design of the Charter

Mexico's proposed Charter was not designed to be a declaration of principles or a resolution similar to the numerous existing texts passed earlier by bodies such as the Economic and Social Council, UNCTAD, or the Second Committee of the U.N. General Assembly.⁹ It was envisaged as a practical instrument, for use by all States, which would clearly set out the rights and obligations governing international economic relations. It would also constitute a basis for the further codification of specific provisions regarding those aspects of the Charter which required more detailed consideration than that which could be given in a general, relatively short document of this nature. Thus, the Charter was not perceived as an end

7. Cf. White, *A New International Economic Order?*, 16 VA. J. INT'L L. 323 (1975).

8. For a detailed study of a developing nation's attitude towards past efforts at achieving a more equitable economic structure at the international level, see R. ARTEGA, MEXICO Y LA UNCTAD (1973).

9. It was at the third session of UNCTAD in April 1972 that President Echeverría Alvarez of Mexico made this proposal. See UNCTAD Res. 45 (III), 1 *Proceedings of the United Nations Conference on Trade and Development*, Third Sess., Annex 1, at 58 (1973).

in itself but as a first, necessary, and long-overdue step towards a complete regime governing States in the economic field.

It was, and remains, the belief of the sponsors that a constitutional instrument of this nature would significantly contribute to the creation of a more balanced and structured economic order. Governments would be able to base their actions and decisions on a rational, explicit, and universal foundation, thereby eliminating the subjective and often dangerous effects of unregulated interaction. The developed countries would be assured a measure of the stability that they so desperately need, especially in the supply and price of essential raw materials. The developing world could look forward to a new and more equitable treatment in development assistance, in their purchases of manufactured goods, and in the access to markets for their products. Although not a panacea for the many ills which afflict the international community, the Charter was meant to be the first concrete expression of the world's response to the changing circumstances underlying the economic upheavals and crises of the last two decades. The Charter would reflect the

realization that the interests of the developed countries and those of the developing countries can no longer be isolated from each other, that there is a close interrelationship between the prosperity of the developed countries and the growth and development of the developing countries, and that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts.¹⁰

B. *The Process of Formulation*

Although there was disagreement as to the nature and contents of the Charter,¹¹ UNCTAD eventually adopted Resolution 45(III) in Santiago by 90 votes in favor, none against, and 19 abstentions.¹² This resolution created a Working Group composed initially of 31 States and charged it with drafting the text of a proposed Charter of Economic Rights and Duties of States. Once the Working Group completed its task, the results were to be circulated to member States for their observations and suggestions. The draft would then be considered, together with all comments received, by

10. G.A. Res. 3201 (S-VI), Sixth Special Sess., U.N. GAOR, Supp. 1, at 3, U.N. Doc. A/9559 (1974).

11. The disagreement was principally between those developed nations which eventually voted against the Resolution and the Group of 77. See generally White, *supra* note 7, at 329; Note, *Charter of Economic Rights and Duties of States: A Solution to the Development Aid Problems?*, 4 G.A. J. INT'L & COMP. L. 441, 458-61 (1974).

12. UNCTAD Res. 45 (III), *supra* note 9, at 58.

the Trade and Development Committee of the U.N. General Assembly, and multistage procedures were to be used and to afford all States an opportunity for preparation.¹³

The UNCTAD Secretariat, located in Geneva, was charged with the preparation of the Charter and its membership. At its first meeting, the Working Group elected Ambassadors from each member State to serve as members of the Group and prepared a draft outline of the Charter. The draft outline included a preamble containing the principles and objectives of the Charter, enunciations which, although not part of the Charter, had not as yet been agreed upon, and a section on the relationship between the Charter and the functions of the United Nations. The Charter was to contain the fundamental principles of the Charter among States in general, the rights and duties of States, the joint responsibilities of States, the principles of the Charter as a whole, especially regarding the protection of the environment, the ocean floor and subsoil, the preservation and enhancement of natural resources, the original outline provided for the Charter, and a fifth chapter on the Charter's application and a fifth chapter on the Charter's relationship to the Charter.

13. *Id.* at 59.

14. U.N. Doc. TD/B/AC.1

15. See generally Charter paras. 7-10.

16. Examples of such principles include non-intervention, peaceful coexistence, and international cooperation for development.

17. The revision procedure was to be determined by the U.N. General Assembly. The Charter was to be reviewed periodically, and the Charter was to be incorporated to ensure its continued relevance and effectiveness.

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the Trade and Development Board of UNCTAD before being presented to the U.N. General Assembly for final approval. This deliberately lengthy and multistage procedure was designed to ensure maximum negotiation and to afford all States the opportunity to participate in the Charter's preparation.¹³

The UNCTAD Secretary-General, Dr. Manuel Pérez Guerrero of Venezuela, was charged with establishing the Working Group and designating its membership. At its first session, held in Geneva in February 1973, the Group elected Ambassador Jorge Castañeda of Mexico as its Chairman and prepared a draft outline of the various items which the Charter would include.¹⁴ According to this framework, the Charter was to include a preamble containing the basic principles of the United Nations and several enunciations which, although generally accepted in the international context, had not as yet been included in a document of this nature.¹⁵ Chapter I was to contain the fundamental principles which should govern relations among States in general.¹⁶ The second chapter would enunciate the economic rights and duties of States and was, therefore, the true operative section of the document. A third chapter would include the notion of the joint responsibilities of all States towards the international community as a whole, especially regarding the common heritage aspects of the seabed, the ocean floor and subsoil beyond the limits of national jurisdiction, and the preservation and enhancement of the human environment. Finally, the original outline provided for a fourth chapter concerned with the Charter's application and a fifth dealing with final articles. Both sections eventually were combined, however, into a single Chapter IV. It contained articles on the close interrelationship between the developing and the developed countries, the prohibition of measures destined to coerce any State into subordinating the exercise of its sovereign rights, and a revision procedure for the Charter.¹⁷

13. *Id.* at 59.

14. U.N. Doc. TD/B/AC.12/1 (1973); *see also* U.N. Doc. TD/B/AC.12/R.4 (1973).

15. *See generally* Charter of Economic Rights and Duties of States, *supra* note 1, preamble paras. 7-10.

16. Examples of such principles included, *inter alia*, sovereign equality, non-aggression, non-intervention, peaceful coexistence, promotion of social international justice, and international cooperation for development.

17. The revision procedure was, essentially, a means of periodically monitoring the Charter by the U.N. General Assembly. Starting in 1975, and every fifth year thereafter, an item of the Charter was to be reviewed by the General Assembly and any amendments necessary were to be incorporated to ensure that the basic purposes and designs of the Charter were in fact being implemented.

III. THE LEGAL STATURE OF THE CHARTER: ASPIRATIONS

A. *The Developed Nations' View*

At the first session of the Working Group, the industrialized nations and the socialist group took a very skeptical view of the negotiations.¹⁸ Only because of the perseverance of the Group of 77 was any progress achieved. This skepticism and negative attitude eventually prompted the industrialized States to raise several preliminary issues, almost certainly designed to consume precious time, which the Working Group was obliged to consider before beginning substantive debate. The most important question involved the legal nature of the Charter. The United Kingdom, United States, and other delegations insisted that before examining the essence of the various chapters, the Group should discuss and decide whether the Charter would take the form of a recommendation or a resolution.¹⁹ This problem frequently recurred during the next year and a half, despite the Chairman's statement that the task entrusted to the Group consisted of formulating juridical rights and duties of an obligatory nature, thereby leaving for the U.N. General Assembly the eventual decision regarding the precise nature of the document in which these principles would eventually be incorporated.²⁰

B. *The Views of the Developing World*

It was always the understanding of the Developing World that the Charter not only should include those rules and principles already generally recognized by customary international law, but also should have as its primary objective the development of new rules responsive to the present and future needs of the international community. To have been satisfied with the mere codification of existing customary international law, without the creation and development of new principles, would have been tantamount to accomplishing nothing. A new international economic order required a new international legal order as a foundation. This position, espoused by Mexico and other developing countries, led to the most serious controversies within the Working Group, because many of the developed nation members were totally unwilling to accept the notion of progressive development of law in this field. Thus, while it was relatively easy to reach agreement on articles such as that which accorded to every State the sovereign right to choose its economic, political, and social systems without any outside interference, difficulties arose during the consid-

eration of ideas such as those of commodity producers, and the present in the contemporary desirability of drawing up a position from the developed

In reality, the experience of organizations in the last two years in rating the notions of codification of International Law has shown the differentiation between the International Law Committee and the International Law Commission.

In the following Article, the preparation of international law, the preparation of draft codes, has been regulated by international law, has not yet been sufficient. Similarly, the expression used for convenience and systematization there already has been a doctrine.²¹

By 1956, however, the Conference of the Rules on the law of the sea had hardly been maintained.²²

Developing countries are necessary, because the rules and binding on States are after their formulation.

21. For an analysis of these documents and the Declaration on the International Economic Order, see *Order Economico Internacional*, 15 FORO INTERNACIONAL 521 (1975).

22. U.N. OFFICE OF PUBLIC INFORMATION, *International Economic Order* 57 (1967). Disagreement over the I.L.C.'s Statutes were raised on the question of duality:

The Commission's Statutes for the development of international law should be no codification with the exception of the I.L.C. [1951] 1 Y.B. INT'L L. COMM. 23. [1956] 2 Y.B. INT'L L.

18. See Green, *Order Economico Internacional*, 15 FORO INTERNACIONAL 521 (1975).

19. U.N. Doc. TD/B/AC.12/1, at 6, para. 19 (1973).

20. *Id.* at 4, para. 13.

TER: ASPIRATIONS

industrialized nations and of the negotiations.¹⁸ Only was any progress achieved. It prompted the industrial-almost certainly designed Group was obliged to con- most important question United Kingdom, United before examining the essence ss and decide whether the nation or a resolution.¹⁹ This ear and a half, despite the to the Group consisted of obligatory nature, thereby final decision regarding the principles would eventually

developing World that the es and principles already ll law, but also should have ew rules responsive to the community. To have been g customary international new principles, would have new international economic as a foundation. This pos- ; countries, led to the most p, because many of the de- ing to accept the notion of us, while it was relatively at which accorded to every c, political, and social sys- es arose during the consid-

INTERNACIONAL 521 (1975).

eration of ideas such as the control of foreign investment, associations of commodity producers, and price indexation. All of these concepts are present in the contemporary economic system, but the mere mention of the desirability of drawing up norms to govern them evoked protest and opposition from the developed countries in the Working Group.²¹

In reality, the experience of the United Nations and of regional political organizations in the last quarter century has shown the difficulty of separating the notions of codification and progressive development of international law. In 1947, when the U.N. Committee on the Progressive Development of International Law and its Codification met in New York, a clear differentiation between these terms was incorporated into article 15 of the International Law Commission's Statutes:

In the following Articles the expression "progressive development of international law" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression "codification of international law" is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.²²

By 1956, however, the Commission had concluded that "in preparing its rules on the law of the sea, [it] has become convinced that, . . . the distinction established in the statute between these two activities can hardly be maintained."²³

Developing countries also argue that innovation and new rules of law are necessary, because the traditional rules of economic law are no longer valid and binding on States who reached political and legal independence long after their formulation and on the basis of situations totally different from

21. For an analysis of these items as presented in the Charter, the U.N. Program of Action, and the Declaration on the Establishment of a New Economic Order, see White, *A New International Economic Order*, 24 INT'L & COMP. L.Q. 542 (1975).

22. U.N. OFFICE OF PUBLIC INFORMATION, THE WORK OF THE INTERNATIONAL LAW COMMISSION 57 (1967). Disagreement over the terms existed in 1947 and continued thereafter. In 1951 when the I.L.C.'s Statutes were reviewed, there still existed a measure of disagreement on the question of duality:

The Commission's Statutes established a very sharp distinction between the *development* of international law and its *codification*. But in practice, there could be no codification without development . . .

[1951] 1 Y.B. INT'L L. COMM'N 123, U.N. Doc. A/CN4/SER.A/1951 (emphasis added).

23. [1956] 2 Y.B. INT'L L. COMM'N 255, U.N. Doc. A/CN4/SER.A/1956/Add 1.

the one existing over the last three decades. No generally accepted resolution of this difficult issue has emerged despite widespread debate among jurists.²⁴ The developing world has argued that the rules and procedures of classical international law do not correspond to contemporary needs and conditions, and that there is an obvious need for the formulation of new normative provisions to correspond to changed circumstances.²⁵ In the case of international economic relations, the Third World has no doubt that the situation requires a change in the existing order.²⁶ It has chosen to attempt to achieve such desired changes through multilateral negotiations rather than through unilateral action.

Mexico, joined by all of her colleagues in the Group of 77, believed in the necessity of a Charter of Economic Rights and Duties of States which would become an international treaty, eventually creating undisputed, legally binding obligations on those States which adhered to it. In view of the strong opposition manifested by the developed countries, however, and the dubious value of a treaty to which only one group²⁷ is willing to become a party, the developing nations acceded to the proposal that the Charter should be a declaration. Their hope was that a solemn proclamation by the General Assembly, although not legally binding, would incorporate legal norms which would gradually acquire a certain force in the regulation of economic interaction.²⁸ The Charter would differ from the

24. Compare Shihata, *Arab Oil Policies and the New International Economic Order*, 16 VA. J. INT'L L. 261 (1976) with Bowett, *International Law and Economic Coercion*, 16 id. 245 (1976).

25. See Castañeda *The Underdeveloped Nations and the Development of International Law*, 15 INT'L ORG. 38 (1961). One of the most striking examples of the changed complexion of the international order is the existence today of nearly three times as many independent States as existed at the termination of World War II.

26. Although Gillian White circumscribes analysis of the word "order" to the interpretation of that term given by Professor Schwarzenberger, it would be interesting to examine other definitions, such as the one advanced by Professor Fatouros:

(T)he function of a legal order is to protect the existing allocation of resources (or "values") and . . . to provide methods and procedure for orderly (i.e. non-violent) changes in this allocation. Legal change . . . signifies then either an actual or a potential alteration in the prevailing pattern of distribution of resources.

Fatouros, *Participation of the "New" States in the International Legal Order of the Future*, in 1 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 317, 351 (R. Falk & C. Black eds. 1969). See also White, *supra* note 7, at 325-26.

27. While the developing countries are numerically superior they would not be able to force compliance with the terms of a treaty in opposition to the perceived interests of the major powers. Thus, rather than attaining a pyrrhic victory, the acceptance of the role of the Charter as a declaration was preferable. See Note, *supra* note 11, at 460 & n.156.

28. Space does not permit a complete study of the various opinions which exist on the legal effect of General Assembly decisions. For an excellent study of this question, see J. CASTAÑEDA, *LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS* (A. Amoia transl. 1969).

Programmes of Action²⁹ a Session of the General Assembly to expressing aspirations the game by embodying rights among all the participants

The developing countries the richer nations would agree establishment of new rules. States would agree to the in relation to the development on a *quid pro quo*, however idea that the developed States, should show special developement. This belief to favor the Third World advantage, however: the would be transformed from active universality.

III. THE REALITIES

Good intentions often international decision-makers and mutually acceptable one. Initially, the positions generally favored while the developing States that public opinion could and subsequent embargo Kippur war in the Middle East. The collective effect of concerted efforts by the developing States. The oil-producing Exporting Countries strategically vital common international community goals through traditional attitude of the industrial Geneva gradually began to accommodate.

29. Programme of Action on G.A. Res. 3202, 6th Special Session.

30. Declaration on the Establishment of a New International Economic Order, 3201, 6th Special Sess., U.N.

generally accepted resolution widespread debate among the rules and procedures of contemporary needs and or the formulation of new circumstances.²⁵ In the case world has no doubt that the²⁶ It has chosen to attempt lateral negotiations rather

e Group of 77, believed in and Duties of States which ally creating undisputed, h adhered to it. In view of loped countries, however, y one group²⁷ is willing to d to the proposal that the s that a solemn proclamation binding, would incur a certain force in the rter would differ from the

International Economic Order, 16 VA. and Economic Coercion, 16 id. 245

he Development of International principles of the changed complexion three times as many independent

e word "order" to the interpretation could be interesting to examine other os:

ting allocation of resources procedure for orderly (i.e. non- . . . signifies then either an pattern of distribution of re-

nternational Legal Order of the Future, 51 (R. Falk & C. Black eds. 1969).

or they would not be able to force e perceived interests of the major he acceptance of the role of the ote 11, at 460 & n.156.

s opinions which exist on the legal dy of this question, see J. CASTA- Amoia transl. 1969.

Programmes of Action²⁹ and Declaration³⁰ adopted by the Sixth Special Session of the General Assembly, in that it would not limit itself merely to expressing aspirations or recommendations; it would alter the rules of the game by embodying rights and duties designed to regulate the relations among all the participants.

The developing countries thus viewed the Charter as a statement that the richer nations would give them more equitable treatment through the establishment of new rules and principles. In exchange, the developing States would agree to the formulation of rights and duties binding them in relation to the developed countries. The exchange would not be based on a *quid pro quo*, however. There can be little argument to counter the idea that the developed countries, in all their dealings with developing States, should show special consideration for the latter's stage of economic development. This belief set the stage for a Charter specifically designed to favor the Third World. The industrialized nations would also gain an advantage, however: the framework of international economic cooperation would be transformed from one of heterogeneous practices to one of normative universality.

III. THE REALITIES OF THE NEGOTIATING PROCESS: A NARRATIVE

Good intentions often become lost during the complex procedure of international decision-making. Because of the need to find common denominators and mutually acceptable texts, the negotiating process was an arduous one. Initially, the developed countries were unwilling to abandon positions generally favoring a status quo largely beneficial to them. Meanwhile the developing States believed that justice favored their position and that public opinion could be mobilized to their advantage. The oil crisis and subsequent embargo by Arab producers during and after the Yom Kippur war in the Middle East alerted the world to the potentially disruptive effect of concerted economic action by a relatively small number of developing States. The united front presented by the Organization of Petroleum Exporting Countries (OPEC) while raising and fixing prices for a strategically vital commodity was clear proof of the imminent threat to the international community of developing countries unable to achieve their goals through traditional means. One result of the embargo was that the attitude of the industrialized nations at the Group of 40 negotiations in Geneva gradually began to shift from hostility and indifference to cooperation and accommodation. If the change had occurred earlier in the negotia-

29. Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3202, 6th Special Sess., U.N. GAOR, Supp. 1, at ___, U.N. Doc. A/9559 (1974).

30. Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, 6th Special Sess., U.N. GAOR, Supp. 1, at ___, U.N. Doc. A/9559 (1974).

tions, the possibility of a universally acceptable Charter might have increased significantly.³¹

The second and third sessions of the Working Group took place in Geneva in July 1973 and February 1974. At the second session, the Chairman prepared alternative draft texts for each article, in light of the prevailing trends expressed in the debates. In an effort to reduce the large number of alternatives formally before the Group and to focus discussion on truly divergent positions, proposals which sought essentially similar purposes were combined. Ambassador Castañeda then presented an informal working document, which became the basic text on which the Group worked.³² Although no member State formally withdrew proposals previously made to the Group, the Chairman's text resulted in the substantial reduction of new proposals.

Because the Working Group was unable to conclude its task in the time originally allocated, it requested the Trade and Development Board of UNCTAD to recommend to the Twenty-eighth Session of the U.N. General Assembly that the mandate of the Group of 40 be extended for an additional year.³³ In acceding to this request, the General Assembly asked the Working Group, as a first step in the codification and development of the subject, to conclude the preparation of a final draft for consideration and approval by the Assembly at its Twenty-ninth Session. The language of this resolution permitted the possibility of further development of specific aspects of the Charter's provisions.³⁴

A. Divergent Views and Article 2

Although some progress was made at the third session of the Group of 40, especially within the Subgroup dealing with the Preamble, there was little or no movement with respect to the most important aspects of Chapter II. The delegations present were almost always divided into three basic positions representing (1) the Group of 77 and China, (2) the socialist countries, and (3) the group of developed States comprising the European

Economic Community, Can prevalent and controversial ally became article 2 of the tion of the activities of trar the nationalization of foreig

The fourth and final form Mexico City in June 1974. number of articles, and info of the Chairman in order to negotiations, all sides exper at acceptable draft languag ined, and further refined wi The United States, nomin opposition to the articles de

By the end of the Mexico unable to reach agreement the U.N. General Assembl to leave the door open for f entrusted with the task of that as complete a text as During these ten days of special attention to article

Despite the lack of succ 2, the Chairman of the W consultations with membe of the Group's final report General Assembly. Two s with article 2 and with al it seemed again that agre limit article 2 to more ge tiating investment agreeu companies seemed insurr

31. This is not merely speculation but is based on the rapid rate of progress observed at the fourth and last meeting of the Group in Mexico City in June 1974. See generally Brower & Tepe, *The Charter of Economic Rights and Duties of States: A Reflection on Rejection of International Law*, 9 INT'L LAW. 295, 296-300 (1975).

32. U.N. Doc. TD/B/AC.12/2, at 46-63 (1973).

33. G.A. Res. 3082, 28 U.N. GAOR, Supp. 30, at 40, U.N. Doc. A/9030 (1973). It was suggested that two further three-week sessions be scheduled.

34. *Id.* For example, article 2(6), dealing with transnational corporations, and article 13, which discusses the transfer of technology, were among those provisions of the Charter not finalized. It is significant to note that both of these subjects are at present being studied by groups established by the United Nations and UNCTAD. See, *Charter of International Economic Rights and Duties*, *supra* note 1, arts. 2(6), 13.

35. See generally White, *supra* note 7.

36. The United States insisted which were clearly unacceptable an expropriating State's duty "prompt and adequate" and TD/B/AC.12/4 (1974).

37. Progress was made, how ment for Chapter III, and on e ment was also found for paragr tion of the Charter. See Browe

38. White, *supra* note 7, at

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Economic Community, Canada, Japan, and the United States. The most prevalent and controversial issue concerned the contents of what eventually became article 2 of the Charter: control of foreign investment, regulation of the activities of transnational corporations, and compensation for the nationalization of foreign property.³³

The fourth and final formal session of the Working Group took place in Mexico City in June 1974. Further progress was made on a substantial number of articles, and informal discussions were held under the auspices of the Chairman in order to find common ground for article 2. During the negotiations, all sides expended considerable effort in an attempt to arrive at acceptable draft language. Several proposals were put forward, examined, and further refined without receiving the approval of all delegations. The United States, nominally supported by its developed allies, led the opposition to the articles dealing with nationalization and compensation.³⁴

By the end of the Mexico City session, the Working Group had still been unable to reach agreement on a complete draft Charter for presentation to the U.N. General Assembly in the fall. In order to reach a consensus and to leave the door open for further negotiations, however, the Chairman was entrusted with the task of convening informal consultations in Geneva, so that as complete a text as possible could be sent to the General Assembly. During these ten days of informal meetings, the participants accorded special attention to article 2 but reached no solutions.³⁵

Despite the lack of success in resolving the difficulties posed by article 2, the Chairman of the Working Group held a further series of informal consultations with member States in New York just prior to consideration of the Group's final report by the Second Committee of the Twenty-ninth General Assembly. Two small working parties were established to deal with article 2 and with all outstanding items relating to trade. Although it seemed again that agreement was within reach, a last minute effort to limit article 2 to more general principles failed. The problem of differentiating investment agreements between States and those involving private companies seemed insurmountable.³⁶

35. See generally White, *supra* note 21.

36. The United States insisted, throughout the negotiations, on the retention of concepts which were clearly unacceptable to the Group of 77. One example is the attempt to qualify an expropriating State's duty to compensate for nationalized property by terms such as "prompt and adequate" and "in accordance with international law." See U.N. Doc. TD/B/AC.12/4 (1974).

37. Progress was made, however, in accepting a compromise text on the human environment for Chapter III, and on article 31 relating to the principle of interdependence. Agreement was also found for paragraphs one and two of article 33, which deals with the interpretation of the Charter. See Brower & Tepe, *supra* note 31, at 317-18.

38. White, *supra* note 7, at 345.

B. *The Destiny of the Draft*

It is obvious from the foregoing account that no effort was spared in the attempt to reach agreement on pending items. During the two years that the Working Group met, countless formulae were studied, analyzed, re-drafted, and refined. All sides manifested good faith throughout the discussions. However, the task was a formidable one; faced with a two-year time limit, the Group was attempting to codify a subject which had eluded regulation until the present.

1. *Alternatives*

When the members of the Working Group realized that no consensus could be reached on all outstanding items, two procedural alternatives emerged. The industrialized nations favored a second postponement by the General Assembly, allowing another year for the Working Group to finish its task. The Group of 77, and especially Mexico, felt that this course was inappropriate for two main reasons. Based on the experience of the preceding years, it did not seem likely that further negotiations among the same participants and under similar rules of procedure would result in additional texts on which agreement could be reached. Rather, the international economic situation in 1975 seemed even less favorable to achieving agreement.³⁹ Furthermore, a prolongation of the negotiating process would only postpone what was then perceived as the inevitable result.

2. *Adoption of the Charter*

Accordingly, the Group of 77 insisted on sending the Charter to the General Assembly for its immediate consideration. It drafted a resolution⁴⁰ containing (1) those sections on which agreement had been reached in the Working Group, and (2) proposals of the Group of 77 for those articles still unresolved. Before the draft was formally submitted, however, it was circulated to all delegations attending the session, and the industrialized nations were again contacted. Although some of their objections to parts of articles 2, 12, and 32 were accepted by the Group of 77, the majority

39. Other factors contributing to the Group of 77's opposition to another year of negotiations were increasing inflation in the rich countries, renewed confrontations between producers and consumers of raw materials, and a greater polarization of views between developed and developing countries.

40. U.N. Doc. A/C.2/L.1386, presented by Mexico on behalf of the 99 delegations which co-sponsored it, at the 1639th meeting of the Second Committee.

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41. In addition, a propo to the tabling of the draft of the Group of 77, Amba

42. See text at note 1,

43. U.N. Doc. TD/B/A Affairs of Mexico, Dec. 1:

44. See generally Whit

45. U.N. Doc. A/PV/22

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became formal draft amendments to the resolution.⁴¹ After all the amendments were systematically rejected by large majorities, the draft Charter was adopted by 115 votes in favor, 6 against, and 10 abstentions. Two weeks later it passed the General Assembly by 120 in favor, 6 against, and 10 abstentions.⁴²

IV. CONCLUSION

Throughout the negotiating process, the developing countries were never willing to accept principles which were contrary to their interests, merely to reach an easy consensus. As one representative stated, "We did not want a rhetorical document whose meager content would betray the real needs of the greater part of the peoples of the world."⁴³ Such provisions would not have had the degree of precision necessary if they were to serve as a useful and significant guide to the conduct of States.

As ultimately approved by the General Assembly, the Charter represents the widest possible measure of agreement on the issues which it contains. More than two-thirds of its provisions were acceptable to all States. Even those sections on which there was disagreement contain, in most cases, elements of consensus achieved through negotiation. States which voted against the Charter as a whole accepted many individual articles.⁴⁴

Since the Charter was passed it has been cited by some as a "revolutionary" document which will transform the entire structure of global interrelationships. Others have maligned it for contributing to the era of confrontation between nations. Ambassador Scali of the United States, speaking at the Sixth Special Session of the General Assembly, cited the Economic Charter as a further example of the "ramming through" tactics of the Group of 77 which, in his opinion, were leading to an eventual breakdown of the United Nations as a serious forum.⁴⁵ The Charter, however, is none of the above; it is an honest effort to take the first step in the process which, hopefully, will lead to a more balanced international system. Far from being a panacea designed to solve all of our problems, the Charter has value insofar as it attracts support from all groups of States. As the last few months have demonstrated, there has been a remarkably progressive development in the thinking of the rich, industrialized nations vis-à-vis

41. In addition, a proposal by the socialist group regarding article 6 was also accepted prior to the tabling of the draft which was introduced to the Second Committee by the Chairman of the Group of 77, Ambassador Garcia Robles of Mexico, on November 27, 1974.

42. See text at note 1, *supra*. See also N.Y. Times, Dec. 13, 1974, at 1, col. 1.

43. U.N. Doc. TD/B/AC.12/4 (1974) (address by Emilio O. Rabasa, Minister of Foreign Affairs of Mexico, Dec. 12, 1974).

44. See generally White, *supra* note 7, at 334.

45. U.N. Doc. A/PV/2229 (1974), reprinted in 70 DEP'T STATE BULL. 569 (1974).

many of the subjects covered in the Charter. Concepts which were anathema to delegations only a year ago are now beginning to receive closer attention. Producer associations, price indexation, trade advantages, and control of multinational enterprises are current topics of concern and discussion. The Lomé Convention between the European Economic Community and the developing States of the African, Caribbean, and Pacific regions⁴⁶ was signed in February 1975 and represents a major step in the establishment of a new model for compatible relations between developed and developing states. The results of the Seventh Special Session of the U.N. General Assembly, held in September 1975, have been highly praised by all participants and viewed as the beginning of a new era of cooperation between States. Although the United States still refuses to accept the necessity of a new international economic order, the North-South conference between consumers and producers of raw materials will afford the possibility of stabilizing the prices, supply, and demand of vital resources. For the first time, participants will seriously discuss means of implementing the notion of price indexation for oil and other commodities as a means of safeguarding economic development. Finally, the Inter-Parliamentary Union, meeting in London in September 1975, unanimously adopted a resolution⁴⁷ which recognizes the Charter of Economic Rights and Duties of States. The resolution notes that many of its proposals command universal agreement and are designed to contribute to a new and equitable structure of world economic relations. It further recommends that these principles be given effect by all countries as soon as possible, preferably through their legislative organs.

Whether the Economic Charter has contributed decisively to the recognition by the industrialized nations of the desirability of a new international economic order will remain a question for historians to decide. Nevertheless, there can be little doubt that traditional attitudes are changing and that relationships are undergoing an interesting metamorphosis. The developed countries now appear more willing than they were a year ago to contribute their efforts to the evolution of a new order.⁴⁸ This change in attitude is due largely to the Third World's demonstrated capability to substitute action for rhetoric. But the future economic order should not and cannot be based on distrust, threats, and recriminations. The positive spirit evidenced in the past year by both the developed and the developing countries must be carefully nurtured so that it results in an economic order born of mutual understanding and respect.

46. Lomé Convention, signed, Feb. 28, 1975, 2 CCH COMM. Mkt. REP. 9715 (1975).

47. 62d Interparliamentary Conference, Doc. C/ES/75 (1975).

48. Haight, *The New International Economic Order and the Charter of Economic Rights and Duties*, 9 INT'L. LAW. 591, 604 (1975).

A New Inter-

In December 1974 the "Charter of Economic Rights" was adopted by a majority. In a somewhat hasty manner, the International Chamber of Commerce accepted the Charter as "the cutting edge of the new international existence—of foreign-owned investment in many countries." The Charter is not legally binding on any country. It is rather a statement of what the U.N. [of] what it hopes to achieve in the field of international investment and trade. Tepe, Jr., writing in the *Journal of World Trade*, agrees that the language of the Charter is not legally binding. While recognizing the limitations of the Charter, Tepe nevertheless considers it a significant step forward. The statements made in the Charter are not binding on any country, but some States might adopt them. The I.C.C. Council voiced support for the Charter, and already urged "governments to ratify the Charter." A majority of the member countries of the I.C.C. Council voted in favor of the Charter, and warned that those who did not do so would be considered as failing to live up to their responsibilities under the Charter.

• Professor of International Law at the University of Göttingen, Germany. G.A. Res. 3281, 29 U.N. GAOR, 2d Sess., 1974, art. 1, para. 1, cited as Charter of Economic Rights, 1975, 6, with 10 abstentions.

2. U.S. COUNCIL OF THE INTER-PRIVATE ENTERPRISE (1975).

3. *Id.* at 1.

4. Brower & Tepe, *The Charter of Economic Rights and the Rejection of International Law?* 1975, 10 J. Bus. L. 101, 111, evidence of the non-binding nature of the Charter. The Charter is not legally binding on any country, but some States might adopt it. The I.C.C. Council voiced support for the Charter, and already urged "governments to ratify the Charter." A majority of the member countries of the I.C.C. Council voted in favor of the Charter, and warned that those who did not do so would be considered as failing to live up to their responsibilities under the Charter. Second, Göttingen, Germany. G.A. Res. 3281, 29 U.N. GAOR, 2d Sess., 1974, art. 1, para. 1, cited as Charter of Economic Rights, 1975, 6, with 10 abstentions.

5. Brower & Tepe, *supra* note 4.