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A MULTILATERAL AGREEMENT ON OIL

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INTRODUCTION

This article is a feasibility study of holding a multilateral convention on oil. It has two parts. Part I focuses on the many factors that make it imperative to consummate an oil agreement. Part II contains suggestions which might be of help in formulating such an agreement.

PART I

I. THE FUTURE OF OIL PRICES

A. A Brief Overview of the World Energy Situation[1]

In only a decade, the price of crude oil has increased by more than 1,500%.[2] This increase suggests that the worst in oil price-hikes is over. Yet due to many factors discussed below, it can be assumed that this is but a hint of what is to follow.

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I am extremely grateful to Mr. John Norton Moore, Professor of Law at the University of Virginia for arousing my interest in the world energy situation and for suggesting that I write this article. Prof. Moore also provided me with much food for thought in the many discussions we had concerning the various issues involved in this paper. The views expressed in this article are, however, my own.

1. For a detailed look into the future of energy see WORKSHOP ON ALTERNATIVE ENERGY STRATEGIES, ENERGY SUPPLY DEMAND INTEGRATIONS TO THE YEAR 2000: GLOBAL AND NATIONAL STUDIES (1977); WORKSHOP ON ALTERNATIVE ENERGY STRATEGIES, ENERGY SUPPLY TO THE YEAR 2000: GLOBAL AND NATIONAL STUDIES (1977); WORKSHOP ON ALTERNATIVE ENERGY STRATEGIES, ENERGY DEMAND STUDIES: MAJOR CONSUMING COUNTRIES (1976).

2. In 1970 oil cost about $1.80 per barrel. *OPEC's Painful Squeeze*, TIME, July 9, 1979, at 12. By 1980 the average price of crude oil had increased to $31.50 per barrel. *See A Year's Oil Bill Goes Up $15 Billion*, NEWSWEEK, June 2, 1980, at 68.

In order to better appreciate why oil prices will continue rising substantially in the future, acknowledgement that the petroleum age is coming to an end is important.[3] Estimates of ultimately recoverable crude oil generally range between two and three trillion barrels.[4] Based upon the present rate of oil consumption it is estimated that the world's oil resources will be exhausted within the first half of the next century,[5] and the prospects for alternative sources of liquid fuel are not very encouraging. Although geologists believe that the world's "tar sands" can yield up to two trillion barrels of liquid fuel, present technology is capable of exploiting no more than 5% to 10% of this amount.[6] Similarly, it is estimated that "oil shale" might yield up to three billion barrels,[7] but present technology is only capable of exploiting about 210 million barrels.[8] Coal seems to be the most promising alternative to oil,[9] but strong environment related objections stand in the way of its use.[10] The production and marketing of oil substitutes is a time consuming process.[11] In 1974, experts believed that alternatives to petroleum could be brought into the market within four to six years.[12] Present day estimates show that development of significant quantities of liquid fuel may take as long as twenty years.[13] Even if alternatives to petroleum reach the market by the late 1980's, they will only help offset the decreasing production of the present sources and

3. According to Phillips Petroleum Co., petroleum in free world economies will be in permanent short supply by the 1990's. The 1980's are viewed as a transition period in which intermittent shortages will occur. *World oil crunch seen in the 1980's*, OIL & GAS J., Jan. 24, 1977, at 38.

4. Individual estimates have varied from as low as 1.6 trillion barrels to as high as 6.3 trillion barrels. *See*, Nulty, *When We'll Start Running Out of Oil*, FORTUNE, Oct. 1977, at 246; Madian, *Oil is Still Too Cheap*, 35 FOREIGN POL'Y 170, 175-76 (1979) [hereinafter cited as Madian].

5. Madian, *supra* note 4, at 179.

6. *When We'll Start Running Out of Oil*, *supra* note 4, at 250.

7. The conversion of oil shale involves crushing and heating the shale to 480°C. *Oil Shale: A Huge Resource of Low-Grade Fuel*, SCIENCE, June 21, 1974, at 1271.

8. *When We'll Start Running Out of Oil*, *supra* note 4, at 250.

9. Worldwide, it is estimated that 12 trillion barrels of oil are recoverable from coal. *Id.*

10. For example, environmental groups claimed credit for thwarting the Kaiparowits project designed to build the largest coal-fired electric plant in Utah. Hill, *Huge Plant's Demise Signals Trouble Ahead for Energy Expansion*, Wall St. J., Sept. 7, 1976, at 1, col. 6.

11. With regard to dealing with the energy crisis and the development of alternative sources of energy, two schools of thought exist within the U.S.—(i) soft technology proponents and (ii) the hard technology proponents. The soft technology advocates believe that the U.S. energy goals will be better achieved by decreasing energy demand through conservation and by the increased use of small scale, decentralized energy sources that are infinitely renewable—sun, wind, vegetation, etc. Hard technology advocates believe that there will be a continuing increase in energy demand that can be met only by coal and nuclear power. Hammond, *The Hard and Soft Technology of Energy*, N.Y. Times, Aug. 28, 1977, § E, at 5, col. 3.

12. Madian, *supra* note 4, at 175.

13. *Id.*

will not necessarily have any adverse effect on the demand for petroleum itself.[14]

Returning to the issue of crude oil, although estimates of two to three trillion barrels of oil have been made, the actually proved oil reserves[15] is about 652 billion barrels.[16] The change in relationship between "world oil production and ratios of oil reserves to production" demonstrates that new oil has become increasingly hard to find.[17] Meanwhile, the demand for oil continues to grow.[18]

B. The Capacity of OPEC to Manipulate Prices

The Organization of Petroleum Exporting Countries (OPEC)[19] accounts for 82% of the free world's oil reserves.[20] At current levels of

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14. Taking into account the development of alternate sources of energy, the report of the Workshop on Alternate Energy Strategies concludes: "Let there be no mistaking our results: in spite of reduced overall demand growth, in spite of strong conservation measures, in spite of higher oil prices and (we feel) vigorous actions to bring on additional supplies, demands for oil continues to grow. The sum of national expectations are very large in the year 2000—larger as we have seen, than our estimates of the maximum potential oil exports. The result is prospective oil shortages." WORKSHOP ON ALTERNATIVE ENERGY STRATEGIES, ENERGY: GLOBAL PROSPECTS 1985-2000, at 239-41 (1977) [hereinafter cited as WAES Report].

15. Proved oil reserves are defined as "oil that is recoverable from known reserves with today's technology and prices. Therefore, in addition to primary recovery, proved reserves include potential production based on using secondary and tertiary techniques—where such techniques have been evaluated and are expected to be used in the fields." *Id.* at 114. Proved oil reserves should be differentiated from ultimately recoverable reserves which are an "estimate of how much oil will eventually be produced. They usually include new discoveries plus an allowance for enhanced recovery as secondary recovery becomes more widely used and as tertiary recovery techniques are developed." *Id.* at 114-15.

16. "Although estimates vary, reserves appear to have peaked at around 675 billion barrels in the mid 1970's and fell to 652 billion last January." *The Oil Crisis is Real This Time*, BUS. WEEK, July 30, 1979, at 45.

17. Between 1960 and 1970, the world consumption of oil averaged around 12 billion barrels annually. During this period, 36 billion barrels of oil were discovered every year, thus adding 24 billion barrels annually to the world's known reserves. Compared to this, the world is presently consuming around 20 billion barrels a year while the rate of discovery of new oil seems to be averaging 14 billion barrels annually. Thus, the world reserve is decreasing by six billion barrels every year. *Id.* at 46. For a discussion on American crude oil reserves, *see*, J. BLAIR, THE CONTROL OF OIL 4-15 (1976).

18. In the first 8 months of 1979, oil imports by Japan, Italy, West Germany and France increased by between 5% and 13.2%. *More Woes on the Oil Front*, TIME, Oct. 29, 1979, at 70. The energy needs of the LDC's are also growing. *See Can OPEC Control Itself?*, NEWSWEEK, June 9, 1980, at 73.

19. OPEC was founded in 1960 by Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. Presently, it is composed of Algeria, Ecuador, Gabon, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates and Venezuela. Ecuador, Gabon, Indonesia, Iran, Nigeria and Venezuela are the only non-Arab members. For a general discussion of the formation of OPEC, see M. AL-OTEIBA, OPEC AND THE PETROLEUM INDUSTRY (1975).

20. Out of the non-communist world oil reserves, the share of OPEC is 82%, while that of the industrialized and non-OPEC developing countries is 11% and 7% respectively. Mallakh, *OPEC: Issues of Supply and Demand*, CURRENT HIST., Mar. 1978, at 126.

production these reserves are expected to last about thirty years.[21] The future trend of oil prices depends on whether OPEC will increase its production to meet increased future demand or whether it will attempt to extend the life of its oil reserves.[22] The emerging OPEC policy indicates that it has chosen the latter course.[23] (Saudi Arabia, the most important oil producing country, set a ceiling on its production[24]). The combination of fixed supply and increasing demand indicates still higher prices in the future.[25] The classical theory of supply and demand, that higher prices of a commodity tends to increase its supply

21. Madian, *supra* note 4, at 173.

22. Conservation of oil is of utmost importance to the Arab oil producers. Their economies are almost totally dependent on oil. To them, "the extraction of oil represents not merely the generation of disposable income but a basic change in form of the major national capital asset from crude oil, whose value is likely to appreciate when kept in the subsoil, to cash which is subject to continuous depreciation and devaluation." Shihata, *Arab Oil Policies and the New International Economic Order*, 16 VA. J. INT'L L. 261, 265 (1976) [hereinafter cited as Shihata].

23. As far back as 1975, the OPEC members linked the issue of oil supplies to "the fundamental requirement" of conserving oil resources. *See* the Solemn Declaration of Sovereigns and Heads of State of OPEC Member Countries, para. 6, *reprinted in* 18 MIDDLE EAST ECON. SURVEY (Nov. 20, 1975). Some members have also announced possible limits to oil production in the past, as shown in the following table:

POSSIBLE PRODUCTION LIMITS ANNOUNCED BY GOVERNMENTS

Country	Estimated Usable Capacity at End 1975 (in Million Barrels per day)	Government-Announced Possible Production Limits (in Million barrels per day)
Venezuela	2.5	2.2
Ecuador	0.22	0.2
Libya	2.5	2.0
Qatar	0.7	0.5
United Arab Emirates	2.3	1.8
Kuwait	3.0	2.0
Saudi Arabia	10.8	8.5
Total	22.0	17.2

Figures obtained from WAES Report, *supra* note 14, at 135.

In late 1979, OPEC's output was about 31.5 million barrels a day. By the middle of 1980, OPEC had brought production down to around 28 million barrels a day. *Can OPEC Control Itself?*, NEWSWEEK, June 9, 1980, at 70, 73.

24. Saudi Arabia has announced that in the next few years, it would raise its total oil production capacity to 12 million barrels a day and then keep it there permanently. *Oil: Why the Saudi's Offer No Salvation*, BUS. WEEK, June 18, 1979, at 110.

25. The question arises whether there are any theoretical legal constraints on the oil producers power to increase prices. Mr. Shihata maintains that under the present regime of international law, there are no constraints. Shihata, *supra* note 22, at 268. He relies on the principle of State sovereignity over its natural resources, and cites the UNCTAD resolution in this context. *Id.* For the text of the resolution *see* UNCTAD, Resolution on Permanent Sovereignity over Natural Resources, Oct. 19, 1972, U.N. GAOR, Supp. (No. 1), 1 U.N. Doc. TD/B/421 (1972). Mr. Shihata's argument has been countered as follows: "There can be no doubt that the manipulation of natural resources is regulated by international law and that the control or use of natural resources is not always a matter of domestic concern. A state cannot do whatever it wishes with natural resources that happen to be under its control. Clearly, the free use or control of resources by one state or group of states can result in an impermissible interference with the free use of control of resources of others as well as an

ultimately causing a price decrease, is too simplistic to be applied to the oil market. The economies of most of the OPEC countries are incapable of absorbing the profits ensuing from price increases;[26] therefore, they have no incentive to further increase profits by raising production.[27] Rather, the impetus for OPEC to reduce production in order to cope with profits is far greater.[28] Even if some individual members of OPEC were to increase their production because of higher prices, it cannot be assumed that prices would automatically fall.[29] OPEC members such as Saudi Arabia and Kuwait can easily counter such moves without undergoing any financial hardship by cutting back production,[30] thereby keeping supplies tight.[31] Indeed this is one of the inherent reasons for the power of OPEC.[32] Therefore, increasing shortages and further price hikes can be expected in the future. The non-OPEC oil supply[33] will not affect this progression since estimates indicate that the production of non-OPEC oil cannot increase by more than 3% over the next decade.[34]

C. The Expected Soviet Entry into the OPEC Oil Market

Even if the non-communist world manages to keep its oil imports at the current level, the demand for OPEC oil will continue to increase because of the expected entry of the communist countries into the Arab oil market. Two studies conducted by the Central Intelligence Agency

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impermissible deprivation of basic human rights." Paust & Blaustein, *The Arab Oil Weapon: A Reply and Reaffirmation of Illegality*, 15 COLUM. J. TRANSNAT'L L. 57, 67-68 (1976).

26. One of the major objectives sought by Arab financial strategists is to enlarge "their own economies absorption capacity in order to facilitate investments capable of contributing to development." Shihata, *supra* note 22, at 279.

27. *The Changes in OPEC that are Driving Oil Prices Wild*, BUS. WEEK, Oct. 29, 1979, at 80.

28. This phenomena of reduced production in response to higher prices has been classified by economists as a "backward bending supply curve." *Id.*

29. The following analysis will apply equally in the case of a dramatic increase in the supply of non-OPEC oil.

30. An idea of the room for reduction of production in these countries can be had from the fact that in 1975 it was thought that of the Saudi daily oil production, which was approximately 7-8 million barrels per day, no more than 3-4 million barrels per day would be necessary to meet Saudi Arabia's financial needs. *See* 18 MIDDLE EAST ECON. SURVEY 2, 3 (Nov. 23, 1975).

31. For a discussion of whether coordinated action aimed at controlling price through production cutbacks would run afoul of international law, see Shihata, *supra* note 22, at 263-64.

32. This is also the reason why Saudi Arabia is so powerful within OPEC.

33. The following non-OPEC countries account for 15%-20% of oil entering international trade: U.S.S.R., Mexico, Norway, China, Malaysia, Egypt, Oman, Trinidad, Syria and Angola. These countries have also benefited from OPEC price increases. Noreng, *Friends or Fellow Travellers? The Relationship of Non-OPEC Exporters with OPEC*, 4 J. ENERGY & DEV. 313, 314 (1979).

34. *Oil, The Threat of a World Slowdown*, BUS. WEEK, June 18, 1979, at 115.

have arrived at different conclusions about the Soviet oil position.[35] If the first CIA study is correct and Soviet output falls short of its demand forcing it to join the ranks of the oil-importing countries, the effect on oil prices will be dramatic.[36] Even if the Soviets do not become importers, it is believed that by 1985 their role as oil-exporters will have come to an end.[37] This alone will increase the price of oil but to a lesser degree than the manipulation of prices by OPEC.

D. Oil Demand for Storage Purposes

In the mid 1980's the supply-demand position of oil will be precarious.[38] Assuming for the sake of discussion, that an ideal situation exists, *i.e.* that production exactly equals consumption, the price of oil will still increase. The consuming countries are conscious of the certainty of an eventual scarcity of oil. There is no doubt that sooner or later shortages are bound to occur.[39] Thus, demand for purposes of storage would provide the market pressure which would keep pushing the prices higher.[40] A short time ago we witnessed the "psychological shortage phenomena" that pushed the oil prices higher at a time when global oil production was exceeding consumption by more than one million barrels a day.[41]

By examining the oil spot market at Rotterdam,[42] one can visualize the grave problems that the price of oil can pose in the future. When the global supply was plentiful, oil was sold in the spot market at almost double the official OPEC price.[43] A trend towards eliminating the major oil companies by selling directly at the spot market is already

35. For a discussion about the two CIA Reports, *see Oil: What's Left Out There*, TIME, Oct. 16, 1979, at 91.

36. The report predicts that the U.S.S.R. will need to import 3.5-4.5 million barrels per day of oil by 1985. For a criticism of the report *see* Goldman, *The CIA and Oil*, N.Y. Times, Apr. 28, 1977, § A, at 29, col. 5.

37. *The Oil Crisis is Real This Time*, BUS. WEEK, July 30, 1979, at 48. The Soviet Union exports about 1 million barrels per day to the West. *Id.* Hungary and Czechoslovakia are already looking to the future and constructing a pipeline to bring OPEC crude from the Middle East. *Comecon's Energy Problems*, THE ECONOMIST, Apr. 30, 1977, at 85.

38. *World Oil Crunch Seen in the 1980's*, *supra* note 3.

39. *See generally Mobil, Shell see oil crunch by 1985-90*, OIL & GAS J., Apr. 18, 1977, at 36.

40. To guard against shortages and a possible future oil embargo the United States intends to store up to 1 billion barrels of oil. Rattner, *First of Oil Reserve Stored in Cavern*, N.Y. Times, July 22, 1977, § D, at 1, col 1.

41. Tanner & Jaroslovsky, *Petroleum Puzzle*, Wall St. J., Nov. 2, 1979, at 1, col. 1.

42. The Rotterdam spot market in petroleum cargoes involves brokers and traders all over the world in multi-million dollar spot trading, usually transacted by telex and telephone. For the concern expressed by Western leaders over the Rotterdam market, see Vincour, *Oil: The Great Noses of Rotterdam*, N.Y.. Times, July 8, 1979, § 3, at 1, col 3.

43. Tanner & Jaroslovsky, *supra* note 41. It is worthwhile to note that during this period of excess supply many members of OPEC actually raised their crude oil prices. *Id.*

emerging within OPEC.[44]

E. Political Instability in Some Member States of OPEC and its Implications on Oil Prices

A factor that cannot be ignored and which will have a severe impact on future oil prices is the present political situation in the oil exporting countries.[45] The Iran-Iraq war makes this all very clear.[46] The present political scene in Saudi Arabia also poses some problems. If the brewing discontent in Saudi Arabia (as reflected by the taking over of the Grand Mosque in Mecca[47]) forcefully increases and the worst comes to pass, a new dimension will be added to the world energy crisis and the price of oil will greatly exceed present day speculations.[48]

However we approach the world energy situation, we reach the same conclusion—the price of oil will substantially increase in the future. This was aptly summed up by former President Carter who, while addressing delegates at a national energy conference, stated: "[I]n the future, supplies are going to be shorter and prices are going to be higher. . . . My own judgment is that OPEC is probably producing at a maximum level, and the tendencies are towards reduced production."[49]

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44. *See generally A Years Oil Bill Goes Up $15 Billion*, NEWSWEEK, June 2, 1980, at 68. OPEC nations have also developed a new marketing strategy to sell their oil in "package deals" meant to secure additional profit at the expense of international oil companies and to win access to Western oil refining technology. In a package deal, crude oil is sold on the condition that the purchaser does all or part of the oil refining. Ibrahim, *OPEC: Profits in Package Deals*, N.Y. Times, Jan. 11, 1980, § D, at 1, col 3.

45. The Arab countries have started taking sides in the Iran-Iraq war. King Hussein of Jordan has shown a willingness to send troops to help Iraq. Libya's Col. Kaddafi and Syria have shown support for Iran. *The Gulf War: Rising Risks*, NEWSWEEK, Oct. 20, 1980, at 40. The Iranian President has warned that "in the case of other states entering the war against us, we will not hesitate to close the Strait of Hormuz." *Id.* If other Arab countries join the war or the Strait of Hormuz is closed, the impact on oil prices will be significant.

46. The lesson of the Iran-Iraq war is that in any conflict between the Arabs, the destruction of each others oil industry would be the primary aim. *See The War in the Oil Fields*, NEWSWEEK, Oct. 6, 1980, at 28. The war forced both Iran and Iraq to cut off exports. *Id.* With the news that Iraq had started exporting 350,000 barrels of oil a day through its Turkish pipeline, which derives its oil through fields around Kirkuk, Iranian raids on fuel storage tanks in Kirkuk intensified. *See Iran, Iraq War Escalates with Heavier Bombings*, Hous. Post, Nov. 27, 1980, § B, at 14, col. 1.

47. *Mecca Mosque Seized by Gunmen Believed to be Militants from Iran*, N.Y. Times, Nov. 21, 1979, at 1, col. 4.

48. Even if the worst does not come to pass, world oil prices could still be adversely affected if terrorist activities aimed at disruption of oil supplies were to start taking place.

49. *More Woes on the Oil Front*, *supra* note 18, at 71.

II. Positive Aspects Of Oil Price Increases

A. Oil Price Increases and the Conservation of Oil

The workshop on Alternative Energy Strategies report, *Energy: Global Prospects 1985-2000*, predicts that even if coal production doubles, conservation measures reduce the increase in petroleum demand to half its traditional growth rate, the output of nuclear generated power multiplies 15 times, and the "real" price of oil rises 50%, the production of oil in the non-communist world is still likely to fall short of meeting demand by approximately 15 to 20 million barrels per day by the year 2000.[50] If the Saudi Arabians double their production to 20 million barrels per day the shortage might be delayed until 1989[51] and if no production limits are set, shortages would nevertheless surface in the late 1990's.[52]

The accuracy of the specific predictions made by this report is questionable because it is based upon the assumption that the economic growth of the non-communist world would average 4.4% a year, and that no more than 20 billion barrels of oil per year would be added to the world's proved reserves.[53] Yet two things are made clear by the report: There is a dire need for (1) conservation of oil and (2) developing alternative souces of fuel.[54] Both these objectives are dependent upon the increase in the price of oil.

Higher oil prices automatically generate incentive to reduce consumption.[55] Some believe that by minor adjustments in life-style and without suffering a decline in economic growth, Americans could consume 30% to 40% less energy than they do today.[56] After the quadrupling of oil prices in 1973, consumption decreased[57] but not as much as was expected.[58] Much room remains for improvement in oil conserva-

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50. *Running Short, No Matter What*, TIME, May 23, 1977, at 63.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. In the context of oil imports for the European Economic Community, it has been suggested that if no United Kingdom oil is available in 1985, to hold down net oil imports to the 1973 level may require a doubling of real oil prices. Kouris & Robinson, *EEC Demand for Imported Crude Oil*, ENERGY POL'Y, June 1977, at 130.
56. *That New Energy Buzz Book*, TIME, Aug. 20, 1979, at 41, 42.
57. In 1974 energy consumption of the United States dropped 2.4% from the 1973 level of 74,754 trillion BTU's (British Thermal Units) to 72,880 trillion BTU's. In 1975 consumption further decreased by 2.5%. *Total Energy Use In U.S. Dropped Again Last Year*, Wall St. J., Apr. 5, 1976, at 7, col. 1; *OPEC Recovers Strong Pricing Position as U.S. Motorists Accelerate Oil Demand*, Wall St. J., May 26, 1976, at 40, col. 1.
58. It is thought that the United States loses about two-thirds of the energy it consumes. Some part of the loss is because there are absolute physical limits on efficiency. However, as much as half the loss, or the equivalent of 12 million barrels per day of oil, could be saved by improved conservation measures. *How to Save Energy*, NEWSWEEK, Apr. 18, 1977, at 70.

tion and only price increases will force movement in this area.

B. *Oil Price Increases and the Development of Alternate Sources of Energy*

As long as the price of oil remains below the estimated price of its substitutes, there is no incentive for the private entrepreneur to develop alternate sources of energy.[59] To make such development attractive, the price of oil will have to increase and equal the estimated finished price of the substitutes.[60] Because there is substantial opposition to the development of some alternatives to petroleum (such as liquid fuel from coal, nuclear energy, etc.) due to environmental and other reasons,[61] the price of oil may have to greatly exceed the finished product price of these alternatives to generate enough financial pressure to remove all objections to their development.[62] To insure that alternatives enter the market when oil shortages appear, the price of oil must be allowed to increase.

III. THE REAL CONCERN BEHIND FUTURE OIL PRICE INCREASES

We have discussed how certain factors will force oil prices to increase in the future. It should be stressed that the real concern is not with future price increases (since increases by themselves will not only induce conservation but also encourage the development of alternate sources of energy) but rather with the manner in which these increases occur. If prices increase in a systematic manner according to world community expectations, there would be no cause for concern. However, past trends indicate that the probability of future oil price increases being arbitrary and against world community expectations is high. In 1973, for instance, oil prices quadrupled.[63] This was followed

59. Indeed, it is not wrong to say that it was the cheap availability of oil, especially during the middle of this century, which caused the present energy crisis. If oil had not been so cheap, other sources of energy would have been developed and complete dependence on oil would have been prevented.

60. Though farfetched, the view has been expressed that the power of OPEC to control prices is one factor which inhibits the flow of capital into the development of alternate sources of energy. The argument is that "to protect its control over world petroleum supplies, OPEC might deliberately reduce prices for a limited period of time, thus driving alternate energy sources out of business." Solomon & Reismeyer, *The Development of Alternate Energy Sources: A Legal and Policy Analysis*, 30 OKLA. L. REV. 319, 329 (1977).

61. *See* Hill, *supra* note 10; Environmentalists were, to some extent, responsible for the withdrawal of the Oil Shale Corporation and the Atlantic Richfield Company from an oil shale project. Sterba, *2 Companies Quit Big Shale Project*, N.Y. Times, Dec. 20, 1975, at 33, col. 1.

62. It is not out of place to observe that ever since energy has become expensive, environment related objections have encountered less sympathetic ears.

63. The 1973-74 price hike was mainly due to the Arab-Israeli war of 1973. Oil supplies to states backing Zionism and Israel were suspended by the Arabs and total production was

by moderate price increases.[64] In 1979 the prices rose by more than 100%[65] and are still rising today.[66] This pattern has been described by some economists as a "stop-go" pattern, *i.e.* a sharp real oil price rise in one year followed by an average or smaller than average increase the next year.[67] This pattern will probably be followed in the 1980's, but with the intermediate periods between consecutive sharp increases in oil prices being far shorter.[68]

IV. PREDICTING FUTURE IMPACT OF SHARP PRICE INCREASES ON THE BASIS OF PAST EXPERIENCE

A. Expected Impact on the Non-Oil Producing Less Developed Countries[69]

The non-oil producing less developed countries (non-oil LDC's)[70] were deeply affected by the oil price hike in the past and future price hikes would again make them suffer the most.[71]

The non-oil LDC's account for much of the world population.[72] If a per capita income of $500 a year is accepted as 'high', "then in 85 countries for which data is available, over two billion persons live below that level, and one to two billion live in states where economic growth is almost non-existent."[73] With such prevailing conditions, the oil price hike of 1973 (coupled with subsequent increases) severely

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reduced by 25%. "This caused a gap between supply and demand, sharply increasing crude oil market prices." *OPEC and the Petroleum Industry*, *supra* note 19, at 181.

64. *See* graph showing OPEC's pricing history in *Can OPEC Control Itself?*, NEWSWEEK, June 9, 1980, at 70.

65. *See id.*

66. *A Year's Oil Bill Goes Up $15 Billion*, NEWSWEEK, June 2, 1980, at 68.

67. *Oil, The Threat of a World Slowdown*, *supra* note 34, at 115.

68. This is because of the present uncertain political conditions prevailing in the Middle East, which makes the occurrence of shortages in the oil market more likely.

69. The term "less developed countries" has been used to signify that group of countries which have also been referred to as the "developing" countries, the "under-developed" countries, the Third World and the Fourth World countries. There is no particular reason of using the term "less developed countries" as opposed to the other terms, and therefore no political or other connotation should be drawn from its use.

70. Because of the great difference between their economic structure, the impact of price hikes on the various countries comprising the LDC's was different; some were more severely affected than the others. However in the ensuing discussion the impact of the oil prices on the group as a whole is considered.

71. In 1978, the LDC's ran up a total deficit of about $30 billion, almost "four times the deficit they ran in the pre-OPEC years." *OPEC And The Poorest*, NEW REPUBLIC, June 16, 1979, at 5. Based on a 10% increase in oil price, the State Department of the United States predicted that their total trade deficit for 1979 would rise to $40 billion. *Id.* However, since prices increased by more than 10% in 1979, the actual deficit was higher. According to David Rockefeller, chairman of the Chase Manhattan Bank, the 1980 deficit of the LDC's would be to the tune of $65 billion to $70 billion. Bennett, *Oil Payment Worries Grow*, N.Y. Times, June 7, 1980, at 25, col. 3.

72. Shams, *Oil Poor Developing Countries*, CURRENT HIST., Mar. 1978, at 109.

73. *Id.*

hampered the economic growth of these countries[74] which was critically needed to raise their standard of living.[75] Uncontrolled future oil price increases would mean that hundreds of millions of people, who are already severely deprived, will be forced to face hunger and illness with no hope of relief.[76]

Apart from the strangulation of economic growth, higher oil prices forced the non-oil LDC's to increase borrowing from public, as well as private, banking institutions.[77] Since 1973, the foreign debt of these countries has doubled to more than 200 billion dollars;[78] 12% of their export revenues are used just to service these debts.[79] The following passage demonstrates the indebtedness of these countries to American banks alone:

> Private bank lendings to non-oil LDC's has shot up from $34 billion in 1974 to $109 billion as of September 1978, and possibly as much as $120 billion today (July, 1979). Even when the sizeable deposits made by LDC's to the banks are subtracted, bank exposure to LDC debt has risen sharply. In 1974 these deposits of reserves came to $30 billion, and last year they totalled $70 billion. This pushed up the banks net claims on developing countries $3 billion in 1974 to $44 billion more recently.[80]

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74. Apart from the strangulation of economic growth, the price increases also drained off most of the LDC's foreign exchange holdings. *OPEC And The Poorest*, *supra* note 71, at 5.

75. *Id.*

76. The annual report by U.N. Fund for Population Activities predicts an explosive population growth in the already crowded Third World cities by the end of the 20th century because of expected rise in world population from 4.4-6.2 billion. Nossiter, *World Population Explosion is Showing, U.N. Finds*, N.Y. Times, June 15, 1980, at 10, col. 1. This spells out further misery for the LDC's.

77. It was estimated that the net new financing requirements of the LDC's totalled an estimated $109 billion in 1974-76 which was a 140% increase compared to the previous three-year period. MORGAN GUARANTY TRUST COMPANY OF NEW YORK, WORLD FINANCIAL MARKETS 4 (1977).

78. *A Threat To Global Growth: How the Next OPEC-Spurred Downturn Will Hit Countries Big and Small*, TIME, July 2, 1979, at 54.

79. *Id.*

80. *Default Threatens Those LDC Loans Again*, BUS. WEEK, July 2, 1979, at 79. Apart from the economic issue, the sheer magnitude of commercial bank loans to the LDC's also raises questions of political significance, *i.e.*, will these loans affect the relationship between the non-oil LDC's borrowers and home countries of the lending banks? How much role will the banks play in shaping up policies of the borrowing countries. Before advancing such huge amounts, the bankers feel justified in making increasing demands upon the LDC's that seek their funds. "But carrying this to its logical conclusion conjures up age old fears of domination of the Poor by the Rich, of renewed Dollar Diplomacy by the U.S., of exploitation of previous colonies by a host of Western nations—and a renewal of all the worse charges that have been heaped upon multinational corporations." Shapiro, *Monitoring: Are the Banks Biting Off More Than They Can Chew?* INSTITUTIONAL INVESTOR, Oct. 1976, at 140.

The possibility of defaults in payment is ever-present.[81] The banking world of today is increasingly apprehensive about advancing new loans.[82] Accordingly, most of these countries will find it exceedingly difficult to borrow from private banking institutions in the future.[83]

OPEC's direct aid to LDC's,[84] as it stands, will not be sufficient to cover the gap that will result from the banking institutions' refusal to advance new loans.[85] Even if OPEC was to substantially increase its "direct aid funds" in the future,[86] it would not necessarily mean the

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81. Some Third World countries have already found repayment of debts difficult. For example, Peru, Zaire, Indonesia and Argentina, finding it difficult to repay debts at the proper time, have had to persuade their creditors either to refinance their existing loans as they become due or to agree to stretch-outs of the original payment schedules. *Third World Risks, Joust for Supremacy: A Survey of American Financial Institutions*, ECONOMIST, Jan. 22, 1977, at survey 25. (The survey is paginated separately and begins after page 56).

82. *See* Riddell, *The New Oil Order: Shifting Economic And Political Tides And Their Implications*, ATLAS WORLD PRESS REV., Sept. 1979, at 17.

83. Some commercial banks have required that they be allowed to monitor the economic performance of the developing country before advancing loans. For example, Peru, while negotiating a $300 million balance of payment loan from a syndicate made up of Bank of America, Chase Manhattan, Citicorp, Manufacturers Hanover, Morgan Guaranty and Wells Fargo, agreed to a bank monitoring process as a condition to receiving the loan. The payment of the loan proceeds was separated into two equal installments. The second payment depended on Peru's satisfactory implementation of an economic stabilization program. Concern was expressed by many over the control of commercial banks of Peru's economic destiny. It was said that "[t]o meet the bankers' terms, for example, Peru sold off its state-owned fishing fleet, devalued its currency, and stopped state subsidies for labor." *Bailing Out Our Banks Abroad*, N.Y. Times, March 6, 1977, § 4, at 16, col. 1. The bankers' response was that the economic program was developed and implemented by the Peruvians themselves without any dictation from the banks. Bellivean, *What the Peru Experiment Means*, INSTITUTIONAL INVESTOR, Oct. 1976, at 145, 148. Certain western economists have, in the context of discussing the problems which might arise if U.S. commercial banks engage in monitoring the economic performances of the LDC borrowers, made the following remarks:

> We're talking about LDC's where people don't understand banking or even markets. Most of the enterprises they know are run by the state or beholden to it. And their political leaders may be demagogues of the first order, who'd love to blame their economic problems on somebody. It doesn't take much to whip up the peasantry with stories about the House of Morgan and U.S. imperialism to explain why there's no food.
>
> To which another observer adds: When the going gets tough, either they blame the banks or the home countries. Let's say they blame the banks. That's fine for the U.S. State Department, but terrible for the banks, which may end up getting expropriated or thrown out of the country when they need a villian.

Either way, if U.S. commercial banks are perceived as having put pressure on foreign governments, it could be a disaster for U.S. foreign policy. Shapiro, *supra* note 80, at 142.

84. OPEC's aid to the LDC's, without reference to the enormity of their problems, has indeed been generous. The tentative figures of OECD's Development Assistance Committee (DAC) show that OPEC members disbursed 1.8% of their GNP in foreign aid in 1974 as compared to 0.33% in the case of DAC countries. *See* IMF SURVEY, May 12, 1975, at 141.

85. Even now the aid only marginally helps in offsetting the burdens imposed by higher oil prices. As has been pointed out: "But this aid only begins to offset the damage wreaked by OPEC on the world's poor countries. It adds up to only a small fraction of their higher oil bills. It will be many years before the LDC's recover from the blow of higher oil prices: for some it may be generations." *OPEC And The Poorest*, *supra* note 71, at 6.

86. For a general discussion about OPEC aid, *see* Shihata, *OPEC Aid, the OPEC Fund, and Cooperation with Commercial Development Finance Sources*, 4 J. ENERGY & DEV. 291 (1979).

lessening of hardships for *all* the less developed countries. In 1974, for instance, 70% of the OPEC aid was distributed among Egypt, India, Syria, and Pakistan.[87] It is likely that in the future, aid funds will not be distributed among the different developing countries in proportion to their needs, but will instead be concentrated in selected countries preferred by OPEC for political and other reasons.

Since most of the industrialized nations are themselves facing financial problems,[88] and since their problems are bound to increase with the passage of time, aid provided by them to the non-oil LDC's is more likely to be reduced rather than increased.[89] Therefore, these nations cannot be relied upon to bail out the non-oil LDC's.

The position that seems to be emerging is that the LDC's, having lost credibility with the banking world, will not find loans readily forthcoming in the future to sustain their huge oil import bills. The developed industrialized world will not be in a position to offer much help, and although OPEC direct aid might be of some assistance to a few, it will not mean much to the majority of these countries. As a result these countries will be forced to abandon their developmental projects as well as lower their present standard of living. Because the present living standard of these LDC's have almost no room for reduction, any forced reduction of these standards would constitute a threat to international peace.[90]

If the international banking institutions continue advancing loans to the LDC's,[91] these loans will not be used for investment purposes but rather for defraying the high costs of energy. As far as the LDC's are concerned, these loans will only take them from their present level of indebtedness to a higher level of indebtedness.[92] Furthermore, the banks would become more vulnerable. Finally, when the inevitable

87. Kaplan, *International Economic Organizations: Oil and Money*, 17 HARV. INT'L L.J. 203, 212 (1976) [hereinafter cited as Kaplan].

88. It is believed that the latest oil price increases will reduce the West's economic growth by roughly 2% and that there will be even larger deflationary effect from cautious inflation-fighting policies being adopted by many countries. N.Y. TIMES, June 10, 1980, § 4, at 1, col. 6.

89. This is dictated by economics, and the emerging political scene in the international arena. The increasing strength of the non-alligned movement indicates that the LDC's will not be as receptive to towing the line of the aid-giving developed country as they once were and with no political benefits in return, there will be little incentive for the developed countries to increase 'aid' (if that is the proper term).

90. It should be understood that this is the worst possible scenario. But for any sound future planning these extremes cannot be ignored. The extremes also help us realize the gravity of the situation.

91. For a discussion on the general question of international lending to developing countries, see *Symposium—International Lending: The Case for Developing Nations*, 7 VAND. J. TRANSNAT'L L. 551 (1974).

92. The prosperity, if any, from loans invested in income-producing projects will, in all probability, be countered by the population explosion in these countries. Thus, for all prac-

process of default in payments begins, it will result in the breakdown of the international banking system.[93] However, the probability of the banks taking such risks is negligible.[94]

Keeping in mind the efforts to bridge the gap between rich nations and poor nations, as reflected in the Economic Order Resolutions of the United Nations,[95] we find that the present course, instead of eliminating the economic disparities among nations, or keeping the status quo, is directed towards increasing the gap, thereby subjecting almost half the world population to utter poverty.[96]

B. Expected Impact on the Developed Countries

The oil price hike also had a marked adverse effect on the economies of the developed nations, though not as severe as that on the non-oil LDC's.[97] The first problem to be faced by the developed countries

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tical purposes their standard of living will remain the same, whereas their debts will increase.

93. Others brush such views aside. Typical are the following comments made by the Chairman of Citicorp:

> They said floating rates would dry up world trade. But they didn't. They said the Eurodollar market was a dangerous monster that would destroy us all unless tamed. But it hasn't. Now they say the developing countries will default on their debts and collapse the whole Banking System. Well we here say it just won't happen.

Lewis, *The Banker's Banker at Citicorp*, N.Y. Times, Mar. 6, 1977, § 3, at 5, col. 2.

94. Because of the multiplier effect which could ruin the banking business, all banks will be extra cautious not to give rise to a default of payment situation. For further discussion on the question of default generally see Greene, *Financing Foreign Governments and Official Entities*, in OFF SHORE LENDING BY U.S. COMMERCIAL BANKS 187, 206 (F. Mathis ed. 1975).

95. The concept of a New International Economic Order was formally launched at the Sixth Special Session of the United Nations General Assembly in April 1974. *See* Cline, *A Quantitative Assessment for the Policy Alternatives in the NIEO Negotiations*, in POLICY ALTERNATIVES FOR A NEW INTERNATIONAL ECONOMIC ORDER 7 (W. Cline ed. 1979). During that session, the LDC's proposed the Programme of Action on the Establishment of a New International Economic Order. G.A. Res. 3202, 6 U.N. GAOR, Supp. (No. 1) 5-12, U.N. Doc. A/9559 (1974). They also introduced the Declaration on the Establishment of a New International Economic Order. G.A. Res. 3201, 6 U.N. GAOR, Supp. (No. 1) 3-5, U.N. Doc. A/9559 (1974). These proposals contemplated a new economic framework that would "correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations." *Id.* at 3.

96. What are the factors that have caused a widening of the gap between the developed and the developing countries? What is required of the developed countries to reduce the gap? For a discussion of these and other issues, see H. SINGER & J. ANSARI, RICH AND POOR COUNTRIES (1977).

97. For a general discussion of the problem arising out of the 1973-74 oil price hike, see Janssen, *Economic Shock Wave from Oil-Price Rises in '73 Still Hurts West*, Wall St. J., Mar. 10, 1977, at 1, col. 6. For a discussion of the impact of higher energy prices on the United States, see Hudson & Jorgenson, *Energy Prices And The U.S. Economy, 1972-1976*, 18 NAT. RESOURCES J. 877 (1978).

was that of the balance of payments.[98] Since the industrialized nations were the biggest importers of oil,[99] all the oil export surplus revenues earned by the oil exporters were mainly reflected in the importers' balance of payments deficits. In 1974 the deficits of these countries, as a group, increased from $17 billion to $61 billion solely because of increased oil prices.[100] Due to the price hike of 1979,[101] the industrial world again faced huge deficits.[102] With future price hikes this problem will continue to recur. The dangers involved in these huge differences in the balance of payments have been aptly pointed out in the following words:

> With so many countries in deficit the remedy of cutting imports and increasing exports, if not by devaluation then by direct import controls and export incentives, becomes more tempting. If these practices were to become widespread and intensified, the result could be a 'neomercantilist' economic system which would turn its back on free trade and the benefits of comparative advantage in an international division of labour—in other words, a complete breakdown of the international economic order which such institutions as the International Monetary Fund (IMF) and the General Agreement on Tariffs and Trade (GATT) have promoted since the end of World War II.[103]

Another problem faced by the developed states as a result of oil price hikes was an increased inflation rate. In 1974, largely due to the increase in oil prices, the developed states recorded a double figure inflation. The 1979 oil price increases also increased the rate of inflation.[104] In the future, with each sharp increase in oil price, the inflation

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98. In order to help rectify the problem of balance of payments, the International Monetary Fund members established an "oil facility" in June 1977 with "a planned initial capital of SDR 3 billion; and by August five OPEC countries (Saudi Arabia, Iran, Venezuela, Kuwait, and Abu Dhabi) and two other oil producers (Canada and Oman) had lent it SDR 2.8 billion at 7%. Before the end of 1974, loans from the oil facility had gone to Italy (27%), seven 'non-industrial developed countries' (32%), and 30 developing countries (41%)." D. RUSTOW & J. MUGNO, OPEC: SUCCESS AND PROSPECTS 61, 62 (1976).

99. Collectively, the industrial countries import approximately 90% of OPEC oil. *Id.* at 69.

100. Kaplan, *supra* note 87, at 205.

101. The 1979 price hike was largely due to the Iranian revolution. The Iranian production had dropped from over 5 million bpd during the Shah's reign to about 500,000 bpd around June 1980. This shortage forced the prices upwards. *See* Ibrahim, *Tomorrow, Economic Logic vs. OPEC*, N.Y. Times, June 8, 1980, § 4, at 2, col. 9.

102. *See id.* (graph showing OPEC's net surplus which represents corresponding deficits of the oil importing countries).

103. Kaplan, *supra* note 87, at 206.

104. *See* Gray & Brainard, *Where The Oil Prices Will Hurt*, EUROMONEY, July 1979, at 34.

figure will also increase.[105] Also, in the past, sharp price increases have caused increased unemployment.[106] Therefore, future price hikes can be expected to adversely affect unemployment figures.

Oil price hikes also pose a threat to economic growth. The 1973 price hike made the booming economies of the developed countries slide into recession.[107] This recession, for the United States, was the largest and deepest recession since the 1930's.[108] The 1979 price increases have resulted in lower economic growth projections.[109] In the past, "50% of OPEC's higher oil earnings have been 'recycled' in the developed world in the form of industrial purchases."[110] Because rapid modernization resulted in the Iranian revolution, there is reason to believe that the Arab countries, in order to slow up their pace of modernization, will cut back on industrial imports in the future.[111] This will substantially reduce the percentage of their earnings traditionally "recycled" in the West,[112] further increasing the chances of recession in the developed world.[113]

In fact, all these effects are interrelated.[114] Higher oil prices cause higher inflation which in turn causes still higher oil prices and so on. To control inflation, fiscal measures are taken which result in slowing down the economic growth resulting in higher unemployment. If this continues, the future outlook for the developed countries is grim with high figures of inflation, economic growth hovering around zero, very high levels of unemployment and exorbitant amounts of balance of payments deficits.

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105. Because of the energy problem the 1980's will most likely record a higher inflation rate than the preceding three decades. Wall St. J., Dec. 19, 1979, at 1, col. 1.

106. By the end of 1974, the depressing effect of higher energy prices on the United States had "added about 1 percentage point to the unemployment rate." Perry, *The United States*, in HIGHER OIL PRICES AND THE WORLD ECONOMY 103 (E.R. Fried & C.L. Schultze eds. 1975).

107. *A Threat to Global Growth: How the Next OPEC-Spurred Downturn Will Hit Countries Big and Small*, *supra* note 78, at 54.

108. At the end of 1974 "higher oil prices had reduced real GNP (1973 prices) by about $35 billion. . . ." *See generally* Perry, *supra* note 106, at 103.

109. It is predicted that the 1980 decade will probably be a period with a slower growth rate compared to the last three decades. Wall St. J., Dec. 19, 1979, at 1, col. 1.

110. *Oil, Threat of a World Slowdown*, *supra* note 34, at 114.

111. *Id.* at 114-15.

112. It is estimated that in the future about 30% of the higher oil earnings will be "recycled" in the West. *Id.*

113. According to Mr. Jelle Zigistra, Chairman of the Bank for International Settlements, the world economy can recover from the recent price increases after a period of recession and can resume growth. But he warns that a third large price increase may be catastrophic. N.Y. Times, June 10, 1980, § 4, at 11, col. 4.

114. At the 1979 Summit Conference in Tokyo, the leaders of the seven major industrialized nations concurred on two major points: (1) that the oil shortage is permanent, and (2) that energy is the key to every other economic problem, including inflation, currency values and unemployment. *Industrial Nations Agree to Set Limits on Oil Imports to '85*, N.Y. Times, June 30, 1979, at 1, col. 6.

C. *Expected Impact on the Oil Exporting Countries and the Eurocurrency Market*

Oil price hikes created difficulties, of a different nature, for the oil exporting countries, *i.e.* how to invest their surplus oil revenues. OPEC's oil revenues in 1974 alone were between $94 billion and $105 billion;[115] its 1978 oil revenues amounted to $127 billion and its 1979 oil revenues were close to $200 billion.[116] Its current account surpluses increased from $12 billion in 1978 to about $50 billion by the end of 1979.[117] Future price hikes will create even larger surpluses and OPEC will have to decide where to invest these revenues.

In 1973-74 small amounts of these surpluses[118] were channeled into international financial institutions (such as the World Bank and the International Monetary Fund),[119] and to certain less developed countries through OPEC direct aid programs.[120] Investments were also made in the developed countries.[121] A major portion of the oil revenue surpluses found their way into the eurocurrency markets.[122] In the future, it is likely that most of the surplus will be invested in the eurocurrency markets.[123]

Eurocurrencies are defined as "deposits with banks in a country other than the country of issue of the currency; for example, United States dollars, French francs or German marks all become eurocurrencies when deposited with banks in London."[124] It should be understood that the eurocurrency market does not come to the aid of all countries having balance of payment problems, because allocation of loans are based upon standard banking considerations such as credit

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115. Kaplan, *supra* note 87, at 203.

116. *See* Gray & Brainard, *supra* note 104, at 34.

117. *See id.*

118. The account surplus for major oil exporting countries was approximately $70 billion. IMF SURVEY, Mar. 24, 1975, at 81.

119. About $2 billion was advanced to IMF facility as a loan. *Id.*

120. About $4 billion was given to the LDC's in the form of grants and loans. *Id.*

121. Investments of $7 billion were made in the United Kingdom and $11 billion were made in the United States; $5 billion was loaned to official institutions in the developed countries other than the United States and the United Kingdom. *Id.*

122. About $21 billion was invested in the eurocurrency markets. *Id.*

123. The following report illustrates the rapid growth of the eurocurrency market indicating the increasing pace at which oil revenues are being invested in it:

> Since 1973, the eurocurrency market has grown by an extraordinary 25% per annum, far faster than the 10% growth in the combined money supplies of the seven major industrial countries (the United States, Canada, Japan, France, West Germany, Italy and Britain). Total deposits in the International banking system now exceed $800 billion. Even if interbank transactions are excluded the net size of the market is believed to be close on $500 billion. That is roughly one-fifth the size of the combined domestic money stocks of these seven countries.

Controlling the Euromarkets, ECONOMIST, June 2, 1979, at 83.

124. Kaplan, *supra* note 87, at 208.

worthiness. The market is well suited for the developed countries[125] and in the past has also helped the LDC's.[126] But, in the future most of the LDC's will find it difficult to have access to the eurocurrency funds.[127]

The regulation of banks operating in the eurocurrency markets poses some peculiar problems. In the event of a liquidity shortage it is not clear who will bail out these banks.[128] The possibility of banks facing such shortages is real since oil exporting states tend to make deposits on a short term basis while most of the borrowing states are inclined to take long term loans.[129] Rumors of major defaults on payments can easily trigger a panic stricken movement for withdrawal

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125. This is because the developed countries are politically more stable and also generally more creditworthy than the LDC's.

126. The reason was that then the eurocurrency market was a buyers market and with so much fund at hand the bankers were not very particular. Also, the credit rating of the LDC's was far better at that time.

127. *See* text accompanying notes 77-83.

128. Central bankers of the major countries have a working understanding among themselves with regard to this problem. These understandings have been described as follows:

> At the July 1974 meeting in Basle of the Board of Governors of the Bank for International Settlements (BIS), the 'central banker's central bank,' a significant step was taken with respect to restoring stability in the eurodollar market. At that meeting in Basle, the central banks of the eight European member countries, (U.K., France, West Germany, Belgium, Italy, the Netherlands, Sweden and Switzerland) agreed in principle on the question of who is to act as lender of last resort for banks which are caught in a liquidity squeeze. It was decided that banks which get into trouble within their own national boundaries will be supported by that country's central bank, but the parent bank of foreign branches will be expected to make good the losses of its branches and will, in turn, be backed up by its central bank. Consortium banks which have multinational bank participation, will be bailed out on a pro rata basis by member parent banks, again backed by their own central banks.
>
> The BIS agreement is unclear concerning who bears responsibility for losses or difficulties experienced by foreign subsidiaries of a bank. . . .
>
> The United States and Japan, whose major banks are important players in the Euromarket, are not members of the BIS and were, therefore, originally not parties to the accord. At the annual IMF meeting in Washington in October 1974, the United States, Japan, and almost 30 other countries, however, agreed to subscribe to the Basle accord.
>
> A safety-net has thereby been strung under the private international banks which operate in the Euromarket. This should make it easier for the system to withstand the strains of recycling, and increase its capacity to absorb petrodollar flows. Central bankers were quick to point out that this accord did not mean a blanket insurance policy against losses or even insolvency for banks who mismanage their affairs. However, the fact that this agreement was made at all, indicated that central bankers do give credence to the 'domino' theory of international banking, *i.e.*, that one or two major bank failures could set off a chain reaction which would bring down the whole system. Therefore, if a bank in trouble is important enough, and its potential losses are sufficiently large, it can feel fairly certain that the central banks will step in to save it.

STAFF OF SUBCOMM. ON FOREIGN ECONOMIC POLICY OF SENATE COMM. ON FOREIGN RELATIONS, 95th CONG., 1ST SESS., REPORT ON INTERNATIONAL DEBT, THE BANKS AND U.S. FOREIGN POLICY 26-27 (1977).

129. Kaplan, *supra* note 87, at 209.

of deposits. Another danger also exists; the oil producers, by making sudden, massive shifts of funds from one currency to another, can cause financial instability throughout the world.[130] Such actions would not be in the interest of the oil producers since they have a big stake in the smooth running of the eurocurrency market. Yet, the possibility of such an action cannot be ruled out. History shows many instances of irrational actions. Since the largest amount of deposits in the eurocurrency market are in U.S. dollars[131] and since anti-American spirit within OPEC has been reinforced by the removal of the Shah from Iran and the actions of Khomeni,[132] the possibility of an unreasonable self-destructive move of substituting U.S. dollar holdings for some other currency has somewhat increased.[133]

Statistics show that:

> At $19 a barrel, the resulting rise in the annual cost of imported oil to consuming countries would be $75 billion. This is about the same increment, in current dollar terms as resulted from the 1973-74 price increases and is equal to about 1% of GNP in non-communist consuming countries. At $25.50 per barrel, the bill for foreign oil would rise by about $150 billion. This is roughly equivalent to 2% of the GNP of non-communist countries. After allowing for real growth, it is about the same relative size as the 1973-74 oil price hikes.[134]

It is clear that although the 1979 price hike is small, compared to the quadrupling of prices in 1973-74, the effect in real terms, giving rise to surplus revenues, is almost the same. Therefore, in the future, even if the percentage of increase in oil prices is not very high, the actual balance of payments surpluses accruing to the oil exporters will still be substantial. Thus, an increasing amount of money will be invested in the eurocurrency market.[135]

Many doubted the ability of the eurocurrency market to absorb

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130. It is doubtful though whether faced with such eventuality bankers and governments will actually allow such massive transfers of currency to take place.

131. Eurodollars account for roughly about 70% of total eurocurrencies. Calhoun, *Eurodollar Loan Agreements: An Introduction and Discussion of Some Special Problems*, 32 BUS. LAW. 1785 (1977).

132. *See* Givertzman, *Passions & Perils: An Anxious Washington Studies the Fever in Islam*, N.Y. Times, Dec. 9, 1979, at 1, col. 1.

133. It should be borne in mind that soon after taking over the American Embassy in Iran, the Iranians attempted to withdraw billions of dollars deposited in the United States. The U.S. prevented the withdrawal by freezing Iranian assets. N.Y. Times, Nov. 15, 1979, at 1, col. 6. Iran stated that its move to withdraw funds from American banks and their overseas branches "was justified on the ground that banking interests were responsible for the admission of the deposed Shah to the United States." *Id.*

134. Gray & Brainard, *supra* note 104, at 34.

135. For a discussion of the technical aspects of recycling, see Pollack, *The Economic Consequences of the Energy Crisis*, 52 FOREIGN AFF. 452-71 (1974).

the huge surpluses of 1974, yet it did so. This, however, does not automatically insure successful handling of surpluses in the future. The situation has changed. Many of those who borrowed in the past are so heavily indebted that further advancement of loans to them is unsafe.[136] Therefore, recycling oil surplus revenues will be exceedingly difficult in the future.[137] The possibility exists that for lack of safe borrowers the banks might refuse to accept for deposit more than a certain amount of the large OPEC surplus revenues. Finding no safe place to invest, the oil exporters may try to eliminate their surplus account by cutting back on oil production. This would further increase the world's problems. Thus, it seems clear that the need for diverting oil revenues from the eurocurrency market to some other place of investment is acute.

The oil exporting states rely on the eurocurrency markets because they believe that their investments will not be secure in the industrialized world.[138] They fear confiscation or expropriation by the concerned government,[139] especially since many of the OPEC states have themselves expropriated foreign property in the past.[140] The freezing of Iranian assets only heightened these fears.[141] The oil exporting na-

136. Bankers are of the opinion that in 1981 "many nations will find it extremely difficult to raise the money they need to pay for oil and other essential imports, including food." Bennett, *Oil Payment Worries Grow*, N.Y. Times, June 7, 1980, at 25, col. 3.

137. The major banks of the world "already have so much lent out internationally that banker's contend they cannot prudently lend much more to oil-importing countries. Mr. Rockefeller of the Chase bank said that international loans by commercial banks already had swollen to more than $1 trillion." *Id.* at 28.

138. In fact, the security issue was one of the factors responsible for the emergence of the eurocurrency markets. As has been observed:

> Historically, the Eurodollar was first created to reduce the perceived sovereign risk. After World War II, the Eastern Bloc countries found themselves with foreign exchange reserves denominated largely in U.S. dollars. The natural way to hold these reserves would have been to keep them in bank deposits and other securities in the United States. However, in the midst of the cold war that came to dominate the post war period, the danger that the United States might expropriate or otherwise control these reserves became unacceptable to the communist countries. As an alternative, these countries began placing their deposits in banks outside the United States. The deposits were still denominated largely in U.S. dollars; however, the immediate legal liability fell outside the United States, often in London.

H. Riehl & R. Rodriguez, FOREIGN EXCHANGE MARKETS 9 (1977).

139. Probably this fear has manifested in the reentry of the "appropriate compensation" provision in the Charter of Economic Rights and Duties of States. No mention about compensation of nationalized or expropriated property was made earlier in the Declaration on the Establishment of a New International Economic Order. *See* H. Steiner & F. Vagts, *Transnational Legal Problems* (2d ed. 1976).

140. For example, Libya nationalized the assets of the British Petroleum Exploration (Libya) Ltd. in 1971. Haight, *Libyan Nationalization of British Petroleum Company Assets*, 6 INT'L LAW. 541 (1972). In 1972, Iraq nationalized the assets of the Iraq Petroleum Company. Comment, *The Iraqi Nationalization of the Iraq Petroleum Company: Implications for the International Law of Expropriation*, 2 DEN. J. INT'L L. & POL'Y 217 (1972).

141. *See Action Disturbs Financial Circles*, N.Y. Times, Nov. 15, 1979, § A, at 1, col. 3.

tions will make substantial investments in the industrialized world only if they are given strong guarantees that their investments will be protected. Since properties have been expropriated in the past, despite bilateral agreements to the contrary,[142] it can be assumed that oil exporters will expect multilateral agreements to offer far more security than bilateral agreements.[143] If no such guarantees are provided, the enormous oil revenue surpluses will continue to flow into the eurocurrency markets and, for reasons outlined above, the world economy will remain in a constant state of jeopardy.

V. OIL POLITICS: THE THREAT TO GLOBAL PEACE

West German Chancellor Helmut Schmidt pointed out that:

> In the short run there is at least a point beyond which economic stability would be in a jeopardy. And that point is reached whenever the industrialized countries are confronted with intolerable adaptation and reorganization problems incapable of being solved at short notice and are thus driven into employment crisis or toward an even higher rate of inflation. In this context, I do not wish even to contemplate a point—at least theoretically conceivable—beyond which the irrational use of force might ensue.[144]

It is unlikely that the economics of oil could actually force nations to resort to force but on the other hand the politics of oil might give rise to such a situation. The issue of price pales before the issue of the continuity of supply of oil. Indeed, the primary concern of the industrialized world is not the price of oil but rather the supply of oil.[145] The

142. For example, in 1951 Iran nationalized the Anglo-Iranian Oil Company whose stock was largely held by the British government. Nationalization took place despite the following provision in the concession agreement:

> This concession shall not be annulled by the government and the terms therein contained shall not be altered either by general or special legislation in the future or by administrative measures or any other acts whatever of the executive authorities.

See Bishop, *The Anglo-Iranian Oil Company Case*, 45 AM. J. INT'L L. 749, 750 (1951).

143. Nationalization, expropriation, confiscation or however one would like to call "wealth deprivation," though at times appearing to take the form of retaliatory measures for punishing the "deprived party," is essentially economically motivated. Being economic in nature (as well as serving to satisfy political sentiments within the depriving state) the policy makers do keep an eye out for political repercussions on the international scene. If there are more parties to an agreement obligating the would be "depriving state" not to take "wealth deprivation" steps, there would be more political pressure to restrain that state from taking such steps.

144. Schmidt, *The Struggle for the World Product*, 52 FOREIGN AFF. 437, 444-45 (1974).

145. It is obvious that supply of oil directly affects its price. But when an embargo is imposed, the questions become how to get oil. The question of at what price to get it becomes secondary since the option of doing without oil is not available.

Arab-Israeli conflict[146] threatens the smooth flow of oil.[147] Recognizing the world's dependence on oil, the Arabs have started relying on it to gain political ends.[148] Time and again the Arabs have made it clear that the Middle East crisis and oil are directly related.[149]

Israel's insistence upon holding the occupied Arab land[150] (including the holy city of Jerusalem[151]) and its flat refusal to allow the establishment of an independent Palestinian state[152] indicates a great potential for future armed conflict. Some have suggested that the

146. The Arab-Israeli dispute has already resulted in four wars: the "Palestine War" in 1948; the Suez Crisis in 1956; the Six Day War in 1967; and the October War of 1973.

147. An ineffective embargo was imposed on the United States during the 1967 war. Boorman, *Economic Coercion in International Law: The Arab Oil Weapon and the Ensuing Judicial Issues*, 9 J. INT'L L. & ECON. 205, 207 (1974). For a discussion about the 1973 embargo *see* Dempsey, *Economic Aggression and Self Defense in International Law: The Arab Oil Weapon and Alternative American Responses Thereto*, 9 CASE W. RES. J. INT'L L. 253, 259-60 (1977).

148. The need for oil forced France and Britain to chill their relations with Israel. It also brought strong African support for the Arabs. *OPEC And The Poorest*, *supra* note 71, at 6.

149. Saudi Oil Minister, Sheikh Yamani, stated: "If we have peace in the area, you will be amazed at how many beautiful and healthy results you can get from that, including in the field of oil." *More Woes on the Oil Front*, *supra* note 18, at 71. In an interview, P.L.O. leader Yasser Arafat stated that Arab oil was committed to the Palestinian cause. *An Interview with Arafat*, TIME, Aug. 20, 1979, at 27. Mr. Abalkhail, the Saudi finance minister, explained the oil position as follows: "The question of a comprehensive peace treaty that recognizes Palestinian rights and returns the Moslem holy places in East Jerusalem is so important to us, so emotionally felt by us, that it is the core of the problem. . . . [S]olve that and all other problems would disappear. Obviously we would give you more oil." *Oil: Why the Saudis Offer No Salvation*, *supra* note 24, at 111.

150. It should be noted however, that in the Camp David Accord between Egypt and Israel, Israel agreed to withdraw from the Sinai. *See Documents Agreed to at Camp David*, 14 WEEKLY COMP. OF PRES. DOC. 1523, 1527-28 (Sept. 25, 1978).

151. Israel's insistence of holding on to Jerusalem has led one commentator to remark that the City of Jerusalem is on Israel's "list of non-negotiables." Note, *Demilitarization as an Instrument of Middle East Peace*, 14 VA. J. INT'L L. 267, 297 (1974). Recently, Israel passed a bill formally "making an undivided Jerusalem the capital of Israel." *A Widening of the Mideast Gulf*, NEWSWEEK, Aug. 11, 1980, at 34. Arab reaction to the annexation of Jerusalem has been sharp. Saudi Arabia's Crown Prince Fahd called on "all Arab countries to unite in a jihad (holy war) to liberate Israeli-occupied Arab territory and establish a Palestinian State in the West Bank and Gaza, with East Jerusalem as its capital." *Jihad for Jerusalem*, TIME, Aug. 25, 1980, at 32.

152. In the Camp David Accord entitled "A Framework for Peace in the Middle East Agreed at Camp David," Israel agreed in principle to a limited form of self-rule in the occupied West Bank and Gaza but kept the question of the ultimate future of these territories open. The conceived self-rule is restricted to the Palestinians actually living in the occupied land thus excluding the Palestinian Liberation Organization. *See Documents Agreed to at Camp David*, 14 WEEKLY COMP. OF PRES. DOC. 1523-26 (Sept. 25, 1978). It should be noted that the Camp David agreements were destined to fail in reaching a just solution to the Mid-East crisis because of the lack of support by the Palestinians and other Arab countries. The final blow to the peace process came with Israel's annexation of Jerusalem. Prince Fahd of Saudi Arabia gave vent to his feelings in the following words: "What has moderation achieved? Is this the West's concept of a just peace? Where is the comprehensive peace framework envisaged at Camp David and promised us? All the masks have fallen, and the talk about peace with Israel has become a kind of illusion." *Jihad for Jerusalem*, *supra* note 151, at 32. An aide to West Germany's Chancellor Helmut Schmidt observed that the Camp David Accord instead of being a formula for peace, has begun "to look like a formula for war." *A Widening of the Mideast Gulf*, *supra* note 151, at 34.

United States should bring pressure on Israel to withdraw from Arab occupied land and help establish a Palestinian state.[153] It seems improbable that U.S. policy towards Israel will change in the foreseeable future.[154] Thus in the event of a future Arab-Israeli war,[155] Israel would most likely receive the same amount of support from the U.S. as it did in the past. In view of past Arab reaction to United States support of Israel, the probability of a future embargo on oil shipments to the U.S. is indeed great. Whether such an embargo will be justified is a separate question and outside the scope of this article.[156] But, what might ensue as a result of such an embargo is relevant to a feasibility study on holding a multilateral convention on oil, and is discussed below. Even in the absence of a Middle East war, oil supplies to the U.S. might be cut off to force the United States to pressure Israel into resolving the Middle East conflict according to Arab wishes. In short, oil is a potent weapon in the hands of the Arabs[157] and the possibility of this weapon being used in the future, during wartime or peacetime, cannot be ruled out.

The important question today is: what will be the consequences of a future oil embargo? No military action was taken in 1973. Before assuming that no military action will be taken in the future, it is worthwhile to examine the circumstances prevailing in the United States in 1973 and the developments that have occurred since then. In 1973: (a) no serious thought was given to the possibility of an oil embargo and hence, no positive plans existed to cope with it; (b) the pros and cons of military intervention had not been discussed in detail and the leadership was not inclined towards taking any hasty steps; (c) the United States was economically capable of bearing additional strains; (d) the embargo in itself was not foolproof because some of the oil exporting countries in need of additional revenues (since they had far less money

153. *See* note 149 *supra*.

154. Given the erosion of American influence in the Persian Gulf because of the fall of the Shah of Iran, it is likely that America will become even more steadfast in its support of Israel.

155. No doubt Egypt's peace with Israel has reduced the possibility of a future conflict but still the situation is very volatile. Indeed, one cannot say when Sadat will become disillusioned in his pursuits of peace and rejoin the Arab camp. Further, since the Egypt-Israeli peace is a one man show, Sadat's absence from the scene can give a completely different complexion to the Middle East crisis. In short, a future Arab-Israeli war is a real possibility.

156. For a debate on the legality of an oil embargo under international law, see Paust & Blaustein, *The Arab Oil Weapon—A Threat to International Peace*, 68 AM. J. INT'L L. 410 (1974); Shihata, *Destination Embargo of Arab Oil: Its Legality Under International Law*, 68 AM. J. INT'L L. 591 (1974); Paust & Blaustein, *The Arab Oil Weapon: A Reply and Reaffirmation of Illegality*, 15 COLUM. J. TRANSNAT'L L. 57 (1976).

157. Indeed, oil is the Arabs strongest weapon. The Arabs fully realize this. The Iraqi President, not so far back, declared "that the threat of a new oil embargo would remain the Arabs' chief weapon against their enemies." *More Woes on the Oil Front*, *supra* note 18, at 71.

than they have now) were shipping oil secretly, thereby reducing the pinch; and (e) the embargo was lifted before it had become absolutely unbearable. These factors taken together explain why no military action was taken.[158]

The situation has since changed. The American economy is now far less capable of bearing such major strains that result from an oil embargo.[159] Since the Arab oil exporters have far more money now than they had in 1973, the probability of oil being shipped secretly is far less. The impact of a future oil embargo would be more severe. Furthermore, no one can predict how long a future embargo would last. Since 1973, a great deal of thought has been given to the issue of military intervention.[160] Former Secretary of State Kissinger, responding to a question about possible U.S. military intervention in the event of a future oil embargo, stated in 1975:

> I am not saying that there is no circumstance where we would not use force. But it is one thing to use it in the case of a dispute over price, its another where there's some actual strangulation of the industrial world.[161]

Following the official stand that "military intervention cannot be ruled out," several military institutes have held sessions and made contingency plans.[162] Studies have been conducted to ascertain how much military force is needed to carry out such operations successfully.[163] A self-contained force has already been created for deployment during emergencies in a "number of regions outside Europe,"[164] most proba-

158. It should also be noted that in 1973, the public sentiment was inclined towards non-intervention because of America's heavy involvement in the Vietnam war. This public pressure restrained policy makers from opening new international war-fronts.

159. Ironically, the 1973 embargo is one of the principal factors which brought the economy to its present state. It removed conceptual barriers to price increases so that new price increases were taken for granted and thus met with little opposition.

160. *See Will U.S. Seize Mid East Oil?*, U.S. NEWS & WORLD REP., Dec. 2, 1974, at 18; Ignatus, *Seizing Arab Oil*, HARPERS, Feb. 1975, at 44.

161. *The Intervention Issue*, TIME, Jan. 20, 1975, at 34; N.Y. Times, Jan. 3, 1975, at 2, col. 1.

162. "In a new study for Congress, John M. Collins and Clyde R. Mark, of the Congressional Research Service, conclude that five American divisions could be mustered, with difficulty, and defeat the OPEC armed forces in the Persian Gulf." *The Conflict Over Countering the Cartel*, BUS. WEEK, July 30, 1979, at 56.

163. *The Intervention Issue*, *supra* note 161, at 35. It has been suggested that in case a future oil embargo takes place, the U.S. forces could quickly react and capture a 400 mile coastal strip along the Persian Gulf extending from Kuwait through Saudi Arabia to Qatar and thus "take control of 40% of the world's proven petroleum reserves." *Id.* It has been noted that since the area under discussion has no substantial centers of population and is without trees, "its effective control does not even bear remote comparison with the [American] experience of Vietnam and combatting guerillas." *Id.*

164. *The Conflict Over Countering the Cartel*, *supra* note 162, at 57.

bly the Middle East.[165] All these post-1973 developments make it clear that in the event of a future oil embargo the possibility of U.S. armed intervention is great.[166]

It should be kept in mind that if an oil embargo takes place and U.S. intervenes militarily and succeeds in overcoming the OPEC forces, the world oil supply will not necessarily change for the better.[167] The danger exists that at the first hint of military invasion, the Arabs, true to their threats, might blow up their oil wells.[168] According to some estimates the U.S. technology is capable of restoring production from the damaged wells within four months or so.[169] But guerilla activities aimed at hampering oil production would intensify, keeping the production of oil from ever becoming a smooth operation.[170]

Soviet reaction to such U.S. military operations also merits examination. One view is that U.S. military intervention in the Middle East will prompt no Soviet response. The argument is that the Soviet interest in that area is not as acute as the United States interest and that the Soviets will stand by passively just as U.S. stayed aloof during the Soviet invasion of Czechoslavakia.[171] This view is unpersuasive. The Soviet Union is a strong supporter of Arab states, such as Iraq and Syria, and is deeply involved in Middle East politics.[172] It cannot afford to see Arab land passing into U.S. hands for geopolitical purposes. Since the Soviet Union will be needing oil in the near future, it has a personal

165. For a discussion of the capabilities and shortcomings of this rapid deployment force, see *Is America Strong Enough*, NEWSWEEK, Oct. 27, 1980, at 48, 61.

166. It should also be noted that the sentiment in America today, triggered by Iran's taking of hostages, is very different from 1973 when the nation was suffering from the "national guilt syndrome" because of its involvement in the Vietnam war.

167. On the other hand, it is more likely that the supply position will change for the worse. As far as the rest of the world is concerned, what guarantee is there that the Americans will not use the oil to their own advantage just like the Arabs, so that the oil dependent countries will be forced to tow the American line instead of the Arab, and this for the majority of the countries, would be far more difficult since they can easily identify themselves with the Arab cause as compared with the American cause.

168. Following Kissinger's remarks that an armed intervention in the Middle East cannot be ruled out, Egyptian President Sadat warned "that the oil producing Arab Nations would blow up their wells rather than let them be seized by U.S. forces." *The Intervention Issue*, *supra* note 161, at 34.

169. *Id.* at 35.

170. Considering that the Palestinian Liberation Organization is expert in guerilla tactics and has been carrying out successful operations abroad, it will not be difficult for them to sabotage the oil industry especially if they have the support of the locals which in all probability they would.

171. Dempsey, *supra* note 147, at 304; *The Intervention Issue*, *supra* note 161, at 35. For a discussion pertaining to the legality of the Soviet invasion of Czechoslovakia, see Goodman, *The Invasion of Czechoslovakia: 1968*, 4 INT'L LAW. 42 (1970).

172. In the wake of the Iran-Iraq war, the Soviets have furthered their interests in the Persian Gulf by signing a "treaty of friendship and cooperation" with Syria. *The Gulf War: Rising Risks*, *supra* note 45, at 40.

stake in the Arab oil fields.[173] The Soviet invasion of Afghanistan has been interpreted by some as the first step in the march towards the Persian Gulf.[174] In view of this it is likely that instead of remaining passive onlookers, the Soviets would actively intervene on behalf of Arab states.[175]

In short, United States intervention will not help much in insuring the continuity of oil supplies but could result in global warfare. In order to eliminate super power confrontation over oil, it is important that the Middle East crisis be resolved,[176] and if not at least the issue of supply of oil should be depoliticized.

It should be noted that an oil embargo is just one of the many factors which threaten the continuity of oil supply. For example, within OPEC, hostilities exist between Iraq and Iran and also misunderstandings between Saudi Arabia and Iran.[177] Boundary disputes remain between Iraq and Kuwait, and Saudi Arabia and Abu Dhabi.[178] Any of these disputes could flare up disrupting the production and consequently, the supply of oil. We have witnessed the Iraq-Iran war.[179] Furthermore, internal problems within some OPEC countries, for example, the Kurdish problem in Iran and Iraq, could give rise to terrorist activities geared towards damaging oil production.[180] Similarly, it is possible that the anti-kingdom sentiment, which swept through Iran, might find its way into Saudi Arabia. Mass agitation and subversive activities might become rampant and affect the Saudi oil production. This might give rise to U.S. armed intervention in favor of the Saudi royal family for purposes of protecting the Saudi oil industry.[181] If intervention takes place in such circumstances it is unlikely

173. *See An Interview with Arafat*, *supra* note 149, at 27.

174. *See* Safire, *The 'Carter Doctrine'*, N.Y. Times, Jan. 14, 1980, § A, at 17, col. 1; *Zia Bars the Door*, NEWSWEEK, Oct. 13, 1980, at 65.

175. From a military standpoint, the geographical proximity of the Soviet Union to the Persian Gulf area gives the Soviet Union an advantage over the United States.

176. Since the Middle East crisis has defied solution for so long, some are of the opinion that it cannot be resolved. For example, a Middle East expert seeing a panel discussion entitled "The Arab-Israeli Dispute—Legal Issues and Possible Solutions" suggested that a more appropriate title would be "Illegal Issues and Impossible Solutions." Newman, *The Arab-Israeli Dispute: Legal Issues and Possible Solutions*, 4 INT'L LAW. 360 (1970).

177. Levy, *World Oil Cooperation or International Chaos*, 52 FOREIGN AFF. 690, 692 (1974).

178. *Id.* at 692.

179. Even if the present conflict does subside, there is no guarantee that it will not erupt again.

180. In fact, prior to the Iran-Iraq conflict ethnic Arab dissidents within Iran tried to sabotage Iranian oil production. *See In the Near Term, A Surprise Surplus*, BUS. WEEK, July 30, 1979, at 46.

181. For all practical purposes, disruption of oil supply from Saudi Arabia means an oil embargo. So, the likelihood of American intervention in such circumstances is the same as in the case of oil embargo. It could be argued that the possibility in such a case is even higher because disruption of oil supplies through terrorist activities implies damage to oil

that the Soviets would look on quietly. From the Soviet point of view there would be no guarantee that United States entering for purposes of guarding the Saudi oil industry, would not decide to stay indefinitely.

Thus, if no elaborate plan is created to meet such emergencies, so that upon disruption of oil production in any OPEC country, certain other countries would increase their productions automatically, and if the OPEC nations do not decide to organize a joint police force to be deployed for guarding oil industries in countries threatened by terrorist acts,[182] the possibility of foreign intervention remains and the threat of global confrontation is ever present.

VI. GLOBAL PROBLEMS OF MUTUAL CONCERN AND THE REASONS WHY OPEC ALONE CANNOT SOLVE THEM

The preceding discussion shows that four major problems relating to world oil trade must be resolved and that each one of them is crucial to the well-being of world economy and peace.

1. The first problem is to regulate oil price increases in such a manner that the emerging "stop-go" trend in oil price increases is eliminated.

2. Since oil price increases will affect the economies of the non-oil LDC's adversely, the second problem is to devise a method for lessening the burdens of these countries and promoting a more just international economic order.

3. As the revenues of the oil exporting countries increase commensurately with the increase in oil prices, and as most of these countries direct much of their revenues into the eurocurrency market, with all its dangerous possibilities, the third problem is to find ways of inducing the oil exporting countries to invest their surplus oil revenues, on a long term basis, in places other than the eurocurrency market.

4. The fourth problem is insuring the continuity of oil supplies and eliminating the present threat to world peace.

OPEC states are not highly developed. They cannot be expected to provide aid in amounts which would substantially reduce the economic ills of the non-oil LDC's. Furthermore, OPEC cannot reason-

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which is irreparable. Also, in such circumstances an invitation to intervene can be expected which will make intervention less politically damaging.

182. A joint police force has been suggested because the local force cannot be relied upon to protect the oil industry. Usually, when mass movements against ruling elites gain momentum, people involved in law maintenance find it difficult not to identify themselves with the movements and to feel sympathetic towards them. It is morally difficult for them to use force in such circumstances. A police force composed of nationals of different countries will be in a better position to effectively guard the oil industry.

ably be expected to change its present course of investing in the eurocurrency markets unless the industrialized countries give strong guarantees to protect OPEC investments in these countries. Therefore, the creation of a more just economic order and the diversion of funds from the eurocurrency markets requires active cooperation from the industrialized countries. But, the regulation of the increases in oil prices and the insurance of the continuity of oil supplies does not necessarily require the active cooperation of the industrialized world. Yet, notwithstanding its current attempts,[183] OPEC cannot be relied upon to solve these problems. The basic reason for its unreliability is its ineffective decision-making process. Decisions of OPEC are "unanimously adopted in the form of conference resolutions which must be ratified by all member governments in accordance with its statute before they can be operative."[184] Most inter-state organizations contain provisions for settlement of disputes by arbitration but OPEC's statute contains no contingency provisions in case of disagreement among member states.[185] It seems improbable that OPEC members will ever unanimously agree to a just increase in price of oil or the manner of its regulation.[186] Even if OPEC initially succeeds in determining the amount by which oil prices should be increased every year, enforcement of this decision still poses a problem. OPEC's statute contains no provisions for sanctions to be applied against a member violating its decisions.[187] It is common knowledge that members do violate OPEC decisions.[188] Furthermore, the presence of OAPEC (Organization of Arab Petroleum Exporting Countries)[189] within OPEC makes it unlikely that OPEC members would ever unanimously agree that oil will not be used as a weapon and then stick by this decision. OPEC, by itself, is not capable of solving the major problems relating to world oil trade because of the structural deficiencies of the organization and the attitudes and past practices of its member states.

183. To date, OPEC has made no official move to disassociate oil from Middle East politics, *i.e.*, to assure the continuity of oil supply.

184. Ajomo, *An Appraisal of the Organization of Petroleum Exporting Countries (OPEC)*, 13 TEX. INT'L L.J. 11, 33-34 (1977).

185. *Id.* at 17.

186. *See id.* at 17.

187. *Id.* at 33.

188. For example, in June 1979 OPEC set the price ceiling at $23.50 per barrel. Soon after Libya and Iran exceeded the ceiling. N.Y. Times, Oct. 16, 1979, § A, at 1, col. 1.

189. OAPEC was founded in 1968 by Saudi Arabia, Kuwait and Libya. Algeria, Abu Dhabi, Dubai, Qatar and Bahrain joined in 1970. For a detailed look into OAPEC's purposes, objectives, achievements, etc., see ORGANIZATION OF ARAB PETROLEUM EXPORTING COUNTRIES, BASIC FACTS ABOUT THE ORGANIZATION OF ARAB PETROLEUM EXPORTING COUNTRIES, OAPEC REPORT (1976).

VII. Possibility Of An Oil Agreement

The dire need to rectify the deteriorating world oil trade situation,[190] and OPEC's inability to do this alone, has been explained. The solution to this problem lies in international cooperation. It is imperative that a multilateral agreement on oil be reached which deals with the four problems identified above.

A. An Oil Agreement from the Standpoint of the Developed Countries

The oil importing developed countries will welcome a multilateral agreement on oil. Presently, world oil trade is controlled by the oil-exporting countries. These countries make all major decisions.[191] Opportunity for participating in this decision-making process, which has a vital impact on the oil importing countries, cannot be ignored by the industrialized world. A multilateral agreement would remove the uncertainty surrounding the price of oil. This would encourage private entrepreneurs to increase business activity resulting in greater economic growth and less unemployment for the developed countries. Since the industrialized world has been committed to providing aid to the LDC's, they will have no objection in pooling part of their resources with OPEC in order to promote a better world economic order. Investment of oil revenues within a country means increased business activity and circulation of the money paid for increased price of oil within the country. Developed countries will readily agree on providing guarantees against expropriation, confiscation, and discriminatory taxation to attract investment by oil exporting countries.[192] The continuity of oil supplies is of vital importance to the industrialized world. Even if the industrialized world does not like some aspects of the overall agreement, they will make accomodations in order to insure the vital continuity of oil supplies. Seeing that the Organization for Economic Cooperation and Development (OECD) has proved ineffec-

190. If someone is blamed for the present oil situation, it is first the oil companies and then, OPEC. The oil companies contribution to the present crisis lies in the fact that by keeping the price of oil too low from 1945-1973, they discouraged the development of alternate sources of energy and increased the dependence of the world on oil. The cheap energy they provided, spoiled the consumption habits of the world so that enforcing conservation measures became exceedingly difficult. OPEC's role in the present crisis lies in the fact that it took undue advantage of the increased dependence of the world on oil and relentlessly increased its price.

191. Obviously, the oil companies exert a lot of influence. But, since 1973 OPEC's control over the oil industry has steadily increased whereas the control of the major oil companies has steadily decreased. *See* Hershey, *The Shrinking Power of Big Oil*, N.Y. Times, Feb. 26, 1980, § D, at 1, col. 2.

192. The developed countries need not give a blanket approval to oil producers to invest in any sector of their economy. Indeed, in certain industries (such as armament industry) the government can expressly forbid foreign government holdings.

tive in countering OPEC, it is clear to the industrialized world that the solution to the oil crisis lies not in opposing OPEC, but in cooperating with it.

B. An Oil Agreement from the Standpoint of the Non-Oil Less Developed Countries

As far as the non-oil LDC's are concerned, any agreement which contains provisions for some fund (or other aid) to be utilized in removing the burden imposed upon them due to increasing oil prices, which provides for measures to be taken to increase their standard of living and which promotes their developmental projects, will receive their full support.[193]

C. An Oil Agreement from the Standpoint of the Oil Exporting Countries

An oil agreement will prove beneficial for the oil exporting countries. Well regulated price increases do not mean that OPEC will be losing money that it could otherwise have made. Regulated increases mean that the world economy will be spared severe disruptions. This is beneficial for all, including OPEC. OPEC ha a long history of political association with the non-oil LDC's who have consistently supported OPEC policies in the past.[194] OPEC is morally bound to take care of them.[195] Considering past aid given by OPEC to some LDC's,[196] OPEC will have no objection in contributing to the establishment of a fund for purposes of achieving a more just world economic order in an overall agreement on oil.

For most of the OPEC countries, the only source of income is oil and that is depleting rapidly.[197] It is in OPEC's interest to divert money away from the eurocurrency markets and into projects which continue to yield profits on a long term basis.[198] If proper guarantees against expropriation and discriminatory taxation are given, OPEC will rely less on the eurocurrency markets. Even now, when no such ex-

193. Further, an oil agreement is in full harmony with the Third World sponsored movement of having commodity agreements to create a more just world economic order.

194. LDC's have supported OPEC politically notwithstanding that OPEC oil policies have hurt them the most. One possible explanation for this is that suffering hardships due to external events is not new to the LDC's. In the oil context, at least they have the psychological pleasure that the perceived "inflicter of hardships" in the past (*i.e.*, the industrialized West) is suffering too, perhaps for the first time, at the hands of the LDC's.

195. Apart from the moral issue, practical politics also dictates that OPEC should take care of them.

196. *See supra* note 84.

197. *See* Ajomo, *supra* note 184, at 31.

198. *See id.*

plicit guarantees exist, the amount of OPEC investments in some industrialized countries, notably the United States, is considerable.[199] Indeed the opportunity to safely invest in long term profit yielding projects in the developed world will be an incentive for OPEC to enter into an overall agreement on oil.

Armed intervention, because of the risks it entails, is unlikely to take place. However, OPEC cannot ignore this possibility. Regardless of whether such intervention would be beneficial for the intervening state, it would surely be destructive for the member states since the ground of conflict would be their land. Thus, keeping its own military weakness in mind and realizing the dangers involved in any future oil embargo, OPEC will not have much difficulty in insuring the future continuity of oil supplies.[200] The desire for assurance of the continuity of oil supplies might result in the creation of a task force for purposes of protecting oil production from terrorist acts. Such protection might be attractive to some of the present regimes in OPEC. Since the issue of oil supplies is of extreme importance, a fixed rate of increase in oil prices might depend upon it. Against the issue of providing guaranteed oil supplies, OPEC may negotiate a higher increase in price rate than would otherwise have been possible. Thus a comprehensive agreement on oil will be in the interest of all parties concerned.

D. Moves Towards an Oil Agreement

There are many who consider the idea of an oil agreement incapable of realization. Yet a small step in this direction was taken at the Havana Conference of non-Aligned States.[201] At the conference, the non-oil LDC's indicated to the OPEC states that their energy burdens had become unbearable.[202] It was mutually decided in the meeting's final declaration that "the international energy issue should be discussed in the context of global negotiations within the United Nations and in relation with other issues such as the problems of development of developing countries, financial and monetary reforms."[203]

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199. For example, at the time of freezing Iranian assets it was thought that "blocked Iranian bank deposits and other assets . . . might total about $6 billion." *Action Disturbs Financial Circles*, *supra* note 141, at 1.

200. The Arabs realize the importance of continuity of oil supplies and already acknowledge the issue of supplying oil as an "international responsibility." *See* the statement of Saudi Arabia's Prince Fahd, as reported in 18 MIDDLE EAST ECON. SURVEY 2 (Nov. 20, 1975).

201. *See* Nossiter, *Poorer Countries Persuade OPEC to Negotiate Oil Prices and Supply*, N.Y. Times, Sept. 18, 1979, § A, at 1, col. 2.

202. *See id.*

203. *Id.* at 9. It should be noted that members of OPEC maintain that they have not agreed explicitly that their pricing policies would form part of the negotiations. *Id.*

The United Nations Committee of the Whole has informally decided to seek approval from the U.N. General Assembly to prepare groundwork for such global negotiations and its chairman is of the view that they could begin by the end of 1980 or the beginning of 1981.[204] This shows that the time is ripe for holding a convention on oil.[205] If the nations of the world realize the dangers involved in allowing the world oil trade to take its own course, and if they see the many benefits that will accrue to them through such a convention, it is possible that reason will prevail and an agreement on oil will finally be concluded.

PART II

The first part of this article stresses the need for international cooperation to better cope with the inevitable burdens that the oil crisis holds for us in the future. An international agreement on oil designed to adequately deal with all the major issues arising out of world oil trade was advocated as the most effective solution. As identified earlier, these issues are: (1) fixation of uniform oil prices and a formula for computing future price increases; (2) establishment of a fund to aid the economies of the less developed countries as a step toward a more just world economic order; (3) reduction of the amount of oil revenues circulating in the eurocurrency market by providing incentives to the oil exporters to make long term foreign investments, both in the developed as well as the less developed countries; and (4) removal of the possibility of any future oil embargo and any other serious disruption of oil supplies.

The task of concluding an oil agreement will be formidable. The varied interests of participating states often make it difficult to reach agreement on any issue, however unimportant, let alone an issue with such far reaching implications as the regulation of oil. Yet with a proper appreciation of problems and a sincere effort to solve them, varied interests become less varied and at times converge. Proceeding

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204. *Id.*

205. Saudi Oil Minister was interviewed by Business Week:

Question: What is the prospect now for an organized "dialogue" between oil consuming countries and producing countries?

Answer: I do not think there is a possibility of discussing oil alone, without discussing other problems of the developing nations, like raw materials, financial problems and the transfer of technology.

Question: Then is the time ripe for such a discussion of the other problems of developing nations?

Answer: It is more than ripe; I think it is urgent. We are always prepared to sit down and discuss such things. *Interview with Ahmed Zaki Yamani: The Trade-offs in Saudi Oil Policy*, BUS. WEEK, June 18, 1979, at 113.

with this idea, in the case of oil, Part II broadly discusses some of the major issues that will arise during the negotiation process and suggests possible solutions, thus giving a rough idea of the form which an oil agreement may take.[206]

I. PARTIES TO THE AGREEMENT

Directly or indirectly, an oil agreement will affect the interest of every nation in the world. It is necessary that every state expressing a desire to participate in the negotiating process and the signing of the agreement be permitted to do so. Participation of the communist nations is not essential for the success of the agreement.[207] If they decline to join, no effort should be spent in persuading them to do so.[208] On the other hand, it is essential that a majority of the free world oil-exporters be parties to the agreement. Efforts should be made to persuade all oil exporters to join. Even if some individual exporters such as Iran do not participate, the agreement could be successful provided the other major oil producers are parties.[209] With regard to the major oil companies the question arises: should the "Seven Sisters"[210] taken together be given the status of a state for purposes of participating in the negotiations and later the signing of the agreement? It should be recognized that the position of the oil companies has changed drastically over the decade.[211] Their power to influence world oil trade has

206. The discussion that follows, being in the abstract, is bound to be simplistic. However it does provide a framework for further discussion and improvement. What is important is that the final agreement should adequately deal with the four major problems identified in the paper, *i.e.*, whatever "means" are adopted, the "end" must be achieved.

207. The participation of the communist world is not essential because communist oil trade does not greatly affect the Third World. Because the communist nations might enter the Arab market in the foreseeable future it would be beneficial if they do join in.

208. Though not in conformity with the general optimistic trend of this article concerning the possibility of the conclusion of an oil agreement, the ensuing discussion—unless it appears otherwise—is generally on the assumption that the communist world would stay out. However, the suggestions contained will need no modifications even if the Soviet bloc joins.

209. Among the oil producers, it is crucial that Saudi Arabia should join in the agreement.

210. The "Seven Sisters" is a term used to describe the seven largest oil companies. These companies are: (1) Exxon, formerly Standard Oil Company (Exxon); (2) Mobil, formerly Socony-Vacuum Oil Company (Mobil); (3) Gulf Oil Corporation (Gulf); (4) Texaco, formerly the Texas Company (Texaco); (5) Standard Oil Company of California (Socal); (6) British Petroleum Company, Ltd. (B.P.); (7) Royal Dutch Petroleum Company and Shell Transport and Trading (Shell). N. JACOBY, MULTINATIONAL OIL 10 (1974). "In the world at large in 1949-1950, these seven companies controlled 65% of proved reserves of petroleum outside the Soviet bloc, 55% of its production, 57% of all refinery capacity and major pipelines, and through ownership or long term leases, at least 67% of all privately owned tanker space." RUSTOW & MUGNO, *supra* note 98, at 3.

211. Until 1969, the hold of the international oil companies on the world oil trade was immense because they determined the levels of production, exports and prices. Now, it is

radically decreased.[212] In view of this there is no need to make them regular parties.[213] While their interests can be safeguarded by their governments, their expertise makes it desirable to allow them to participate in a consultative capacity during the formulation of the agreement. After the agreement becomes effective, if they take any step which violates the agreement or otherwise affects it adversely, the concerned governments should be held responsible.

It is proposed that the agreement should take place under the auspices of the United Nations Organization and that pursuant to a General Assembly resolution, an Oil Committee should be formed and entrusted with the task of laying the groundwork for, and the conducting of, negotiations.[214]

II. ALLOCATION OF VOTING RIGHTS

The allocation of voting rights among different states poses a difficult question: should voting rights be allocated on a "one nation one vote" basis or on some other principle? The major actors in the oil game, the oil exporters and the developed countries, will probably insist that voting power should be allocated according to the capacity of states to influence the world oil market. Therefore, any attempt to allocate voting rights on the basis of sovereign equality, one nation one vote, is bound to fail because the decision-making power would pass into the hands of the non-oil LDC's, countries who have practically no power to influence world oil trade.[215] Obviously, some form of weighted voting will have to be adopted. In this connection the voting procedure established under the International Coffee Agreement (ICA)[216] offers helpful guidelines.

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the oil producing countries who set production levels, decide where to export, and also at what price to sell oil. Levy, *supra* note 177, at 693.

212. The status of the oil companies has been reduced to that of an agent to the oil producing countries. This is reflected by the fact that in 1973 the Dutch and American oil companies, according to the wishes of the oil producing countries, became "the instruments for carrying out the embargo on oil shipments to their own home countries." *Id.*

213. Any attempt to make them regular parties may complicate the negotiating process since many countries loyal to the traditional concept of sovereign equality may object to awarding the oil companies the status of a state.

214. The move made at the Conference of the Non-Aligned Countries at Havana, reference to which has been made earlier in this article, can also be a channel used to reach an oil agreement. In that case the issues of development and technology transfer, though extremely important, may be dropped temporarily to focus on the oil issue.

215. The developing nations consumed about 10% of the world energy in 1976, which is "almost 13% of the energy consumption of the developed markets economies." Shams, *supra* note 72, at 109.

216. International Coffee Agreement, 1962, 1963 2 U.S.T. 1911, T.I.A.S. No. 5505, 469 U.N.T.S. 169; International Coffee Agreement, 1968, 1968 U.S.T. 6333, T.I.A.S. No. 6584, 647 U.N.T.S. 3, *amended and extended* Apr. 14, 1973, *entered into force* Oct. 1, 1973, 25

Professor Kaplan, of Harvard, in the context of advocating an oil agreement between the oil importers and exporters on the lines of ICA aptly described ICA's complex voting rules as follows:

> The weighted voting formula adopted by the ICA (International Coffee Agreement) was designed to accommodate the interests of both producers and consumers, to match voting with economic power within each group yet limit the ability of a few countries to dominate the organization. Voting in the council, the ICA's main governing body, was based on a system of equal votes for exporters as a group and importers as a group (1,000 votes each) regardless of the number of members in each group. Within each group the total number of votes allocated to it was divided among the group members basically according to respective shares in exports or imports over an historical period. In order to limit what would otherwise have been an overwhelming voting power of the United States in the importers group, no member was allowed to hold more than 400 votes. Ordinary decisions of the council were made on the basis of a 'distributed simple majority vote,' meaning a majority of the votes cast within the importers group and a majority of the votes cast within the exporters group, counted separately. Important decisions such as those concerning quotas and the application of sanctions, required a distributed two thirds majority vote. In order to block the potential veto power of the United States and Brazil on important decisions, a special procedure was established whereby at least two members of each group had to vote against a proposal to which all other members had agreed.[217]

The voting procedure of ICA ensured that its decisions would reflect the majority view of each interest group, the exporters and the importers of coffee.

Before proceeding to draw up a voting formula for the proposed oil agreement on the lines of ICA, it is worthwhile to examine the purposes sought by each of these agreements.

The Coffee Agreement centered around one major objective, the elimination of price fluctuations by steadying the world supply of coffee.[218] The coffee trade neither resulted in huge amounts of unmanageable money nor placed unbearable burdens on the economies of coffee importing countries. Rather, price fluctuations were more to the detri-

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U.S.T. 379, T.I.A.S. No. 7809; International Coffee Agreement, 1976, *opened for signature* Jan. 31, 1976, T.I.A.S. No. 8277.

217. Kaplan, *supra* note 87, at 218-19.

218. *See* Stuckart, *The International Coffee Agreement*, 9 LAW & POL'Y INT'L BUS. 569, 577-78 (1977).

ment of coffee exporting countries.[219] The agreement was concerned with the issues of supply and price and did not touch upon the utilization of revenues generated by the coffee trade. All the coffee importing countries had the same degree of common concern—the amount of coffee they would be allowed to import and the price that they would have to pay for it.[220]

The scope of the proposed oil agreement extends far beyond that of the coffee agreement. It is concerned not only with the supply and price of oil but also with the manner in which oil revenues should be utilized. The oil importers fall into two distinct categories, the developed countries and the less developed countries. With regard to the issue of supply and price of oil, their interests are similar. However, with respect to utilization of oil revenues, their degrees of interest in using the money in a certain manner vary sharply. If voting procedures were to be framed exactly along the lines of ICA, the developed and less developed oil importing nations would fall into one group, the oil importers group. Under the ICA plan, since voting rights within the group would depend upon the quantity of oil imported by individual states in the past, the LDC's would practically have no influence in the decision-making process.[221] It is unlikely that the LDC's will ever agree to such rules because if voting power was so allocated, any resulting agreement would in essence be an agreement between OECD and the oil exporters.

One of the purposes of the proposed oil agreement is to help the LDC's overcome the hardships of high energy costs, and to aid them in their developmental projects. Because this aspect is of such vital interest to the LDC's, some mechanism to increase their influence in the decision-making process must be provided.

Within the basic structure of the ICA voting rules, there are two ways to increase the role of the LDC's in the decision-making process: First, the provision in the importers voting rules that "any two importers must cast their votes against a proposal if all other members are voting for it" should be replaced by another provision, requiring that on any proposal before the importers, three of the OECD members must vote against it if the rest of the OECD members are voting for it regardless of how the LDC's vote. This solution is not very appealing because although it would reduce the control of OECD in the import-

219. *See id.* at 570.

220. For an in-depth analysis of the International Coffee Agreement, *see* Bilder, *The International Coffee Agreements: A Case History in Negotiations*, 28 LAW & CONTEMP. PROB. 328 (1963).

221. That is because the amount of oil imported by the LDC's is very small as compared to the developed countries. *See supra* notes 99, 215.

ing blocs decision-making process, it would not necessarily increase the role of the LDC's to the extent that is desired.[222] It also restricts the capacity of the developed countries to make decisions best suited to serve their interests. In addition, they might find this procedure unacceptable because it imposes extra restraints on them as compared to the oil exporters, a psychological factor that cannot be ignored in view of the long state of mental confrontation existing between the two groups.

Second, a far more attractive possibility which will give effective power to the LDC's in the decision-making process is to create three blocs instead of two for voting purposes, such as, the oil exporting countries bloc, the oil importing developed countries bloc and the oil importing less developed countries bloc. Each of these blocs should be assigned a total of 1,000 votes irrespective of the number of states in it.[223] Within these blocs voting rights should be divided between states in proportion to the oil imported or exported by them during the previous five years.[224] The highest number of votes that any one state should be allowed to hold in each bloc should be 400.[225] To block the potential veto power of U.S. and Saudi Arabia on important decisions, at least two members should be required to vote against any proposal which is supported by the rest of the members in the bloc. All decisions should be made on the basis of a distributed simple majority vote, a majority of votes in each one of the three blocs.

The voting and decision-making procedures of the oil agreement should differ from the ICA's procedures in only two ways: instead of forming two groups as in the ICA, the oil agreement should have three groups; and whereas the ICA made distinctions between ordinary and important decisions, requiring distributed simple majority vote for ordinary and distributed two-third majority vote for important decisions, the oil agreement should make no such distinctions and should require

222. The role of the LDC's would still be subservient for the initiative would rest in the developed countries with the power of tipping the scale in the hands of LDC's in marginally close cases which in all probability will be few.

223. The total number of votes could be increased or decreased as the situation demands. The figure of 1,000 has been used arbitrarily with no real significance except to focus on the fact that the basic framework of the ICA's voting rules may be helpful in allocating voting rights.

224. Considering that some countries have through conservation reduced their oil imports and that they intend to still further reduce imports, it might be better to allocate voting rights in proportion to the oil imported during the previous three years or the previous year.

225. The purpose of mentioning 400 as the ceiling on the number of votes one state can hold is to make clear that no state should be allowed to have a veto power. Since the U.S. in the developed importers bloc and Saudi Arabia in the exporters bloc will far outstrip the others in terms of holding votes and since both of them enjoy good relations with each other, the other participants might wish to set the top ceiling at some lower level to effectively reduce their power in their respective groups.

a distributed simple majority vote for all decisions.[226]

III. PANEL OF ARBITRATORS

Negotiating multilateral agreements can be very time consuming. Decades may pass before any meaningful result is achieved.[227] In the case of oil, the probability of extended negotiations is high because a "distributed simple majority vote" might often be difficult to achieve on many issues. But in this instance time is crucial. Any agreement that is reached thirty years from now will be practically meaningless because (1) irreparable damage, as envisaged in the first part of this article, will already have occurred, and (2) there will not be much oil left to regulate. Therefore some method must be devised for shortening the negotiation period as much as possible.

Most multilateral agreements contain compulsory third party adjudication clauses to deal with problems arising out of the agreement, after it has come into effect. Rarely do parties use arbitration to break stalemates that often arise during the negotiation process itself.[228] In the oil context, it is suggested that the negotiators should depart from conventional modes by setting up an "Arbitration Tribunal" for the purpose of deciding issues which might arise during negotiations and which the parties themselves are unable to resolve.[229]

A convenient way of selecting arbitrators is to choose them from the Justices serving on the International Court of Justice.[230] Alternatively, the tribunal could be composed of sixteen members: six from the exporting countries, six from the developed oil importing countries and four from LDC's.[231] No two members should have the same nationality and all of them should serve in their personal capacity. From these members a President should be elected to head the tribunal. Decisions should be based on a vote of simple majority.[232] In case of a tie,

226. It is for convenience's sake that no distinctions have been proposed between ordinary and important decisions: requirement of a two-third distributed majority vote might often result in stalemates.

227. For example, in cocoa's case, the 1972 Agreement took 17 years to draft, negotiate and ratify. *See* Kofi, *The International Cocoa Agreements*, 11 J. WORLD TRADE L. 37, 42-44 (1977).

228. It is conceptually hard to fit in arbitration in the negotiating process for negotiation implies full freedom of the parties to agree or not to agree on their own terms.

229. During negotiations parties often take up positions and later find it difficult to modify their stance for fear of loss of face. In such circumstances arbitration is especially helpful.

230. This will save a lot of time that would otherwise be spent in selecting arbitrators. The statute of the International Court of Justice allows its judges to act as arbitrators.

231. The arbitrators representing each group should be elected from within that group. Their election should then be ratified by the other two groups.

232. Considering that although the arbitrators will be serving in their personal capacities yet their personal backgrounds will necessarily affect their mode of thinking and hence the

the President should cast the decisive vote.

IV. FIXATION OF IMPORT AND EXPORT QUOTAS

The regulation of world oil production by allocation of import and export quotas should be done with two goals in sight: the elimination of the emerging "stop-go" pattern of oil price increases[233] by the removal of any possibilities of future shortages in the oil market and forcible reduction in the demand for oil by that amount which is being wasted due to lack of strict conservation enforcement measures.

If one were solely concerned with eliminating shortages, the solution would lie in regulating production in such a way that supply would equal demand. Since oil conservation must also be taken into account, it is proposed that the following criteria be adopted for regulating production: the supply of oil should be equal to the *essential needs* of the consuming world.

In order to determine the amount of oil required to meet the "essential needs of the world," it is advisable to form a "Committee of Experts." The Committee should be composed along the lines of the "Panel of Arbitrators," described above. The Committee should be entrusted with the task of estimating the oil needs of each oil importing country. To estimate these needs, the Committee may, in addition to other factors, consider: (1) the amount of oil imported in the past, (2) current and future development projects, and (3) the amount of oil that can be saved by efficient means of conservation.

If different opinions arise among Committee members with respect to such estimates for any given country, there should be a vote and the decision should be based on a two-thirds majority. These estimates should then be forwarded as recommendations to the main body for adoption as "import quotas." The Committee's estimates should be for a period of five years.[234] In this manner the import quotas for all the oil importing countries can be fixed. By combining the individual import quotas of these countries, the amount of oil required for the essential needs of the world can be ascertained. Keeping in view the

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decisions, it might appear that the requirement of a simple majority vote is not enough. Yet it has been proposed assuming that the crucial arbitrators, *i.e.*, the 4 representing the LDC's, will not be swayed either towards the exporters nor the developed importers. This assumption is based on the belief that the LDC's being in the consumer's class will identify sufficiently with the developed oil importers so as to nullify the effect of their long political association with OPEC in their fight towards achieving a more just world economic order.

233. *See* text accompanying note 67 *supra*.

234. The time period of five years has been suggested keeping in mind that the process being complex, it will be cumbersome to go through it more often—say every two years or so. On the other hand, it will be difficult to accurately predict beyond five years—say ten years.

possibility of variance between estimates and actual need, a factor of safety should be built into the level of global oil production by maintaining oil production at a slightly higher level than the estitmated essential needs of the world. Under the agreement, a facility should be provided for storing this small excess production of oil.[235]

Once the import quotas and the level of global oil production have been determined, the question of allocation of export quotas arises, *i.e.*, in what proportion should the global oil production be divided among the oil exporting countries. A different procedure is recommended for allocating export quotas than the one suggested for finding import quotas due to the substantial difference in attitudes towards quotas between the exporters and the importers.

If oil importing states were asked to estimate their own oil requirements, they would tend to exaggerate their import quotas since any excess oil could always be stored and used later. Storage might be economically attractive since money invested in oil would yield a better guaranteed profit than money placed in a savings bank account, assuming that the increases in oil prices every six months or annually would be substantially higher than the prime rate of interest. Such a plan would defeat conservation. Because of this possibility it is suggested that complete command be given to the Committee of Experts for recommending import quotas for purposes of final allocation.

In the case of oil exporting countries, granting complete control to the Committee of Experts for allocating export quotas is not warranted for the following reasons: (1) the question of which country should produce how much does not affect the conservation issue as long as the total production of oil does not exceed the estimated figure required to meet the essential needs of the world, and (2) some of the oil exporters are not interested in exporting as much oil as they can since many of them cannot absorb the ensuing revenues.[236] Furthermore, all of the producers realize that oil prices will increase and the later the oil is sold the greater the profit.[237] While some states may want to reduce their exports, there may be others who would like their exports to increase.[238]

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235. The developed countries have made arrangements among themselves for storing oil for emergencies. *See supra* note 40. The storage facility of the developed countries can be utilized for storing excess production of oil.

236. *See The Changes in OPEC That Are Driving Oil Prices Wild, supra* note 27, at 80.

237. *Id.* For the contention that oil producing countries are better off producing than keeping their oil in the ground, see Chanery, *Restructuring the World Economy*, 53 FOREIGN AFF. 242, 253 (1975).

238. "Although all 13 members of OPEC are developing countries, their attitudes and dependence on oil production differ greatly. Nigeria, Iran, Indonesia and Venezuela, for instance, have relatively large populations and need high oil revenues to support economic

The following procedure is suggested for allocating export quotas. The Committee of Experts should first ask each one of the oil exporters how much oil each would like to export. By taking into account their desired export level, the Committee should compute the total amount of oil available for export. It should then be ascertained whether the total falls short of or exceeds the estimated amount of oil required for the essential needs of the world.[239] If the total figure falls short, the Committee should again approach the exporters individually to see if any would be willing to increase its exports to cover the difference, or a part thereof. If a state or a group of states agrees to increase its exports to cover the difference, the problem is solved. If no state is willing to increase its exports or if some states agree to increase their exports but the increase is not sufficient to cover the difference, the solution would lie in distributing the difference among all the oil exporters in proportion to the amount of oil they initially wished to export.

In case the total figure exceeds the estimated amount of oil required for the essential needs of the world, the same procedure should be adopted. Committee members should approach individual oil exporters to see if some of them would be interested in lowering their expressed export levels. If a state or a group of states agrees to lower its exports so as to remove the "excess," the problem is solved. If no state agrees to lower its expected levels of exports or if some states agree to lower their exports but the reduction is not sufficient to remove the "excess," then the solution would lie in proportionately reducing the expressed export levels of the exporters by an amount equal to the "excess."

In case an exporting country expresses its desire to export an amount grossly inconsistent with its past patterns of production, for instance, if Saudi Arabia expresses a desire to export two million barrels per day[240] or if Kuwait wants to export seven million barrels of oil per day,[241] and from such expressions the Committee realizes that the procedures suggested above are unworkable, or if for some other reason compliance with the foregoing procedures would be detrimental to the

development programs. These countries must balance the need for immediate income against the desire to prolong the flow of oil revenues by limiting production. On the other hand, Saudi Arabia, the United Arab Emirates, Kuwait and Libya are currently earning oil revenues well in excess of domestic requirements, and therefore have little incentive to increase oil production above present levels." WAES Report, *supra* note 14, at 131-32.

239. The term "essential needs of the world" also includes the safety margin of excess production.

240. Saudi Arabia's oil production ranges between 8.5 million to 9.5 million barrels a day. *More Woes on the Oil Front*, *supra* note 18, at 70.

241. Kuwait's oil production ranges around 2 million barrels a day. *See The Changes in OPEC That Are Driving Oil Prices Wild*, *supra* note 27, at 77.

agreement, then the Committee, after stating its reasons, should take command of production allocation and on its own make estimates of how much oil should be produced and exported by each oil exporting country.[242]

The estimates obtained by the Committee under the regular procedure or the estimates made under the contingency procedure should be forwarded to the main body as recommendations for adoption as export quotas. All estimates should be made for a five year period.

It is possible that certain recommendations of the Committee may fail to gain a "distributed simple majority vote" and might be prevented from being adopted as the 'import or export quotas.' If so, the estimates should be reviewed and again subjected to vote. If they fail again to gain a distributed simple majority vote, and it becomes obvious that further attempts to gain such a vote would be futile, then these estimates should be referred to the Panel of Arbitrators for a final decision.[243]

While making estimates the Committee should pay particular attention to the demand and production of different qualities of oil. ICA's experience shows that demand for different qualities of the same commodity can fluctuate and disputes often arise as a result.[244] In the case of coffee, the change in demand for different kinds of coffee was directly dependent on changes in consumer taste.[245] Since an accurate prediction of future change in consumer taste for different qualities of coffee was not possible, the quotas at the time of negotiation could not truly reflect the demand for different kinds of coffee for the entire period for which they were prescribed. The ICA solved this problem by providing "special export authorizations" whereby if demand for any special kind of coffee increased more than was expected, it could be

242. In determining whether the oil exporter's desired export amount is or is not grossly out of proportion with its past patterns of production, the Committee of Experts should take into consideration political and other external impacts on the oil industry in such countries. For example, due consideration should be given to the Iranian revolution and Iran's war with Iraq in determining whether Iran's desired export amount is in proportion with its past export levels. The Committee should also be mindful as to whether the exporter has the physical capabilities to export the specified amount.

243. Instead of requiring a distributed simple majority vote for referring the issue to arbitration, it would be preferable to decide that after a "quote" fails thrice to get a distributed simple majority vote it will automatically go before the arbitration panel unless the parties by a distributive simple majority vote decide otherwise.

244. *See* Lowenfeld, *International Commodity Controls—Some Lessons from the Coffee Agreement*, 61 AM. J. INT'L L. 785, 787 (1967).

245. The African producers, parties to the ICA, claimed that their export quotas had been set low and that over the years a change in consumer tastes had taken place and therefore the demand for their kind of coffee had increased. *Id.*

exported in excess of the quota.[246] In the case of oil, it is possible that demand for different kinds of oil may fluctuate. However, such fluctuations will not be dependent on changes in consumer tastes but rather on the policies of states of big business. Therefore, accurately predicting these changes will not be very difficult and the Committee should take into account the different qualities of oil when recommending quotas. Import quotas for every state should specify the amount of each kind of oil it will require. Similarly, estimates for "export quotas" of each country should specify the amount of each kind of oil it would export. Production should be so regulated that the demand for different qualities of oil is exactly met.

Situations can arise where it might not be possible for an exporter to fulfil its obligations under the agreement. For instance, terrorist activities, a worker's strike, or even a war may force oil production to cease. In these circumstances, the excess oil kept in the "oil storage facility" may be used. But the oil in the "facility" might be exhausted before production is restored.[247] Thus to counter these eventualities, the committee should propose allocation of emergency production responsibilities among different oil exporters.[248]

V. DETERMINATION OF PRICE

A major and difficult issue facing the negotiators of the oil agreement concerns price. The following questions will arise: How should the basic price of oil be fixed? How should the different qualities of oil be priced? Should a two tier pricing system (*i.e.* one price for the developed oil importing countries and another price for the less developed oil importing countries) be adopted? How should the increase in price be regulated, *i.e.*, what should be the time interval between consecutive increases in price and how much should such increases be?

A. General Guidelines for Fixing Initial Prices

It should be mentioned at the outset that great disparity exists between the current price of oil and its cost of production. In spite of this, oil prices keep increasing. Considering this and the fact that oil is important not only as a primary source of energy but also because it is "the basic raw material for about ten thousand derivatives in the pe-

246. For further discussion of ICA's "special export authorizations," see Kaplan, *supra* note 87, at 220-21.

247. This may be particularly true if the cause of reduced oil production is war.

248. The importance of allocation of emergency production responsibilities can hardly be overstated. If adequate provisions are not made in this regard, the agreement is bound to come apart at the onset of any emergency.

trochemical field,"[249] it is clear that any attempt to fix its price in relation to its cost of production will not succeed.[250] Therefore, to start out, it will be more feasible to fix the price at the level being charged by the exporters at the time of negotiations. If prices are not uniform, as will most likely be the case, the different prices should be averaged, and the average price should be fixed as the starting price. In case this starting price is not acceptable to a simple majority of the oil producers, the developed and less developed oil importers, then efforts should be made to negotiate and settle on some other price. If the parties fail to agree on any price at all, then the matter should be referred to the panel of arbitrators for consideration, who should then fix the initial price of oil.

B. Pricing Different Qualities of Oil

Because there are different qualities of oil in the market, initial prices for each will have to be fixed. OPEC's policy in this regard is to use the Saudi Arabian light crude oil as a standard.[251] The sulphur content in other oils compared to the sulphur content in the Arabian light crude determines whether they should be priced higher or lower than the standard.[252] The higher the sulphur content the lower the price.[253] It is suggested that OPEC's procedures be followed. First, the initial price for Arabian light crude should be settled and then the initial prices for different qualities of oil should be fixed in relation to it.

C. Desirability of Adopting a Two Tier Pricing System

A two tier pricing system[254] is not very desirable for the following

249. Shihata, *supra* note 22, at 270.

250. The Arabs maintain, and perhaps rightly so, that the relevant cost of oil is the opportunity cost of keeping it underground. It should be noted, in passing, that the tradition of pricing Persian Gulf oil far above its cost of production existed long before the formation of OPEC. The reasons for such pricing are discussed in RUSTOW & MUGNO, *supra* note 98, at 108-09.

251. "Although the Saudi Arabian light (34°API) crude oil is used as a standard for OPEC crude oils, the Algerian and Nigerian oil are reputed to be the lowest in sulphur content." Ajomo, *supra* note 184, at 17 n.36. OPEC's orderly pricing system broke down after the Iranian revolution and member states started charging whatever prices they could get. But they are again on the way of keeping Saudi "benchmark crude" as a standard and pricing other qualities of oil in relation to it. *See OPEC's "Algerian Bazaar,"* NEWSWEEK, June 23, 1980, at 63-64.

252. *See* T. RIFAI, THE PRICING OF CRUDE OIL: ECONOMIC AND STRATEGIC GUIDELINES FOR AN INTERNATIONAL ENERGY POLICY 350 (1975).

253. For a discussion as to why high content sulphur oil is sold cheaper, *see id.* at 111. Apart from the sulphur content, the degree of gravity of the oil and freight costs also play a part in determining whether the different oils should be priced higher or lower than the Arabian light. Kaplan, *supra* note 87, at 221 n.64.

254. By a two tier pricing system is meant one price for the developed oil importing countries and another for the oil importing LDC's.

reasons:[255]

(1) It will cause considerable delay in the process of negotiations: reaching a decision on even one price will be difficult, let alone two.

(2) If the two tier pricing system is adopted, the difference in price might tempt some states to secretly re-export a part of their share of oil for higher prices, especially if they thought that more money could be made by re-exporting oil rather than deploying it into development or some other project at home. This could result in the creation of a black market for oil. The experience of ICA shows that the possibility of such re-export is indeed real.[256]

(3) The end sought by a two tier system, *i.e.* to relieve the economic burdens imposed on the LDC's can adequately be achieved through other provisions of the agreement.

D. Time Span Between Consecutive Price Increases

As regards the question of periods between price increases, it is suggested that prices should increase every three months. This will be conducive to conservation because people react instinctively to price increases by cutting back on consumption. But when prices remain static at any given level for some time, psychological adjustments occur and previous consumption habits are resumed. Regulating price increases on a quarterly basis will shorten the time period for psychological adjustments and will consequently increase conservation. Also it can be presumed that increases occuring every three months will be less sharp than biannual or annual increases, thus reducing the possibility of causing rude shocks to the world economy.

E. Regulating Price Increases

Since inflation is dependent on so many different factors and future rates of inflation cannot be accurately predicted, it is reasonable to assume that the oil exporters will not agree on any price increase formula which provides for some fixed percentage increase based on inflation rates at the then prevailing price. For example, based on estimates that global inflation will increase by 9% annually, a proposal is made that oil prices should increase by 12% annually. The only acceptable formula would be one based on some percentage increase in "real

255. OPEC has in the past not reacted very favorably to the idea of different prices for different countries. For example, in 1974 at the Islamic Summit held in Lahore, Pakistan, OPEC members rejected Libya's proposal of setting a four-tier pricing system. Libya's proposal was aimed at helping LDC's particularly the Islamic countries, *reported in* 17 MIDDLE EAST ECON. SURVEY 1 (Nov. 19, 1974).

256. B. FISHER, THE INTERNATIONAL COFFEE AGREEMENT 107 (1972).

terms" in the price of oil. For instance, it can be decided that x% increase in the real price of oil will take place every three months. The actual increases should be determined in view of the burdens they would impose on the economies of the oil importing countries as well as the incentives they would provide for the development of alternate sources of energy.[257]

VI. CREATION OF A FUND

In order to lessen the burdens imposed on the Third World and Fourth World countries by the rising cost of energy, and to help them with their developmental projects, the agreement should provide for the creation of a "Fund". The developed oil importing countries and the rich oil exporting countries should contribute equally toward this Fund. A "Board of Governors" should be organized to administer the Fund. All three interest groups, oil exporters, developed oil importers, and less developed oil importers, should be equally represented on the Board. Fund money should be available to provide free aid and loans at low interest rates to the LDC's. The needs of the country should be the primary, and its credit worthiness the secondary, determining factor in advancing loans. It is suggested that a "Panel of Economists" be selected who should conduct surveys of all the LDC's, looking into their special problems and needs, and make recommendations to the Board concerning the amount of aid and loans to be given to each one of them. A time limit for making recommendations and taking action on these recommendations should also be imposed.

VII. GENERAL PROVISIONS

Considering that the political situation in many of the oil exporting countries is far from stable, the agreement should provide for the establishment of an international police force whose sole purpose should be to ensure a smooth flow of oil.[258] This force should be a standby force to be deployed in any country where terrorists are expected to sabotage the oil industry.[259] The agreement should expressly

257. Price regulation which would promote the development of alternate sources of energy will mean higher burden on the economies of the oil importing countries. On the other hand, price regulation directed towards reducing the economic burdens of the importing countries would discourage the development of alternative sources of energy. Thus, a careful balance will have to be struck between these two equally important objectives.

258. The creation of such a force and its development in some state for purposes of defending the oil industry will not run afoul of art. 2, para. 4 of the United Nations Charter since such force will be neither directed against the "territorial integrity" nor the "political independence" of that state.

259. The deployment could be conditioned on a prior request or approval of the widely recognized government of the state concerned.

mention that the purpose of such "Force" is not to protect the government of the country concerned, but rather to protect the oil production plants so that no disruption in the supply of oil takes place.[260]

Under the agreement, strong assurances should be given to the oil exporters that if they invest their money in the oil importing countries their investments will not be confiscated, expropriated or frozen.[261]

It is possible that some of the exporters might not join the agreement. Therefore, provisions should be made to obligate the oil importers who are parties to the agreement not to buy oil from any source other than the oil exporters who are parties to the agreement. Presuming that a majority of the oil exporters will join the negotiations, this provision will induce other exporters who are not inclined toward such an agreement to join in, too. In case they prefer to stay out, this provision will safeguard the interests of those who have joined in. Similarly, there should be a provision to preclude the oil exporters who are parties from selling oil to any country who is not a party. Apart from inducing all importers to participate, this provision will also be conducive to the conservation of oil. Many countries, in order to keep on increasing their standards of living, might well be willing to buy oil from the spot market. The high prices offered by them might tempt oil exporters to increase production far above the estimated "essential needs of the world" level, thus defeating conservation.

Finally, the agreement should provide for strong sanctions against any party to the agreement found violating it. This will ensure continuity of the supply of oil.

SUMMARY

Oil prices will keep on increasing substantially in the future. The following are some of the major factors which indicate such increases: (1) the expected exhaustion of world oil reserves, proved and unproved, within the first half of the next century; (2) the considerable amount of time required for developing and marketing alternate sources of energy; (3) the increasing difficulty being encountered in finding new oil and the possibility of shortages occurring within the next decade or so; (4) the increasing actual demand for oil in the developed countries; (5) the demand for oil resulting from the "psychologi-

260. Disassociation of the "Force" both in theory as well as in practice, from the power struggle within the state may induce revolutionaries or terrorists to desist from attacking the oil industry. However, any association with the ruling party is bound to intensify the raids on the oil industry.

261. Guarantees should also be provided against discriminatory taxations and other forms of creeping expropriations.

cal shortage" phenomena; (6) the communist countries' expected entry in the free world's oil market; (7) the control of OPEC over world oil trade and its realizaiton that at present levels of production its reserves will not last for very long; (8) the lack of incentive among some of the OPEC members to increase production; (9) Saudi Arabia's decision to set an absolute, ultimate ceiling on its oil production at 12 million barrels per day; and (10) the strong possibility of disruption in oil supplies due to the Arab-Israeli conflict and also because of the unstable political conditions existing in some of the oil exporting states.

Oil price increases would not be a matter of much concern if they were to take place in a systemmatic manner according to world expectations. Indeed, such increases would be welcome since they would help achieve two major objectives, the conservation of oil and the development of alternate sources of energy. But based upon past trends, it can be predicted with relative certainty that future price increases will be sharp and arbitrary instead of moderate and well regulated, and will create serious problems for oil importing countries and world economy.

Because of their apparent lack of ability to repay past debts, the non-OPEC LDC's have lost credibility in the banking world. They will not find loans readily forthcoming in the future to sustain their huge energy bills. OPEC's direct aid will not be sufficient to help them nor will the developed countries be in a position to contribute substantially. Future price hikes will force them to lower their standards of living and discontinue developmental projects.

The developed oil importing countries will also be adversely affected. For them price hikes will mean a high rate of inflation, near zero economic growth, very high levels of unemployment and exhorbitant balance of payment deficits. The price hikes will also generate huge oil revenue surpluses for oil exporters. Much of this money will be invested in eurocurrency markets. This will keep world economy in a constant state of jeopardy because the banks operating in the eurocurrency market are vulnerable to liquidity shortage: a panic withdrawal can pose serious problems since deposits made by oil producers are on a short term basis while loans advanced on the basis of these deposits are usually long term. Further, any oil producer can cause financial instability throughout the world by making massive shifts of funds from one currency to another.

The continuity of oil supply is also uncertain. Politics in the Middle East can result in another oil embargo. Misunderstandings among OPEC states can lead to armed conflict affecting their oil supplies. Revolutions and counter revolutions in some of the politically unstable

OPEC states can also hamper oil supplies. The possibility of U.S. armed intervention either in response to an oil embargo or for purposes of protecting oil production in an OPEC state cannot be ruled out. The probability of Soviet involvement in this event is also high. The issue of oil supplies presents a constant threat to world peace.

World oil trade poses four difficult problems, each of which is of crucial importance to the well-being of world economy and peace: (1) how to fix a uniform oil price and establish a criteria for regulating oil price increases; (2) how to reduce the burdens imposed by rising cost of energy on less developed countries and help them in their development projects; (3) how to encourage oil exporting countries to invest their surplus oil revenues in areas other than the eurocurrency markets; and (4) how to ensure the continuity of oil supply.

OPEC controls world oil trade. Yet the presence of OAPEC within OPEC, its past practices, the inherent weakness of its Charter (as reflected by its ineffective decision-making process, lack of mechanism to solve disputes among members, and absence of sanctions to be applied against members violating its decisions) makes it clear that OPEC by itself is neither capable of nor can be relied upon, to solve the major problems arising out of world oil trade.

The key to oil crisis lies in international cooperation. If the world is to be saved from the impending doom, it is imperative that a multilateral agreement on oil be reached. The oil importing countries' frustration over rising energy costs coupled with the willingness shown by oil producers to discuss energy and other related issues at the Havana Conference of Non-Aligned States indicates that the time is ripe for holding an Internaitonal Convention on Oil.

With regard to the proposed agreement, the following suggestions are made:

The oil agreement should take place under the auspices of the United Nations. Pursuant to a General Assembly resolution a Committee should be formed to prepare groundwork for carrying on negotiations to reach an agreement.

For the purposes of allocating voting power and drawing up a decision-making procedure, the rules established under the International Coffee Agreement can be adopted with slight modifications. Under the oil agreement three blocs should be created for voting purposes—(1) the oil exporters bloc, (2) the developed oil importers bloc, and (3) the less developed oil importers bloc. Each one of these blocs should be assigned a total of 1,000 votes regardless of the number of states in it. Within these blocs, voting power should be divided between states in proportion to the oil imported or exported by them dur-

ing the previous five years. No state should be allowed to hold more than 400 votes. To block the potential veto power of the U.S. and Saudi Arabia on important decisions, at least 2 members should be required to vote against any proposal which is supported by the rest of the members in that bloc. All decisions should be made on the basis of a "distributed simple majority vote," *i.e.* a majority of votes in each one of the three blocs.

In order to conclude an agreement in the shortest possible time a departure from conventional modes of negotiating should take place, and an arbitration panel should be formed to decide issues that might arise during the process of negotiations, but which the parties are unable to resolve themselves.

A Committee of Experts should be set up for recommending import and export quotas for each oil importing and exporting country. By fixing import and export quotas, oil production should be so regulated that the supply should be equal to the essential needs of the oil consuming world.

The initial price of oil should be fixed at the price being charged by oil exporters at the time of negotiations. OPEC's policy of keeping Saudi Arabian light crude oil as a standard for pricing different qualities of oil should be followed. A figure for percentage increase in "real" price of oil on a regular basis should be decided.

A fund should be created for helping the less developed countries. Rich oil exporters and developed oil importers should contribute equally to this fund. A Board of Governors should be elected to administer it. A panel of economists should be selected to provide information to the Board about the needs of the less developed countries.

An international police force should be established for purposes of protecting oil industries against terrorist acts in any oil exporting country where such industry is in danger.

Under the agreement, strong assurances should be given to the oil exporters that if they invest their money in the oil importing countries, their assets will not be confiscated, expropriated or frozen.

Finally, in order to ensure the continuity of the oil supply, the agreement should provide for strong sanctions against any party found intentionally violating it.