THE BRETTON WOODS INSTITUTIONS

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INTRODUCTION

Early in World War II, the economic and financial experts of the allied nations began to consider what plans could be made to help meet the economic problems of the post war period and to avoid a post World War II slump. This culminated in the Bretton Woods Conference in New Hampshire in 1944, officially announced as the United Nations monetary and financial conference. From these deliberations the outlines of the two complementary financial institutions emerged; The first to become the International Monetary Fund[1] was to promote international currency stability and the accepted rules on international financial conduct. The second institution was the International Bank of Reconstruction and Development[2] or popularly known as the World Bank.[3] It was established to help finance the reconstruction and development of its allied countries.[4]

The Bank was set up as a new type of international investment institution which could authorise or guarantee loans for the productive reconstruction and development projects both with its own capital and through the mobilisation of private capital, under a financial structure where the risk of such investment would be shared by all member countries roughly in accordance with their economic strength.[5]

Subsequently several other specialised agencies were created as a part of the Bank. In 1956 the International Financial Corporation,[6] was established as an affiliate of the Bank.[7] In 1960 the International Development Association[8] was formed.[9]

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1 Hereinafter Fund.

2 Hereinafter IBRD.

3 Hereinafter Bank.

4 L. Henkin *et al.*, *International Law Cases and Materials* 1019 (1980).

5 Henkin, *supra* n. 4. *See also* the Articles of Agreement of the IBRD.

6 Hereinafter IFCI.

7 Its object was to fulfill the purpose of the Articles of Agreements of the Bank (especially Art. I(ii)), which seek to promote private foreign investments by participating in private loans and other investments and when private capital is not available on reasonable terms by supplementing private investments from its own resources..

8 Hereinafter IDA.

9 In the late 1940's there was already some discussion in the United Nations to establish an international agency, which would be favourable to the developing countries. At the Annual

In 1947, the Bretton Woods Institutions and the United Nations signed agreements which formally laid down that the Bank[10] and the Fund are specialised agencies of the United Nations. Since then they have been considered as formal United Nations' specialised agencies.

BRETTON WOODS INSTITUTIONS: AGENCIES OF THE UNITED NATIONS?

The agreement,[11] with the United Nations took considerable time because of the fear of the Fund and the Bank, that the position of being a specialised agency of the United Nations could subject them to undesirable "political control" or "influence" or "hurt the Bank's credit rating". As a consequence the agreements contained 'special privilege' clauses which ensure the independence of the Bank and the Fund.[12] As a result of the special privilege clauses the Bretton Woods institutions are indeed 'very special specialised agencies.[13] Both Bretton Woods institutions have always clearly lead a life outside the United Nations, and are in fact independent organisations.[14]

The United Nations agreements with these specialised agencies, the system of weighted voting adopted by the Bretton Woods institutions always distinguished them sharply form the others and the relationship the United Nations established

Meeting of the Board of Governors of the Bank in Oct. 1959, the Board of Governors adopted a resolution proposed by the United States to formulate the Articles of Agreements of the IDA, which were subsequently approved.

10 Document A/349, Sept. 2. 1947. C f. Agreement between the United Nations and the IBRD, II Int'l Org. 198-201 (1948).

11 *Id.*

12 The agreement not only stresses the limitations to which the Bretton Woods institutions and the United Nations are subject, in order to safeguard confidential information, but they also limit the right of reciprocal representation. Representatives of the United Nations being permitted to attend only meetings of the Board of Governors of the Bank and the Fund, and being excluded form the meeting of the Board of the Executive Directors (Art. II). In addition the agreement with the Bank stipulates that action to be taken on any loan by the Bank is a matter to be determined by the independent exercise of the Bank's own judgment and that it would be sound policy for the United Nations to refrain from making recommendations to the Bank with respect to particular loans or terms and conditions of financing by the Bank (Art. IV).

13 H. Onno Ruding, *The Development and Future Role of the International Monetary Fund and the World Bank* in *The U.N. under Attack* 57, Jeffrey Harrod and Nico Schrijver (Eds) (1988).

14 The membership of the United Nations is not a pre condition for being members of the Bank and the Fund, neither does membership of the United Nations give the right to join these institutions.

with them after considerable difficulty was much less closed than was hedged by reservations to prevent possible interference by the United Nations.[15]

The economic and social activities of the United Nations and its agencies have been expanding and the United Nations Development Programme.[16] allocation of funds has not shown striking changes. On the other hand there has been a dramatic increase in the activities and the funds available to the Bank group. The Bank group however represents a vehicle for development aid, distinct from the United Nations and UNDP and not necessarily inspired by identical priorities, indeed these priorities are normally enumerated at the Governors' meeting, with little if any with reference to the United Nations decisions.[17] In fact the Bank and the Fund have a poor track record of development policies which are contradictory to what the United Nations system is doing.[18]

Rather distraught Central American finance ministers have said " When we are visited by the UNDP people, of all the experts, we are told to invest more in health care, increase women's accesses to education, develop basic infrastructure, and spend money to get our basic social indicators to get lifted up. Then the Bank breezed in and told us to slash government spending in order to make ourselves more attractive to global capital markets by increased saving. Which is the real United Nations?"[19]

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15 The first article of the agreement with each of the organisations contains the statement 'by reason of the nature of international responsibilities and the terms of its Articles of Agreement, the Bank (Fund) is, and is required to function as, an independent international organisation.' Both agreements also contain the following statements, 'the United Nations agrees that, in the interpretation of para. 3 of Art. 17 of the United Nations Charter, it will take into consideration that the Bank (Fund) does not rely for its annual budget for contributions from its members and that the appropriate authorities of the Bank (Fund) enjoy full autonomy in deciding the form and content of such budget.'

16 Hereinafter UNDP.

17 Tull, *infra* n. 19.

18 A clear illustration of this policies of the Bank which seem to be virtually oblivious to global human rights concerns and have refused to reassess its initial position against considering human rights factors in loan decisions or the human rights implications of its financing operations. In 1965 the United Nations General Assembly passed two resolutions to the Bank which requested that it refrain from granting any assistance to the governments of Portugal or South Africa as their policies were in violation of the United Nations Charter. The Bank refused the United Nations' request. An analysis of the Bank's articles reveals that it has misconstrued its powers, it has clear authority to incorporate human rights considerations into lending criteria and in fact, under its Charter and as an agency of the United Nations it has an obligation to do so. *See* V.E. Marmorstein, *World Bank Power to Consider Human Rights Factors in Loan Decisions*, 13 Intn'l Law and Econ. 113 (1978)

19 Prof. Kennedy, ASIL Proceedings 45 (1995) 89th U.N. Charter as History 45, 57.

THE BRETTON WOODS INSTITUTION AND THE UNITED STATES OF AMERICA : FOUNDERS 'KEEPERS'

Founders

The principal initiators of the Fund were the United States of America and Great Britain. The most decisive role however, was played by the United States. Only the United States had the financial resources to make the organisation work; American military, political and economic powers was at its zenith. Thus the system adopted at Bretton Woods reflected the perception of the United States as to its economic self interest, which was modified slightly by the British view,[20] rather than the views of all the conferees on the best economic method to achieve international stability and growth.[21]

The Fund was based on two plans, the *Keynes*[22] and the *White*.[23] The Fund as it exists today is largely based on the *White Plan*.[24]

The *Keynes Plan*, tried to address the problem of liquidity.[25] His plan proposed an International Currency Union, which was to function as the world's central bank.[26] He also came up with the concept of the international currency called the 'bancor'. This plan proposed bancor to be valued in gold. Keynes gave complete control of the gold bancor relationship to the United States and the Great Britain.[27] The United States rejected this plan because, it being the most powerful country at that time would have to contribute $23 million. The United States also had other

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20 The Fund as it is today, is largely based on the White plan which was propagated by the United States, though it was modified slightly by the Keynesian plan, supported by the British.

21 J. Asherman, *The International Monetary Fund: A History of Compromise*, 16 Int'l Law & Pol. 244 (1984).

22 This was created by Lord Keynes and proposed by Great Britain.

23 This was created by Harry Dexter White and proposed by United States of America.

24 Asherman, *supra* n. 20

25 It should be kept in mind that these plans were proposed right after World War II. Britain had been economically destroyed in the war.

26 The countries had to buy the bancors (This was the I"nternational Bank money" right which would be controlled by the International Currency when as under the Keynes Plan, precursor to today's SDRs) from the Fund, if a country had a surplus balance of payments then it would buy bancors from the Fund. If a country had a deficit balance of payments then it would borrow bancors form the Fund. Each country had a quota. Under this plan both surplus and deficit countries had the responsibility to maintain balance of payments at equilibrium. Adjustment only on the part of the debtor nation would place an intolerable burden on them. This was recognised by the United States later, when it became a debtor nation. This is what the *Keynesian Plan* proposed, in simple terms.

27 These two countries could control and fix the value of the bancor with respect to gold.

reservations.[28] Kenneth W. Dam said, "the Keynes plan was rejected simply because of the fear that the Congress did not understand it."[29]

The *White Plan*, is what today's Fund is based on. The *White Plan* was a retaliation to the *Keynes Plan*. It called for the establishment of a Stabilisation fund with resources of $5 million.[30] It also gave the United States 25% of the votes.[31] He considered the US dollar to be the most important currency at that time and so proposed that the members' quota be paid in part that and part in gold.[32]

Therefore at the time of inception the United States, being the most powerful country adopted the *White Plan*, which gave it control over the rest of the Fund.

Keepers

During the Bretton Woods conference, United States gave a great deal of importance to the introduction of a uniform, basic vote for each member country in order to prevent control of a multilateral institution like the Fund by only a few countries. Ironically, because of the voting structure that the Fund follows, the United States dictates the policies of the Fund.

The original plan as drafted by Keynes and White rejected the system of one member and one vote and adopted a 'quota system.' Under this system each member's voting power would be determined by its quota.[33] The voting power of a member country is made up of 250 basic votes plus one for every 10,000 SDRs of its quota.[34]

The United States controlled 22% of the voting rights till 1970's when the OPEC countries wanted to increase their votes. The United States agreed to part with some of their voting powers. The United States' voting power as it stands today is 17.662%.[35] This was done by increasing the scope of the 85% majority resolu-

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28 They were worried about the proposal to devalue currency when debit balance reached a limit along with other mechanisms that the plan had.

29 Asherman, *supra* n. 18 at 247.

30 In contrast to the *Keynes plan*, it called for the United States to provide on $ 3.2 million.

31 Weighted voting was present in both the plans. *White* gave the United States a larger share of the votes without the limitations that *Keynes* imposed.

32. After World War II, the US dollar was a very strong currency, so *White* advocated it.

33 At the Bretton Woods conference, the countries there negotiated their quotas, which by and large carry on even today. Other countries which joined the Fund later, have their quota decided by the Board of Governors (Art. III(I), Articles of Agreement of the Fund). The Articles of Agreement don't lay down any policy or guidelines that the Board of Governors have to follow while granting quota.

34 Art. XII(5), Articles of Agreement of the Fund '77. This replaced the existing system of $ 100,000.

35 Richard Gerster, *Proposals for Voting Reform Within the IMF*, 5 J. World. Trade 125 (1993).

tions.[36] This gives the United States a *de facto* veto power. In the history of the Fund there has never been a programme that has been passed if the United States hasn't agreed to it.[37]

The power of the United States over the Bank is very clear by policies the Bank follows in certain situations. An example of this is the United States and Chile crisis.[38] The Bank had taken into account many projects that were proposed in Chile, in 1971 the Committee of the Alliance for Progress conducted its annual country review. The representative of the Bank stated that the economic situation in Chile was temporally uncertain and prospects of further loans was questionable.[39] Consequently several pending loans were not approved.[40] the same happened when the Bank turned down a loan to Chile to buy passenger jets for its national airline.

In 1972 the United States Congress enacted *Public Law 92-247*, which directs the President of the United States to instruct the United Executive Director of the Bank and the IDA to vote against any loan that would benefit a country which has expropriated American owned property or nullified contracts with American nationals.[41] This is consistent with the announced policy of the Executive Branch of the United States. As the United States hold the largest block of votes in the Bank and the IDA depends on it for funding, this policy is a threat to all other nations.

These policies are blatant violations to the Articles of Agreement of the Bank.[42]

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36 The Fund has three types of majority requirements , 100% which it rarely requires, 85% which was used for SDR allocations etc. and 75% which was used for policy matters. The United States agreed to give up a few of its votes only if the scope of the 85% majority was increased to include important policy decisions. This was agreed upon. The developed countries wanted to lower the 75% majority and increase its scope. So as it stands today, 85% majority is required for all 'political' decisions, while 70% is required for 'operational' matters.

37 J. Gold, *Weighted Voting Powers: Some Limits and Problems*, 68 A.J.I.L. 687, 697 (1974).

38 There existed strained ties with Chile in the 1970's when the Allende Government was in power. The United States used its power in the Bank and blocked a series of loans to Chile.

39 H. Brosche (Richard B. Lillich) The Arab Oil Embargo and the U.S. preview against Chile Economic Coercion and the New International Economic Order, Richard B. Lillich(Ed.) 1976

40 These events resulted in the fact that the Allende government in Chile did not receive any ore loans from the Bank, and President of Chile's Central Bank Alfmzo Incstreza accused the bank of acting "not as an international multilateral body at the service of the economic development of all its members, but infact as a spokesman and instrument of private nations of one member country."

41 Brosche, *supra* n. 39.

42 Art. IV, s. 10(c) states. "The Bank and its officers [shall not] be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve [the Bank purposes including the supplementing of private capital by providing finance for productive uses].

Art. V, S. 5(c) states "[A]sks member states to refrain from all attempts to influence Bank officials in the discharge of their duties."

Thus the United States controls the Bank and the Fund, by virtue of either its voting power or its funding. It is very interesting to note that since the inception of the Fund a European is always the Managing Director and an American always the President of the Bank.

The Bretton Woods institutions are no longer United Nations agencies, specialised or not but are an extension of the United States government.

BRETTON WOOD INSTITUTIONS AND DEVELOPMENT

The Bretton Woods institutions were not set up, as popularly believed, by the developed countries to aid and develop the developing countries. On the contrary they were established to 'shield the developed countries from financial disasters through state intervention.'[43]

The Bank and the Fund were never created for development.[44] There has however been a shift in the policies of the Bank and the Fund.

The shift in the Bank-Fund policy has to be understood in the context of the 1970's oil crisis.[45] In such a situation the quantum of lendable resources (which usually came from the developed countries) was reduced. Thus there was a capital crunch in the international capital markets, consequently the rate of interest of whatever capital that was available also increased. The developing countries were in a financial crisis. They did not have the funds to buy oil from the OPEC countries at the present price and neither could they borrow capital from the international capital markets, for the lack of funds and also because of the high interest rates. They had two options, to borrow from the commercial banks at a high rate of interest or to borrow from the Bank and the Fund.

Commercial banks were not very enthusiastic about lending to developing countries, especially in the present state of affairs.[46] Though the banks were trepid about lending, they could also not ignore the high returns from these loans. They therefore approached the Fund, in order to get a guarantee and credit ratings of the borrowing countries. The banks were not in a position to dictate domestic policy

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43 T.K. Kumar, *Fund-Bank Policies of Stabilisation and Structural Adjustment: A Global and Historical Perspective*, 28 Econ. & Pol. Wkly 815, 817 (1993). The Fund was set up to stabilise the world monetary system and the Bank to aid and re-construct the war torn developed countries. These were the primary objectives, which over the years have changed.

44 *See supra* text accompanying n. 4.

45 The OPEC countries had increased the price of oil. This move affected all countries. The developed countries who before has a surplus balance of payments went into deficit and the developing countries budget deficit became greater.

46 Commercial banks had been lending money to developing countries. Citibank for example had lent Mexico large sums of money (though it made up only one tenth of its total loans, it accounted for a fifth of the revenue) at high rates of interests. Mexico in the mid 1970's publicly declared that it could not voluntary go on paying the interest.

changes that could guarantee their loans. The Fund could, therefore the banks and the Fund entered into an informal agreement under which the banks would advance the money to the borrowing countries, while the Fund would dictate the conditionalities.[47] So both the Banks' and the Funds' objectives were met, at the expense of the borrowing countries.[48]

The Bank had experimented with structural based lending in the early 1960's.[49] In the early 1970's the Bank revived the structural based lending policies, since the Indian crisis of the mid-1960's.[50] This revival was hasty and reactive: the trigger was the oil crisis.[51] The African countries,[52] were hit by this and there was a drop in their balance of payments. The Bank acted under the pressure of the external events and revived its structural based policy lending.[53] The Bank tried to show that structural based lending was an exception to standard policy. This however was hard to preserve with the onset of the second oil crisis in 1979. The Executive Board was always hostile to this form of lending. President of the Bank, R McNamara[54] (as he was then), expressed his doubts about these loans. Some critics hold the view that the Bank's move towards policy based lending was a token gesture. They argued that the size of the loan was too small to have any impact on the productivity of the poor countries.[55] The Bank was concerned more with getting back its loans (safe loans) than in doing any development work. The entire concept of structural based lending was against the "morals" of the Bank. The Board of Governors did not want to 'buy' policy changes. They did not want to interfere in the internal workings of a country and dictate policy to them, also at the same time they did not want to loose their money. The Bank agreed that leverage was not the primary motive of their policies but nevertheless an important consideration. The Bank was scared of loosing its "political neutrality". Several years have passed

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47 They did this by having all the borrowing countries enter into a 'stand by arrangement' with the Fund. Therefore on paper the Fund was lending the money and so it could dictate the conditions that went with the loans.

48 Frederic L. Kurgis Jr., *International Organisations and their legal settings: Documents, Comments and Questions* 541 (1977).

49 India was one of the first countries where structural based lending was tried. Under Am-Aid and following the Bell Commission recommendations India had tried to change its domestic policy in areas of agriculture. The Indian rupee was also devalued in July 1966, following the recommendation of the Bank. There was a great deal of resentment against the Indian Government and the Bank. The Bank after this did not try out these policies for quite a while.

50 *Id.*

51 *Supra* n. 18.

52 Zambia, Kenya and Tanzania.

53 P. Mosley *et al., Aid and Power: The World Bank and Policy-based Lending* 33 (1995).

54 He was considered to be a pro-poor and had done a great deal in trying to shape the Bank into a pro-developing country agency.

55 Mosley *et al., supra* n. 26.

since the Bank has revealed the aim of leverage in official Bank pronouncements.[56] This exposes the hypocrisy of the Bank and in the front it tries to maintain of being "politically neutral".[57]

CONCLUSION

The Bank and the Fund were established in the post World War II era in the context of avoiding a slump through the stabilisation of international currency and reconstruction of allied nations. In the initial years it fulfilled this function effectively. The change in the role of the Fund and Bank arose during the oil-crisis as its policies were guided by purely "economic" considerations and the high returns provided by loans to developing countries could not be ignored, the high risk associated with it was countered by conditional lending through structural adjustment programmes. These new policies of loans to developing countries were wrongly construed as bringing development on the agenda of the Fund and the Bank. The Fund and Bank have received a great deal of criticism for their development policies. However these agencies were never intended to be development agencies or to be agencies promoting the cause of developing countries, but on the contrary were to protect the financial interest of the allied nations or the developed world. To criticize the Fund and the Bank for their development policies therefore appears to be invalid. The justification for such criticism however becomes valid in the context of the fact that the Bank and the Fund are specialised "agencies" of the United Nations and are therefore expected to follow the general policy considerations of the United Nations and the goals set forth in the Charter. Development is definitely a priority area on the United Nations agenda, what is however more important is the goals set forth the Charter of equality amongst the nations also including economic equality. The Fund and the Bank do not fulfill these and several other obligations of the United Nations Charter and have in fact functioned as agencies quite independent of the United Nations. They have been able to do so because their resources of funding have remained quite independent of the United Nations. As has already been noted the Fund and the Bank were created not for development purposes but in fact to protect the financial interests of the allied nations or more specifically that of the U.S., these interests being more or less in contradistinction to that of the developing nations. The Charter places an obligation on the United Nations and consequently on its agencies, i.e. the Fund and the Bank to promote equality amongst nations including economic equality. With the present structure, voting power and function of the Fund and the Bank cannot be expected to perform development functions. Two alternatives are therefore proposed. Firstly, the Fund and the Bank have become defunct now as the function it was set up to fulfill it has completed and therefore it must be dissolved and new financial agencies created in its place to fulfill the functions of development which are relevant in today's context and more suited to the needs of the developing world.

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56 *Ibid.* at 36.

57 *See supra* text accompanying n. 59

The second alternative is that the structure of the Fund and the Bank be modified in terms of its voting power and decision making power to be more equitable to both the debtor and the creditor nations, development being kept away from its agenda. The purpose of the financial institutions would be to provide financial stability while the role of development be left to other development agencies of the United Nations which would also prevent overlapping of functions.

Whatever alternative we select the aim is singular, i.e., to fulfill the goals set forth in the Charter. Another argument put forth is to separate the Bank and the Fund from the United Nations entirely. Presently the setup whereby it remains as an agency of the United Nations yet continues to be autonomous in its policies for the ostensible reason to keep away from "political considerations" is simply an eyewash to the extent that the "political considerations" that do guide the Bank and the Fund are not those of the United Nations but of America alone. In a setup whereby there is complete separation of the two, the U.S. would be justified in attaching conditionality to the loans it provides and in following policies biased towards the developed world. However so long as it continues to be an agency of the United Nations it must not only follow the goals laid down in the Charter and promote economic equality and sovereignty amongst the nations but also follow policies in accordance with those of the United Nations. We are concerned with the Bank and the Fund as agencies of the United Nations and as the situation exists today. In the words of Davison Budhoo[58] "the fund remains a law unto itself, impervious to questions about its performance, its human rights record and its accountability to its victims and others affected by its actions. I believe that there is bound to be some way through which the Fund and its powerful supporters in the developed world could be made to move away from the callous path of destructiveness and follow a humane course of action that makes civilisation possible."[59]

58 Senior official of the I.M.F. for 12 years until he resigned in 1988.

59 Letter from Davison L. Budhoo, Senior Official, The International Monetary Fund, to Michel Camdessus, Mangaging Director, The International Monetary Fund (May 18, 1988).

UNCTAD AND INTERNATIONAL TRADE - THE FORGOTTEN LINK

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Trade liberalization has occupied centre stage of the world's attention in the last two years. GATT and its principal organ, WTO have been scrutinized threadbare by the developed and developing countries to see whether their interests have been protected. At this moment, one's curiosity is aroused about an institution called UNCTAD.[1] What is its importance? Does it not have any say in the present economic scenario? The institution, by its very name definitely professes to deal with 'trade'. Then, is it not important enough as GATT, if not more important? There are some the questions that would be addressed in review of this institution.

THE MAKING OF UNCTAD

The birth of UNCTAD is a very stereotyped tale of conflict between developed and developing countries trying to wrest control of international trade. The earliest international organisation was the ITO[2] which was established under the auspices of the Havana Conference. When this failed, the economic issue were taken up two levels. The negotiations on tariff concessions were taken up in GATT. The other economic issues were taken up in other institutions. A noted author notes the effects of these institutions:[3] "Nor did they satisfy the aspirations of the growing number of developing states for an organisation which would address itself to these questions of trade and development of particular importance to them." This frustration led to many attempts, essentially political, to form the ideal institution which would take care of these issues. Ultimately at the Geneva Conference on Trade and Development (1984),[4] UNCTAD was formed and given an institutional framework. The Trade and Development Board (TDB) was housed which consisted of 55 members. All countries participated in this conference which was dominated by the Group of 77. This group was born just before UNCTAD-I. All the developing countries got together and voted as a block.

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1 United Nations Conference on Trade and Development.

2 International Trade Organisation.

3 Corea, Gavin, *Encyclopedia of Public International Law*, Vol. 5, 1980 at p. 301.

4 Popularly known as UNCTAD-I.