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THE U.N. ECONOMIC CHARTER AND U.S. INVESTMENT AND POLICY

By G. A. Zaphiriou*

I. INTRODUCTION

The United Nations General Assembly adopted the Charter of Economic Rights and Duties of States (the Economic Charter)¹ on December 12, 1974, by a 120-6-10 vote.² The background, the non-binding character of the Economic Charter, and some of its provisions have been analyzed in an article by Charles N. Brewer and John B. Tepe, Jr. which is based on a report approved by a subcommittee of the Section of International Law of the American Bar Association.³

The purpose of the present analysis is:

(1) To express a further opinion on the legal effect of the Economic Charter leading to the application of some of its provisions that truly reflect current practice.
(2) To suggest that the fundamental principle of "[f]ulfilment in good faith of international obligations" refers to general international law and qualifies each provision of the Economic Charter unless it is excluded by its wording.
(3) To submit, in the light of the above premises, that the Economic Charter renders support to the regulation of foreign investment and of transnational corporations in the United States, provided that bilateral treaties of friendship or conventions of establishment are observed.
(4) To demonstrate that the one-sided provision on the taking of property contained in the Economic Charter will not help the recognition of expropriatory action but, on the contrary, will lead to effective retaliation in the United States and in Western Europe.
(5) To refer briefly to the policy of the United States towards nonmarket economy states as reflected in the Trade Act 1974.

¹ See Appendix, reproduced from 14 INT'L LEG. MAT'LS 251 (Jan. 1975).
² 120 states voted in favor. Belgium, Denmark, Federal Republic of Germany, Luxembourg, United Kingdom and United States voted against. Austria, Canada, France, Ireland, Israel, Italy, Japan, Netherlands, Norway and Spain abstained.
³ See 9 INT'L LAWYER 295 (1975).
II. LEGAL EFFECT OF THE ECONOMIC CHARTER

The conservative view, as expressed by Brierly in his masterly succinct style,\(^1\) is that according to the Charter of the United Nations,\(^5\) the General Assembly, apart from its control over the budget, can only recommend, initiate studies, and deliberate; and that recommendations have only a moral effect. In practice, however, states have vested the General Assembly and the Security Council with quasi-judicial,\(^6\) and possibly, quasi-legislative powers that were not originally anticipated. These quasi-legislative powers are described as follows by Ambassador Jorge Castañeda,\(^7\) the first Chairman of the working group that prepared the Economic Charter:

> The Assembly is the organ best suited to determine, by way of a general pronouncement (as opposed to the function performed by the International Court of Justice in elucidating also, but by way of individualized judgments, the nature of certain principles or rules), whether or not specific practices constitute customary law or reflect general principles of law.

> In this indirect but important manner, the General Assembly can make a powerful contribution to the codification of international law through the exercise of a function that might be characterized as quasi-legislative, and that, in the future may assume even greater importance than it has to date.

General Assembly resolutions are not binding but may have legal effects whenever they constitute evidence of general customary international law.\(^8\) Some of the provisions of the Economic Charter are representative of modern trends, e.g., the provision on regulation of foreign investment and on regulation and supervision of transnational corporations.\(^9\) Other provisions are clearly not, e.g., the provision supporting the creation by states of international cartels in primary commodities.\(^10\) The Economic Charter cannot formulate new rules or change existing rules: \(^11\) (1) because it lacks the support of a substantial number of developed states and (2) because

\(^{5}\) U.N. CHARTER, art. 9 - art. 14.
\(^{9}\) Appendix, art. 2(2)(a) and (b).
\(^{10}\) Appendix, art. 5.
the establishment of a custom requires consistent practice in time. A General Assembly resolution cannot effect an instantaneous change of international law.

A. “Fulfilment In Good Faith Of International Obligations”

The above wording of fundamental (j) in chapter I raises in the context of the Economic Charter two important questions of construction: First, does it refer only to treaty obligations or to all obligations under general international law and, second, does it refer only to obligations between states or also to obligations by a state to an investing foreign enterprise.

It is arguable that the above wording is merely a restatement of the fundamental principle of international law as expressed by the maxim *pacta sunt servanda* and, therefore, restricted to treaty obligations.\(^1\) On the other hand, it is absurd to suggest that a document emanating from the most important international institution omitted a reference to general international law which includes treaties, custom, and general principles of law.\(^2\) In some instances a new norm of general international law may override a treaty obligation.\(^3\) When this is the case, a liberal interpretation would suit the declared purpose of the Economic Charter which is said to be the formulation of new norms of international economic conduct.

Even though the word “fulfilment” points to the performance of a positive duty traditionally associated with the performance of a treaty obligation (or a contract in the sphere of private law) while a custom is traditionally associated with a duty to refrain from some action, upon closer examination the distinction is hardly valid and is based on verbal formulation. One can say that there is a duty to refrain from violating human rights or the right of an alien to his property, or that there is a positive duty to apply a minimum standard to an alien and his property to be fulfilled in good faith.

Carrying this analysis a step further, while an investment contract between a state and a foreign enterprise which is to be governed by the domestic law of the host state and subject to the jurisdiction of its courts does not, as such, create an international obligation, the repudiation of such contract in bad faith by the host state may give rise to an international wrong and an international claim by the investor’s state. Thus, even by the application of the classical international law concept that an individual is merely an object of international law, fundamental (j) should be extended to the fulfilment of obligations under general international law.

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by states towards other states and towards aliens and their property in good faith. Moreover, the submitted interpretation would provide a fair counter-balance to the right of a state to regulate and supervise activities of transnational corporations within its national jurisdiction under article 2(2)(b) of the Economic Charter.

It should be noted that the fulfilment in good faith of international obligations qualifies every other provision of the Economic Charter, unless it is excluded expressly or by implication, not only because of its fundamental importance but because of the express provision of article 33(2) of the Economic Charter which stipulates that "each provision should be construed in the context of the other provisions."

II. Regulation Of Foreign Investment

Article 2(a) of the Economic Charter provides that a state has the right within its national jurisdiction to regulate and "exercise authority" over foreign investment. This right is meaningless if not properly analyzed and framed, and is limited by general international law by the application of fundamental (j). The delimitation of the scope of "national jurisdiction" is also a function of international law. A state may have the right to prescribe a rule applicable to foreign investment situated (which also requires proper definition) in its territory, but it may not have a right to enforce the prescribed rule outside its territory.

In developing states, there has been a marked change of pattern in the domestic regulation of direct investment. The emphasis has gradually shifted both in Latin America and Africa from a preferential treatment


afforded to foreign investment, to no more than national treatment with increasing local participation and control. But even under the modern trend the host state may, and often does, grant special terms to the foreign investor by exempting capital goods which are imported for use by the investor from import duties and other equivalent charges, by granting tax benefits, and, in countries that have exchange control, by granting the right to re-export capital and profits. Resolution 1803 (XVII) of the General Assembly of the United Nations of December 14, 1962, expressly provided that:

Foreign investment agreements freely entered into by or between sovereign states shall be observed in good faith. (Emphasis added.)

The change of pattern which was noticed above does not justify the omission of a similar provision from the Economic Charter. Agreements affording special benefits to the private investor are still common practice even in states that pursue policies of extreme nationalism towards foreign investment.

There can be no doubt that a state is not compelled to grant preferential treatment to foreign investment, but should it freely decide to do so because it is in need of foreign capital or technology (there is such a thing as the reality of the market), it should be under an obligation to honor the undertakings and guarantees that induced the foreign investment. A foreign investor, once authorized to invest in a particular state under terms, whether legislative or contractual, is entitled to rely on the fact that these terms will not be changed in bad faith.

If the authorization is granted by an investment agreement between the government or proper authority of the host state and the foreign investor, it may sometimes be possible to provide that the agreement will be governed by a law other than the law of the host state, and that disputes will be referred to an impartial forum. Such choice of law clause, if uncoupled with a choice of impartial forum clause, provides a relative safeguard that the terms of the investment will not be affected by a change of legislation in the host state. This is only a "relative safeguard" because the court of 17. This represents an application of the Calvo Doctrine which accords to aliens and their property no more than national treatment and excludes diplomatic protection. See Mexico Const. art. 27 and article 3 of the Mexican Law on the Promotion of Foreign Investment, reproduced in 12 Int'l Leg. Mat'ls 643 (1973).
18. Many such benefits can be found in the legislatures of Greece, Korea, Sri Lanka, and others. For a recent example, see the Argentine Foreign Investment Law, articles 4 and 5 (on investment contracts between the foreign investor and the proper Argentine authority) and articles 11-13, reproduced in 12 Int'l Leg. Mat'ls 1489 (1973).
the host state may hold that the choice of law clause is inapplicable as
being contrary to public policy.

A useful choice of law clause was inserted in the tripartite concession
agreement between Egypt, the Egyptian General Petroleum Corporation
(EGPC) and Esso which was made on December 14, 1974.21 The clause
provides that the agreement will be governed by principles common to the
law of Egypt and the law of the United States and, failing such common
principles, by principles recognized by civilized nations in general, includ-
ing those that have been applied by international tribunals.

A state may be unwilling or unable (because of constitutional or other
legislative provisions) to insert in a government contract a clause referring
disputes to arbitration or, a fortiori, to a foreign jurisdiction. Taking again
as an example the agreement between Egypt, EGPC and ESSO, disputes
between Egypt and either of the two corporations are to be referred to the
jurisdiction of the Egyptian courts, whereas, disputes between EGPC and
ESSO are to be submitted to a form of international arbitration. To avoid
this difficulty, 65 states adopted the Convention on the Settlement of
Investment Disputes between States and Nationals of other States22 which
was prepared by a United Nations specialized agency, the International
Bank for Reconstruction and Development. The Convention provides for
a center of arbitration to which the contracting states and their nationals
can submit in writing disputes for settlement. It was, however, opposed en
bloc by the Latin American states. If the investment agreement has no
choice of law and no clause submitting disputes to international arbitra-
tion or to a jurisdiction other than that of the courts of the host state, the
foreign investor must seek his remedies, if any, in the host state.

Section 193 of the Restatement (Second) of the Foreign Relations Law
of the United States expressed the principle that the breach by a state of
a contract with an alien is wrongful under international law if the breach
is effected in an arbitrary manner without a bona fide claim of excuse and
if there are no local reasonable provisions for redress. A prerequisite for the
application of this principle is that the parties contemplated when they
entered into the contract that its performance would involve, to a substan-
tial degree, foreign commerce, use of foreign resources (or presumably
technology), or activity outside the territory of the host state. The principle
found expression in a well known arbitration award23 and is, undoubtedly,
reasonable, fair, and necessary—particularly if the maxim pacta sunt
sevanda is to be confined to contractual obligations between states.24 Con-

21. Egypt-Egyptian General Petroleum Corporation - ESSO: Concession Agreement for
Petroleum Exploration and Production, art. XXI, reproduced in 14 INT'L LEG. Mat'l's 915,
933 (July 1975).
24. See BROWNLIE, INTERNATIONAL LAW, 530-34 (1973); O'CONNELL, INTERNATIONAL LAW
stitutional developments and the acceptance of the rule of law by most developing states would, in the modern context, render the principle superfluous; but be that as it may, it should have found its place in the Economic Charter as a principle of last resort.

At a time when direct investment is increasingly carried out by means of local subsidiaries having the nationality of the host state, it is vital to stress the importance of observance of contractual obligations between host state and foreign investor which led to the investment and the creation of the subsidiary. The subjection of persons or things (either tangible or intangible) to the jurisdiction of the host state was effected by relying on the guarantees that were granted. I see no value in the argument that a foreign investor, by investing in a state, assumes the risks to which local investors are exposed. I know of no principle of law which imposes on a party the assumption of risk that the other party may repudiate its contractual undertakings in bad faith.

The conclusion that one can draw up to this point is that the Economic Charter should have made it clear that fulfilment in good faith of international obligations includes obligations by states to foreign enterprises (whether state or private) and that regulation of foreign investment is also a concern of international law which sets a limit to state arbitrariness.

The right of a state to regulate and “exercise authority” over foreign investment renders support to an extension or intensification of United States control over foreign investment in the United States. Three bills, in identical wording, which were introduced in the House of Representatives and referred to the Committee on Interstate and Foreign Commerce, provide for the establishment of a National Foreign Investment Control Commission. The Commission is to prohibit any person (a) who is not a citizen of the United States or (b) who is owned or controlled by a person who is not a citizen of the United States from acquiring, directly or indirectly, rights, title, or interest in any voting security of any issuer, involved in interstate commerce, if the Commission determines that such issuer is “substantially involved in any area essential to [United States] national security and/or economic security.” The area indicated covers a wide range including, amongst others, nuclear energy, real property to be identified by the Commission, strategic materials, steel, fuel distribution, pharma-

25. See The Barcelona Traction Case, Belgium v. Spain, [1970] I.C.J. 4, where it was decided that the state of the shareholders' nationality has no locus standi before an international tribunal and it cannot extend diplomatic protection. The case, however, left open the locus standi of, and the right of diplomatic protection by the state of the nationality of the shareholders of a corporation organized and managed in the territory of the allegedly responsible state. See also Whiteman, The El Aguila Nationalization, 8 Digest of Int'l Law 1272 (1967).

ceuticals, or any other field determined by the Commission (as long as any such area remains important to United States national security and/or economic security). The Commission is to be vested with wide powers of inquiry and also with the power to force a sale of securities held by aliens or alien controlled companies in order to reduce their holding to 49 per cent or less or to deprive them of management control.

It is not my intention to construe in detail bills that may never become law. The above is mentioned only as an instance of "exercise of authority" that may find justification in the Economic Charter. Even though the United States voted against the Economic Charter, it is legitimate for a witness in a public inquiry, or counsel in an administrative or judicial hearing to refer to the Economic Charter as providing, at least in some of its more balanced provisions, evidence of prevailing tendencies. Also it is proper for a court, whether state, federal, or international, to consider and apply some provisions of the Economic Charter as constituting evidence of a growing international custom or practice.

The bills, if they become law, would violate provisions of equal treatment (national treatment) accorded to foreign nationals and companies by bilateral treaties or conventions of friendship or establishment unless the proposed control by the National Foreign Investment Control Commission can be bought under some exception provided for in the bilateral treaties. The Treaty with the Federal Republic of Germany and the Convention with France, which are typical of other treaties of friendship and commerce, and conventions of establishment, contain a reservation that each contracting country can determine the extent to which aliens may, within its territory create, control, manage or acquire interests in, enterprises engaged in communications, air or water transport, banking involving depository or fiduciary functions, exploitation of the soil or other material resources and the production of electricity.

Artical VII(2) of the Treaty with the Federal Republic of Germany and artical VIII(3) of the Convention with France provide that each contracting country will not intensify existing limitations on enterprises of the other contracting party which are already engaged in the above activities.

Article XII of the Convention with France (which is, in substance, identical with article XXIV of the Treaty with Germany) provides, further, as follows:

The provisions of the present Convention shall not preclude the application of measures:
(a) regulating the importation and exportation of gold and silver;
(b) regarding fissionable materials, the radio-active by-products of the utilization or manufacture of such materials, or raw materials which are the source of fissionable materials;
(c) regulating the manufacture of and traffic in arms, munitions and implements of war, as well as traffic in other materials carried on directly or indirectly for the purpose of supplying military establishments;
(d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.

The Treaty and Convention provisions relating to national treatment and to the above reservation and limitations raise a number of interesting questions of construction. First, are they to be construed strictly or liberally? Second, can a fundamental change in circumstances which was not foreseen by the parties (e.g., technological change or the international cartelization of oil) be invoked by the United States for the termination or suspension of certain obligations under the Treaty or Convention, or at least as a justification for a wider interpretation of the above reservations? Third, do measures for the protection of “security interests” in the context of the relevant provisions of the Treaty and Convention include “economic security”?

There is very little international and national precedent on the above matters with the exception of a decision of the U.S. Supreme Court which held that provisions in treaties of friendship and commerce

are to be construed in a broad and liberal spirit and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred.\textsuperscript{30}

The rights referred to in the above decision are rights to national treatment and, consequently, reservations of the contracting countries to limit such rights must be construed strictly.

Change of circumstances has never been applied by an international tribunal or a U.S. court to determine the validity or even the interpretation of a treaty or convention. The principle, however, which is expressed by the maxim \textit{rebus sic standibus}, exists and may well be applied in the future.

In my opinion the expression “security interests” should be construed widely and should include “economic security.” In some areas it is impossible to distinguish between military and economic security, \textit{e.g.}, the en-

\textsuperscript{30} Asakura v. City of Seattle, 265 U.S. 332, 342, 44 S.Ct. 515, 516, 68 L. Ed. 1041, 1044 (1924).
ergy industry. A fourth Bill,\textsuperscript{31} which was introduced in the House of Repre-
sentatives and referred to the Committee on Interstate and Foreign Com-
merce, deals with the prevention of control by foreign persons of United
States companies engaged in the energy or defence industry and falls
clearly within this exception.

III. REGULATION OF TRANSNATIONAL CORPORATIONS

The provisions in article 2(2)(b) of the Economic Charter have now
become common ground. It is now generally accepted that the activities
of transnational corporations should be regulated. Transnational corpora-
tions are not entitled to interfere in the internal affairs of the host state or
in general become involved in local politics unless their activity constitutes
legitimate lobbying. It is obvious that they must abide with the laws and
regulations of the host state.\textsuperscript{32}

A United Nations Commission on Transnational Corporations ap-
pointed by the Economic and Social Council is drafting an international
code of conduct for transnational corporations. No doubt, the committee
will delineate the spheres of competence between home and host country
to regulate the activities of transnational corporations. It will be important
to consider the impact of international law, the obligation on the host state
not to discriminate between transnational corporations, to accord them as
near a national treatment as is possible under the concrete economic cir-
stances, and also, to treat them fairly and to honor contractual under-
takings.

IV. THE RIGHT TO TAKE FOREIGN PROPERTY

Article 2(2)(c) of the Economic Charter provides that a state has the
right to take foreign property so long as appropriate compensation is paid,
taking into account the relevant laws and regulations of the taking state
and "all circumstances that the State considers pertinent."\textsuperscript{33} This provi-
sion should again be contrasted with the declaration of the relevant princi-
pies in Resolution 1803 (XVII) of December 14, 1962:\textsuperscript{34}

Nationalization, expropriation or requisitioning shall be based on grounds
or reasons of public utility, security or the national interest which are

\textsuperscript{31} H.R. 4677, 94th Cong., 1st Sess. (1975).
\textsuperscript{32} See Report of the Group of Eminent Persons on The Impact of Multinational Corpora-
tions on Development and on International Relations, U.N. publication E/5500/Rev. 1
ST/ESA/6, 1974, 14, 39, 40, 46; Multinational Corporations in World Development, U.N.
publication ST/ECA. 190, 1973; Hearings before the Group of Eminent Persons, U.N. publi-
cation ST/ESA/15, 1974; Kissinger Address of September 1, 1975, read by Moynihan, the U.S.
Representative to the United Nations, 73 DEP'T OF STATE BULL. 425, 432-33.
\textsuperscript{33} Appendix, art. 2(2)(c).
recognized as overriding purely individual or private interests, both do-
mestic and foreign. In such cases, the owner shall be paid appropriate
compensation, in accordance with the rules in force in the state taking
such measures in the exercise of its sovereignty and in accordance with
international law. In any case, where the question of compensation
gives rise to controversy, the national jurisdiction of the state taking such
measures shall be exhausted. However, upon agreement by sovereign
states and other parties concerned, settlement of the dispute should be
made through arbitration or international jurisdiction.

The declared principles were accepted both by developed and developing
states (ironically including Chile) and, although a number of takings and
adjudications took place during the 13 years that elapsed between Resolu-
tion 1803 and the Economic Charter, they provide no basis for the drastic
departure from the text of Resolution 1803.

Resolution 1803 laid down the prerequisites that justify a taking or re-
quisioning (which is merely a transfer of use for a limited period rather
than an outright transfer of ownership). They are: (i) the existence of some
reason of public utility, security or national interests and (ii) the payment
of compensation appropriate, according to domestic law and international
law. Prerequisite (i), which is a reflection on the international plane of a
provision frequently found in constitutions and domestic legislations, ex-
presses also, indirectly, the widely accepted principle of international law
that the taking must not be discriminatory. Lack of discrimination was
invoked and stressed by the government of Chile in the copper nationaliza-
tion. Discrimination by Libya was invoked by British Petroleum in the
nationalization of its share in the Libyan nationalization case. It cannot
be seriously doubted that it is a basic requirement of international law.

There can also be no doubt that the payment of compensation is a basic
requirement of international law and the Economic Charter duly incorpo-
rated it. But difficulties arise when one attempts to determine the measure
of compensation. The use of the proper adjective cannot provide the
solution. There are, perhaps, linguistic differences between “fair” (or
“just”), “appropriate” or “adequate.” “Fair” (or “just”) emphasizes judi-
cial discretion; “appropriate” is, perhaps, slightly tilted in favor of admin-
istrative discretion, and “adequate” implies the existence of a minimum
measure. Traditionally, the concern of international law is to provide a

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35. Brownlie, International Law 523-24 (1973); O'Connell, International Law 776-77,
36. Vicuña, Some International Law Problems Posed by the Nationalization of the Cop-
per Industry by Chile, 67 Am. J. Int'l L. 711 (1973); see also observations as to the application
of the principle by Seidl-Hohenveldern, Chilean Copper Nationalization cases Before German
37. Haight, The Libyan Nationalization of British Petroleum Company Assets, 6 Int'l
Lawyer 541 (1972).
minimum standard of conduct for the protection of aliens and their property. International law and international tribunals cannot and should not be concerned with internal policies and internal political expediency which are important factors for the domestic determination of the appropriate compensation. On the other hand, the function of international law and international adjudication is to ensure that the alien is adequately compensated for the taking of his property. Authority can be found in a widely cited decision of the Permanent Court of International Justice that "fair" compensation, which would render an expropriation of foreign property lawful under international law, equals the value of expropriated property at the time of the taking, plus interest up to the time of payment. 38

The Economic Charter, by departing from the relevant wording of Resolution 1803 and accepted principles of international law, adopted the Soviet view (which was rejected during the drafting of Resolution 1803) that the appropriateness of compensation is a matter to be determined according to the national law of the taking State. 39 In fact, the Economic Charter went further by referring to "all the circumstances that the State considers pertinent." 40 thus introducing a wide legislative or administrative discretion difficult to challenge in any court of law.

The second sentence of article 2(2)(c) of the Economic Charter, which provides for a hearing as to the amount of the compensation before the domestic tribunals of the taking state or before an international tribunal if otherwise freely agreed by states concerned, is of little help since the matter will have to be determined according to the domestic law of the taking state and in light of all circumstances that the state considers pertinent. If, for instance, the taking state considers that excess profits above x percent per annum realized during years preceding the date of nationalization should, under the circumstances, be deducted from the amount of the compensation, there appears to be very little room left for judicial discretion and no room at all for the application of a minimum international standard.

The basic defect of article 2(2)(c) is that it attempts to exclude the application of international law, both as to the legality of the taking and as to the appropriateness of compensation. International law renders illegal the taking of foreign property which is based on discrimination or confiscation (by payment of a nominal compensation), and defines the limits of national jurisdiction within which expropriation or nationalization can legally be effected. It is interesting to note that sub-paragraph (c) of article 2, unlike sub-paragraphs (a) and (b), does not refer to "national jurisdiction." We shall see below, when discussing the challenge to title in

40. Appendix, art. 2(2)(c).
domestic litigation, that English law recognizes only expropriations affecting property situated in the territory of the expropriating state and that the position is very similar in the Federal Republic of Germany, France, Italy, and Japan. In the United States a comparable result is achieved by applying the act of state doctrine (which precludes the examination of the legality of the taking) only to the taking by a foreign sovereign of property within his territory. United States law, however, unlike English law, appears to recognize that a state, also, has jurisdiction to prescribe a rule of law as to an interest of a national irrespective of the situation of the subject matter to which the interest relates.

The Economic Charter attempts to exclude the application of international minimum standards, diplomatic protection, and even to limit the application of international law by an international tribunal. Article 42 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States provides that if the parties have failed to agree on an applicable law, the tribunal shall apply the law of the host state (including its rules on the conflict of laws) and "such rules of international law as may be applicable." If the Economic Charter is declaratory or formative of international law, customary international law has abdicated the function to determine whether the taking by a state of foreign property is legal and what, under the circumstances, is just compensation.

V. CHALLENGE TO TITLE AND RETALIATION

The submission of investment claims to international arbitration and the application of international law would ensure an impartial regulation of investment disputes. The attempt of the Economic Charter to exclude or limit the use of international adjudicatory machinery and the application of international law (which provides objective and evolving rules not subject to arbitrary change by the host state), are bound to drive the foreign investor, who found no local satisfaction of his claim, to the use of other means. A common method used in the past was the attachment by the alleged owner of movable property found outside the territory of the expropriating state.

The present position in the United States is that a court (either federal or state) will examine the legality of the alleged acquisition of title or other right in property by a state (or a party claiming under it) which is in

violation of principles of international law, unless the President of the United States determines that the application of the act of state doctrine (which precludes the examination of the legality of the taking) is required in the particular case. The principles of international law, as understood in the United States, require that in cases of nationalization or expropriation a reasonable provision be made for the determination and payment of an adequate, effective, and reasonably prompt compensation. Conflicts are, therefore, bound to arise between the determination of the legality of the expropriation and of the proper compensation by the tribunals of the taking state which are only bound (according to the Economic Charter) by their national laws and policies and the determination by the United States courts (which will decide these matters according to international law and their own public policy). Anticipated changes in sovereign immunity and service of process, together with the possibility in certain states (of the United States) of conferring jurisdiction to a court by attachment of assets, may give rise in the future to contractual or tortuous claims against expropriating states.

In the United Kingdom, the tendency is to treat the acquisition of property by an expropriating state according to principles of private rather than public international law. Acquisition by a state of property situated in its territory by ad hoc legislation is recognized in England, unless such application of the lex situs is contrary to English public policy and/or principles of international law as incorporated into the law of England. The Economic Charter will provide some argument that international law has changed since the decision in Anglo-Iranian Oil Co. v. Jaffrate, but this will not prevent an English court from excluding the application of the lex situs on grounds of public policy if the expropriation violates international law as understood in England. Furthermore, as was submitted above, the Economic Charter has no formative effect.

The approach in Germany, Italy, and Japan is very similar to the

46. RESTATEMENT, note 42 supra at §190-95; 22 U.S.C.A. §2370(e)(1) and (2) (Supp. 1976).
50. Id.
approach in the United Kingdom, although in all three countries the courts tend to rely more on principles of public international law than the English courts. Both the Civil Court of Rome and the High Court of Tokyo, in the Anglo-Iranian Cases, referred to the General Assembly Resolution 626 (VII) of December 21, 1952, adopted less than a month after the date of the Iranian nationalization law which dealt with the right of a state to exploit its own natural resources.

French courts examine the payment of compensation in order to recognize title acquired by a foreign state through expropriation. Earlier French decisions insisted on the payment of compensation which was both just and prompt (in fact, pre-assessed, "préalable"). Decisions after the Second World War, in view of the widespread nationalization both inside and outside France and the violation by the French government of article 545 of the Civil Code (which requires a just and pre-assessed compensation), were satisfied if the foreign expropriatory legislation provided for the payment of reasonable compensation.

When Libya in 1971 nationalized the interest of British Petroleum Exploration Company (Libya) Ltd. in a Libyan oilfield covered by a concession agreement, B.P. attempted to claim ownership of oil that originated from the oilfield. This attempt failed on the ground that the oil had been extracted by the Arabian Gulf Exploration Company after nationalization and that, consequently, B.P. could not claim title in the oil. The decision rested on the narrow ground that according to Libyan law all petroleum lying in the Libyan subsoil in its natural state is deemed to be the property of the Libyan state and that since this particular oil was not extracted by B.P., the company could not claim title to it. Similar attempts by Kennecott Copper Corporation in Paris, Rotterdam and Hamburg, through its dissolved subsidiary Braden Copper Company and Braden's transferee, the Sociedad Minera El Teniente, to claim title in copper extracted from the nationalized El Teniente mine in Chile, also failed, though on different grounds of corporation law and procedure.


54. See notes 52 and 53 supra.


Even though claims to products extracted from nationalized mines and oil fields were not always successful, the provisional attachments which preceded the investigation of title impeded their world-wide trading and gave rise to protests and difficulties until, ultimately, a compromise was reached on the payment of compensation. In addition to judicial measures taken by enterprises from the recovery of expropriated property, states resort to measures of retaliation for the protection of their nationals. The first Hickenlooper Amendment and the Gonzalez Amendment to the Foreign Assistance Act are typical examples of legislative authority authorizing the President of the United States to take steps in retaliation for injury by expropriations, or other similar measures, against property and interests of U.S. citizens and U.S. controlled business associations abroad. The first Hickenlooper Amendment provides for the cutting of aid to the expropriating state; the Gonzalez Amendment for the use of the voting power of the United States in an international organization against such state.

The Economic Charter, by making clear that international law governs the legality of the taking and by setting a minimum standard of compensation, would have contributed to the avoidance of measures that impede international trade and would have improved the security of investments as a means to international economic development. As it now stands, it will, inevitably, lead to the following results:

1. Circumvention of the Economic Charter by specific provisions in bilateral treaties that the property of nationals and business associations of one contracting state within the territory of the other contracting state can only be expropriated for a public purpose and with prompt payment of compensation representing the equivalent of the property taken and in effectively realizable form.

2. Avoidance of investment in a state with which there is no bilateral treaty, to the detriment of unsponsored investment and trading from which both developing and communist states have benefitted greatly.

3. Preference to enter into joint ventures with no transfer of capital or equity holding in the host state.

4. Preference to deal with communist states where there is no private property than with a developing state with a private property system.

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(5) Challenges to title.

(6) Contractual and tortious claims relating to expropriation that will be made effective by anticipated changes both in the United States and in Western Europe in sovereign immunity, service of process on foreign governments and enforcement against assets owned by foreign states, state enterprises or state controlled enterprises.

VI. TRADING WITH NONMARKET ECONOMIES

Article 4 of the Economic Charter is representative of present trends. No state is subject to discrimination of any kind based solely on differences in political, economic, or social systems. Development of trade between the United States and the communist world has been slower than that between other non-communists states and the communist world. In 1973, the value of U.S. trade was calculated to be less than 10 percent of the value of trade between other non-communist countries and the communist countries of Eastern Europe.60

The Trade Act of 1974 has made the conclusion of a commercial treaty, the granting of most-favored-nation treatment, and the extension of credits or guarantees, or investment guarantees to nonmarket economy countries, conditional on the liberalization of their immigration laws.61 The liberalization of immigration as a precondition for the lifting of discrimination against products of nonmarket economies accords with fundamental (k) in Chapter I of the Economic Charter which provides for the respect of human rights and fundamental freedoms. The Universal Declaration of Human Rights62 in article 13(2) provides; "Everyone has the right to leave any country, including his own and to return to his country."

The first trade agreement to be signed and to be transmitted to Congress for approval under the Trade Act 1974 and the procedure of §407 is the agreement with Romania of April 2, 1975.63 The granting of nondiscriminatory treatment to products of the People's Republic of China is awaiting the full diplomatic recognition of that country by the United States.

Trade with nonmarket economies raises purely economic difficulties which are unrelated to human rights and political considerations. They concern subsidization and dumping by nonmarket economies. Subsidization by the state is inherent in a system in which means of production are

63. Agreement on Trade Relations between Romania and the United States, reproduced in 14 INT'L LEG. MAT'LS 671 (1975).
owned by the state. Dumping (i.e., the introduction of products of one country into the commerce of another country at less than the normal value of the products) cannot be easily detected. Furthermore, antitrust provisions which increasingly apply to foreign commerce between market economies do not apply to state monopolies. The realization of these differences that exist between market and nonmarket economies has led to the introduction of necessary safeguards and procedures in the U.S. trade agreements with the U.S.S.R. and Romania. These safeguards and procedures consist in joint consultations and examination of the relevant factors and the taking of preventive or other measures found to be necessary to avoid market disruption. A corresponding section, dealing with market disruption caused by the importation of a product from a communist country, was included in the Trade Act 1974.

VII. Conclusion

The Economic Charter cannot formulate new rules or change existing rules of international law because it lacks the support of a substantial number of developed states. A General Assembly resolution cannot, in any event, effect an instantaneous change of international law; the establishment of a custom requires consistent practice in time. Some of the provisions of the Economic Charter are representative of modern trends.

The fundamental principle in the Economic Charter which calls for fulfilment in good faith of international obligations refers to general international law and qualifies each provision of the Economic Charter unless it is excluded by its wording.

The right of a state to regulate foreign investment and activities of transnational corporations supports a United States policy of control of foreign investment, provided such policy does not violate bilateral treaties of friendship or conventions of establishment.

Article 2(2)(c) of the Economic Charter, which refers to nationalization, expropriation and other takings, should be amended so as to make clear that it is subject to the fundamental duty of a state to fulfill its obligations under general international law in good faith and that the payment of compensation must satisfy international minimum standards. Lack of clarification in this field will be detrimental to international trade, will lead to retaliation and to effective claims against expropriating states,

67. Section 2436 provides for an investigation by the International Trade Commission and for necessary action to be taken by the President of the United States.
state enterprises, or state controlled enterprises.

The current trend which is followed by the United States policy, is in favor of trading between countries with different economic, political, or social systems. It should, however, be borne in mind that economic considerations may justify, in certain cases, the taking of measures by a market economy country against market disruptions caused by a nonmarket economy country.
APPENDIX

UNITED NATIONS GENERAL ASSEMBLY
CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES
RESOLUTION 3281 (XXIX)

The General Assembly,

Recalling that the United Nations Conference on Trade and Development, in its resolution 45 (III) of 18 May 1972, stressed the urgency to establish generally accepted norms to govern international economic relations systematically and recognized that it is not feasible to establish a just order and a stable world as long as the Charter to protect the rights of all countries, and in particular the developing States, is not formulated,

Recalling further that in the same resolution it was decided to establish a Working Group of governmental representatives to draw up a draft Charter of Economic Rights and Duties of States, which the General Assembly, in its resolution 3037 (XXVII) of 19 December 1972, decided should be composed of forty Member States,

Noting that, in its resolution 3082 (XXVIII) of 6 December 1973, it reaffirmed its conviction of the urgent need to establish or improve norms of universal application for the development of international economic relations on a just and equitable basis and urged the Working Group on the Charter of Economic Rights and Duties of States to complete, as the first step in the codification and development of the matter, the elaboration of a final draft Charter of Economic Rights and Duties of States, to be considered and approved by the General Assembly at its twenty-ninth session,

Bearing in mind the spirit and terms of its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, which underlined the vital importance of the Charter to be adopted by the General Assembly at its twenty-ninth session and stressed the fact that the Charter shall constitute an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality, and inter-dependence of the interests of developed and developing countries,

Having examined the report of the Working Group on the Charter of Economic Rights and Duties of States on its fourth session, transmitted to the General Assembly by the Trade and Development Board at its fourteenth session,

Expressing its appreciation to the Working Group on the Charter of Economic Rights and Duties of States which, as a result of the task performed in its four sessions held between February 1973 and June 1974, assembled the elements required for the completion and adoption of the
Charter of Economic Rights and Duties of States at the twenty-ninth session of the General Assembly, as previously recommended, 
Adopts and solemnly proclaims the following charter:

CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

PREAMBLE

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems in the economic and social fields,

Affirming the need for strengthening international co-operation in these fields,

Reaffirming further the need for strengthening international co-operation for development,

Declaring that it is a fundamental purpose of the present Charter to promote the establishment of the new international economic order, based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems,

Desirous of contributing to the creation of conditions for:
(a) The attainment of wider prosperity among all countries and of higher standards of living for all peoples,
(b) The promotion by the entire international community of the economic and social progress of all countries, especially developing countries,
(c) The encouragement of co-operation, on the basis of mutual advantage and equitable benefits for all peace-loving States which are willing to carry out the provisions of the present Charter, in the economic, trade, scientific and technical fields, regardless of political, economic or social systems,
(d) The overcoming of main obstacles in the way of the economic development of the developing countries,
(e) The acceleration of the economic growth of developing countries with a view of bridging the economic gap between developing and developed countries,
(f) The protection, preservation and enhancement of the environment,

Mindful of the need to establish and maintain a just and equitable economic and social order through:
(a) The achievement of more rational and equitable international economic relations and the encouragement of structural changes in the world economy,
(b) The creation of conditions which permit the further expansion of trade and intensification of economic co-operation among all nations,
The strengthening of the economic independence of developing countries,

(d) The establishment and promotion of international economic relations, taking into account the agreed differences in development of the developing countries and their specific needs,

Determined to promote collective economic security for development, in particular of the developing countries, with strict respect for the sovereign equality of each State and through the co-operation of the entire international community.

Considering that genuine co-operation among States, based on joint consideration of and concerted action regarding international economic problems, is essential for fulfilling the international community's common desire to achieve a just and rational development of all parts of the world,

Stressing the importance of ensuring appropriate conditions for the conduct of normal economic relations among all states, irrespective of differences in social and economic systems, and for the full respect for the rights of all peoples, as well as strengthening instruments of international economic co-operation as means for the consolidation of peace for the benefit of all,

Convinced of the need to develop a system of international economic relations on the basis of sovereign equality, mutual and equitable benefit and the close interrelationship of the interests of all States,

Reiterating that the responsibility for the development of every country rests primarily upon itself but that concomitant and effective international co-operation is an essential factor for the full achievement of its own development goals,

Firmly convinced of the urgent need to evolve a substantially improved system of international economic relations,

Solemnly adopts the present Charter of Economic Rights and Duties of States.

CHAPTER I

Fundamentals of international economic relations

Economic as well as political and other relations among States shall be governed, inter alia, by the following principles:

(a) Sovereignty, territorial integrity and political independence of States;

(b) Sovereign equality of all States;

(c) Non-aggression;

(d) Non-intervention;

(e) Mutual and equitable benefit;

(f) Peaceful coexistence;

(g) Equal rights and self-determination of peoples;
(h) Peaceful settlement of disputes;
(i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development;
(j) Fulfilment in good faith of international obligations;
(k) Respect for human rights and fundamental freedoms;
(l) No attempt to seek hegemony and spheres of influence;
(m) Promotion of international social justice;
(n) International co-operation for development;
(o) Free access to and from the sea by land-locked countries within the framework of the above principles.

CHAPTER II

Economic rights and duties of States

Article 1

Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

Article 2

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.
2. Each State has the right:
   
   (a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;
   
   (b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;
   
   (c) To nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that
other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

Article 3

In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others.

Article 4

Every State has the right to engage in international trade and other forms of economic co-operation, irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic cooperation, every State is free to choose the forms of organization of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic co-operation.

Article 5

All States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy, in particular accelerating the development of developing countries. Correspondingly all States have the duty to respect that right by refraining from applying economic and political measures that would limit it.

Article 6

It is the duty of States to contribute to the development of international trade of goods, particularly by means of arrangements and by the conclusion of long-term multilateral commodity agreements, where appropriate, and taking into account the interests of producers and consumers. All States share the responsibility to promote the regular flow and access of all commercial goods traded at stable, remunerative and equitable prices, thus contributing to the equitable development of the world economy, taking into account, in particular, the interests of developing countries.

Article 7

Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose its means and goals of develop-
ment, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process of benefits of development. All States have the duty, individually and collectively, to co-operate in order to eliminate obstacles that hinder such mobilization and use.

Article 8

States should co-operate in facilitating more rational and equitable international economic relations and in encouraging structural changes in the context of a balanced world economy in harmony with the needs and interests of all countries, especially developing countries, and should take appropriate measures to this end.

Article 9

All States have the responsibility to co-operate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries.

Article 10

All States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, inter alia, through the appropriate international organizations in accordance with their existing and evolving rules, and to share equitably in the benefits resulting therefrom.

Article 11

All States should co-operate to strengthen and continuously improve the efficiency of international organizations in implementing measures to stimulate the general economic progress of all countries, particularly of developing countries, and therefore should co-operate to adapt them, when appropriate, to the changing needs of international economic co-operation.

Article 12

1. States have the right, in agreement with the parties concerned, to participate in subregional, regional and interregional co-operation in the pursuit of their economic and social development. All States engaged in such co-operation have the duty to ensure that the policies of those groupings to which they belong correspond to the provisions of the present Charter and are outward-looking, consistent with their international obligations and with the needs of international economic co-operation and
have full regard for the legitimate interests of third countries, especially developing countries.

2. In the case of groupings to which the States concerned have transferred or may transfer certain competences as regards matters that come within the scope of the present Charter, its provisions shall also apply to those groupings, in regard to such matters, consistent with the responsibilities of such States as members of such groupings. Those states shall cooperate in the observance by the groupings of the provisions of this Charter.

Article 13

1. Every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development.

2. All States should promote international scientific and technological co-operation and the transfer of technology, with proper regard for all legitimate interests including, _inter alia_, the rights and duties of holders, suppliers and recipients of technology. In particular, all States should facilitate the access of developing countries to the achievements of modern science and technology, the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies and their needs.

3. Accordingly, developed countries should co-operate with the developing countries in the establishment, strengthening and development of their scientific and technological infrastructures and their scientific research and technological activities so as to help expand and transform the economies of developing countries.

4. All States should co-operate in research exploring with a view to evolving further internationally accepted guidelines or regulations for the transfer of technology, taking fully into account the interests of developing countries.

Article 14

Every State has the duty to co-operate in promoting a steady and increasing expansion and liberalization of world trade and an improvement in the welfare and living standards of all peoples, in particular those of developing countries. Accordingly, all States should co-operate, _inter alia_, towards the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade and, to these ends, co-ordinated efforts shall be made to solve in an equitable way the trade problems of all countries taking into account the specific trade problems of the developing countries. In this connexion, [sic] States shall take measures aimed at securing additional benefits for the interna-
tional trade of developing countries so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, the acceleration of the rate of growth of their trade, taking into account their development needs, an improvement in the possibilities for these countries to participate in the expansion of world trade and a balance more favourable to developing countries in the sharing of the advantages resulting from this expansion, through, in the largest possible measure, a substantial improvement in the conditions of access for the products of interest to the developing countries and, wherever appropriate, measures designed to attain stable, equitable and remunerative prices for primary products.

Article 15

All States have the duty to promote the achievement of general and complete disarmament under effective international control and to utilize the resources released by effective disarmament measures for the economic and social development of countries, allocating a substantial portion of such resources as additional means for the development needs of developing countries.

Article 16

1. It is the right and duty of all States, individually and collectively, to eliminate colonialism, apartheid, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a pre-requisite for development. States which practise such coercive policies are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them.

2. No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force.

Article 17

International co-operation for development is the shared goal and common duty of all States. Every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty.
Article 18

Developed countries should extend, improve and enlarge the system of generalized non-reciprocal and non-discriminatory tariff preferences to the developing countries consistent with the relevant agreed conclusions and relevant decisions as adopted on this subject, in the framework of the competent international organizations. Developed countries should also give serious consideration to the adoption of other differential measures, in areas where this is feasible and appropriate and in ways which will provide special and more favourable treatment, in order to meet the trade and development needs of the developing countries. In the conduct of international economic relations the developed countries should endeavor to avoid measures having a negative effect on the development of the national economies of the developing countries, as promoted by generalized tariff preferences and other generally agreed differential measures in their favour.

Article 19

With a view to accelerating the economic growth of developing countries and bridging the economic gap between developed and developing countries, developed countries should grant generalized preferential, non-reciprocal and non-discriminatory treatment to developing countries in these fields of international economic co-operation where it may be feasible.

Article 20

Developing countries should, in their efforts to increase their over-all trade, give due attention to the possibility of expanding their grade with socialist countries, by granting to these countries conditions for trade not inferior to those granted normally to the developed market economy countries.

Article 21

Developing countries should endeavour to promote the expansion of their mutual trade and to this end may, in accordance with the existing and evolving provisions and procedures of international agreements where applicable, grant trade preferences to other developing countries without being obliged to extend such preferences to developed countries, provided these arrangements do not constitute an impediment to general trade liberalization and expansion.
Article 22

1. All States should respond to the generally recognized or mutually agreed development needs and objectives of developing countries by promoting increased net flows of real resources to the developing countries from all sources, taking into account any obligations and commitments undertaken by the States concerned, in order to reinforce the efforts of developing countries to accelerate their economic and social development.

2. In this context, consistent with the aims and objectives mentioned above and taking into account any obligations and commitments undertaken in this regard, it should be their endeavour to increase the net amount of financial flows from official sources to developing countries and to improve the terms and conditions thereof.

3. The flow of development assistance resources should include economic and technical assistance.

Article 23

To enhance the effective mobilization of their own resources, the developing countries should strengthen their economic co-operation and expand their mutual trade so as to accelerate their economic and social development. All countries, especially developed countries, individually as well as through the competent international organizations of which they are members, should provide appropriate and effective support and co-operation.

Article 24

All States have the duty to conduct their mutual economic relations in a manner which takes into account the interests of other countries. In particular, all States should avoid prejudicing the interests of developing countries.

Article 25

In furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries, of land-locked developing countries and also island developing countries, with a view to helping them to overcome their particular difficulties and thus contribute to their economic and social development.
Article 26

All States have the duty to coexist in tolerance and live together in peace, irrespective of differences in political, economic, social and cultural systems, and to facilitate trade between States having different economic and social systems. International trade should be conducted without prejudice to generalized non-discriminatory and non-reciprocal preferences in favour of developing countries, on the basis of mutual advantage, equitable benefits and the exchange of most favoured-nation treatment.

Article 27

1. Every State has the right to fully enjoy the benefits of world invisible trade and to engage in the expansion of such trade.

2. World invisible trade, based on efficiency and mutual and equitable benefit, furthering the expansion of the world economy, is the common goal of all States. The role of developing countries in world invisible trade should be enhanced and strengthened consistent with the above objectives, particular attention being paid to the special needs of developing countries.

3. All States should co-operate with developing countries in their endeavours to increase their capacity to earn foreign exchange from invisible transactions, in accordance with the potential and needs of each developing country and consistent with the objectives mentioned above.

Article 28

All States have the duty to co-operate in achieving adjustments in the prices of exports of developing countries in relation to prices of their imports so as to promote just and equitable terms of trade for them, in a manner which is remunerative for producers and equitable for producers and consumers.

CHAPTER III

Common responsibilities towards the international community

Article 29

The sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind. On the basis of the principles adopted by the General Assembly in resolution 2749 (XXV) of 17 December 1970, all States shall ensure that the exploration of its resources are carried out exclusively for peaceful purposes and that the benefits derived therefrom are shared equitably by all States, taking into account the particular inter-
ests and needs of developing countries; and international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon.

Article 30

The protection, preservation and the enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States should enhance and not adversely affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within the jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. All States should co-operate in evolving international norms and regulations in the field of the environment.

CHAPTER IV

Final provisions

Article 31

All States have the duty to contribute to the balanced expansion of the world economy, taking duly into account the close interrelationship between the well-being of the developed countries and the growth development of the developing countries, and that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts.

Article 32

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

Article 33

1. Nothing in the present Charter shall be construed as impairing or derogating from the provisions of the Charter of the United Nations or actions taken in pursuance thereof.

2. In their interpretation and application, the provisions of the present Charter are interrelated and each provision should be construed in the context of the other provisions.
Article 34

An item on the Charter of Economic Rights and Duties of States shall be included on the agenda of the General Assembly at its thirtieth session, and thereafter on the agenda of every fifth session. In this way a systematic and comprehensive consideration of the implementation of the Charter, covering both progress achieved and any improvements and additions which might become necessary, would be carried out and appropriate measures recommended. Such consideration should take into account the evolution of all the economic, social, legal and other factors related to the principles upon which the present Charter is based and on its purpose.