Chapter - VI

LEGAL OBLIGATIONS OF MEMBERS:

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Flowing from the objectives set out by each individual commodity agreement are a set of obligations which members are committed to or required to perform. Broadly speaking, four such categories of obligations can be distinguished: general obligations, functional obligations, equitable obligations and the fair labour standards obligation. Together they seek to establish a legal regime to govern international trade in a particular commodity.

The general obligations require members to perform all their obligations in good faith and implement any decision taken by the Council. Functional obligations encompass obligations aimed at stabilising prices, certain industry and trade obligations, obligation to contribute to the administrative budget, and the duty to provide relevant information. Equitable obligations manifest the principle of preferential treatment for developing countries as well as provide means to take cognisance of operational rigours arising from changing conditions of production and trade. Finally, the obligation to maintain fair labour standards commits member states to ensure a minimum standard of living to the workers on plantations and mines. The basis and content of these category of obligations vary considerably.
The structure of obligations established by commodity agreements seek to strike a balance of interests between exporter and importer countries. Therefore, for fear of upsetting the integrity of the agreement, they rarely permit reservations to be made to any provision of the agreement. Since the practice of proscribing reservations highlights the peculiar nature of commodity agreements a section of the chapter is devoted to examining the nature and rationale of the typical reservations clause which is incorporated.

Though the integrity of the agreement needs to be defended, and obligations are required to be performed in good faith, allowance has always to be made for exceptional or emergency circumstances which may require relief to be granted from the performance of specific obligations. Commodity agreements inevitably provide for such eventualities through including a "Relief from Obligations" clause. On a broader plane, the whole mechanics of amendment has the same objective. The last sections of the chapter deal with these aspects.

The examination here opens with a discussion of the four categories of obligations.

I. GENERAL OBLIGATIONS

All the contemporary commodity agreements contain a provision defining the general obligation of member states
in the matrix of the principle of good faith. A typical clause found in these agreements reads:

Members shall for the duration of this Agreement use their best endeavours and co-operate to promote the attainment of the objectives of this Agreement and shall not take any action in contradiction of those objectives.¹

The general obligation clause adumbrates the broad legal framework in which conflict and cooperation between member states are to be defined. It contains both a negative and a positive element. While the negative element proscribes any act which obstructs or inhibits the effective implementation of the agreement, the positive element requires member states to work towards attaining the objectives of the agreement in a spirit of cooperation. The legal significance of the clause lies in its explicit incorporation of the twin elements of the principle of good faith into the agreement. "The principle that treaty obligations should be fulfilled in good faith and not merely in accordance with the letter of the treaty has long been recognised by international tribunals and is reaffirmed

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¹ See article 2(1) of INRA, see also article 2(1) of ICFA, and article 56(1) of ISA, article 44(1) of ICCA, articles 4 and 5 of ICSA, article 41(1) of ITA, article 34(1) of IAJJP, and article 30(1) of ITTA.
by the United Nations 'as an act of faith'.\(^2\) The importance of the twin elements to the effectiveness of any international economic agreement can hardly be overstated, for they require not the passive observance of obligations but the active cooperation of member states in achieving the goals set by the agreement.

The general obligation is significant in an interrelated context. The numerous obligations undertaken under the agreement vary in their content. There are obligations which are precisely defined in the agreement, and there are other obligations which essentially represent commitments or at best "quasi-obligations". In the latter cases it is extremely important that the members perform their obligations in good faith. In this respect is is perhaps worth noting that "fulfillment in good faith of international obligations" is stated by the Charter of Economic Rights and Duties of States as a fundamental principle of international economic relations.

Apart from the umbrella obligation, there is also the general obligation to accept as binding all decisions of the Council and to implement the same. For instance,

the IAJJP states:

Members undertake to accept as binding decisions of the Council under the provisions of this Agreement, and shall seek to refrain from implementing measures which have the effect of limiting or running counter to them.3

While some agreements merely state that "Members shall accept as binding all decisions of the Council under this Agreement",4 the IAJJP along with INRA and ITTA add "and shall seek to refrain from implementing measures which have the effect of limiting or running counter to them".5 The latter words appear to provide for a situation where a member while ostensibly abiding by the decision of the Council may simultaneously adopt other measures which go to negate the impact of the Council decision.

II. FUNCTIONAL OBLIGATIONS

Depending on the nature of the agreement, there are four kinds of functional obligations which are cast upon the members of commodity agreements: (a) obligations flowing from the adoption and implementation of measures aimed at stabilising prices; (b) obligations relating to the

3. See article 34(2) of IAJJP.
4. See article 15(3) of ICFA and article 41(2) of ITTA.
5. See article 49(3) of INRA and article 30(2) of ITTA.
structure of the industry or the trade of the commodity
which is subject of the agreement; (c) obligation to contribute to the administrative budget of the Organisation; and (d) obligation to provide information. Given the bipartite nature of the agreements and the rationale underlying it, the nature of the obligations may differ for, and the incidence of the obligations may fall differently on, the producer and consumer members. However, generally speaking, it is submitted that the obligations of members should reflect the principle of reciprocity and the international legal principle of mutual and equitable benefit listed again by the Charter as a fundamental principle of international economic relations. In this regard, as shall be argued, the consumer countries need to play a bigger role in implementing the objectives of the commodity agreement than they are presently doing.

A. Obligations Aimed at Stabilising Prices

The obligations of members towards the objective of price stabilisation is essentially determined by the nature and type of a commodity agreement. Firstly, an ICA may or may not incorporate specific price stabilisation mechanisms. Where it does include a mechanism, it may either rely exclusively upon a single mechanism like the buffer stock or export quotas, or use both of them in combination. And if the ICA does not incorporate any specific mechanism, it
may yet conceive of certain other policy measures towards attaining the objective of price stabilisation. For instance, the IAJJP which does not incorporate any price regulating mechanism requires "consideration of" the question of stabilisation of prices. The nature of obligation such a measure imposes upon members is not very clear.

Where a commodity agreement relies on the buffer stock mechanism, the most significant obligation of member states relates to the financing of the buffer stock. Till recently however, the buffer stock was financed almost exclusively by the exporting members. While gladly accepting the principle of institutional parity i.e. equal voice in the decision making process, the consumer members refused to assume corresponding financial responsibility in keeping with the principle of reciprocity. Some importing members, however, did make voluntary contributions towards financing the buffer stock in the past. For instance, under the third International Tin Agreement; 1965, France and the Netherlands made contributions in proportion to their respective votes. Other importing members contributed in subsequent agreements.

6. Article 1(2) of IAJJP.
It was the INRA which for the first time imposed a joint legal obligation on the exporting and importing members of the agreement. It provided that "the financing of both the normal buffer stock and the contingency buffer stock shall be shared equally between the exporting and importing category of members". This was a far-reaching step, a belated recognition of the responsibility of the importing members who stand to benefit quite as much as the exporting members from price stability. The principle of joint financing of the buffer stock is coming to be accepted as a binding norm in the evolving international commodity law. It has been included in the ITA as a basis for financing buffer stocks. The ITA provides that "the financing of the normal buffer stock shall at all times be shared equally between Producing and Consuming Members". The Agreement establishing the Common Fund for Commodities endorses this norm and provides that only an ICA which conforms to the principle of joint buffer stock financing can have access to the First Account of the Common Fund which is to provide a line of credit to buffer stocks established within the framework of ICAs.

9. See article 29(2) of INRA.
10. See article 22(1) of ITA.
11. See article 7(2) of the Agreement establishing the Common Fund for Commodities (UN, N.Y., 1981). For a full discussion of the Common Fund, see Chapter X.
The contributions to be made by member states are apportioned by the Council either in accordance with their respective percentages of production or consumption (as in the case of the ITA) or according to their shares of votes in the Council (as in the case of the INRA). In the case of levy based agreement like the ICCA the contribution is "charged on cocoa either on first export by a member or on first import by a member".

Alongside the duty to make available their contribution to finance buffer stocks, there can be other obligations with respect to the stabilisation objective. One such obligation relates to the disposal of non-commercial stockpiles. Disposal of non-commercial stockpiles can seriously affect the market situation and an appropriate obligation in this respect is in order. The ITA, for instance, requires a member state desirous of disposing of tin from its non-commercial stockpile, to consult with the Council on its disposal plans. Khan explains the nature of the problem thus in the context of tin:

The international commodity agreements are based on a postulate that in the world commodity market the supplies of the regulated commodities originate from the producing countries alone. This assumption is not

12. See article 22(2) of ITA; articles 28(2) and 29(1) of INRA.

13. See articles 31 and 35 of ICCA.
always true in the case of tin. This is a strategic commodity. Governments stock it for national security and other public non-commercial purposes. Strategic stocks are held and occasionally stocks deemed surplus are released into the world market. Such releases, if uncontrolled or without any coordination with the ITC /i.e. the International Tin Council/ disrupt the tin market and falsify one of the basic assumptions of the ITA.14

Therefore, the ITA lays down guidelines which should govern disposals from non-commercial stockpiles. It states that disposals from non-commercial stockpiles are to be made with due regard to the protection of tin producers, processors and consumers against disruption of their normal markets and against adverse consequences of such disposals on the investment of capital in exploration and development of new supplies and the health and growth of tin mining in the territories of producer members. Furthermore, it provides that the disposals should be in such amounts and over such periods as will not unduly interfere with the production and employment in the tin industry of producer members and will avoid creating hardships to their economies.15


15. Article 46(4) of ITA.
When a member state wants to dispose of tin from its non-commercial stockpile it must give adequate notice of its plans to the Council. The Council is required to, upon receiving such notice, promptly enter into official consultations with the member in order to ensure that the disposal plans are in conformity with the guidelines. The Council has also to review, from time to time, the progress of such disposals and can make recommendations to the concerned member. The member is required to give due consideration to the recommendations of the Council. In the past this cooperation mechanism has played an useful role. For instance, the United Kingdom, Canada and Italy have made fruitful use of these provisions.

Finally, there may be obligations relating to certain special stocks which are required to be held by individual exporting members. For instance, Article 46 of the ISA permitted allocation of special stocks to the exporting members pro-rata to their individual export tonnages, in the circumstances and subject to adjustments specified in the Agreement. The performance of stocking obligations were subject to verification.

If the commodity agreement in question is an export quota agreement or uses export quotas in support to buffer

16. See article 46 of ITA.
stocks, the chief obligation of member states is to ensure full compliance with the provisions relating to quotas. For example, Article 42 of the ICFA provides that "Exporting Members shall adopt the measures required to ensure full compliance with all provisions of this Agreement relating to quotas". More specifically, it states that "Exporting Members shall not exceed the annual and quarterly quotas allocated to them". In addition to any measures the member may take, the Council can ask a member to adopt additional measures for the effective implementation of the quota system adopted in the Agreement.

B. Industry and Trade Obligations

A variety of industry and trade obligations are set out in commodity agreements. These obligations, firstly, pertain to those objectives which manifest UNCTAD's positive and integrated concept of commodity agreements. They relate to, inter alia, improving market access and demand, promotion of consumption and increased processing of primary commodities in developing countries. The responsibilities undertaken in these respects have two general features: (i) they essentially represent commitments in principle, and rarely are any corresponding regulatory measures included; and (ii) the incidence of these obligations, where any practical measures are included, often fall unequally on exporters. For a more effective and
equitable set of obligations to emerge the consumer members need to participate more fully in the implementation of the agreements.

Secondly, there are obligations concerned with ensuring access of supplies to consumers and can involve measures in the even of a shortage of the commodity.

1. Commitments to improving market access and demand

There is little doubt that if the United Nations conception of the commodity agreement as a vehicle of development is to become a reality through stabilising and increasing the export earnings of developing primary commodity exporting countries, it is imperative that these agreements include positive measures to remove obstacles which presently inhibit increased consumption. However, at present such measures are more or less absent. The nature, scope and limits of the commitments undertaken in contemporary commodity agreements can be illustrated with reference to the ICFA and the ICCA.

Article 48 of the ICFA entitled 'Removal of obstacles to consumption' states in para (1) that "Members recognise the utmost importance of achieving the greatest possible increase of coffee consumption as rapidly as possible, in particular through the progressive removal of any obstacles which may hinder such increase". The major
obstacles indicated are: (a) import arrangements applicable to coffee, including preferential and other tariffs, quotas, operations of government monopolies and official purchasing agencies, and other administrative rules and commercial practices; (b) export arrangements as regards direct or indirect subsidies and other administrative rules and commercial practices; and (c) internal trade conditions and domestic legal and administrative provisions which may affect consumption.

Members undertake, in this regard, a number of obligations - that they shall endeavour to pursue tariff reductions on coffee or take other action to remove obstacles to increased consumption; seek ways and means by which obstacles to increased trade and consumption may be progressively reduced and eventually eliminated; and inform the Council annually of all measures adopted with a view to implementing the stated obligations. The Council is authorised to make recommendations to members which are required to report to the Council the measures adopted to implement them.

The ICCA states in Article 46 para (3) that importing members shall make every effort "within the limits of their international commitments" to pursue policies which will not artificially restrict the demand for cocoa and which will ensure to exporters the regular access of their
markets for cocoa. Like in the ICFA, the Council is authorised to make recommendations and examine periodically the results achieved. 18

Khan concludes in the context of the content of these provisions:

*Demand of these commodities remain in effect unregulated. The problem of obstacles, as the need to take appropriate actions is recognised. At best the agreements have made this question a subject of international quasi-obligation and provide a framework within which actions may be taken, if the parties so desire, through future negotiation. The obligation is subject to 'auto-determination' and the supervisory structure is based on the good faith pattern.* 19

However, they do represent the first steps towards a more precise and binding regime being incorporated in commodity agreements. Moreover, in the context of this as well as other obligations to be considered presently, it is important to remember that the content of the obligation does not affect its normative character. Nor is the concept of obligation to be confused with that of sanctions. This is,

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18. See also article 50 of INRA entitled 'Obstacles to trade'; and article 58 of ISA entitled 'Access to Markets'.

however, not to contend that there is no need for more effective provisions being written into the commodity agreement, but merely to stress that their content does not necessarily dilute their normative character.

However, in realistic terms, it is difficult to visualise a precise and binding regime being incorporated in commodity agreements in the near future. Two principal reasons account for this pessimistic view. Firstly, negotiations to improve market access are today being conducted in the GATT and it is unlikely that the concerned developed countries will agree to having these issues negotiated in the United Nations Commodity Conferences. Secondly, for ideological and other policy reasons, these countries will resist any regulation of their internal market.

On the other hand, the developing countries as commodity exporters need to formulate strategies to have more serious measures written into the commodity agreement. It is recommended that a legal case be made out in this respect based upon accepted principles governing international economic relations, in particular those relating to market access, as manifested in the General and Specific principles adopted at UNCTAD I, the Declaration and Programme of Action for the establishment of a New International Economic Order, the Charter of Economic Rights and Duties of States, and the unanimously accepted Integrated Commo-
Commodity Programme. Such a case cannot, of course, be confrontational in nature as it would threaten the renegotiation of the agreement. It should, instead, be used to persuade the countries to accept their legal commitments made in and outside the commodity agreement, as well as accept negotiation of market access within the forum of commodity conferences. In this respect, it is worth reiterating that the existing commodity organisations do not have a legal cell or any legal personnel to advise on such matters. This organisational lapse should be rectified immediately.

2. Obligations to promote consumption

Apart from seeking to remove the obstacles to increased market access; commodity agreements, it may be recalled, also have as one of their objectives the promotion of consumption. Thus, the ICCA states in Article 47, para (1), that "All members shall endeavour to promote the expansion of cocoa consumption in accordance with their own means and methods". In this context, all members are called upon to endeavour to inform the Council on a regular basis of relevant domestic regulations and information concerning cocoa consumption. The Executive Director of the ICCA is empowered to make recommendations to members after evaluating the global demand scenario continually.
The Council is authorised to establish a committee with the aim of stimulating the expansion and consumption of cocoa in both exporting and importing countries. The membership of this committee is limited to members contributing to the promotion programme. While the cost of such programmes is to be met through contributions from the exporting members, the "importing members may also contribute financially". It is submitted that the obligation on the importing countries should be mandatory.

In the ICFA the "Members undertake to encourage the consumption of coffee by every possible means". The promotion endeavour, it has been seen, is to be financed by a Promotion Fund which was to be financed in the first two years through a compulsory levy on the exporting members. The Promotion Committee which was to run the Fund was authorised to collect a compulsory levy in two other years as well. The importing members had no comparative obligation and could make voluntary contribution if they so desired. The same system has broadly been retained in the 1983 International Coffee Agreement. Like in the case of the ICCA, it is recommended that the burden of obligation should fall equally on the importing countries.

20. Article 47(4) of ICCA.
21. Article 47 of ICFA.
22. See article 47.
It is true that it is the exporting members which will be the beneficiaries of any scheme to promote consumption, yet the importing members should assume responsibility. Firstly, in most cases the exporting members are likely to be developing countries which rely a great deal on the export earnings from the respective commodities. To put it differently, the importing members should accept the obligation in the backdrop of the fact that the commodity agreement is an instrument which seeks to establish a NIBO. Secondly, it may be reiterated that the importing members are given equal voice in the negotiation and implementation of the agreements and should therefore assume concomitant responsibility.

The significance of the recommendation can be understood in the light of the bleak prospects for growth which face cocoa and coffee. There is, therefore, an urgent need to promote their consumption, as well as the consumption of other commodities, for which the active cooperation - both physical and financial - of the importing members is required within the framework of commodity agreements.

23. See Chapter II, sub-section "Promotion of Consumption".
3. Commitments to increase processing in developing countries

Commodity agreements explicitly recognise the need of developing countries to increase processing of raw commodities in developing countries. The ICPA, for instance, states in Article 46 para (1) as follows:

Members recognise the need of developing countries to broaden the base of their economies through, inter alia, industrialisation and the export of manufactured products, including the processing of coffee and the export of processed coffee.

In this connection it provides that "Members shall avoid the adoption of governmental measures which could cause disruption to the coffee sector of other Members". The reference is in particular to tariff and non-tariff barriers which is a major obstacle to the increased processing of commodities in developing countries. Where a member does not comply with the provision, and another member expresses its concern, the former member is under an obligation to consult with the other and shall make every effort to reach amicable settlement on a bilateral basis. Where a settlement cannot be arrived at resort can be had to the dispute settlement procedures.

The ICCA incorporates a much broader provision which merely recognises the needs of developing countries to broaden the base of their economies but appears to place
no serious obligation on members. The ITA provides that the Council shall, in the light of studies of the tin market, identify obstacles to the expansion of trade in semi-finished tin products and finished tin products. In this respect the Council can make recommendations to members with a view to reducing, and where possible fully eliminating, such obstacles. The INRA also empowers the Council to make appropriate recommendations towards improving processing of natural rubber.

In brief, while these agreements recognise the importance of increasing processing of raw commodities in developing countries they do not, apart from perhaps the ICFA, incorporate concrete legal duties in this regard. The obvious recommendation in this respect is that future agreements include concrete responsibilities if the sentiment expressed in these agreements is to be translated into practice.

4. **Obligation to assure supplies to consumer members**

The commodity agreement does not merely express the concerns of the exporting members but reflects the mutual interests of the exporting and importing members. An imp-

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24. See article 50 of ICCA.
25. See article 44 of ITA.
26. See article 44 of INRA.
Important objective of the importing countries in participating in the agreement is to be assured access to supplies. Consequently, commodity agreements cast an obligation in this regard on the exporting members. For example, Article 43 of INRA states in para (1):

Exporting members to the fullest extent possible undertake to pursue policies and programmes which ensure continuous availability to consumers of natural rubber supplies.\(^{27}\)

In the event of a potential shortage the Council is empowered to make recommendations on possible appropriate steps to ensure as rapid an increase as possible in the natural rubber supplies.

The ITA goes further than other agreements and envisages not only equitable distribution between the consuming members\(^ {28}\) but also preferential treatment for the consuming members. In the latter context it provides that

The Council may consult with Producing Members on appropriate measures not inconsistent with other international agreements on trade, with the

\(^{27}\) See also article 46 of ICCA; article 40 of ITA; and article 60 of ISA.

\(^{28}\) Article 40(5) of ITA provides that "the Council may, by a two-thirds distributed majority, invite Members to enter into such arrangements with it as may assure Consuming Members an equitable distribution of the available supplies of tin".
objective, in the event of a shortage of tin, of seeking to provide a preference as regards the supply of tin to Consuming Members.29

C. Obligation to Contribute to Administrative Budget

Each member of a commodity agreement has an obligation to contribute to the administrative budget of the Organisation. As the IAJJP, for instance, provides: "The expenses necessary for the administration of this Agreement shall be brought into the Administrative Account and shall be met by annual contributions from members...".30

The individual assessments are usually made either in proportion to the votes a member holds or in accordance with the ratio of individual votes to the total votes.

The ITA authorises the Council to approve a supplementary budget, when, because of unforeseen circumstances, the normal budget is unlikely to meet the administrative expenses of the Council. The payment is generally required to be made in freely usable currencies or currencies which are convertible in the foreign exchange markets into freely usable currencies, and are exempt from foreign exchange restrictions.

29. Article 40(6) of ITA.

30. See article 21 of IAJJP; see also article 25 of INRA; article 25 of ICPA; article 38 of IOOA; article 23 of ICCA; article 20 of ITA; articles 23 and 24 of ISA; and article 19 of ITTA.
D. Obligation to Provide Information

Fratianne and Pattison, it may be recalled, well point out that "Information is a central ingredient to international cooperation and policy co-ordination". It provides the basis on which the commodity agreement is negotiated and administered. There is also little doubt that ICOS possess a comparative advantage in the collection and dissemination of data. Therefore, commodity agreements require the ICOS to act as a centre for the compilation and distribution of necessary economic intelligence. However, the effective performance of this task by the respective Councils hinges on the cooperation of members which need to regularly make available the relevant information. Therefore, an obligation is placed in this regard on all members of ICAs. They require members to furnish relevant statistics and information within a reasonable time, and to the fullest extent possible. The INRA, for instance, requires members to promptly, and to the fullest extent possible, furnish to the Council available data concerning the production, consumption and international trade in natural rubber by specific grades. The Council


32. See article 46(2) of INRA; see also article 53(1) of ICFA; article 66(2) of ISA; article 52(1) of ICCA; article 31(2) of IAJJP; and article 27(2) of ITTA.
can also ask the members to supply such other information as is necessary for the operations of the organisation. 33 Some agreements like the ICFA, ISA and the ICCA further provide that if a member state failed to supply the necessary information the Council could ask the concerned member to give reasons for non-compliance. 34 Where it is found that there is a need for technical assistance the Council is empowered to take the necessary measures. The ICFA also contemplates withholding the release of coffee stamps or other equivalent export authorisations.

It may be noted, however, that the obligation to supply information is often subject to certain exceptions. Thus, ordinarily, the obligation cannot be insisted upon where it is inconsistent with domestic legislation, or where it would prejudice the essential security interests of the state. 35 Finally, the Council is expected to respect the confidentiality of the information which is provided.

III. EQUITABLE OBLIGATIONS

The category of functional obligations contains a dynamic component in so far as they promote the positive

33. See for instance 53(2) of ICFA; article 46(3) of INRA; article 52(2) of ICCA; and article 66(3) of ISA.
34. See article 53(3) of ICFA; article 66(4) of ISA; and article 52(3) of ICCA.
35. See article 46(3) of INRA; article 47 of ITA; article 31(2) of IAJJP; and article 27(2) of ITTA.
and integrated concept of a commodity agreement. However, they reflect an existential perspective of commodity markets in as much as they do not explicitly envisage preferential treatment for developing countries and sub-groups thereof, or attempt to concretely take cognisance of changing conditions of production and trade. While the distinction may on occasion be admittedly a fine one it is adopted here as an analytical device to highlight certain aspects of commodity agreements.

In recent years the ICA has not remained impervious to the particular situations of developing countries and is coming to recognise (a) the need to protect developing importing countries from the ill effects of any regulatory measures incorporated in the agreement, and (b) that developing exporting countries need to be granted preferential treatment. However, it may be noted at the outset, there is no extended practice in these respects.

A criticism levied against the export quota type of commodity agreement is that it freezes production patterns and thereby does not take into consideration, inter alia, the interests of emerging exporters. Another charge is that, given the structure of commodity agreements, the interests of the small exporters are ignored. Equity, however, demands that the interests of the emerging and small exporters are taken into account, particularly in
view of the fact that a number of emerging and small exporters are developing countries. Commodity agreements, therefore, seek to incorporate ways and means to accommodate these interests.

A. Obligations to Grant Preferential Treatment

In the post-1945 period the international legal process has evolved the norm of preferential treatment for developing countries and sub-groups thereof. The developing countries are seeking to establish a NIEO which will facilitate the elimination of inequality in its economic relations with the developed world. The establishment of a new order at this historical juncture necessitates differential and more favourable treatment of the developing countries. The international legal process, therefore, attempts to "transpose the existing unequal situations in the legal sphere, by the establishment of parallel legal inequalities". The actual preference

36. For a painstaking collection of evidence with respect to the manifestations of the principle of preferential treatment see Wil D. Wervyn, "The Principle of Preferential Treatment for Developing Countries", in UNITAR/DS/5, 15 August 1982, Progressive Development of the Principles and Norms of International Law Relating to the NIEO: Analytical Papers and Analysis of Texts of Relevant Instruments, pp. 6-183.

granted to developing countries varies in its content and degree in each instance depending upon several factors inter alia, the nature of the instrument, the area of cooperation, the state of the international economy and past practice.

Commodity agreements often incorporate a "differential and remedial measures" provision which allows, under certain circumstances, discrimination in favour of developing importing members and least developed countries. It thereby places a certain obligation upon the members of commodity agreements. A typical clause reads:

Developing importing members, and least developed countries which are members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in accordance with paragraphs 3 and 4 of section III of resolution 93(IV) of the United Nations Conference on Trade and Development. 38

It would be useful to recall here the relevant paras of the Integrated Programme for Commodities:

(3) The interests of developing importing countries, particularly the least developed and the most

38. See article 56 of ICDA; see also article 52 of INRA; article 42 of ITA; article 36 of IANUP; and article 32 of ITTA.
seriously affected among them, and those lacking in natural resources, adversely affected by measures under the Integrated Programme, should be protected by means of appropriate differential and remedial measures within the Programme.

(6) Special measures, including exemption from financial contribution, should be taken to accommodate the needs of the least developed countries in the Integrated Programme for Commodities.

The understanding was that if the Programme had negative impact on the developing countries, in particular the least developed countries it needed to be remedied as a matter of equity.

Apart from the "differential and remedial measures" clause, the ICAs in other ways may grant preferential treatment to developing countries and sub-groups thereof. The ISA, for instance, discriminated in favour of developing countries in the following ways:

(1) Certain sugar exports of specific developing countries to specified developed countries or within specified developing regions were excluded from the maximum export entitlements established for each sugar-exporting country under the Agreement. This applied to the exports of ACP countries to EEC under the 1975 Lome Convention (art. 30), of India to EEC under a 1975 agreement (art. 30), to part
of the exports of Cuba to the socialist countries of Eastern Europe (art. 31); and up to a certain maximum, to sugar traded within the Eastern African Community (EAC) and the Caribbean Community (CARICOM) (art. 36).

(2) Developing importing member states could, subject to due notification to the Sugar Council, export sugar in quantities exceeding their imports, up to a maximum of 10,000 tonnes per quota year, without these exports being considered as basic export tonnage or being subject to adjustments (art. 38).

(3) In certain circumstances specified in the Agreement, when shortfalls could be redistributed among exporting members, in excess of their basic export tonnages, 20 per cent were to be allocated exclusively to developing exporting members (and the remaining 80 per cent to all exporting members) pro rata to their basic export tonnages (art. 43).

(4) In contrast to developed importing members, developing importing members were not under the obligation to ensure access to their markets for imports of sugar from exporting members (art. 58).

(5) Developing countries which were small producer exporters (developing exporting members with an initial basic export tonnage of 300,000 tonnes or less), which
realised an expanded production capacity in excess of 10,000 tonnes per quota year, and did so in conformity with plans duly registered with the International Sugar Organisation (ISO) upon entry into force of the Agreement, had a right to an increased basic export tonnage (upto the individual and collective maxima indicated in article 34, para (g)).

(6) With respect to developing members which were small producer-exporters (those with basic export tonnages not exceeding 300,000 tonnes) it was provided that in the renegotiation of basic export tonnages account was to be taken of "realised expansion projects" duly registered with the ISO (art. 34 para (2)(a)(vi)), and the same category of developing exporting members were exclusively eligible to additional export allocations by the Special Hardship Reserve Committee, up to a total of 300,000 tonnes per quota year, in case they were "experiencing hardship as a result of special difficulties and... in temporary need of additional export entitlements in excess of their respective quotas in effect or export entitlements under other provisions of this Agreement" (art. 39).

(7) With respect to small developing countries, in the renegotiation of basic export tonnages account was to be have taken as "the role of sugar in the economy, dependence upon the free market and the special position of small developing members whose export earnings were heavily dependent upon the export of sugar" (art. 34 para 2(a)(v)).
(8) For the purposes of the maintenance of special reserve stocks (which was to be held and apportioned pro rata to basic exports tonnage of each developing member which is a very small producer-exporter (in this case, a member with a basic export tonnage not exceeding 180,000 tonnes) was not be taken into account, unless such a member itself desired otherwise (article 46, para 3).

(9) With respect to the fulfilment of export obligations, finally, a special rule applied to land-locked developing exporting members; it being provided that in their case in view of the burden of additional transport costs, the non-use of all of their quota in effect or export entitlements, as appropriate, in one or more quota years would not be a ground for considering that they had not fulfilled their obligations under the Agreement thereby incurring the cancellation of entitlement in the renegotiation of the agreement (art. 37, para 1).

(10) The Agreement had provided with respect to extra allocations by a special Hardship Reserve Committee, that "the total allocations which may be made in accordance with this article, priority shall be given to small developing Members whose export earnings are heavily dependent upon the export of sugar. Equally, special consideration shall be given to the claims of those Members whose economies are becoming increasingly dependent upon sugar". (art. 39 para 5).
(11) With respect to Land-locked Developing Countries (LLDC) exporting members, in view of the fact that their exports are hampered and burdened by the additional cost of transport to seaports, the Council was to consider, in consultation with UNCTAD, as to in what manner land-locked developing exporting Members could best benefit from the United Nations Special Fund for LLDC's (established by the General Assembly) up to the maximum such Members were entitled to export (art. 37, para 2).

(12) The Council was to, as far as possible, in each quota year review the operation of the Agreement in the light of its objectives and the effects of the Agreement on the market as well as on the economies of individual countries, "in particular of the developing countries". The Council was then to formulate recommendations regarding ways and means of improving the functioning of the Agreement (art. 68).

The practical impact of such provisions depend on the spirit in which these commitments are approached, the peculiarities of the commodity market which the agreement is seeking to regulate, and a host of other factors. However, the absence of any serious impact should not belittle the significance of including such provisions. Substantive and effective measures will not emerge overnight. In view of this, the emergence of equitable commitments is in itself
a salutary development. However, greater efforts need to be made, from within the framework of commodity agreements, to give preferential treatment to developing countries. In this context it may be pointed out that for all the provisions included in the ISA it could not bring any great benefits to the developing countries for the EEC persists in giving subsidies to its farmers and protecting its own markets. In other words, the special position of developing countries also needs to be viewed from a broader perspective than it is being seen at present.

B. Principle of Equitable Treatment and Export Entitlements

An important reason why preferential treatment has come to be granted to developing countries in ICAs is the fact that it is no longer viewed as in the Havana Charter as an emergency measure but as an instrument of development. Such a view has influenced, for instance, in export quota agreements, a change in the basis for determining the export entitlements of exporting members. While earlier export entitlements were determined solely according to the criteria of past export performance in a particular period, the changing concept of commodity agreements have led to the introduction of other relevant factors.

Khan has pointed out that the earlier statistical mode of determination "if applied in an unmitigated manner
fossilises the present market structure and is unsuited to the needs of the developing countries who are new exporters, land-locked, or heavily dependent upon the export earnings of one or a few primary commodities. The recognised special needs of the developing countries thus form the rationale for equitable treatment". 39 To put it differently, the principle of equitable treatment requires that cognisance be taken of changes in the world production pattern and exports in a particular commodity and in doing so take into account the needs of developing exporter countries. Such a perspective anticipated commitments on the part of the other exporting members in particular, and can assume different forms.

Contemporary commodity agreements have introduced ways and means of accommodating the interests of the emerging and the small exporters. These include, *inter alia*, adoption of the categories of major and minor exporters, adjustment in basic export entitlements and allocation of basic export entitlements on a historic-cum-variable basis.

The ICFA is an example of the manner in which these different ways can be put into practice. The exporter's category is divided into major and minor exporters. The

minor exporting countries, firstly, have an irreducible entitlement which is immune from any diminution. These countries are further classified into those which export less than 100,000 bags, allowed to increase their quota by ten per cent in subsequent years, and those which fall within the limits of 100,000 bags to 400,000 bags, but allowed to increase their quota by five per cent. The 1983 International Coffee Agreement deals with the matter slightly differently, stating that the minor exporters shall together have an export quota corresponding to 4.2 per cent of the global annual quota set by the Council.

The basic export entitlement in the ICFA is saved from rigidity by adopting variable reference years which are made dependent upon the year of export control. It may, however, at first be noted that the export entitlements in the Agreement is constituted of a fixed part, corresponding to 70 per cent of the global annual quota, and variable part corresponding to 30 per cent of the annual global quota, distributed in proportion to each exporter's share of total verified stocks. The Agreement provides that if the quotas came into effect in the first year, the

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40. See article 31(1) of ICFA.
41. Ibid.
fixed part is to be related to average exports over the four years 1968-69 - 1971-72. However, if the quotas came into effect in later years, or if they had been imposed but had been suspended, recent exports were to be taken into account - the volume of exports during the coffee year 1976-77. As it happened quotas did not come into effect until October 1980, since the market price had hitherto remained over the ceiling level. The provision allowed for a certain amount of flexibility in determining export quotas.

The ITA allocates quotas on the basis of relative shares of production or exports in the last preceding year in which controls were not in force. This solution is more flexible than the one incorporated in the ICPA. In the ISA a different method had been used. The initial quotas which were negotiated and specified in the Agreement were to remain in effect for the first two years, and were to be renegotiated in the beginning of the third quota

43. See article 30 of ICPA. The 1983 Agreement, however, follows the procedure of stating share of individual members entitled to a basic quota in coffee year 1983-84 which was to be set before 30 September, 1984. Article 30(1), ibid.

44. Article 34(1) of ITA states, "The total permissible export tonnage for any control period shall be divided among Producing Members in proportion to their production or export figures, as appropriate, for the last four consecutive quarters which preceded the control period and which were not declared control periods".
year taking into account a number of relevant factors, to arrive at revised basic export tonnages for each of the remaining three quota years. Through such a provision account was to be taken of the changing structure of world sugar production. It may also be noted that in the ISA, members with small export entitlements were guaranteed access to the free market of 70,000 tonnes and is not subject to adjustment.

In sum, commodity agreements apply the principle of equitable treatment to take cognisance of the changes visiting international trade in a particular commodity, requiring corresponding commitments from members. The application of the principle not only makes the export quota mechanism more flexible but also assures the small exporters access to markets. The latter in contemporary agreements are essentially developing countries which are thus guaranteed a certain level of export earnings.

45. See article 34 of ISA.
46. See article 35(1) of ISA.
47. For instance, in the ICPA, the exporting members exporting less than 100,000 bags, as listed in the Annex to the Agreement are: Gabon, Jamaica, Congo, Panama, Dahomey, Bolivia, Ghana, Trinidad and Tobago, Nigeria, Paraguay, and Timor. The exporting members with a guaranteed export entitlement of 70,000 tonnes, as listed in Annex II of the Agreement are nearly all developing countries: Bangladesh, Barbados, Belize, St. Kitts-Nevis-Anguilla, Congo, Ethiopia, Haiti, Honduras, Hungary, Indonesia, Madagascar, Malawi, Paraguay, Romania, Sudan, Turkey, Uganda, United Republic of Cameroon, United Republic of Tanzania, Uruguay, Venezuela, Zambia.
IV. OBLIGATIONS TO MAINTAIN FAIR LABOUR STANDARDS

A major shortcoming of commodity agreements is that the benefits which accrue from their operation do not trickle down to the workers on plantations and mines, the final producers of goods. Not only are wages pitifully low in Third World countries, but also the working conditions are appalling, with little or no semblance of worker's rights. Therefore, way back in 1943 the International Labour Office had recommended that "Whenever existing conditions are unsatisfactory, there should be arrangements to ensure that labour employed on the production of controlled commodities receive fair remuneration and adequate social security protection and that other conditions of employment are satisfactory". More recently, the Brandt Commission Report recommended that "the benefits of a new regime for commodities must reach the real primary producers, namely the men and women working on the plantations and in the mines".

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49. Inter-Governmental Commodity Control Agreements (Rio, Montreal, 1943).

Contemporary commodity agreements often contain a “fair labour standards” clause which places an obligation upon members to ensure a minimum standard of living for workers on the plantations and mines. For instance, the INRA incorporates the following clause: “Members declare that they will endeavour to maintain labour standards designed to improve the levels of living of labour in their respective natural rubber sectors”.

The origin of ‘fair labour standards’ clauses can perhaps be traced to Article 23 para (a) of the Covenant of the League of Nations which obliged member states “to endeavour to secure and maintain fair and humane conditions of labour for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend”. The 1919 Constitution of the ILO also set as one of its primary objectives the adoption and promotion of international labour standards.

However, a firm link between trade and labour standards was possibly established in the Havana Charter of 1948 which in its chapter on employment and economic activity provided an article on fair labour standards which, inter alia,

51. See article 54 of INRA; see also article 63 of ISA; article 6 of ICOM; article 60 of ICCA; and article 45 of ITA.
recognised as a "common interest" of all countries to achieve and maintain fair labour standards. Article 7 para (1) of the Havana Charter read:

The Members recognise that measures relating to employment must take fully into account the rights of workers under intergovernmental declarations, conventions and agreements. They recognise that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognise that unfair labour conditions particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.52

It is difficult to accept entirely the content of the statement as it links fair labour standards to productivity. Secondly; the provision was quite vague in nature, although as Alston has noted, it was "significantly mitigated" by para (3) of the same article which provided for consultation and cooperation between the ICO and the ILO in matters relating to labour standards.53 Notwithstanding the inade-


quences of the provision and the underlying motivations, it represented a first thrust towards incorporating fair labour standard clauses in trade and commercial inter-governmental agreements. It may be recalled that the Havana Charter was not made operative through ratification.

The general principle enunciated in the Havana Charter soon found its way into commodity agreements. The First Sugar Agreement of 1954 and the First International Tin Agreement of 1954 contained fair labour standard clauses. The 1954 Sugar Agreement, for instance, provided that "the participating Governments declare that, in order to avoid the depression of living standards and the introduction of unfair competitive conditions in world trade, they will seek the maintenance of fair labour standards in the sugar industry". It is significant to note that the maintenance of fair labour standards is delinked here from the issue of productivity. Thereafter, the clause was incorporated into several agreements. However, as Kullman notes, "It cannot be said that at a certain moment there was a break-through, from which time onwards such clauses have been inserted in all commodity agreements on the contrary, simultaneously with the conclusion of

agreements with 'fair labour standards' at least equally important agreements (coffee) which did not contain such clauses, were concluded".55 But, Kullman himself hastens to add, "once a 'fair labour standards' clause obtained entry to an agreement, in each case it has been included in the renegotiations as a noncontroversial element without any amendments".56

The nature and content of 'fair labour standards' have not seriously been defined in any commodity agreement. There is mere reference to, inter alia, provision of full employment, raising the level of living, and improving working conditions. It is submitted that the content of "fair labour standards" is not only to be derived from the particular provision incorporated into a commodity agreement but also from relevant international instruments on human rights, since "it seems accurate to say that the proposals which comprise the call for a New International Economic Order constitute in effect the basis for a new international human order".57


56. Ibid.

57. E/29/4/1334, 2 January 1979: Question of the realisation in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights and study of special problems which developing countries... contd...
The link between the promotion of human rights and just international world order has always been recognised as inextricable. The Universal Declaration of Human Rights stated that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised." It is generally agreed that the influence of the Universal Declaration on the development of post-Second World War constitutional and other statutory laws in numerous countries has been extremely remarkable. More recently, the Charter of Economic Rights and Duties of States specifically includes "respect for human rights and fundamental freedoms" and the "promotion of international social justice" among fundamental principles of international economic relations. In this context, General Assembly resolution 32/130 is rather categorical: "the realisation of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms."

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The nature and content of the "fair labour standards" clause, therefore, must be concluded from an integrated and holistic reading of a range of international instruments applicable to the context. For example, both the Universal Declaration of Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1967, which spell out, among other things; the economic foundations of human rights, dilate upon the meaning and substance of what has been termed in ICAs as "fair labour standards". Articles 7, 8 and 9 of the Covenant (to which 90 states have acceded) contain its essential aspects. Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular (a) remuneration which provides all workers; as a minimum, with: (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and (ii) a decent living for themselves and their families; (b) safe and healthy working conditions; (c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no consideration other than those of seniority and competence; and (d) rest, leisure and reasonable limitation of working hours and

59. For the text of Covenant, see n. 58, p. 10.
periodic holidays. Article 8 recognises "the right of everyone to social security, including social insurance". While these two provisions outline the fundamental basis of improving the well-being of the working population, Article 8 accepts the necessity of a democratic labour movement in improving working conditions. Under its provision, states undertake to ensure: (a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions can be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security of public order or for the protection of the rights and freedom of others; (b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organisations; (c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security of public order or for the protection of the rights and freedoms of others; and (d) the right to strike, provided that it is exercised in conformity with the laws of the particular country.
The "fair labour standards" obligation incorporated in commodity agreements are admittedly exhortatory in intent. In other words, like the provision in the Havana Charter, they do not apparently create any binding obligations on the part of parties to the agreement. The only relative exception were perhaps the earlier sugar agreements which used the phase "members shall", though even this clause was qualified by the term "as far as possible", with reference to raising the standard of living of workers.\(^6\) In fact, unlike the Havana Charter, ICAs do not even make it mandatory for their members of the International Labour Organisation (ILO) to cooperate with that organisation to implement the fair labour standards clause, albeit non-binding, included in the commodity agreements. In fact, the agreements also do not even provide for a system of consultations with the ILO. Finally, the ambiguity of the clause leaves it uncertain as to who can agitate a question of non-observance of the principle before the ILO and what kind of "action" can be envisaged by it.\(^6\)

These lead Kullman to "cast doubt upon the practicability of the clauses, particularly since special sanction..."


\(^6\). See generally A/CHN.9/193, Legal Aspects of International Commodity Agreements, 1980.
or control mechanisms with regard to infractions are not provided for". That is, a violation of the clause "entails at the most a grievance procedure". Kullman's point is valid to a certain extent. However, it must not be forgotten that if the fair labour standards clause is binding in its content under the ILO Conventions and the Economic and Social Covenant then those member states which are also members of the ILO and have ratified the Covenant will have to assume the larger obligation.

Secondly, the clause is, in a sense, justifiably vague, for it would be "impracticable", for instance, to detail out the provisions of the over 300 ILO Conventions and recommendations which could be relevant to a particular commodity. Thirdly, too much must not be made out of the lack of special sanctions and control mechanisms. The problem reminds one of the broader debate as to whether a 'legal' obligation can exist at all unless backed by specific sanctions. An overwhelming consensus of the international legal community has not seen sanctions as a sine qua non for the existence of legal obligation.

More specifically, the latter debate relates to the distinction between "subjects of law" and "beneficiary" in international legal jurisprudence. The concept of legal

claim is central to the distinction; whereas a subject of law can 

"in suo jure" formulate a legitimate claim against the 
duty-bearers, the beneficiary does not possess such a per-
sonal legal claim, although his/her interests in the matter 
may be recognised.64 The worker on the plantations and 
in the mines is in these terms a 'beneficiary' as it is 
claimed that he/she does not have a personal international 
legal claim against the state. The more appropriate way of 
looking at this distinction, it is submitted, would be to 
make a further distinction, as Hersch Lauterpacht does, 
between "legal claim" and "procedural capacity" in order 
to underline the necessity of regarding the human person 
as the subject and not the object of the development 
process. Such reasoning increases the accountability of 
states in international law towards workers.65

In the final analysis the implementation of the 
"fair labour standards" clause would rest on the political 
character of member governments which are parties to these 
agreements, their attitude towards the working class, the 
socio-economic conditions facilitating or impeding the 
implementation, and the extent to which the industrial and 
agricultural workers are organised. However, it is impor-
tant that legal provisions are injected with a content 
which facilitates the process and creates an environment

64. E/CN.4/1334, n. 57, p. 43.
65. Ibid.
a fair labour standards clause should do so when the agreements are renegotiated.

Be that as it may, Kullman ventures to make three principal propositions which, in effect, question the validity and practical usefulness of the very idea of a 'fair labour standards clause' in the ICAs. First, he contends that "it is doubtful whether they are in accordance with the fundamental objectives of the commodity agreements". Second, "the real beneficiaries of 'fair labour standards' are the highly developed industrialised countries". It is also argued that the fair labour standards are in "complete contradiction" to the aims of the North-South dialogue.67 Given the serious nature of these contentions, the argument which forms their basis needs to be carefully examined. The argument appears to be that improving working conditions under the pressure of "fair labour standards", regardless of the stage of development of the respective country, will have implications for the competitiveness of export goods in that the decisive competitive advantage of the developing countries on the world market consists of comparatively low production costs. This could mean lower export earnings, and consequently the creation of unemployment opportunities.68

68. Ibid.
Further, the industrialised world benefits from the following advantages: "stoppage of imports from 'sweat shop' countries, protection of the exports of the more developed countries, protection of employments in the more developed countries, prevention of the implementation of a processing industry in the raw material producing developing countries". 69  Finally, the increasing prices of primary commodities will give impetus to their substitution by synthetics. 70

The validity of Kullman's propositions may be considered briefly. His arguments involve several serious misconceptions. Firstly, there is the false premise that the "fair labour standards" clause will be given effect to regardless of the stage of development of the concerned state. As Alston aptly points out in his reply to Kullman, "while it is true that certain international labour standards are fundamental (e.g. forced labour), all are generally designed to take full account of the wide range of economic conditions as well as social, cultural and legal factors which exist in different countries. Were this not the case; the system of standards would be self-evidently utopian and irrelevant". 71 Secondly, the ambit of "fair

69. Ibid.
70. Ibid.
71. Alston, n. 36.
The "labour standards" clause is considerably wider than what Kullman appears to concede; apart from the element of economic well-being as reflected in wages, the clause also recognises implicitly the concept of a democratic labour movement struggling to improve its overall social position in society. The third misconception, and this is central to Kullman's viewpoint, is the policy assumption that the decisive competitive advantage of developing countries can and should be sustained on the world market through low wages alone. And since low wages in developing countries must itself be traced to the low level of development of the productive forces and production relations which have hindered the growth of these forces, Kullman's plea is for developing countries to continue to play the role of cheap raw material supplier's in the contemporary world.

On the other hand, Kullman does not appear to recognise that even where a developing country possesses competitive advantage, the developed world inevitably pursues protectionist policies, where there exists a competitive domestic industry. The Common Agricultural Policy (CAP) of the European Economic Community in sugar is an instance which immediately comes to mind. In other words, Kullman overlooks the fact that the present structure of international economic relations is itself inequitable and biased against the developing countries. In this context he also fails to make a distinction between
low wages and competitive advantage on the one hand and
the whole question of export earnings which is directly
related to other factors *inter alia*, the manner in which
the prices of these commodities are determined on the
world market, low income elasticity of demand and the
exclusive reliance on the market of developed countries.
In sum, Kullman seeks to wish away the entire mechanics
of neo-colonialism.

V. RESERVATIONS IMPERMISSIBLE

Can a exporting or importing member state make
reservations to the structure of obligations established
by a commodity agreement. Contemporary commodity agree-
ments rarely permit reservations to be made to any provision
of the agreement. A typical provision states that "Reser-
vations may not be made with respect to any of the provi-
sions of this Agreement." 72 The ISA is an exception to
this rule, 73 while the ICSA contains no provision at all
with respect to reservations.

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72. See article 68 of INRA; article 63 of ICPA; article
67 of ICCA; article 61 of ITA; article 47 of IAJJP;
and article 43 of ITTA. A reservation is defined
in the Vienna Convention on Treaties as "a uni-
lateral statement, however phrased or named, made
by a state, when signing, ratifying, accepting,
approving or acceding to a treaty, whereby it
purports to exclude or to modify the legal effect
of certain provisions of the treaty in their
application to that state".

73. Article 78 of ISA.
Generally speaking, reservations are deemed undesirable because they may confer undue advantage on a member and more importantly, frustrate the object and purpose of the treaty. At the same time, "it is an inevitable feature of the system whereby large scale political issues are reduced to agreed formulas in multilateral conventions".\textsuperscript{74}

In view of these contending claims the practice of reservation was given the blessing of the International Court of Justice in the Reservations to the Convention on Genocide\textsuperscript{75} case with the proviso that the reservation made should be compatible with the object and purpose of the agreement or convention to which they are made. The Vienna Convention on the Law of Treaties also supports the view.

While the arguments in permitting the practice of reservations may have considerable theoretical and pragmatic basis, the peculiar nature and structure of commodity agreements render reservations unsuitable. Firstly, as has been pointed out,

The concept of integrity of the convention has a special meaning and significance in an economic


\textsuperscript{75} \textit{I.C.J. Reports 1951}, p. 15.
agreement. The rights and obligations of the parties and the framework of regulatory instruments are the results of extensive negotiations and represent a fine balance between the interests of different groups. This balance can easily be upset if a reservation is allowed to be made after the balance has been struck.76

Secondly, the commodity agreement has an extremely short duration, negating an important reason for permitting the practice of reservations i.e., as a risk management technique.77 Thirdly, though it is extremely vital to the operation of a commodity agreement that a maximum number of exporting and importing countries participate in the agreement this factor cannot be given precedence over the need to preserve the "integrity" of the agreement. It is true that the effectiveness of the agreement is greatly reduced if a major exporter or importer stays away from the agreement. But more often than not the reasons for non-participation pertain to aspects which are central to the whole agreement and cannot bear reservations viz.; disputes over the allocations of export quotas or the price range incorporated in the agreement.78

76. Khan, n. 11, p. 352.

77. For an excellent treatise on risk-management techniques see Richard B. Bilder, Managing the Risks of International Agreement (The University of Wisconsin Press, Wisconsin, 1981).

78. See generally Chapters IV and IX.
In the circumstance that a commodity agreement does not contain any provision on reservation, the matter is subject to conflicting interpretations. The absence of provision could either be taken to mean that reservations are permissible or it could be interpreted to mean that no reservations are allowed. In favour of the former view is the following observation of the International Court of Justice:

...it could certainly not be inferred from the absence of an article providing for reservations in a multilateral convention that the contracting states are prohibited from making certain reservations. Account should also be taken of the fact that the absence of such an article or even the decision not to insert such an article can be explained by the desire not to invite a multiplicity of reservations. 79

Article 19 of the Vienna Convention on Treaties apparently seems to support this view in as much as it allows reservations unless the reservations are prohibited by the treaty. However, these claims, as has been noted, are qualified by the fact that the reservations should not go to subvert the object and purpose of the treaty to which they are made. In line with the International Court's

79. *ICJ Reports (1951)*, p. 22.
observation in the Reservations case the Vienna Convention provides that no reservation can be made if the reservation in question is incompatible with the object and purpose of the treaty. If this qualification is interpreted in the light of the special characteristics of commodity agreements it would appear to militate against the practice of reservations. However, it is difficult to make a categorical statement that reservations would not be permissible under any circumstances, that is, in the absence of any provision in that regard. In practice, if a dispute arises, the matter would be settled through negotiations in the respective Council. Or else resort could be had to the dispute settlement mechanisms incorporated in the agreement.

The ISA, as noted at the outset, allows reservations to be made on specific matters. Particular reasons accounted for, as if it were, this departure from practice: 

"The basic reason for this departure was that certain provisions of the Agreement, for example restriction on government subsidies, regulation of production and stock were not acceptable to the countries with centrally planned economies. The exceptional circumstances were recognised. However, since it would have been discriminatory to allow reservations to certain members and not to others the

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80. Khan, n. 11, p. 352.
right to make reservation was extended to others. Similarly, as it was not possible only to permit reservations regarding provisions mentioned above a general clause was drafted to the effect that reservations were permissible which "do not affect the economic functioning of this Agreement". Any dispute relating to reservations is to be decided by the Council which also is to decide whether reservations made otherwise are permissible.

VI. RELIEF FROM OBLIGATIONS

While reservations are impermissible, and the members to an agreement are required to perform their obligations in good faith, there is no denying the need to take account of the factor of contingency. Quite a few of the contemporary commodity agreements contain an express provision which empowers the Council to grant relief from obligations under special circumstances. The INRA, for example, provides as follows:

Where it is necessary on account of exceptional circumstances, or emergency or force majeure not expressly provided for in this Agreement, the Council may, by special vote, relieve a member of an obligation under this

81. Article 78(3) of ISA.
Agreement if it is satisfied by an explanation from that member regarding the reasons why the obligation cannot be met.\textsuperscript{82}

The Council is required, in granting relief to a member, to give reasons, state the terms and conditions, and specify the period for which the member is relieved of an obligation.\textsuperscript{83} The ICCA contains a similar provision, but indicates certain obligations from which relief cannot be granted. The obligations so excepted are, (i) the obligation to contribute to the administrative budget or the consequences of a failure to pay them; and (ii) the obligation to pay the levy which goes towards financing the buffer stock. Under the ISA the member seeking relief from an obligation needs to justify that the "implementation of the obligation constitutes a serious hardship for, or imposes an unequitable burden on such Member".

In brief there are three principal conditions under which relief can be granted by the Council: exceptional circumstances, emergency circumstances, and force majeure. The provision of a special vote ensures that only serious requests are granted, and eliminates any unilateral assertion of relief by a member.

\textsuperscript{82} Article 53 of INRA; see also article 69 of ISA; article 55 of ICCA; article 35 of IAJJP; and article 31 of ITTA.

\textsuperscript{83} Ibid.
VII. AMENDMENT OF AGREEMENT

The provisions relating to relief from obligations represent an attempt to take into account the need to except a member from the incidence of an obligation in certain special circumstances. There may, however, be occasions necessitating the permanent elimination, modification or reinterpretation of an obligation or obligations. The latter situations call for an appropriate amendment of the agreement.

All commodity agreements contain provisions governing amendment to the agreement after it has entered into force. They generally lay down the procedure for proposing an amendment, the voting requirements necessary to render it effective, and the time from which it will take effect. Most often it is provided that the Council may, by a special vote, recommend an amendment of the agreement to the contracting parties. However, the IOOA, for instance, does not require a special vote.85 The percentage of participating governments which need to accept it before it can become effective varies from agreement to agreement. The ICCA and

84. See article 69 of ICFA; article 82 of ISA; article 63 of INRA; article 47 of IOOA; article 72 of ICCA; article 57 of ITA; article 42 of IAJIP; and article 38 of ITTA.

85. See article 47(1) of IOOA.
the ICFA, for instance, specify that an amendment would become effective hundred days after the depositary had received notifications of acceptance from contracting parties representing at least 75 per cent of the exporting members holding at least 85 per cent of the votes of the exporting members, and from contracting parties representing at least 75 per cent of the importing members holding at least 85 per cent of the votes of the importing member. 86

The ITA requires an amendment to be ratified, accepted or approved by Members holding at least 80 per cent of the total Producing Members and at least 80 per cent of total votes of Consuming Members. 87 The other ICAs, taking into account their peculiar needs, specify the requisite percentage of acceptances necessary to bring an amendment into force. In view of the fact that time is an important element in the regulation of commodity markets the Council is usually empowered to fix a period within which notification or acceptance to the depositary may be made. If the requisite majority is not secured within specified time the amendment is considered to be withdrawn.

The status of members which have not notified the acceptance of an amendment is defined in the agreements which usually incorporate the following clauses

86. See article 72(1) of ICCA and article 69(1) of ICFA.

87. See article 57(1) and (5) of ITA.
Any member on behalf of which notification of acceptance of an amendment has not been made by the date on which such amendment becomes effective shall as of that date cease to participate in this Agreement, unless any such member satisfies the Council at its first meeting following the effective date of the amendment that acceptance could not be secured in time owing to difficulties in completing its constitutional procedures, and the Council decides to extend for such member the period fixed for acceptance until these difficulties have been overcome. Such member shall not be bound by the amendment before it has notified its acceptance thereof.88

The INRA goes further in that a member does not merely cease to participate in the agreement but instead ceases to be a party to the agreement.89 The difference is that "...the former leaves room for rectification of the flaw: the latter emphasises the punitive aspects".90 The ITA incorporates a clause permitting withdrawal where a member’s interests are adversely affected by an amendment.91

The amendment provisions in ICAs must also be viewed in the light of the limited duration of the agreement which permits the system of obligations to be renegotiated every

88. Article 72(2) of ICCA; see also article 69(2) of ICFA; article 57(3)(b) of ITA; article 42(5) of JAJP; and article 38(5) of ITTA.
89. Article 63(5) of INRA.
91. Article 57(6) of ITA.
few years. Therefore, a rather stiff procedure is laid down for amending the agreements. The nature of the procedure can be traced to the necessity of securing a producer-consumer consensus.

VIII. APPRAISAL

The ICA is a legal instrument, a multilateral treaty, which constructs a system of concrete legal obligations for achieving its economic objectives, it is these obligations which lend specificity to the framework of cooperation and articulate the legal basis on which the agreement is to be implemented. The assumption of legal obligations within the framework of the commodity agreement, whatever be their legal content and effectiveness, is a significant step towards building an international commodity order based on consensus. Therefore, an intrinsic value needs to be attached to the endeavour.

While the substantive content of the various obligations do vary, members are required to perform all the obligations in good faith. If international law is not to be considered merely as a set of rules backed by sanctions in the manner of Austin and Kelsen but as a normative framework for international community action, then the significance of obligations whose violation will not invite sanctions cannot be ignored. In any case, as the immediately
following chapter on the enforcement machinery in commodity agreements will show, they include a number of persuasive measures to ensure that members perform the obligations they have undertaken. Moreover, as will also be seen, in the final analysis coercive measures are also envisaged although they may not be resorted to in practice. In so far as the rather broad formulation of some of the obligations are concerned, it may only be reiterated that the content of the obligations do not affect their normative character. 92

At the same time, with reference to a number of industry and trade obligations, there is a need to framing obligations which are more appropriate, precise and binding. In this context, there appears to be no reason why questions of market access and demand, whether of raw or processed commodities, cannot be negotiated within the commodity conferences rather than in GATT. There is as well the need to persuade the importing countries to participate more fully in the implementation of the commodity agreement than they are doing at present. Consumer countries are unwilling to equitably share the burdens of the agreement while possessing equal rights in the decision making process. It was pointed out, for example, that the importing members did not necessarily have to make a contribution

92. For a discussion, in this regard, of the concepts of "soft" and "hard" law, see Chapter XI.
to consumption promotion funds. It is the exporting members alone which are required to make compulsory financial contributions. It is suggested that contributions on the part of the importing members be made equally mandatory, in the background of the fact that the ICA is a component of the programme to establish a NIEO.

In keeping with the international consensus that preferential treatment should be granted to developing countries and sub-groups thereof, commodity agreements incorporate negative and positive legal formulations which seek to grant preferential treatment. Unfortunately, there is no serious and extended practice in this regard. The equilibrating role of law is also manifested in export quota agreements in as much as these agreements have devised means of accommodating the interests of new exporters or small exporters. By mitigating the operational rigours of the traditional system of allocating and operating export quotas they have rendered partly redundant the criticism that export quotas freeze production patterns and misallocate world resources. By recognising the need of small exporters the agreements accept the contemporary concept of the commodity agreement as an instrument of development.

In recent years the growing human rights movement has drawn attention to the fact that while states benefit out of the network of international economic cooperation, these benefits do not trickle down to the actual producers.
the workers on the plantations and mines. Quite appropriately commodity agreements place an obligation upon members to ensure to the workers a minimum standard of living and rights. However, the "fair labour standards" clause which states the obligation is generally broad and exhortatory. It is recommended that specific ways and means should be devised to lend substance to the provision. A first step could be to include a reporting procedure. Arrangements for cooperation and consultation with ILO need also to be established. In so far as the content of the clause goes it is suggested that the same be located in the host of relevant human rights instruments which address the question.

A significant advantage of establishing an international economic institution is that it acts as a centre to collect and disseminate information. The ICO has also been assigned this important task. In order that it performs this task effectively ICAs place an obligation upon their members to make available all relevant information. In the process it emphasises the advantage of institutionalising international cooperation.

The commodity agreement not only establishes a system of obligations but also an enforcement system to ensure that members carry out their obligations. The following chapter examines the various persuasive and coercive elements which constitute the system of enforcement. There is separate discussion of the export quota and buffer stock
type of agreements in so far as obligations aimed at stabilising prices are concerned.