Chapter V

INSTITUTIONAL STRUCTURE
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It is imperative that a functional agreement like the commodity agreement erect an institutional structure which complements its operation and implementation. The edifice will necessarily be marked by the conflicting interests which are reconciled and embodied in the agreement. Since the fundamental contradiction in an ICA is between exporters and importers or producers and consumers, this reality pervades the entire institutional framework; beginning with the bipartite nature of the membership and the mode through which the agreement enters into force, the contradiction encompasses every organisational forum and the decision making process. The conflicts within the group of exporters and importers are also reflected in the institutional structure; the adoption of the principle of weighted voting, for instance, seeks to codify the divergence of interests within the groups.

While it is necessary that the institutional structure accommodates the conflicting interests of the membership, it also needs to ensure that the objectives of the agreement are achieved through setting up appropriate organs. In this context, the nature of the commodity
agreement plays an important role. For instance, the
export quota and buffer stock entail different implementa-
tion processes, and therefore, requisite bodies may need
to be set up to oversee them. However, broadly speaking,
commodity agreements set up an institutional framework
which is essentially similar.

The ensuing analysis of the institutional structure
of ICAs is divided into two parts. The first part examines
the membership of the commodity agreements; the provisions
relating to the entry into force; and the duration and
termination of the agreements. The second part critically
details out the formal organisational structure and the
decision making process.

I. MEMBERSHIP

Generally speaking, the membership of an ICA is
determined by a blend of juridical-economic principles
which are rooted in the functional character of the agree-
ments. Two interrelated and overlapping fundamental pri-
nciples are: (a) the principle of state participation,
and (b) the principle of interest. The former principle
permits any government, which has a stake in the commodity
to be regulated, to become a member. The principle of
interest, on the other hand, accommodates non-state entities
which have a substantial interest in the trade of the
commodity. For example, intergovernmental organisations are eligible to become members of an ICA. It is under this principle, that observers are enabled to participate.

A. The Principle of State Participation

While tracing the evolution of commodity control schemes in the inter-War period, reference was made to the fact that the failure of the private schemes, in contrast to the significance of such schemes to the economic and political stability of states, had underlined the need for government participation for the effective regulation of international commodity trade. Furthermore, it was noted, the necessities of World War I had forced governments to abandon their obedience to laissez-faire policies. This interest convergence which pointed towards active state participation in commodity control schemes, was given added impetus by the need to protect the final consumers interest. Consequently, the principle of state participation in commodity control schemes was embodied into the League principles, and later in the Havana Charter.

The general principle that membership of ICAs are open to all governments is, however, limited in the UN practice in respect of agreements negotiated within the framework of the United Nations. Only those governments are invited to an United Nations Commodity Conference which
are members of the United Nations system i.e., the United Nations, the specialised agencies and the International Atomic Energy Agency. And commodity agreements, it should further be pointed out, are open to signature only by governments which participate at the Conference. For instance, the ISA provides (article 72): "This Agreement shall be open for signature... by any Government invited to the United Nations Sugar Conference". Therefore, as Khan points out, "although the membership of the international commodity agreement is open it is not universalist". 1 It is true that accession is permitted by agreements like ICCA and INRA to "the Government of any State", yet this provision itself is to be viewed against the background of the fact that very often the Secretary-General of the United Nations is the depositary of these agreements and that he is in his function bound by the 'rules and guidance of the General Assembly'. However, the Secretary-General of the United Nations is not always the depositary. For instance, for the IOCA, Spain acts as the depositary, and Spain is not necessarily inhibited in the performance of its functions in the manner of the United Nations Secretary-General. These differing provisions could mean diverse legal practices, and therefore

one cannot but endorse the view that "The uniformity of the international commodity law will be helped if in so far as it is possible the same principles are applicable to the institutional aspects and if one entity acted as depositary to all the commodity agreements".2

In keeping with the basic conflict of interests in a commodity agreement, there are two categories of members: 'exporting member' and 'importing member' or as in the ITA 'producing member' and 'consuming member'. These terms are usually defined in the agreement itself. For instance, the ICCA defines the terms thus:

- **Exporting country or exporting member**: means a country or a member respectively whose exports of cocoa expressed in terms of beans exceed its imports. However, a country whose imports of cocoa expressed in terms of beans exceed its exports but whose production exceeds its imports may, if it so chooses, be an exporting member.3

- **Importing country or importing member**: means a country or a member respectively whose imports of cocoa expressed in terms of beans exceed its exports.4

Similarly, the IAJJP defines an "Exporting member" as a member whose exports of jute and jute products exceed its

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2. Ibid.
3. Article 2(k) of ICCA.
4. Article 2(1) of ICCA.
imports of jute and jute products and which has declared itself to be an exporting member. 5

And an "Importing member" as:

a member whose imports of jute and jute products exceed its exports of jute and jute products and which has declared itself to be an importing member. 6

Most agreements permit a change in the category of membership subject to rules and regulations established by the Council. 7 It may be reiterated that the bipartite nature of the membership flows through the entire institutional structure.

5. Article 2(4) of IAJJP.

6. Article 2(5) of IAJJP. See also definitions of the terms in other agreements: article 3(6) and (7) of ICFA; article 2(6) and (5) of ISA; article 2(6) and (5) of INRA; article 3(c) and (d) of IOOA; articles 2 and 5 of ITA; and article 2(4) and 2(5) of ITTA.

7. For instance Article 3(1) of ICCA states that "a member may change its category of membership on such conditions as the Council may establish". Similarly, article 4(2) of IAJJP provides that "a member may change its category of membership on such conditions as the Council shall establish". The ICFA notes that "a Member may change its category of Membership on such conditions as the Council may agree". See article 5(1) of the ITA for the provision which requires the Council to declare, with the consent of the member concerned, a member a producing or a consuming member.
B. Observers

In all commodity agreements, with the exception of ICFA and ITA, a non-member government may be invited to the meetings of the Council. For instance, Article 11 of INRA provides that

The Council may invite any non-member Government,... to attend as an observer any of the meetings of the Council or of any committee...

Similarly, Article 14 of ICCA provides in para (1) that

The Council may invite any non-member State to attend any of its meetings as an observer. 8

ICAs also make provision for the special interest of the United Nations and related specialised agencies in commodity problems. The Council, as will be shortly seen, is authorised to establish appropriate relationship with these and other intergovernmental organisations concerned with commodities. It can also invite any of these organisations to attend any of its meetings as observer. 9

The provision for observers, that is, participation of non-member states and international organisations, is in

8. See also article 15(1) of ISA; article 39(3) of IOOA; article 15 of IAJFP; and article 15 of ITTA.

9. See article 15(2) of ISA; article 22 of ICFA; article 39(1) of IOOA; article 11 of INRA; article 14(2) of ICCA; article 15 of IAJFP; article 15 of ITTA; and article 7(h) of ITA.
keeping with the functional nature, as opposed to more political organisations, of commodity agreements.

C. Intergovernmental Organisations

Invariably special provision is made for the membership of intergovernmental organisations. The wordings of the relevant article are practically identical in all agreements:

Any reference in this Agreement to 'Governments' shall be construed as including the European Economic Community and any other intergovernmental organisation having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession shall, in the case of such intergovernmental organisations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organisations.10

The intergovernmental organisation must have responsibilities in respect of the negotiation, conclusion and application of international commodity agreements. The EEC has

10. See article 5 ('Membership by intergovernmental organisations') of TAIFF; see also article 4(3) of ICFA; article 5 of INRA; article 3(2) of ICDA; article 4 of ICDA; article 56 of ITA; and article 5 of ITTA.
such responsibilities and is, therefore, referred to by name.\textsuperscript{11} It is under this provision that the International Seabed Authority will be a member of ICAs.\textsuperscript{12}

It was the UN Coffee Conference 1962, on the prodding of an Italian proposal, which first discussed the question of EEC participation in United Nations commodity negotiations.\textsuperscript{13} The Italian representative had proposed that the representative of the EEC be invited to participate in a consultative capacity in the Executive Committee's deliberations. It was reasoned that since the Community absorbed more than forty per cent of the imports of coffee the participation of EEC in the negotiations would facilitate the Executive Committee's work. On the other hand, it was pointed out that since the members of EEC were individually represented at the Conference it would benefit little to have the EEC representative as well. The Executive Secretary to the Conference drew attention to ECOSOC Resolution 296(XI) of August 1950 which provided that non-member states "may also be included

\begin{itemize}
\item \textsuperscript{12} See article 151(1)(b) of the \textit{United Nations Convention on the Law of the Sea} (UN, N.Y., 1983).
\item \textsuperscript{13} Khan, n. 1, p. 257.
\end{itemize}
if they are substantially interested in the production or consumption of or trade in the commodity concerned".14 He recalled a decision of the Wheat Conference which had invited the EEC to participate on certain specific items on the agenda. Furthermore, the ICCICA had recommended that the UN Coffee Conference may consult certain international financing institutions.15 Eventually, the Executive Committee decided to invite the representatives of the EEC as well as the Organisation of American States to participate in consultative capacity in certain specified items.

Having examined the membership of ICAs it is to be considered as to how the agreements enter into force. The provisions in this regard are framed with a view to bringing the agreement into force at the earliest, without departing from its basic structure.

II. ENTRY INTO FORCE

All commodity agreements lay down the conditions under which they enter into force. These conditions relate to the ratification, acceptance, approval or accession by governments representing a certain percentage of

14. Ibid.
15. Ibid.
the exports/production and imports/consumption of the particular commodity. The agreement is usually opened for signature and ratification after a text has been approved by a Conference. Individual ICAs prescribe a time limit for the deposit of ratifications: say, four to twelve months from the date the agreement is opened for signature. For example, the INRA was adopted on 6 October 1979 and was opened for signature from 2 January to 30 June 1980 and the ratifications were requested by 30 September 1980.

As Khan points out, "a time-limit is necessary for two reasons". Firstly, "an economic regulation of a commodity is based upon certain assumptions about market situation. Undue delay and protraction in the bringing into force of the agreement can easily falsify some of those assumptions and thereby upset, if not totally nullify, a fine balance between the rights and obligations of the parties to the agreement." Secondly, "providing a time-limit is to give continuity to a commodity organisation and the economic regulation already in existence". In other words, as Tomuschat observes, long delays "would endanger the fruits of combined international efforts and destroy the legal basis of the existing institutions".

16. Ibid., p. 344.
17. Ibid., p. 345.
In conformity with the above perspective, commodity agreements provide that they enter into force either 'definitively' or 'provisionally'. For an agreement to 'definitively' enter into force, what is generally necessary is the ratification, acceptance or accession by governments representing a minimum percentage of world trade in the commodity and a minimum number of exporting and importing countries. For instance, in the renegotiated International Coffee Agreement, 1983, it is provided that if governments representing at least 20 exporting members holding at least 80 per cent of the votes of the exporting members and at least 10 importing members holding at least 80 per cent of the votes of the importing members have deposited their instruments of ratification, acceptance or approval it would definitively come into force.19 The IOOA, however, merely required the ratification, acceptance, accession or approval of six countries together accounting for 60 per cent of world olive oil production.20 However, some agreements like the ITA, for instance, did not require a minimum number of countries to have ratified if the production and consumption percentages (set at 80 per cent) were satisfied.21

20. See article 46(1) of IOOA.
21. See article 55(1) of ITA; see also article 75(1) of ISA; and article 61(1) of INRA.
laying down a minimum percentage of participation by exporting and importing countries before an agreement can come into force can be traced to the factor of effectivity. The lack of participation by a large number of interested states, it has been noted, inhibits the effective operation of the agreement.

The set time limits are, however, not rigid. As some countries might be required to enact specific legislation in order to ratify, ICAs contain provisions which allow the agreement to enter into force provisionally upon receipt of either the required number of ratifications or notifications of intention to ratify. A government remains a provisional member till it deposits an instrument of ratification when it becomes a definitive member. The requirements in terms of number of countries and percentages of production/exports and consumption/imports usually remain the same. An exception to this practice is the ITA which lowered the percentage to 65 per cent from the original 80 per cent. The "provisional" entry into force becomes "definitive" when the conditions for the latter are satisfied. 22

If the requirements for both "definitive" or "provisional" entry into force of the agreement are not

22. Article 55(2) of ITA.
fulfilled there is a provision which permits those who have ratified, accepted or approved, or are provisional members, to put the agreement into force among themselves in whole or in part. For instance, in the case of the ITA, the respective required percentages for the automatic entry into force of the Agreement had not been met by June 1982 (the relevant percentages were 79 per cent on the side of producers and 47.65 per cent on the side of consumers). The governments which had deposited the necessary instruments or indicated that they would apply the agreement provisionally, met in June, 1982 and decided in pursuance of Article 55(3) of the Agreement, that the Agreement would enter into force provisionally among themselves in whole on 1 July 1982 when it should have entered into force definitively if the necessary ratifications had been secured. 23 It is the Secretary-General of the United Nations who is empowered to call a meeting where such a decision can be taken.

III. DURATION, EXTENTION AND TERMINATION

All agreements incorporate a provision on "duration, extention and termination". The provision states the period

23. See also article 61(3) of ICFA; article 75(4) of ISA; article 63(3) and (4) of INRA; article 46(3) and (4) of ILOA; article 66(3) of ICCA; article 40(3) of IAJJP; and article 37(3) of ITTA.
for which the agreement shall remain in force, the procedure by which the agreement can be extended in duration, and the manner in which it can be terminated. It may be recalled that the London Monetary and Economic Conference 1933 had laid down certain conditions to which control schemes were required to conform. Among other things, it required that they be of adequate duration i.e. a duration which ensured that the objectives of the control scheme could be achieved. Control schemes at this stage were made for short periods. For example, the international tin agreements 1931 and 1933 were for two and three years respectively. The 1937 international sugar agreement, on the other hand, was concluded for five years. The trend towards a longer period reflected, to a certain extent, a response to the problems faced during the period of the Great Depression. The Havana Charter, however, stipulated that a commodity agreement should not extend beyond five years. This negative formulation was in keeping with the Charter philosophy which considered ICAs as a necessary evil, i.e. as a temporary measure to tide over the problems of 'burdensome surpluses'. The Charter, to be sure, however, did provide for the renewal of the agreement where the conditions for continuation were present. The Charter stipulation of five years is followed in the ITA, the ISA, the INRA, the IAJJP and the ITTA. The ICFA is for six years, the IOOA for four and the IOCA for three years.
It is submitted that the factor which should determine the duration of an agreement is the nature of the problem affecting the commodity:

If the problem is one of pronounced fluctuations in prices, the Agreement should at least encompass any cyclical movement to which the commodity is subject. If the problem is one of existing burdensome surplus and of shifting resources away from or at least limiting production of, the surplus commodity for a period, the Agreement should be long enough to achieve this end, due regard being had to the desirability of providing for periodic reviews to correct possible changes.24

Secondly, there is the need to ensure that a very short period does not prove to be a destabilising factor. For instance, the ICCA is to remain in force "until the end of third full cocoa year after its entry into force". The short duration of the ICCA, according to the UNCTAD secretariat, has considerably inhibited its functioning:

"The relatively short life of the International Cocoa Agreements has reduced their potential revenue from the levy, curtailed the credit limits for buffer stock operations and militated against long term planning".25 More-


over, it is difficult to renegotiate an agreement every few years. In case of a failure in negotiations, the entire organisational structure may have to be destroyed within the span of a couple of years.

Most commodity agreements also incorporate a provision for the extension and termination of its life. For instance, the INRA provides that "Before the expiry of the five-year period... the Council may, by special vote, decide to extend this Agreement for a period not exceeding two years and/or to renegotiate it".26 The period of two years and the requirement of special vote is common to most agreements. However, the ILOA requires the unanimous decisions of the members.

As alluded to in the INRA provision cited above, commodity councils are empowered to renegotiate the agreement. The renegotiation could take place, depending on the provision made, either under the auspices of the Council or within the framework of the United Nations Conference. There is little doubt that the latter is preferable, for as Khan aptly notes, "The agreements are not simply the

26. See article 67(2) of INRA; See also article 68(3) of ICFA; article 83(2) of ISA; article 71(3) of ICCA; article 49(2) of ILOA; article 59(2) of ITA; article 46(2) of IAJJP; and article 42(2) of ITTA.
private contractual arrangements but are instruments of the New International Economic Order". 27

Finally, the Council can, by special vote, decide to terminate the agreement at any time. The termination takes effect from the date that the Council determines. Provision is made, in all cases, for the liquidation of the Organisation. 28 The circumstances under which an agreement may be terminated are never specified. The common sense position is that an agreement would be terminated when it is not likely to achieve its objectives. The IOOA, it may be noted, does not incorporate any provision for premature termination. The possible reason for the absence of any provision is that "The Olive Oil Agreement has co-ordinative functions and the members do not envisage any need for the termination of the agreement". 29

IV. ORGANISATION AND MANAGEMENT

Commodity agreement invariably establish an international body responsible for the administration of the agreement. The Havana Charter had also envisaged the establishment of a "commodity council" under each commodity

27. Khan, n. 1, p. 349.
28. See article 68(4) and (5) of ICFA; article 83(3) of ISA; article 67(6) and (7) of INRA; article 71(4) and (5) of IC:CA; articles 59(4) and 60 of ITA; article 46(6) and (7) of IAJJFP; and article 42(5) and (6) of IFTA.
control agreement. However, these councils were to form part of the international trade order which the Charter intended to establish and, therefore, were to come under the umbrella of the International Trade Organisation. In other words, these councils were not to be wholly independent organisations. The collapse of the Charter saw the setting up of autonomous commodity organisations under respective ICAs.

A preliminary question which needs to be raised is whether commodity organisations (ICOs) set up under ICAs can be defined as international organisations. While this is not the occasion to enter into a debate on the elements which collectively go to constitute an international organisation – a subject which has received elaborate treatment in the literature of international law – a few references are not out of place. According to Bowett, "it is permissible to assume that most organisations created by a multilateral intergovernmental agreement will; so far as they are endowed with functions on the international plane, possess some measures of international personality in addition to the personality within the systems of municipal law of the members which all the agreements on privileges and immunities (and often the basic constitutions) provide for. Possession of such international personality will normally involve, as a consequence, the attribution of
power to make treaties, of privileges and immunities, of power to contract and undertake legal proceedings: it will also pose a general problem of dissolution, for in the nature of things the personality of all such organisations can be brought to an end. 30

Sir Gerald Fitzmaurice has defined "international organisation" thus:

The term 'international organisation' means a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from its member-states, and being a subject of international law with treaty-making capacity. 31

Finally, Seidl-Hohenveldern has listed the following requirements for an entity to be termed an international organisation: (1) the entity must exhibit permanency; (2) it must be created by an international agreement; (3) the members are states or other subjects of international law; (4) the members interact on the basis of equality and maintain their sovereignty; (5) the members mutually desire to achieve a legally sanctioned goal which


could not be achieved by each state acting independently; (6) the entity is allowed, by the members, to have a "will" which does not necessarily correspond to the desires of the individual members; and (7) at least one organ is empowered to represent the entity in attaining the mutual goal of the members and in making manifest the will of the entity. 32

Considering these definitions in the context of IOs, Johnston concludes that,

the current U.N. intergovernmental commodity organizations apparently fit into the international organization category. They are created by multilateral conventions, have states as members and espouse common goals. Their distinct will or legal personality is declared in their constituent agreements. However, the assumption that the legal personality is international in nature may be rebutted. It could be argued that the clause within the constituent agreements merely provides for the legal personality of the organization on the municipal level in each of the agreement's member-states. This is refuted in the context of U.N. arrangements by other provisions and practices. The organizations maintain an independent secretariat which is considered international in character, use a majority system of voting by which obligations and rights are assigned to member-states and are empowered to carry on cooperative activities with other international organizations and public entities. 33

33. Ibid., p. 52.
The analysis of the structure of commodity organisations, the powers and functions of its several organs and the privileges and immunities it enjoys, will go to substantiate Johnston's conclusion that ICOs are international organisations in the strict sense of the term. Further, attention needs to be drawn to the fact that the ICAs expressly spell out that the ICOs possess legal personality. For example, Article 21, para (1), of INRA states:

The Organisation i.e. the International Rubber Organisation shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.34

Such a provision appears to provide conclusive evidence that ICOs are international organisations.

Broadly speaking, the composition, structure, powers and functions of the ICOs set up are similar in nature, that is, aside from the differences which flow from the peculiar problems and needs of a specific commodity as well as—in the case of a price regulating agreement—the type of mechanism incorporated in the agreement to

34. See also article 23(1) of ICPA; article 5 of ISA; article 21(1) of ICAC; article 16(1) of ITA; article 17(1) of ITA; article 17(1) of ITA.
stabilise prices. An ICO established under an ICA, usually functions through a Council and such other permanent and ad hoc bodies as are necessary to administer the agreement.

A. The Council

The highest authority in ICO is that of the 'Council' - an example is the International Natural Rubber Council - which consists of all members of the Organisation. Each member state is represented on it by one delegate and is permitted to designate or appoint alternates and advisers to attend its sessions. However, the alternate delegate is empowered to act and vote only in the absence of the delegate or in other “special circumstances”. The Council elects each year a Chairman and a Vice-Chairman, with some agreements like the ICCA requiring a second Vice-Chairman to be elected. In order to ensure

35. See article 9 of ICFA; article 7 of ISA; article 6 of INRA; articles 27 and 30 of the ICOA; article 6 of ICCA; articles 3 and 4 of ITA; article 6 of IAJJP; and article 6 of ITTA.

36. See article 11 of ICFA; article 9 of ISA; article 12 of INRA; article 30(1) and (2) of ICOA; article 8 of ICCA; article 11 of ITA; article 8 of IAJJP; and article 8 of ITTA. It may be pointed out that a 'year' is defined separately in commodity agreements. For example, a year in the context of ICCA means a "cocoa year" which is "the period of 12 months from 1 October to 30 September inclusive" (article 2(e)). The IAJJP defines a "jute year"

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the representation of both exporting and importing members. ICAs provide that the "Chairman and Vice-Chairman shall be elected, one from among the representatives of exporting members and the other from among the representatives of importing members". They similarly provide that "these offices shall alternate each year between the two categories of members". The Chairman as the presiding officer does not have a vote in the Council. Therefore, on occasions where the Vice-Chairman is presiding he shall also have no vote. Seldom are any qualifications required for being appointed Chairman or Vice-Chairman.

1. Sessions

The Chairman, and in his absence the Vice-Chairman, is required to convene the sessions and meetings of the Council. Each ICA specifies the number of 'regular'

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as the "period from 1 July to 30 June inclusive" (Article 2(11)). ICAs, however, leaves it to the Council to determine the period of office.

37. See article 11(2) of ICPA; article 9(2) of ISA; article 12(2) of INRA; article 8(2) of ICCA; article 11(1) and (6) of ITA; article 8(2) of IAJIP, and article 8(2) of ITTA.

38. Ibid.

39. The ITA, however, incorporates a negative qualification, i.e. an individual is disqualified from being appointed an Executive Chairman if he had been actively engaged in the tin industry or in the tin trade during the five years preceding the time of the appointment. The rationale for this provision appears to be to exclude any person who is likely to have a vested interest in the tin industry or in the tin trade. Article 11(2) of ITA.
sessions which must be held and lays down the circumstances in which a 'special' or an 'additional' session can be held. The INRA, for instance, provides that "as a general rule, the Council shall hold one regular session in each half of the year". It can meet in a special session whenever it so decides or at the request of (a) the Chairman of the Council; (b) the Executive Director; (c) a majority of the exporting members; (d) a majority of the importing members; (e) an exporting member or exporting members holding at least 200 votes; (f) an importing member or importing members holding at least 200 votes.\footnote{40} The ITA requires the Council to hold four sessions a year and provides for a special session (a) at the request of any five members; or (b) at the request of members holding together at least 250 votes; or (c) at the discretion of the Executive Chairman.\footnote{41} ICAs, therefore, provide that apart from regular sessions, a special session can be convened whenever an issue of significance needs to be discussed or when a group of states or even a single state feels strongly about a matter which needs to be sorted out. Such a mechanism facilitates the operation of the agreement through evolving a consensus on various sensitive issues which crop up from time to time. It enables the

\footnote{40. See article 14(1) and (2) of INRA.}

\footnote{41. See article 12(2)(a) of ITA.}
members to take account of the grievances of some member states which could otherwise turn into a threat to the agreement.

ICAs also specify the quorum for any meeting of the Council. The quorum is generally constituted by the presence of a majority of exporting and importing members, provided that such members together hold in their respective category at least two-thirds of the total votes of the members in that category.42 ICAs, like the ICCA, IAJJP, ISA, and ITA, distinguish between the opening meeting of the session and subsequent meetings.43 In the latter case, a simple distributed majority would normally constitute the quorum. Most ICAs also provide for the eventuality of non-availability of quorum at the opening meeting of the session within a certain period of time. In such cases, the quorum requirement could be tuned down

42. See article 10(1) of ICFA; article 17(1) of INRA; article 32(1) of IOOA; article 19(1) of ICCA; article 12(4) of ITA; article 13(1) of IAJJP; and article 13(1) of ITTA. The ISA requires the "presence of more than half of all exporting Members and more than half of all importing Members, the Members thus present holding at least two thirds of the total votes of all Members in their respective categories", (Article 16).

43. See article 10(1) of ICFA; article 16 of ISA; article 17(2) of INRA; article 32(2) of IOOA; article 19(2) of ICCA; article 12(4) of ITA; article 13(2) of IAJJP; and article 13(2) of ITTA.
to a presence of simple distributed majority i.e. in case for a period of time it was unable to have the requisite quorum.44

2. Some powers and functions

The powers and functions of the Council are explicitly laid down in all commodity agreements. They generally contain an umbrella clause which confers on the Council all powers necessary for the execution of the agreement and directs it to perform the functions which are imperative to carry out the provisions of the agreement. For instance, under the ITA, the International Tin Council “shall have such powers and functions as may be necessary for the administration and operation of this Agreement”.45 Similarly, the ICCA provides that International Cocoa Council “shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of this Agreement”.46 This provision is a replica of that contained in the ISA, INRA and ICOA and now incorporated in the IAJJP and ITTA.47 The Council is required, usually by

44. The ICFA is however an exception to this rule. The ICFA requires the time appointed for the Council meeting to be postponed for three hours continuously till a quorum is present at the appointed time. (Article 20(1)).
45. See article 7(a) of ITA.
46. Article 7(1) of ICCA.
47. Article 8(1) of ISA; article 7(1) of INRA; articles 28(1)(a) and 29(5) of ICOA; article 7(1) of IAJJP and article 7(1) of ITTA. See also article 10(1) of ICFA.
special vote, to adopt the necessary rules and regulations in order to carry out the provisions of the agreement and, therefore, in consistency with it. These rules and regulations can include its own rules of procedure, rules for the administration and operation of the buffer stock, the financial and staff regulations of the Organisation etc. The Council is also enjoined to keep such records as are needed for the performance of its functions under the agreement.

Apart from the umbrella clause, commodity agreements, depending on individual objectives and regulatory measures adopted, also lay down specific powers and functions of the Council, some of which may be noted here. To avoid repetition, a number of its powers and functions relating to, inter alia, appointment of the Executive Director and other staff, establishment of subsidiary bodies, enforcement, dispute settlement, amendment, redistribution of votes, and relief from obligations are discussed in the course of examining these issues.

(a) **Review and revision of price range**

The Council has the critical task of review and revision of the price range after an indicated period of time and subject to conditions laid down in the agreement.

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48. See article 10(2) of ICPA; article 8(2) of ISA; article 7(2) of INRA; article 28(6) of IOCA; article 7(2) of ICCA; article 7(e) and 8(a) of ITA; article 7(2) of IAJJP; and article 7(2) of ITTA.
The ICCA, for instance, provides that the Council shall, each cocoa year, at its second regular session, review and, if appropriate, revise the initial price range incorporated in the Agreement. 49 In carrying out the review, the Council is directed to take into consideration the trend of cocoa prices, consumption, production, stocks, the influence on cocoa prices of changes in the world economic situation or monetary system and all other factors having a bearing on the question. 50 The Agreement further details out certain other circumstances with reference to buffer stock purchases and sales— which necessitate revision of prices. The significance of the Council's function and power to review and revise the price range cannot be overstated. The very existence of ICAs often hinge on the ability to reach consensus on this question.

(b) Allocation and adjustment of quotas

Where the export quota mechanism is used in order to stabilise prices, the Council has the important task to allocate and adjust quotas, subject to the conditions laid out in the particular commodity agreement. Under the ICFA, for instance, the Council is to determine, at its last regular session of the coffee year, a global annual

49. Article 27(2)(a) of ICCA. See also article 62 of ISNCA, article 32 of INRA, and articles 27 and 31 of ITA.

50. Article 27(2)(b) of ICCA.
quota. In the light of such a determination, and on the basis of basic quotas (which has a fixed as well as a variable part), it allocates annual and quarterly quotas. Under certain market conditions, the Council is permitted to vary these quotas. 51

(c) **Prepare and implement projects**

Recent agreements like the IAJJP and ITTA, which have long-term development of the commodity as their chief objective, seek to achieve the same, *inter alia*, through implementing appropriate projects. In this regard, the IAJJP requires the Council to identify, arrange for the preparation and implementation of, and, with a view to ensuring their effectiveness, follow up approved projects. It is also to decide the relative priorities of the projects which are approved by it. The ITTA contains parallel provisions. 52 Other commodity agreements may also resort to such measures for which the Council is assigned relevant tasks. 53

(d) **Collection and dissemination of information**

A primary task of the Council involves the collection, exchange and publication of information. Since the

51. See articles 34, 35 and 36 of ICPA; see also article 34 of ISA; and article 34 of ITA.

52. See articles 1(2) and 23(1) of IAJJP; and article 23 of ITTA.

53. See for instance, article 44 of INRA.
transparency of the market is a chief obstacle to developing countries as increasing their role in primary commodity trade, easy and timely access to information is of crucial value, in particular, to developing member countries. The Council is assigned a key role in the performance of this task i.e. it is to act as a 'centre' for the collection and publication of necessary information.  

Generally speaking, all information relating to the production, consumption, trade, supply, stocks and prices of a commodity are to be collected. This would include, wherever appropriate, the gathering of technical data on the production and processing of the commodity.

(e) Approval of administrative budget

Before the end of each financial year, the Council is required to approve the administrative budget of the Organisation for the following financial year as well assess the contribution of each member to the budget. And after the close of each financial year the accounts are to be audited, for which purposes the Council may be authorised to appoint auditors. The audited accounts are then to be approved by

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54. See article 53 of ICPA; article 46 of INRA; article 52 of ICCA; article 81 of IA-JP; and article 27 of ITTA.

55. See article 25 of ICPA; article 24 of ISA; article 25 of INRA; article 38 of IOOA; article 23 of ICCA; article 20 of ITA; article 21 of IA-JJP; and article 19 of ITTA.
the Council. A summary of the audited accounts and balance sheet are then published. In the case a buffer stock mechanism has been incorporated in a commodity agreement, the buffer stock account will also need to be audited and approved. There could also be other special accounts which need to be audited and approved, as in the case of IAJJP and ITTA.

(f) Conduct studies

The Council is also to undertake or promote studies on relevant aspects of production and trade of the specified commodity. The IAJJP, for instance, provides that "the Council shall arrange to have studies undertaken of the trends and of the short- and long-term problems of world jute economy". The subject of study would, of course, be dictated by the peculiar and unique nature of the problems each commodity faces. The agreements often indicate the follow-up action. The ICCA, for instance,

56. See article 27 of ICPA; article 26 of ISA; article 24 of INRA; article 38 of ICOA; article 25 of ICCA; article 19 of ITA; article 20 of IAJJP; and article 22 of ITTA.

57. See articles 22 and 24 of INRA; and articles 17 and 19 of ITA.

58. See articles 18 and 20 of IAJJP; and articles 18 and 22 of ITTA.

59. See article 31(3) of IAJJP. See also article 54 of ICPA; article 66(6) of ISA; article 47(3) of INRA; article 28(5) of ICOA; article 53 of ICCA; article 10(a) and (b) of ITA; and article 27(3) of ITTA.
empowers the Council to submit recommendations, whenever necessary, to member states on the subject of these studies. 60

(g) **Annual review and report**

An annual review of the operation of the agreement is to be carried out by the Council. 61 Based on such a review, ICAs like the INRA, ICCA and the ISA empower the Council to make recommendations on the ways and means to improve the functioning of the agreements in the light of the set objectives. 62 The annual review thus facilitates the operation of the agreement by periodically taking stock of the situation, and on its basis chalking out a course of action which would enable the achievement of the desired objectives. The Council is also to publish an annual report on its activities as well as other relevant information. 63 Some agreements also require the publication of other variety of reports which could include annual assessment of the commodity situation, or the state of stocks etc. 64

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60. See article 53 of ICCA.

61. See article 48(1) of ISA; article 48 of INRA; article 54(1) of ICCA; article 32(2) and (3) of IAJJP; and article 28(2) of ITTA.

62. Ibid.

63. See article 47(1) of INRA; article 54(2) of ICCA; and article 32(1) of IAJJP.

64. See article 54(2) of ICPA; article 47(1) of INRA; article 54(3) of ICCA.
(h) **Cooperation with other organisations**

It is well known that commodity issues are dealt with in various international forums, viz., UNCTAD, FAO and several other governmental and non-governmental organisations. All ICAs, therefore, provide for cooperation with these organisations. Some ICAs, like the ICFA and the INRA, contain a general clause in this regard. The INRA provides:

1. The Council may make whatever arrangements are appropriate for consultation or cooperation with the United Nations, its organs and specialised agencies, and other intergovernmental organisations as appropriate.

2. The Council may also make arrangements for maintaining contact with appropriate international non-governmental organisations.65

The Council can also invite any of these organisations as observers to the meetings of the Council or of any Committee. Agreements like the ISA, IOOA, ICCA, IAJJP and ITTA mention certain organisations by name, in particular, UNCTAD and FAO. The IAJJP also mentions the International Trade Centre, UNCTAD/GATT (ITC) and UNIDO. The ITTA mentions UNEP and UNDP. Finally, all these agreements

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65. Article 10 of INRA; see also article 22 of ICFA; and article 39 of IOOA. See also n. 66 infra.
recognise the particular role of UNCTAD in international commodity trade and, are required to keep it informed of its activities and programmes of work. 66

3. Delegation of powers

The Council is empowered to delegate its powers to the Executive Committee or other specified subsidiary bodies. Powers which cannot be delegated, given their importance, are most often explicitly excluded. For instance, the ICCA excepts the following powers from being delegated, inter alia, (a) redistribution of votes; (b) approval of the administrative budget and assessment of contributions; (c) revision of prices; (d) relief from obligations; (e) decision of disputes; (f) suspension of rights; (g) extension or termination of the agreement; (h) recommendation of amendments to members etc. 67 The Council can also revoke any delegation of powers to any subsidiary body. The INRA, for instance, permits the Council to "at any time discuss and decide any issue that may have been delegated to any of its committees". Further

66. See article 14 of ISA; article 13 of ICCA; article 39 of ICPA; article 14 of IAJJP; and article 14(1) of ITTA.

67. See article 17(3) of ICCA; see also article 18(2) of ICPA; article 19(1) of ISA; and article 8(c)(1) of ITTA.
"the Council may, by special vote, revoke any power delegated to a committee". 68

In actual practice the question may arise as to where to draw the line in delegating powers, in particular to the Executive Committee. In this respect it has been noted that "an adequately broad delegation is essential to the functioning of a stabilisation mechanism since a body as large as a Council... cannot be expected to meet often enough or reach decisions quickly enough to deal with market developments promptly". 69 In other words, the final test in this regard is functional; powers will be delegated in as much as they contribute to the smooth and effective functioning of the agreement.

B. The Executive Committee

The ISA, ICFA, ICCA, establish, as a body subsidiary to the Council, an Executive Committee or Executive Board as in the case of ICFA. 70 The ICCA, for example, envisages an Executive Committee consisting of eight importing and

68. See article 9 of INRA; see also article 18(3) of ICFA; article 19(2) of ISA; and article 8(c)(ii) of ITA.


70. See articles 17 to 21 of ISA; articles 16 to 20 of ICFA; and articles 15 to 19 of ICCA.
eight exporting members to be elected for each cocoa year in the Council by the importing and exporting members respectively. Each elected member is to be represented on the Committee by a representative or by one or more alternates. In addition, the elected member can appoint one or more advisers to its representative or alternates. Like the Council, the Committee is to have a Chairman and a Vice-Chairman elected for each cocoa year and these offices are to alternate between the exporting and importing members. The Chairman does not have a vote. The Executive Committee is responsible to, and works under the general direction of, the Council. Apart from exercising the powers expressly delegated to it by the Council, it is entrusted with the task of keeping the market under continuous review and to recommend appropriate measures to the Council.\textsuperscript{71} One author has appropriately described the Executive Committee as "a reflection of the Council with reduced dimensions".\textsuperscript{72}

C. Executive Director

Apart from IDOA and ITA the other ICAs appoint an Executive Director who is to be the chief administrative

\textsuperscript{71} See article 17(1) and (2) of ICCA.
\textsuperscript{72} Tonuschat, n. 16, p. 65.
officer of the organisation and responsible to the Council for the administration and operation of the agreement, in accordance with the decisions of the Council. Some agreements (ISA and ICCA) require consultation with the Executive Committee before his appointment. Under the ICPA the Council appoints the Executive Director on the recommendation of the Executive Committee. The Executive Director is required to satisfy a negative qualification in that he should have no "financial interest" in the industry, trade or other commercial activities relating to the particular commodity.

D. Subsidiary Bodies

Commodity agreements, in order to facilitate their smooth administration, establish a number of subsidiary bodies which are assigned different functions. Besides, they usually authorise the Council to establish any other subsidiary body. The significance of the bodies vary depending upon the particular task it is assigned. In fact the importance of the network of subsidiary bodies them-

73. See article 21(1) and (2) of ICPA; article 13(1) and (3) of INRA; article 20(1) and (2) of ICCA; article 22(1) and (2) of ISA; article 16(1) and (e) of IAJJP; and article 16(1) and (3) of ITTA.
74. See article 20(1) of ICCA; and article 22(1) of ISA.
75. See article 21(1) of ICPA.
76. See article 22(4) of ISA; article 20(7) of ICCA; article 13(6) of INRA; article 16(5) of IAJJP; and article 16(5) of ITTA.
selves would vary from agreement to agreement depending on the role they are to play in achieving the objectives of the agreement. The various subsidiary bodies established in the contemporary agreements may briefly be reviewed.

1. ICFA

The ICFA establishes a Promotion Fund with the objective of promoting consumption and to achieve and maintain the highest quality and purity of the beverage. The Fund is used to finance promotion campaigns in importing member countries, and to sponsor research and studies related to the consumption of coffee. The Fund is administered by a Promotion Committee whose membership is confined to members which contribute financially to the Fund. The Executive Director of the International Coffee Organisation is the Chairman of the Committee who is required to report periodically to the Council on the activities of the Committee. Since its inception, the Promotion Committee has approved ten resolutions which set out its policy objectives, the modes through which these objectives are to be achieved, and its financial implications.78

77. See article 47 of ICFA.

78. The Promotion Fund was set up under the 1968 Coffee Agreement. The concerned resolutions are: ICO, Promotion Committee resolution No. 1(E), 2 October 1976; ICO, Promotion Committee resolution No. 2(E), 28 January 1977; contd.../-
2. ITA

The ITA establishes the following bodies to assist the Council in the performance of its functions: (a) Economic and Price Review Panel; (b) Administrative Committee; (c) Buffer Finance Committee; (d) Committee on Costs and Prices; (e) Committee on Development; (f) Credentials Committee; and (g) statistical Committee. 79 The Council is, in addition, empowered to establish such other subsidiary bodies as it deems necessary. The membership and terms of reference of these bodies are determined by the Council by a two-thirds distributed majority vote. The body is generally required to determine its own rules of procedure. Any of the subsidiary bodies may be terminated at any time by the Council. According to Fox, the most immediately influential committee has been the Statistical Committee which provides every Council meeting an assessment of the forthcoming supply and consumption position. 80

79. See article 9 of ITA.

3. ISA

The ISA established a Sugar Consumption Committee which was composed of both exporting and importing members. The Committee studied the following, *inter alia*, (a) the effects on sugar consumption of the use of any form of substitutes for sugar, including both natural and artificial sweeteners; (b) the relative tax treatment of sugar and other sweeteners or raw materials for the production of the latter; (c) the effects on the consumption of sugar in different countries of (i) taxation and restrictive measures; (ii) economic conditions and, in particular, balance-of-payments difficulties, and (iii) climatic and other conditions; (d) means of promoting consumption, particularly in countries where consumption is low; (e) ways and means of cooperating with agencies concerned with the expansion of consumption of sugar and related foodstuffs; (f) research into new uses of sugar, its by-products and the plants from which it is derived. It is required to submit its reports to the Council.\(^\text{81}\) The ISA also established a Special Hardship Reserve Committee under the chairmanship of the Executive Director "to examine such applications as may be made by developing exporting Members which are experiencing hardship as a result of special difficulties and which are in temporary need of additional

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81. See article 65(3) of ISA.
export entitlements in excess of their respective quotas in effect or export entitlements...". 82 The Committee was to be composed of not more than six members who did not represent interests likely to be affected by any of its decision.

Finally, the ISA had established a Price Review Committee comprising of four exporting members and four importing members under the chairmanship of the Executive Director to collect and assess data on: (i) prices, consumption, production, trade and stocks of sugar and alternative sweeteners; (ii) the influence on sugar prices of changes in the world economic situation or monetary situation, including the effect of world inflation or deflation and variations in exchange rates; (iii) any other factors which might affect the achievement of the objectives of the Agreement. 83 The Committee was required to submit its findings to the Council.

4. INRA

The INRA establishes the following subsidiary bodies: (a) Committee on Administration; (b) Committee on Buffer Stock Operations; (c) Committee on Statistics; and (d) Committee on Other Measures. 84 The International Natu-

82. See article 39(1) of ISA.
83. See article 62(4) of ISA.
84. See article 19 of INRA.
eral Rubber Council can also, by special vote, establish additional committees. All the committees are responsible to the Council which, by special vote, determines the membership and terms of reference of each committee. In addition, the Council was directed to establish a "Panel of experts" from the rubber industry and trade of exporting and importing members to provide advice and assistance to the Council and its committees, in particular on buffer stock operations and other measures to achieve the objectives of the agreement.85

5. IOOA

The IOOA establishes an Economic Committee "to exchange viewpoints on the world situation in the olive oil market, with the aim of finding solutions to problems liable to disrupt the international olive oil trade".86 Additionally the Council is empowered to appoint such special committees as it deems useful for assisting it in the exercise of its functions under the Agreement.

6. IAJJP

The IAJJP establishes a Committee on Projects which is responsible to, and is to work under the general direction of the Council. The participation in the Committee

85. See article 20 of INRA.
86. See article 21(3) of IOOA.
is open to all members and it is to meet four times a year or at the request of the Council. The functions of the Committee are to consider and technically appraise and evaluate project proposals; to decide on pre-project activities; and to make recommendations to the Council relating to projects.\textsuperscript{87} The Committee on Projects has a crucial role to play since the most important means through which the objective of IAJJP are to be achieved is through projects on research and development, market promotion and cost reduction.\textsuperscript{88} In view of this fact, the rules of procedure as well as the distribution of votes and voting procedure are the same as those applicable to the Council. It is to meet four times a year or at the request of the Council.

7. ITTA

The ITTA establishes the following committees:

(a) Committee on Economic Information and Market Intelligence; (b) Committee on Reforestation and Forest Management; and (c) Committee on Forest Industry.\textsuperscript{89} The function of the Committee on Economic Information and Market Intelligence is to keep under review the availability and quality of statistics and other information required by the Organisation; analyse the statistical data and specific indicators for the monitoring of international tropical timber trade; keep under continuous review the interna-

\textsuperscript{87} See article 28 of IAJJP.

\textsuperscript{88} See article 1(2)(a) of IAJJP.

\textsuperscript{89} See article 24(1) of ITTA.
tional tropical timber market, its current situation and short-term prospects; make recommendations to the Council on the need for, and nature of, appropriate studies on tropical timber, including long-term prospects of the international tropical timber market, and monitor and review any studies commissioned by the Council; carry out any other tasks assigned to it by the Council; and assist in the provision of technical cooperation to producing members to improve their relevant statistical services.90

The Committee on Reforestation and Forest Management is to keep under regular review the support and assistance being provided at a national and international level for reforestation and forest management for the production of industrial tropical timber; encourage the increase of technical assistance to national programmes for reforestation and forest management; assess the requirements and identify all possible sources of financing for reforestation and management; review regularly future needs of international trade in industrial tropical timber and, on this basis, identify and consider appropriate possible schemes and measures in the field of reforestation and forest management; facilitate transfer of knowledge in the field of reforestation and forest management with the

90. See article 25(1) of ITTA.
assistance of competent organisations; co-ordinate and harmonise these activities for cooperation in the field of reforestation and forest management with the relevant activities pursued elsewhere, such as those under FAO, UNEP, the World Bank, regional banks and other competent organisations. 91

The Committee on Forest Industry is to promote cooperation between producing and consuming members as partners in the development of processing activities in producing member countries; promote exchange of information in order to facilitate structural changes involved in increased and further processing in the interests of both producing and consuming members; monitor ongoing activities in this field, and identify and consider problems and possible solutions to them in cooperation with the competent organisations; and encourage the increase of technical assistance to national programmes for the processing of tropical timber. 92

The Agreement provides that research and development is to be a common function of all the three committees. 93

Further, all the three committees are when a project proposal is referred to them, to consider and technically appraise and evaluate project proposals; decide on and

91. See article 25(2) of ITTA.
92. See article 25(3) of ITTA.
93. See article 25(4) of ITTA.
implement pre-project activities necessary for making recommendations on project proposals to the Council; identify possible sources of finance for projects referred to it; follow up the implementation of projects; make recommendations to the Council relating to projects; and carry out any other task related to projects assigned to it by the Council. 94

The subsidiary bodies of each commodity agreement establish an auxiliary framework of cooperation. They delineate a division of labour which ensures the effective implementation of the agreement. They can as well elaborate an internal legal regime, as for instance the Promotion Committee of the International Coffee Organisation does, through adopting resolutions. The significance of subsidiary bodies will vary depending on the role they have been assigned in the scheme of things.

5. **Buffer Stock Manager**

ICAs, which incorporate the buffer stock mechanism in order to stabilise prices, also appoint a Buffer Stock Manager. He is appointed by the Council by special vote, often after consulting the Executive Committee. 95 The

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94. See article 25(5) of ITTA.
95. See article 20(3) of ICCA; article 13(1) of INRA; and article 13(3) of ITA. The appointment of a Buffer Stock Manager in the ITA, however, does not require a special vote.
terms of appointment are fixed by the Council for carrying out the functions imposed upon him. These functions, however, are to be exercised in consultation with the Executive Director. The qualifications are essentially negative in nature, and are the same as those to be satisfied by members of the staff. The international character of duties is also similarly stressed.

The Buffer Stock Manager is usually responsible for the day-to-day operation of the Buffer Stock. The Manager performs a critical task since "a mistaken effort of counteraacting a downward price trend might lead to serious losses and waste of resources. When changes of supplies, prices, and market conditions are studied in retrospect, these elements of cycle and trend often can be distentangled to a fair degree. To disentangle them at the time they occur, however, and to counteract the short-run movements without counteracting the trend, are difficult tasks for the manager of a buffer stock who is not endowed with perfect foresight". The role which a

96. Article 30(3) of ICCA provides that "The Manager shall, in accordance with rules established by the Council, be responsible for the operation of the buffer stock and for buying cocoa, selling and maintaining in good condition stocks of cocoa and, without incurring market risks, replacing lots of cocoa in accordance with the relevant provisions of this Agreement; see also articles 13(4), 35 and 36 of INRA.

Buffer Stock Manager will play will depend upon the nature of discretionary powers vested in him. While the successive tin agreements have tended to increase the scope of the action which the Buffer Stock Manager can take, agreements like INRA have curtailed the discretionary power of the Stock Manager. The former is a more salutary development for it enables the Stock Manager to perform his functions more effectively through *inter alia*, taking anticipatory action in the market (both in the spot and futures market) and counteract to a certain degree speculation of a destabilising nature.98

Rules adopted by the Council may clarify the functions and powers of the Buffer Stock Manager. For example, the International Cocoa Council, at its twentieth session in 1981, adopted the 'Buffer Stock Rules of the International Cocoa Agreement, 1980'.99 These rules lay down the procedures by which the Manager will perform his functions. It also specifies particular legal matters. For instance, Rule 2(h) states that "Purchases shall be made on Buffer Stock Contract Forms or on the basis of other contract forms recognised by the international cocoa trade". Finally, the rules provide that the Manager shall keep the Executive Director informed of all developments and changes

98. See article 30 of ITA.
in the Buffer Stock. He is required as well to (a) inform the Council regularly of movements of cocoa in and out of the buffer stock and of the stocks held; and (b) publish daily information, to include tonnage, growth, period of shipment and port of destination, on all purchases and sales and all stocks in the buffer stock. 100

F. Staff

The staff is generally appointed by the Executive Director in accordance with rules and regulations established by the Council. In drawing up the regulations, the Council is required to have regard to provisions applying to officials of similar intergovernmental organisations. The members of the staff, like the Executive Director, are to have no commercial or financial interest in the various sectors related to the commodity; the international character of their duties is stressed. The Executive Director and all members of the staff are proscribed from seeking or receiving any instructions from any member or from any other authority external to the organisation. They are to refrain from any action which can reflect on their position as international officials responsible only to the respective organisation. The member countries are directed to respect the exclusively international

100. Ibid., rules 9 and 10.
character of the responsibilities of the Executive Director and other staff members. They are asked not to seek to influence them in the discharge of their responsibilities. It may not be inappropriate to point out here that ICOs do not appear to employ any legal personnel. This is rather unfortunate. Besides the need for legal advice in the daily administration of the agreement - for which outside help would otherwise need to be secured - there is the urgent need to take cognisance of developments in international fora which have a bearing on the principles and policies which underlie commodity agreements. For instance, attempts are underway within the United Nations to consolidate and progressively develop the norms and principles governing international economic relations. A principle which has come in for special attention is the principle of stabilisation of export earnings of developing countries. Together, commodity agreements contribute to the crystallisation of the principle and its content. ICOs can fruitfully intervene in the entire process.

101. See article 21(5) of ICFA; article 22(4) and (5) of ISA; article 13(6) and (7) of INRA; article 20(7) and (8) of ICCA; article 13(6) and (7) of ITA; article 16(5) and (6) of IAJIP; and article 16(4)(5) and (6) of ITTA.

102. For a full discussion see Chapter XI.

103. Admittedly this task does not fall within the proper sphere of an ICOs function. Moreover, the contradictions between the exporting and importing contd....
V. DECISION MAKING PROCESS

The significance of decision making procedures to the effective operation of international organisations can hardly be overstated; decisions are not likely to be observed if the procedures through which they are arrived at are perceived to be arbitrary. The essential determinants of the decision making process in an international organisation are the basis on which votes are allocated and the number of votes which are required to take particular decisions. Yet, as is briefly argued, for a proper perspective it is important to locate the decision making procedures in the nature of the organisation i.e. its objectives and functions.

Most of the control schemes operating during the inter-War period, as already seen, lacked consumer representation. These control schemes had provoked tremendous opposition on the part of consumer countries, and the hostility threatened their successful operation by producers. The Havana Charter had sought to "redress" the balance by providing that

participating countries which are mainly interested in imports of the commodity concerned shall, in members will be difficult to reconcile. Yet, there is no denying the need to keep abreast of developments, and to intervene, in however small a way, in ongoing debates.
decisions on substantive matters, have together a number of votes equal to that of those mainly interested in obtaining export markets for the commodity. 104

Equal representation of producer and consumer members is now an accepted norm in commodity agreements.

A. The Rationale for Consumer Representation

The rationale for consumer representation is traced to the need for devising effective and equitable instruments. Since producer and consumer states have divergent interests it is important for the smooth functioning of an agreement that their respective interests are safeguarded. Consumer representation, it is said, constrains producers from taking undue advantage of any temporary condition in the market, 105 and enables the control schemes to keep prices at a level in keeping with long-term trends in demand and supply. It is argued that in the absence of consumer representation a scheme would "inevitably tend to try and stabilise the price at a level above the long-term equilibrium level" and thereby also succeed in holding back the expansion of the more efficient sources of production.


The producer countries, on the other hand, acceded to consumer representation as it strengthened the foundation of the agreements. Consumer participation would, to begin with, help implement the agreement; the realisation existed from past experience that producer-consumer cooperation in operating control schemes would, in many circumstances, be more effective than an agreement among producers alone. Furthermore, it was felt that inter-governmental agreements under the auspices of the United Nations, in contrast to Producer Associations, were more "solid". In other words, for certain tactical and operational advantages, the exporter countries conceded equal weight in the voting principle. For, strictly speaking, "the equitable nature of such a provision is debatable if for no other reason than because exporting countries have much more interest in the functions of a particular agreement than do the consumer nations". 106 It is the

106. Johnston, n. 32, pp. 12-3. Therefore, it cannot be said that Producer Associations are inherently inequitable. In this context attention needs to be drawn as well to the fact that the structure of international trade in primary commodities is biased against the developing producer countries. Thirdly, consumer countries are often unwilling to arrive at a commodity agreement leaving producer countries with little choice but to form Producer Associations. Finally, the Producer Associations may serve other objectives which commodity agreements do not endorse. It is keeping these contexts in mind that Article 5 of the Charter of Economic Rights and Duties states:

contd.…….../-
exporter countries which are dependent on a large part of their export earnings from trade in these commodities.

At the same time the value of a cooperative framework could not be ignored. Moreover, if the exporter countries grant consumer nations equal participation in the decision making process, they have a right to receive positive cooperation from them. However, the record of cooperation from consumer countries has been, on the whole, rather disappointing because the importing countries are generally reluctant to accept any significant obligations to ensure the observance of the terms of an agreement. They do not usually contribute to promotion or diversification funds or agree to coordinate the production of synthetics. 107 It was only for the first time in 1979 that they agreed, under the IMFRA, to jointly finance buffer stocks.

cont....

All states have the right to associate in organisations of primary commodity producers in order to develop their national economies to achieve stable financing for their development... 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.

The voting structure incorporated in ICAs is 'strikingly similar'. The exporting and importing members are generally assigned 1,000 votes each. The internal distribution of these votes takes into account both the principle of sovereign equality of states as well as the principle of weighted voting. In other words, members are assigned a certain number of initial votes (say, five each), while the remainder is divided among the members in proportion to the individual percentates of export or import as the case may be. The Council is requested to annually establish or otherwise the percentages in each category i.e. exporters and importers. Agreements most often specify a ceiling with regard to the total number of votes a member can hold. The ITA

108. See article 13(1) of ICFA; article 11(1) of ISA; article 15(1) of INRA; article 10(1) of ICCA; article 14(1) and (2) of ITA; article 10(1) of IAJJP; and article 10(1) of ITTA. The IODA is an exception in this regard.

109. See article 13(2) of ICFA (It allots five basic votes to all members); article 14(1) and (2) of ITA (It also allots five initial votes to each member); article 11(2) of ISA (allots five initial votes); article 15(2) and (3) of INRA (It allots only 1 initial vote and that too only in the case of exporting countries); article 10(2) and (3) of ICCA (It divides 100 votes equally among all exporting members and another 100 votes among the importing members); and article 10(2) and (3) of IAJJP (It divides 150 votes equally among all exporting members while each importing member is allotted five initial votes).
places its ceiling at 450 votes, while the ICCA at 300 votes in accordance with their needs and in the light of individual voting structures written into the Agreement. 110

As Khan points out, this is an attempt to curb the hegemony of a few exporting and importing countries. In the ICPA and the ICCA, an attempt is made as well to 'mitigate' the negative impact of votes of a few major members. "If a proposal fails to secure the required votes because of the negative votes by three or less than three members, the matter is put to vote again; if the Council decides by a simple distributed majority, within forty-eight hours, and again within twenty-four hours if the decision is prevented by two or less than two votes, and if at the third vote the proposal fails to be adopted because of the negative vote of one member, the proposal is deemed to have been adopted." 111

The voting structure of ICAs, as is clear, merely pays homage to the principle of sovereign equality of states. They essentially incorporate the system of weighted voting. That is, within each group, the votes are allocated according to the member's respective share in export or import. The major exporters and importers seek a voting power corresponding to their role in the export or import of the commodity in order to defend their dominant position. They thereby together possess a veto power over all decisions.

110. Article 14(8) of ITA and article 10(4) of ICCA.
111. Khan, n. 1, p. 372.
However, it would not be correct to equate the fact of weighted voting in ICs as Stephen Zamora appears to do with the prevalence of such systems in bodies like the International Monetary Fund (IMF) or the World Bank.112 The varied objectives of these institutions must be borne in mind. In order to view the system of weighted voting in its proper perspective the place of the institution which functions with it in the extant international economic structure must be evaluated. Such an exercise would reveal, for instance, that while bodies like the IMF and the World Bank are reinforcing the existing inequitous international economic structure, commodity agreements, on the contrary, are seeking to promote, in however small a way, a just world economic order. Viewed from such a perspective, caution needs to be exercised in generalising about the validity of certain voting structures.113

An important feature of the voting structure in ICs - in keeping with their bipartite nature - relates to the system of majority requirement, i.e. the require-


113. For a more detailed discussion see Chapter XI.
ment of concurrent voting. Under this system, the principle of majority requirement must be fulfilled in each category of members. The ICCA, for instance, defines a "simple distributed majority vote" thus:

simple distributed majority vote
means a majority of the votes cast
by exporting members and a majority
of the votes cast by importing
members, counted separately.114

Such a system flows from the very need for consumer representation and helps achieve minimum consensus on any issue. ICAs usually contain two kinds of majority vote - the simple distributed majority vote and the special vote or the two-thirds distributed majority.115 While in the normal case all decisions are to be taken by a simple distributed majority vote, more important decisions of the Council require a two-thirds distributed majority vote. The decisions which call for a special vote are specified in the agreement itself.

114. Article 2(n) of ICCA; see also article 2(10) of INRA; article 3(9) of ICFA; article 2(8) of ISA; article 2 of ITA; article 2(9) of IAJP; and article 2(9) of ITTA.

115. See also article 3(10) of ICFA; article 2(7) of ISA; article 2(8) of INRA; article 2(6) of ICFA; article 2 of ITA; article 2(8) of IAJP; and article 2(8) of ITTA. Only the IOOA, it appears, requires decisions of the Council to be taken by a majority of four-fifths of the votes cast. Article 35(1) of IOOA.
Commodity agreements, as is the practice, distinguish between decisions and recommendations of the Council, even though a recommendation is also to be made by a single distributed majority vote. A typical clause reads as follows:

All decisions of the Council shall be taken, and all recommendations shall be made, by a distributed simple majority vote unless otherwise provided for in this Agreement. 116

It is the decisions of the Council alone which are stated to be binding on the members, although recommendations would naturally be of immense persuasive value. 117

116. See article 16(1) of ICFA; see also article 13(1) of ISA; article 18(1) of INRA; article 12(1) of ICCA; article 12(1) of IAJJP; and article 12(1) of ITTA. The IOOA and ITA do not contain a parallel provision but presumably follows the practice of distinguishing decisions and recommendations.

117. Attention needs to be drawn here to a drafting problem. In other than IAJJP and ITTA which entitle the relevant article "Decisions and Recommendations of the Council" the other agreements use the title "Decisions of the Council". In all the cases the article invariably contains a clause stating that the decisions of the Council are binding on the members, with no reference to recommendations. This raises the question as to whether recommendations are also to be deemed decisions of the Council. This impression gains ground in the ITTA which while laying down the voting procedure in the Council makes no reference to recommendations. However, to accept such an understanding would go against the clear meaning of the term "recommendation". Furthermore, if the members did not seek to distinguish between "decisions" and "recommendations" of the Council there was little need to introduce the latter term in the text. Yet, in future, it would be best to remove any drafting ambiguity which has crept into the text.
In actual practice decisions are taken and recommendations are made by consensus. Recent agreements like the IAJJP and the ITA specifically direct that "The Council shall endeavour to take all decisions, and make all recommendations, by consensus". But this does not mean that the voting strength has no significance. As the Executive Director of the International Sugar Organisation has pointed out in a recent assessment of the operation of the ISA, "it did have significance in reaching consensus because certainly the Council and the Executive Committee were not ready to overrule major Members lightly, nor were minor Members inclined to hold out for minority views of less than major importance to them".\footnote{118} "All in all", he concludes, "Members worked together well in all the bodies of the Organisation and the practice of decision by consensus rarely precluded or delayed a useful decision".\footnote{119}

\textbf{VI. PRIVILEGES AND IMMUNITIES}

It is today the general practice of the constitutional instruments of international organisations to state the privileges and immunities the organisation as well as its officials will enjoy. These provisions are the

\footnote{118. TD/B/C.1/259, n. 69, p. 7.}
\footnote{119. Ibid.}
legal device through which an international organisation is exempt from the control of national authorities. The extent and limits of the privileges and immunities which are granted are determined by the functional needs of the organisation. In the words of Jenks,

The proper measure of international immunities is what is necessary for the impartial, efficient and economical discharge of the functions of the organisation concerned, and in particular what contributes to the effective independence of the organisation from the individual control of its separate members exercised by means of their national law and executive authority as distinguished from their collective control exercised in a regular manner through the appropriate international organs.120

There can however be two ways of granting these privileges and immunities: either through a broad provision which leaves it to subsequent agreements to define them in detail, or a more comprehensive provision which embodies the details in the constituent instrument itself.

While the basis of privileges and immunities of ICOs is spelt out in the commodity agreements, their concrete content is indicated in the headquarters agree-

ments which every ICO is required to sign with its host government. The coffee, cocoa, sugar, and tin organisations, which have their headquarters in London, have concluded respective agreements with the Government of the United Kingdom. Since these agreements are more or less identical in nature, the Headquarters Agreement signed with the International Tin Council may be examined for purposes of illustration.

Article 2 of the Agreement states, the 'overriding objective and scope' as follows:

>This Agreement shall be interpreted in the light of the primary objective of enabling the Council [i.e. the International Tin Council] at its headquarters in the United Kingdom fully and efficiently to discharge its responsibilities and fulfill its purpose and functions.

121. For texts (apart from the agreement with International Cocoa Organisation) see Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Coffee Organisation, Great Britain T.S. No. 86 (Cmd. 4120), 1969; Headquarters Agreement... International Sugar Organisation, Great Britain T.S. No. 88 (Cmd. 4127), 1969; Headquarters Agreement... International Wheat Council, Great Britain T.S. No. 14 (Cmd. 3882), 1969; Headquarters Agreement... International Tin Council, Great Britain T.S. No. 38 (Cmd. 4938), 1972 (hereinafter cited as Tin Headquarters). All these texts have been reproduced in Johnson, n. 32, Appendix III.3.

122. Tin Headquarters, ibid.
Of course, the privileges and immunities are granted only for official activities which are defined in article 1, para (e) to include "its administrative activities and those undertaken pursuant to the Fourth International Tin Agreement or any succeeding agreement...."123

The ITC is declared immune from jurisdiction as well as execution. There are, however, three exceptions to this general rule: (a) when the International Tin Council expressly waives its immunity; (b) when a third party brings a civil action for damages caused by a motor vehicle operated on behalf of the Organisation or the said vehicle is involved in a traffic offence; and (c) when an arbitration award is to be enforced and the award is rendered pursuant to a finding of an arbitral tribunal that the dispute is regarding a written contract between the Council and private third parties situated in the United Kingdom.

The Headquarters Agreement declares the archives and premises of the Organisation inviolable. Only with the consent of the Executive Director can a legal process be executed on the premises of the Organisation. The Agreement also excepts its property and income from all direct taxes, if the property in question is maintained within the purview of the Organisation's official activities.

123. Ibid.
In order to ensure complete independence in the exercise of their functions, the representatives of members and intergovernmental organisations participating in the ICA are accorded privileges and immunities. These include immunity from arrest and seizure of personal luggage; immunity from jurisdiction in respect of acts performed in the exercise of their functions; inviolability of their papers; exemption from measures restricting entry into the country; and currency exchange privileges. These immunities can be waived by the member state or intergovernmental organisation if it decides that the immunity would “impede the course of justice and... can be waived without prejudicing the purposes for which it was accorded”. 124 Finally, the Executive Chairman is given the status of a diplomatic agent, while the staff members are provided immunity from jurisdiction, unless the matter relates to motor offenses.

It is to be noted that like all headquarter agreements of international organisations, the Tin Headquarters Agreement is independent of the ICA and can be terminated when the headquarters of the organisation is moved from the territory of the host government or in the event that the organisation ceases to exist.

124. Ibid.
VII. APPRAISAL

The structure of international institutions reflect the specific features of the environment of which they are a product. The structure of ICs faithfully embody the contradictions which characterise international trade in primary commodities. Firstly, they seek to accommodate the divergent interests of the exporter and importer group of countries, both via-a-vis the other group as well as within the groups. The bipartite nature of the membership and the principle of weighted voting express these relationships. Secondly, keeping in view the fact that commodity markets are in a constant state of flux due consideration is given to the temporal element. The provisions relating, for instance, to entry into force, reflect this concern.

To ensure that the ICs can effectively carry out their functions they are endowed with legal personality and granted privileges and immunities. They usually function through a Council and other permanent and ad hoc bodies deemed necessary. Together they establish channels of communication and consultative fora whose value is greatly more than the merely functional needs they serve. They promote international cooperation through institutionalising a continuous system of negotiations on aspects of international trade in a particular commodity.
An important task of the ICO is to enforce the obligations undertaken by members of a commodity agreement. The next chapter, therefore, examines the system of obligations incorporated in ICAs, and the following chapter the system of enforcement.