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SOMMAIRE

THE ORGANIZATION OF ARAB PETROLEUM EXPORTING COUNTRIES (OAPEC)

An Arab producer association with supra-national features

By

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I. Establishment of OAPEC :

The beginning of a specifically Arab petroleum policy dates back to 1967, the year when Egypt tried to enforce an oil embargo against those countries which had supported Israel in the Six Day War.(1) Egypt's appeal was directed to all members of the Organization of Petroleum Exporting Countries (OPEC, founded in 1960) (2), at least, however, to the Arab oil-producing countries. This attempt failed owing to the diverging interests of the non-Arab OPEC members. After this failure, the plan to establish an Arab petroleum organization, which had already been proposed in 1965, was discussed anew during the preliminaries of the summit conference of the Arab League to be held in Khartoum at the end of August, 1967.(3) This plan, however, also failed owing to the differing interests of the countries involved. Thereupon, on January 9, 1968, the «conservative» countries, the Kingdom of Saudi Arabia and Libya as well as Kuwait, established the Organization of Arab Petroleum Exporting Countries (OAPEC), domiciled in Kuwait. There were different reasons pushing these countries to act independently. On the one hand, oil as a commodity and the foreign currency earnings linked to it were to be kept out of the continuous political disputes which had arisen between conservative and progressive camps within the Arab League.(4) On the other hand, the demand for a policy of intervention in the international oil marked made by the so-called «progressive»

countries since 1967, was to be neutralized by means of a concerted action of the OAPEC members within OPEC.(5) In order to make sure that the basic principle of a market economy would also be safeguarded in the future, these three countries in the founding agreement were given the right of veto regarding the admission of new members and a qualified right of veto concerning resolutions on substantive matters. In order to strengthen their own position, the three founding members invited Iraq to join OAPEC. The latter, however, rejected this proposal since, among other things, it supported the idea of a petroleum organization which was to be open to all Arab states and closely linked to the Arab League.(6) The basic setting and structure of OAPEC underwent a significant change through the overthrow of the Libyan monarchy and the installation of a «progressive» republic in September, 1969. In 1970, OAPEC agreed to Algeria's accession to the Organization which was supported by Libya, and at the same time to the membership of Qatar, Abu Dhabi and Dubai (later merged in the United Arab Emirates) and of Bahrain, which had been called for as a balance for the interests of Saudi Arabia. Iraq joined in 1982 when upon Saudi Arabian pressure the accession of Egypt and Syria had become possible, too, through amendment of the founding agreement. According to the original text, one of the prerequisites for membership had been that in the country concerned petroleum had to «constitute a significant source of its national income» (Art. 7 (b) (1).).(7) After initial objections raised by Libya, Tunisia's application for membership was approved by a unanimous vote of the OAPEC Council of Ministers on March 6, 1982.

At present, OPAEC thus has eleven members : Algeria, Bahrain, Egypt, Iraq, Kuwait, Libya, Qatar, Saudi Arabia, Syria, Tunisia, and the United Arab Emirates.(8)

II. Status and activities of OAPEC :

1. Objectives and main tasks :

The special legal character of OAPEC, the difficulty of obtaining official information(9), and that of evaluating sources written in Arabic have led to divergences in the rating and classification of this international organization in European litera-

ture, mostly in connection with OPEC. Furthermore, the structure of OAPEC is still in its development. The shift in the point of main effort caused by this fact makes a judgement of future developments even more difficult.

In Art. 2 of its founding agreement, OAPEC has set out its objectives, which are as follows :

a) The cooperation of the members in various forms of economic activity in the petroleum industry and the realization of the closest ties among them in this field ;

b) The determination of ways and means of safeguarding the legitimate interests of its members in this industry, individually and collectively ;

c) The unification of efforts to ensure the flow of petroleum to its consumption markets on equitable and reasonable terms ;

d) The creation of suitable climate for the capital and expertise invested in the petroleum industry in the member countries.

In pursuit of the said objectives, the Organization shall in particular :

a) «Take adequate measures for the coordination of the petroleum economic policies of its members.

b) Take adequate measures for the harmonization of the legal systems in force in the member countries to the extent necessary to enable the Organization to carry out its activity.

c) Assist members to exchange information and expertise and provide training and employment opportunities for citizens of members countries in members' countries where such possibilities exist.

d) Promote cooperation among members in working out solutions to problems facing them in the petroleum industry

e) Utilize the member resources and common potentialities in establishing joint projects in various phases of petroleum industry such as may be undertaken by all the members of those of them that may be interested in such projects».

For the implementation of its tasks, OAPEC had at its dis-

posal in 1980 an annual budget of some 2 million KD raised by the member states in equal shares; this amount is steadily increasing.(10)

The objectives and main tasks of OAPEC, as determined in its founding agreement, are of a purely economic nature. In practice, the Organization has also pursued political objectives, as, for example, the oil embargo imposed against the United States and the Netherlands in 1973, as well as the suspension of Egypt from membership and its boycott in the OAPEC-related economic undertakings, decisions that were taken after the signature of the Camp David Peace Accords in 1979.(11) It cannot yet be established beyond a doubt though, whether the decision of 1973 was taken by the Council of Ministers of OAPEC or by the petroleum ministers of the individual countries.(12)

2. Accession and membership :

In accordance with the objectives of OAPEC, there are four conditions to be fulfilled by any country who wishes to join the Organization :

a) The status of being an Arab oil-exporting country;

b) Petroleum constituting a significant source of the country's national income ;(13)

c) Unconditional adherence to the provisions of the OAPEC Agreement and to amendments which may be made to it ;

d) Approval of membership by a majority of three quarters of the votes of the Council of Ministers, including the votes of all founding members (Article 7).

The members of OAPEC are classified into two categories : (a) Founding members, and (b) Subsequent members. In contrast to OPEC, associate membership is not countenanced in OAPEC.(14) The admission of observers, however, is possible.

The founding members mentioned above hold a privileged position. They enjoy particular voting rights regarding the issuance of resolutions and the taking of binding decisions on

substantive matters, and even a right of veto regarding the acceptance of new members.

The OAPEC Agreement does not contain any provisions regarding exclusion, withdrawal and suspension from membership.(15) The suspension of Egypt from membership, decided by the Council of Ministers in 1978, was thus legally not unobjectionable. An exclusion could only come into consideration if a substantial violation of the Agreement, whose objectives are of an economic nature, was shown. This was, however, not at all the case. Rather, Egypt had violated resolutions of the Arab League, breaking ranks with the united Arab front against Israel by signing the Camp David Peace Accords.(16)

3. Organs of OAPEC :

OAPEC carries out its functions through four organs :

a) Council of Ministers ,

b) Executive Bureau,

c) Secretariat,

d) Judicial Board.

The first two are inter-governmental organs ,i.e. composed of representatives of the Member States who are bound by their countries' instructions. The Secretariat and the Judicial Board, on the other hand, are integrated organs, i.e. they comprise persons who exercise their functions without being bound by instructions given by the Member States.

a) Council of Ministers :

The Council of Ministers is the supreme authority of OAPEC. It is composed of one representative from each Member State, as a rule the minister of petroleum or someone enjoying a comparable degree of responsibility for petroleum affairs. The chairmanship is to be assumed by representatives of the members by rotation according to the order of the countries' names in the Arabic alphabet, each for a period of one year. The Council convenes twice a year; extraordinary sessions

may be convened at the request of the Secretary General or of one of the Member States.

The Council has a wide range of responsibilities, including in particular the drawing up of OAPEC's general policy, the direction of its activities and laying down the rules governing these activities. These responsibilities are counterweighed by the powers of th other organs provided for in the OAPEC Agreement (drawing up of the agenda, convening of extraordinary sessions, development of programmes of action) and by the practical work of the Organization. In addition to these general responsibilities, the Council has further concrete and exclusive responsibilities as well as all those which the «Agreement or the regulations did not expressly provide for to be within the competence of any other organ».(17)

The legal decisions of the Council are taken in the form of statutes, resolutions and recommendations. Only the statutes and resolutions have binding authority on all members (especially those whom they concern) and are subject to ratification by the competent authorities in the member countries according to the legal rules in force.

Applications for membership must be approved by a majority of three quarters of the votes, including those of the three founding members. For decision-making and the determination of other important questions, a quorum of three quarters of the members, including at least two founding members, is necessary. Thus, there is hardly any possibility of abrogating the privileges of the founding members. For a revision of the Agreement, however, three quarters of the votes of all member countries are necessary, without the founding members holding any special position. For decisions on procedural questions and recommendations, only a simply majority of the members' votes is required.(18) In practice, however, a tendency towards unanimity in decision-making can be observed.(19)

b) Executive Bureau :

The Executive Bureau, composed of one representative from each of the member countries, has primarily executive competen-

ces, but in addition it has the power to submit proposals and to take administrative decisions. Among other things, it considers matters relating to the application of the Agreement and the Organization's performance of its activities. In addition, the Executive Bureau fulfils the tasks assigned to it by the Council of Ministers; it submits to the Council recommendations and proposals concerning matters falling within the scope of the Agreement, such as the drawing up of the agendas for the Council, reviewing the Organization's draft annual budget and referring it to the Council, and approving the staff regulations of the Secretriat.(20)

The chairmanship of the Bureau shall be assumed by the representatives of the member countries by rotation according to the same rules that apply for the Council. At the invitation of its chairman, the Bureau convenes before every Council meeting to prepare the Council agenda. Upon the request of the Secretary General or of a member state, he may convene the Executive Bureau for two additional meetings. The resolutions of the Bureau shall be carried by a majority of two-thirds of the votes of all members, without any preferences given to the founders' votes.(21)

c) Secretariat and Secretary General :

In contrast to comparable organs of other international organizations, the Secretariat of OAPEC is not a purely administrative organ. It holds an important position within the Organization, due to the power of initiative assigned to the Secretary General which has further developed in the course of the Organization's activities.

The Secretary General assumes the administration of the Secretariat, aided by three Assistant Secretaries.(22) They are appointed by decision of the Council of Ministers for a period of three and four years respectively. They shall be nationals of one of the member states, with adequate experience in petroleum affairs. In addition, not more than two of the persons who hold the positions of General Secretary and Assistant Secretary shall be selected from the same nationality.

The powers of the Secretary General cover two precisely defined areas : the internal administration and direction of the Organization and its external relations. Within the Organization itself, he holds the position of a head of the Executive. In addition, further far-reaching powers of initiative are assigned to him, such as the drawing up of the draft of the Organization's annual budget and the convocation of extraordinary meetings of the Council of Ministers and of the Executive Bureau. The Secretary General is at the same time the Secretary General of the Council and of the Bureau; he takes part in their meetings, where he contributes to the decision-making process, without any voting rights, by making comments, suggestions, and so forth.

In the framework of external relations, the tasks of the Secretary General include the maintaining of contacts with international organizations and fulfilling the role of an official spokesman and legal representative of OAPEC. Since 1973, the third Secretary General has expanded his competences to include a political dimension. In connection with the energy crisis which arose in the wake of the war in the Middle East in October 1983, he developed his own initiatives on the international level, especially in the formulation of the Arab position. Finally, according to a resolution of the Council of Ministers of June, 1974, the Secretary General is to take part ,via the «Arab Fund for Economic and Social Development», in the administration and distribution of the funds provided by OAPEC for supporting the oil-importing Arab countries.(23)

The Secretariat has the responsibility of implementing the statutes and resolutions elaborated by the Council or of supervising their implementation, and the task of planning further activities, with the final decisions resting with the other organs. It has a staff of over a hundred employees and is divided into seven departments : Legal Department, Petroleum Projects Department, Information and International Relations Department, Finance and Administrative Affiars Department, Economics Department, Exploration and Production Department, Library and Documentation Department. In addition, there is the permanent Training and Manpower Development Unit. Besides, the Council and the Executive can establish ad hoc commissions

of experts to assist the Secretariat, which may be entrusted with particular tasks.(24)

d) Judicial Board :

The Judicial Board is the only existing judicial organ of a Third World regional organization.(25) The relatively short regulations given in the OAPEC Agreement were supplemented in the Protocol of May 9, 1978, which came into force even before the end of the fixed two-year term.(26) The rules set forth in the Agreement and the Protocol have been inspired by the statutes of the International Court of Justice and the Court of Justice of the European Communities. They exhibit some special characteristics, however.(27)

The Judicial Board is composed of an uneven number of judges, at least seven and at most eleven judges. The judges must be nationals of different Arab countries. Their impartiality must not be in doubt and they must fulfil the necessary conditions for holding the highest judicial positions in their countries, or be jurists of international repute. By a majority of three quarters of the Council of Ministers, the judges are appointed for a term of six years from a proposed list on which no more than three names from each country may appear. They may only be re-elected once.(28)

In order to maintain continuity, half of the judges (that is, a «half» which is in fact more or less than the half of the uneven number of judges) are newly elected every three years. This procedure has not yet come into force. The following temporary rule is now in operation : the first judges who have been elected only work on a part-time basis; their term of office is three years and they may be re-elected several times. When for the first time full-time judges are appointed, it will be decided by lot which half (in this case : the «smaller» half) is to be in office for only three years.(29)

The judges enjoy all diplomatic immunities and privileges in the territories of the Organization's members. With regard to their official functions, including their oral and written statements, their judicial immunity continues after their resignation.

The immunity of a judge can only be suspended by a majority of three quarters of the members of the judicial Board. The judge affected does not take part in that decision. After the suspension of his judicial immunity, a judge may only be prosecuted according to the procedure which applies to the judges of the Highest Court of his country.(30)

A judge who resigns before the end of his term of office is superseded by a new judge who is named for his predecessor's remaining term of office. A judge can be removed from office only if the other udges in the Judicial Board decide unanimously that he no longer fulfils the required conditions.(31) Otherwise, every judge remains in office until his successor enters upon his duties. The Member States are obliged not to influence the judges in the exercise of their duties in any way and to respect their independence and impartiality.(32)

The judges may not take part in the settlement of an action brought before the Judicial Board if they have previously participated as agent, legal adviser or counsel for one of the parties in the matter concerned or if they have been called upon to decide as a member of a tribunal, of a commission of inquiry or in any other capacity. A judge who considers himself biased in a law case has to inform the President of the Judicial Board about this fact. If the President decides that a judge should not take part in a particular case, he has to inform the judge concerned about the reasons of his decision. The resolution of the Judicial Board regarding the interpretation and application of this rule set forth in Article 14 of the Protocol is a final one.(33)

The judges must not exercise any political, administrative, or professional activity beyond their official function, with or without payment, nor any other activities which are incompatible with their function. In addition, the judges are requested to respect the obligations arising from their function, during and after their term of office.(34)

From their midst, the judges elect the President and Vice-President for a period of three years. Re-election is permissible. In the event of their absence or inability to attend, their func-

tions shall be taken over by the oldest judge. The President is at the same time the highest administrative official of the Judicial Board.(35) He has no special rights, however, vis-à-vis the other judges. He designates the other employees.

The Judicial Board issues its own procedural, financial and administrative rules as well as its budget, which is linked to the budget of the Organization. The rules and the budget need the agreement of the Council of Ministers.(36) The Judicial Board names a chancellor.(37)

In order to take decisions, the presence of five, seven or nine judges of the Judicial Board is necessary, depending on the total number of members. The judgements are passed by the majority of the votes. In the absence of unanimity, the judge who is voting differently may deliver his dissenting opinion in a written form.(38) The Judicial Board does not know the institutions of attorneys general, ad hoc judges, advisory assistants, or chambers.(39) It thus differs from other courts, as, e.g., the Court of the European Communities.

The functions of the Judicial Board are of a judicial and advisory nature.

Its judicial function is divided into aa) mandatory and bb) optional jurisdiction.(40)

aa) The mandatory jurisdiction covers the following types of disputes :

«a) Disputes relating to the interpretation and application of this Agreement and the implementation of the obligations arising from it.

b) Disputes which arise between two or more members of the Organization in the field of petroleum operations.

c) Disputes which the Council decides that the Board is competent to consider.»(41)

Regarding disputes type (a), the Member States, OAPEC as an organization, as well as the companies established within its framework are entitled to invoke the Judicial Board, as long as the matter deals with a dispute between.

— Two or more Member States,

— Two or more companies established within the framework of the Organization,(42)

— Member States and these companies,

— The Organization and a Member State or one of the above-named companies.

Regarding questions of petroleum operations (disputes type (b)), only the Member States are entitled to bring matters before the Judicial Board. For the third type of disputes for which the Council may decide that the Board is competent to consider them, a simple majority vote of the Council members is sufficient.(43) In both cases, the petitions may only deal with the actual activities of the Organization in the field of petroleum operations. Questions of territorial sovereignty, such as boundary conflicts, are not considered. The specific procedural rules, which are to be prepared by the Judicial Board and approved by the Council of Ministers, have not yet been issued.(44)

bb) The optional jurisdiction(45) of the Judicial Board, basing on voluntary submission of the parties to the jurisdiction of the Judicial Board, is given for the following issues between :

— A Member State and a petroleum company operating in the territory of the said member ;

— A Member State and a petroleum company belonging to any other member ;

— Two or more Member States if the dispute does not fall under the mandatory competence.

The fact that not only state companies, but also private oil corporations have the possibility of invoking an international court, represents an important new development. On the basis of the above-mentioned optional jurisdiction, however, the Judicial Board will seldom be invoked after the successful replacement of oil concession agreements by participation contracts, as these new contracts as a rule have special arbitration clauses. Correspondingly, this will also apply in most of the disputes of the two last-named types.

The advisory function of the Judicial Board, which is not specified in the Protocol but will be determined in the procedural rules still to be issued, comes into being only upon approval of the Council of Ministers.(46) This function is limited to questions of law. The Judicial Board can decline it, however, from case to case. In any case, the advisory opinions have no legally binding effect but are only of moral value.(47)

In determining the applicable law we have to distinguish between three situations. In cases of mandatory jurisdiction, the Judicial Board has the applicable rules of the Islamic and international law to draw upon; both legal systems are given equal weight. In this event, it applies :

a) The founding agreement of OAPEC and those international treaties which are binding on the parties;

b) Binding international customary law;

c) General principles of law recognized by the international community;

d) Principles common to the legal systems of the Member States;

d) Court decisions and the views of well-known scholars of public law in the Member States as a subsidiary source.

The judges thus face the new task of creating a more strongly Arab-influenced international law for OAPEC by consideration of principle taken from Islamic and international law, the latter being permeated by European legal conceptions.

With regard to the cases of optional jurisdiction, the Judicial Board decides on the basis of the law which it considers applicable in that particular case. In the cases of contractual or tortious liability of OAPEC there is a special rule determining the applicable law.(48) Concerning the mandatory jurisdiction, the determination of the applicable sources of law is patterned according to Article 38 of the Statute of the International Court of Justice; in the cases of optional jurisdiction and liability of OAPEC, it is patterned according to the regulation applying to the European Court of Justice. Thus, the judges have to draw upon different sources of law in cases of mandatory and optional

jurisdiction and also in cases of liability, a situation which in particular cases may seriously impair their work and lead to incoherent solutions.

4. Duration of the Agreement and possible amendments to it :

The duration of the OAPEC Agreement is not limited to a given time; for its revision a resolution of the Council of Ministers as the supreme authority of OAPEC is required, adopted by a majority of three quarters of all Member States. The revision of the Agreement can be taken into consideration every ten years or on the proposal of half of the members.(49) There is no special regulation regarding the termination of the Agreement. Hence, the procedure adopted for the revision of the Agreement applies in the case of its termination, too.

5. International juridical personality

OAPEC enjoys a juridical personality in the Member States. It may thus acquire movable and immovable property, perform legal transactions as well as sue and be sued in its own name.(50)

Moreover, OAPEC has also to be accorded the status of an international juridical personality. Although this aspect is not explicitly mentioned in the Agreement, it results from OAPEC's extensive powers to conclude agreements with other countries and international organizations, set forth in Article 5. The international liability of OAPEC, in contract and in tort, is regulated in Article 6 (a), according to which its contractual liability is governed by the law of the contract entered into, and the liability for tort is governed by the common general principles of law of the Member States. In matters of liability (Article 6 of the Agreement), the applicable law thus differs from the rules applied in other issues by the Judicial Board The rights and duties of the employees of OAPEC result from the provisions given in the OAPEC Agreement and the guidelines and staff regulations developed in application of this Agreement

In performing its activities in the Member States, OAPEC enjoys the immunities and privileges which result from its diplomatic status and are defined in a Protocol appended to the

Agreement in 1969.(51) Hence, OAPEC, although not a party according to the Protocol ,is entitled to assert the relevant rights and duties vis-à-vis the Member States.(52) The revision of the Protocol needs the consent of the OAPEC Council of Ministers as the supreme authority of the Organization .

6. Supranational features of OAPEC

OAPEC ranks among the few regional, international and specialized organizations with supranational features outside the classical Western industrialized countries. From this viewpoint, it is comparable to the European Coal and Steel Community (ECSC), because, similarly to the ECSC, OAPEC is a union of Arab States which extract and process petroleum. The supranational features of OAPEC, however, are not as far developed as those of ECSC. The important decisions of OAPEC need to be transformed into the law of the Member States, whereas the comparable legal acts of the ECSC become immediately effective in the Member States. Also, the trend perceived in practice of having unanimity for decisions, although a qualified majority would be sufficient, does not speak in favour of a supranational character of OAPEC.

The Judicial Board represents the most substantial supranational feature in OAPEC, but its importance cannot yet be judged due to its very recent establishment. It deserves, however, to be given great attention because of its efforts towards a harmonization of the legal systems within the framework of OAPEC. In this context it must be underlined that the application of Islamic law by the Judicial Board in case of disputes is not as irrelevant as it may at first appear to a European. The Islamic law has indeed developed solutions with regard to international law which could take into account the particular circumstances given in the Arab countries. In any case, the sources and their ranking in Islamic law differ from those set forth in the OAPEC Protocol. The sources of Islamic law are, in order of merit : the Koran; the tradition arising from decisions of the Prophet Mohammad; the consensus of legal scholars; reasoning by analogy, as well as customary law as a subsidiary source. For the establishment of new legal norms by OAPEC, it is especially treaties which are authoritative; they are not,

however, among the sources of Islamic law. It cannot be judged so far to what extent this will result in difficulties in the search for harmonization of legal rules.

Secondly, the application of Islamic law can lead to unforeseen consequences. For example, according to the teachings of all Islamic law schools, natural resources which are located on land of the Islamic public treasury (bait al-mal) are possessions of the Islamic communities.(53) According to the Malekit school which dominates in some Gulf States and in North Africa, the same applies to natural resources located on private land. According to the Hanbali school of law which dominates in Saudi Arabia and Qatar, liquid natural resources, including petroleum, are subject to a shared use by the Moslems which the private oners have to tolerate.(54) These conceptions would mean, however, that for the distribution of revenues from the extraction of such natural resources the national boundaries would no longer be of any importance.(55) The consequence would be a considerably greater transfer of financial resources to those Islamic States with fewer natural resources. This transfer would not be valued as a kind of development aid, and even less as a charity, but as an accomplishment of the legal claims of the poorer Islamic countries to have their own share.(55a)

7. Prevailing activities

In regard to the prevailing activities of OAPEC, two areas may be distinguished :

a) The Organization's tasks in a narrow sense, such as the harmonization of the legal systems in force in the member countries, the exchange of information and expertise, and the establishment of joint projects in various phases of petroleum industry ;

b) The Organization's tasks in a broader sense, above all the coordination of the petroleum economic policies of its members.

Among the above-named tasks in a narrow sense, the harmonization of the legal systems of the Member States has not yet made much progress. Up to now, only one commission within the General Secretariat has been dealing with legal ques-

tions regarding the transport of petroleum and its products at sea. In the meantime, the Secretariat has, however, collected and published the legislations of the Member States concerning the petroleum industry. Finally, the importance of the establishment of joint projects is to be emphasized. The founding agreements of those undertakings are ratified by the Member States and, through parallel legislation, transformed into national law. This procedure results in a certain harmonization due to the recognition of a uniform contract law in the Member States concerned.(56)

The gaining and the exchange of information and expertise has been institutionalized in so far as the Arab Petroleum Training Institute was founded in Baghdad in 1980. It aims at the uniform training of teaching staff and the development of educational material for all activities related to the petroleum industry. In addition, an Energy Institute, serving as a sort of «Statistical Office», is to be established, dealing with the collection, elaboration and distribution of data on the petroleum industry.(57)

In regard to the common solution of problems linked with the petroleum industry in the Member States, the General Secretariat has carried out several studies which mark the beginning of such a cooperation.

Furthermore, a number of undertakings have been established with the goal of realizing joint projects in the petroleum industry :(58)

a) The Arab Maritime Petroleum Transport Company (AMPTC) founded in 1973 with its seat in Kuwait; at the moment it has at its disposal the third-largest Arab tanker fleet.

b) The Arab Shipbuilding and Repair Yard Company (ASRY), founded in 1974 with its seat in Bahrain; among other things, it manages a dry dock for repair of large tankers.

c) The Arab Petroleum Investment Company (APIC), founded in 1973 with its seat in Saudi Arabia; its main goal is the financing of the construction of pipelines and petrochemical plants in the Member States ;

d) The Arab Petroleum Services Company (APSC), founded in 1977 with its seat in Libya; through joint undertakings together with foreign companies it intends, among other things, to make their know-how available to the Member States.

e) The Arab Engineering Company (AEC), founded in 1981 with its seat in Abu Dhabi; it is to serve as a centre for the acquisition of patent licences and of know-how in order to place them at the disposal of shareholders as well as of other interested Arab parties. This company, for the first time, is not formed by the Member States themselves but their national petroleum companies and the Arab Petroleum Investment Company named above.

The establishment of further undertakings is being planned. It is noteworthy that these undertakings are founded by some or all of the Member States, which can also hold differing interests, rather than being established by OAPEC itself (with the exception of the Arab Engineering Company), as is allowed by Article 5 to the OAPEC Agreement.

The above-named companies show some legal particularities. In the companies' firm-names, the expression «Arab» indicates their forming part of this cultural region, in contrast to the usual companies which belong to a particular country. They are established by international treaty, a fact which shows the international character of the companies. The companies' shareholders are States. Therefore, they need a statute which is not subject to the members' national legal systems and allows the companies to perform their activities without taking into consideration the national borders of the Member States. OAPEC is not mentioned as a party in the founding agreements concluded under its patronage. Their provisions, however, ensure close relations between OAPEC and the companies which, strictly speaking, are independent in legal, financial and administrative respects. These relations comprise the interdependence of OAPEC's objectives and the companies fulfilling these objectives, the restriction of shareholders to OAPEC members, and, above all, the right of supervision over the companies accorded to the OAPEC Council of Ministers.

The question of the companies' nationality has not been solved uniformly in the founding agreements. For example, the Arab Maritime Petroleum Transport Company has been accorded the nationality of all participating Member States, whereas the Arab Shipbuilding and Repair Yard Company has been given the nationality of the State in which it is located.(90) The Arab Petroleum Investment Company and the Arab Petroleum Services Company enjoy the rights which the participating States grant to their national companies, without, however, having to assume the corresponding duties, especially with respect to taxes.(91) In regard to the Arab Engineering Company, the pattern adopted for the Arab Shipbuilding and Repair Yard Company was combined with that relating to the Arab Petroleum Services Company.(92) This company has thus the nationality of the State in which it is located and, at least, enjoys the rights of a national company in this country and also in other Member States in which it is operating. In the author's view, a uniform solution would have been preferable to the various solutions concerning the nationality of the joint undertakings. This, however, presupposes a more advanced state of harmonization than has been reached so far.(93) Similarly to the patterns adopted for regulating the question of nationality, the law applicable to the companies has not been developed out of the national law of a particular State. It rather derives primarily from the founding agreement and, subordinately, from the common general principles of law recognized in the participating States, as far as they are compatible with the founding agreement. It is the Judicial Board which is competent for the development of a particular law for OAPEC regarded as a community. As to the law relating to the Arab Engineering Company, the founding agreement and the Statute are applicable, whereas the law of the country in which it is located is only of secondary importance. OAPEC's tasks in a broader sense comprise, among other things, the preparation of a common petroleum policy of the Arab oil-producing countries. Article 3 of the founding agreement states, however, that the decisions taken in the framework of OAPEC must not be deemed to affect those of OPEC. The reason for this statement was that in 1968, when OAPEC was founded, OPEC had already been established. The latter had been established in 1960 by a resolution adopted on September 14, 1960, at the Baghdad Conference and later ratified by the Member States.

The statutes of OAPEC are more precise and more detailed than those of OPEC, especially with regard to the juridical personality([54]) and the diplomatic immunities and privileges granted to OAPEC.([56]) There are further differences between the two Organizations regarding the majority required in decision-making, the degree of sovereignty granted to the Member States, and their duties towards the Organization and among one another.

OAPEC is not intended to operate in competition with OPEC. In order to delimit the responsibilities of the two organizations, a tacit understanding was reached according to which all decisions on a common petroleum policy are to be taken in the framework of OPEC. This does neither prevent a previous arrangement on the common bargaining line among the OAPEC States which are also members of OPEC, nor the enforcement of the positions agreed upon, since OAPEC members have a clear preponderance in OPEC not only in numbers (7 to 13) but also with regard to their petroleum output and their economic power. One can, however, observe a certain conflict of interests between the «progressive» Member States (such as Algeria, Iraq and Libya) and the more «conservative» ones (such as Saudi Arabia and the United Arab Emirates)([55a]) as far as the coordination of the petroleum policies of the OAPEC members is concerned. The progressive States hold a more socialist position and favour a policy of state intervention, whereas the conservative States stand for a market economy. The former pursue a strongly nationalist course on the exploitation and processing of petroleum, whereas the second group also tolerates a considerable role of foreign companies. So far, however, the above-named conflicts do not seem to have impaired the decision-making process. Moreover, the establishment of OAPEC enabled its members to cut down the influence of foreign petroleum companies within a shorter period of time than otherwise would have been the case. As yet, both groups agree that their activities are to remain concentrated on the Western «capitalist» countries. The question of the common petroleum policy hitherto developed must thus be considered in the light of the results of the policy pursued by OPEC.

III. OAPEC's position in international economic policy and international law :

8. OAPEC as a producer association unilaterally embedded in OPEC :

In the field of economic policy, OPEC and thus OAPEC, too, are said to act as a cartel in the world petroleum market. In this context, no distinction is made between the two organizations, and this opinion seems to be justified. As mentioned above, both organizations, among other things, aim at exercising their influence in the international petroleum market. On a national level, a cartel is defined as an organization of private firms which seeks to influence the free pricing process in a particular market, to the exclusive benefit of its members. The common goals of OPEC and OAPEC, however, go beyond influencing the price mechanism in the internatioal petroleum market and can be classified as follows :

— Increase of the revenues of the Member States ;

— Legal control over the extraction and processing of petroleum ;

— Actual control over the petroleum from its extraction and processing to its sale in the world market or in the individual consumer countries.

In the framework of this study, only those activities of OPEC and OAPEC can be discussed by which a direct intervention in the international petroleum market takes place. Above all we intend to examine the question of whether the two organizations have exercised an influence on the petroleum market by fixing prices or quantities or both.

a) Factual development of the activities of OPEC and OAPEC

First of all, the question arises whether OAPEC has developed guidelines which might help its members in OAPEC to plan a long-range petroleum policy. For example, a plan for the long-term financial needs of OAPEC Member States might be helpful for determining the desirable world market prices of petroleum, on the assumption of a control over the petroleum output. The elaboration of a long-term petroleum policy, however, is still at its beginning, although, in 1973, the Secretariat of OAPEC directed a memorandum to the Member States re-

garding the importance of a harmonization of their petroleum policies. The Council of Ministers discussed this issue in July, 1974, and emphasized its relevance. Concrete results of the resolution have not become known so far.([66])

Generally, OAPEC and OPEC stand in opposition to the International Energy Agency (IEA) which was set up by the industrialized OECD countries as a counter-force to OPEC and OAPEC. The IEA is striving for a long-term replacement of petroleum as a primary energy source by other sources and has worked out concrete figures for the substitution of petroleum in the energy balances of the Member States. Moreover, in 1973, the OECD members had agreed upon a minimum price (which in the meantime has strongly increased, however), allowing them to carry on, at favourable costs, with their projects for the development of substitute energy which otherwise would have become unremunerative.

In view of this situation, one must try to find out whether OPEC and OAPEC indeed influence the market with the help of their current activities. In this context, a distinction between different periods of time must be made.([67])

With the establishment of OPEC in 1960, the Member States aimed at a stabilization of the revenues of the oil-producing countries, which were calculated as a percentage of a posted price.

The discovery and opening up of new oil reserves in the late fifties and early sixties caused a downward pressure on the world market price and thus also on the reference price for petroleum. Because of this increase in the supply of petroleum the petroleum companies, which at that had almost unlimited control over petroleum, implemented unilateral price reductions in order to promote the use of this energy source in the industrialized countries. At an early stage, they were not willing to recognize OPEC as a negotiation party, but instead they made concessions to the individual petroleum-producing countries. In the following years, OPEC could strengthen its position vis-à-vis the petroleum companies and achieved an increase of its revenues through a stabilized reference price at a rising sales volume.

This success would have been hardly possible if the petroleum-producing countries had not founded their own organization and given expression to a common will. In regard to this first period, however, one cannot speak of a direct influence exercised on the international petroleum price by means of a stabilized reference price, since this price helped to calculate the taxes payable to the governments of the petroleum-producing countries rather than to control the market.

During the second period, which began in the late sixties, the industrialized countries increased their demand for petroleum, whereas the supply was declining for political reasons. On the one hand, after the closure of the Suez Canal, the tanker capacity, on a medium-term basis, did not suffice for the petroleum transport due to the enforced detour round Africa. On the other hand, after the change of regime from a conservative monarchy to a progressive republic, Libya in 1969 unilaterally reduced its petroleum output by 40% in order to preserve its natural resources. In this situation OPEC succeeded in enforcing a significant increase of the reference prices on the one hand, and, after the suspension of the gold convertibility of the dollar in 1971, in their indexation as a protection of their petroleum revenues against inflation on the other.([68]) This time OPEC had also achieved a strong increase of the world petroleum price. But only since 1970, price increases have been formally decided by OPEC. Up to this date, individual Member States which were especially tough negotiators, such as Libya and Algeria, had urged the petroleum companies to accept price increases; the other petroleum-producing countries followed. The petroleum companies were now more willing to accept price increases, especially because they could be entirely passed on to the consumer countries due to the excess of demand over supply.

The beginning of the third period coincides with the Arab-Israeli War of 1973. The Arab OPEC members, all of them being members of OAPEC, unilaterally decided to reduce their petroleum output first by 5% and later by further 20%. Four Western industrialized countries (the Netherlands, Portugal, South Africa, and the United States) were no longer to be supplied with petroleum. Moreover, the Gulf States for the first time decided to raise the price for their petroleum considerably.

Only a few months later, the cutbacks in production and the embargo, which had been mainly decided and carried out by the OAPEC States, had to be revoked because the non-OAPEC members of OPEC were obstructing the embargo by supplying petroleum to the above-named countries. They also increased their prices, however, so that a uniform price front was set up. The new price level seemed insufficient to the Iranian government which was a member of OPEC, but not of OAPEC. Iran sold a part of its petroleum output in the international spot market which was very much disconcerted by the events of the third Middle East War, and so tripled the previously fixed prices. Again, the other OPEC members followed and re-established the uniform price front. The petrolum companies accepted these unilateral price decisions (which previously would have been considered impossible) without opposing any serious resistance, since they could pass them entirely on to the consumers because of the continuing shortage of petroleum.

It soin became obvious, however, that the unilaterally decided and extremely high price increases had overcharged the international petroleum market. Due to the world-wide recession, the demand was declining. On the whole, it was only a slight decrease, but nevertheless it seriously affected some Member States (for example, Libya — 30%, Kuwait — 15%). OPEC was thus confronted with the new problem of how to regulate the Member States' shares of the market. First this was to be achieved by means of prices. Thus a uniform price basis had to be calculated, a problem which had seemed less urgent at times of constantly rising prices. Out of the multitude of petroleum qualities available, the «Arabian Light» was chosen as a quality of reference. In addition, the OPEC Economic Commission was to prepare a uniform price list for the 26 hottest-selling petroleum qualities. Taking account of the costs of transport to the respective consumer countries, the commission was to calculate for each port of shipment the price which, cif port of shipment, would have led to uniform price offers for the Member States. This solution proved to be impracticable so that the Member States could have no certainty about the expected volume of their petroleum revenues. Therefore, since 1976, differences of opinion have arisen between the OPEC numbers, including those which at the same time were members.

of OAPEC. Whereas Saudi Arabia and the United Arab Emirates, on the basis of a long-range strategy, intended to use only moderate price increases as a means for encouraging the use of substitute energy, the other States, in accordance with the short-term market situation, called for higher price increases. No decision could be made since OPEC applies the principle of unanimity.(69) Thereupon, the other eleven OPEC members raised their selling-prices, thus breaking the price unity. Saudi Arabia and the United Arab Emirates refused, however, to put up with this breach. During the whole period they had been striving for a concerted action in the framework of OPEC. Their main means of bringing pressure to bear was the capability of their petroleum industry to control the supply quantities in such a way that an undesired movement of prices in the international petroleum market could be avoided or at least mitigated. Their influence also seemed to prevail when the unity of OPEC was again strongly shaken by the change of regime in Iran. From the end of 1978, Iran had temporarily failed to supply any petroleum. Thereupon, Saudi Arabia, Iraq and Kuwait raised their petroleum output in order to fill the gap in the petroleum supply and to re-establish the price unity. This aim could not be achieved. In the world petroleum market, which was very much disconcerted, every OPEC Member State was able to put its price demands through, a situation which again resulted in a new, considerable increase in prices. Until 1981, further attempts to reach an agreement were frustrated especially by Algeria, Libya and Iran.(70) The third period ended with OPEC's collapse as a «price cartel». Saudi Arabia seemed to have lost its role as a leading force in OPEC.

At present, a fourth period seems to begin which is characterized by a situation where prices are influenced through the control of supply quantities. Since 1980, three countries (Algeria, Libya and Nigeria) have separately adjusted their petroleum output to their financial needs. In the meantime, however, they were compelled to discontinue this course of action, since demand in the international market was decreasing again and prices were tending downwards.(71) Hence, some Member States tried to stabilize their revenues by selling larger quantities at a reduced price. This tough competition again brought about a downward pressure on the price level of petroleum. In

this new situation, OPEC succeeded in regaining its capacity to act. In March 1982, it decided to reduce the production in the individual Member States by different percentages in order to invert the price tendency in the international petroleum market.(72) Saudi Arabia and the United Arab Emirates, which because of their economic situation were in a better position to bear an eventual decrease in revenues, took over the highest production cutbacks.(73) It remains to be seen whether these measures will be successful.

To sum up it can be said that OPEC and OAPEC have considerably influenced the world petroleum price. Here four periods can be distinguished :

Since 1960, a stabilization of revenues, which had only an indirect and slight influence on the world petroleum price; since 1970, a sharp increase in revenues linked to a stabilization of purchasing power, which now had a more direct effect on the international petroleum prices; since 1973, the direct influencing and unilateral fixing of international petroleum prices; and finally, since 1982, the regulation of production quotas in order to prevent a fall in world petroleum prices.

On account of this uncontested influencing of the world petroleum market by OPEC and OAPEC for the benefit of their member countries, it is justified in the author's view to qualify these organizations as cartels. Their decisions, however, are not enforced by means of sanctions as could be expected by defining them as a cartel.

In formal respect it must be added, however, that some authors want to apply the term of «cartel» to private independent firms only, whereas the same way of action on the part of independent States is termed a «producer association»(74). For this reason, OPEC may be called an association of petroleum-producing countries which has succeeded in influencing the world petroleum market to its own benefit. OAPEC, which is represented in OPEC by the majority of its members and so determines its policy, de facto can be regarded as embedded in OPEC.

b) Cartel-like activities of OPEC and OAPEC : aspects of national and international law :

Having seen that, with respect to its aims and their implementation, OAPEC's and OPEC's activities have so far been focused on influencing the world petroleum market, the question now arises whether such a behaviour is admissible. This problem has to be considered at two levels, that is, from the point of view of the national anti-trust law, since interferences with the world market also influence the particular national markets, and from the viewpoint of international law as far as its principles can be applied to questions regarding the world market.

In contrast to OPEC, these questions are not often examined in publications dealing with OAPEC.(75) The reason may be that — as has been mentioned above — OAPEC has left decisions regarding the fixing of prices and quantities in the world petroleum market to OPEC. Nevertheless the question seems to be justified because seven OAPEC countries are influential members of OPEC, and the decisions of OPEC are binding on all Member States of OAPEC.(76) For this reason, what has been said with respect to the cartel like activities of OPEC for the most part also applies to OAPEC.

aa) In regard to the first question, that is, whether it is possible to take legal action against OAPEC on the basis of national law, it has to be pointed out that these rules of law only apply to market-influencing activities of private firms, but not to market-controlling associations of States. In this context it must be said that States, in contrast to private firms, are safeguarding public interests and so their influencing of the market is justified.(77) In procedural respects it is noteworthy that the principle of immunity of states prohibits the bringing of action. A similar effect is attributed to the «act of state doctrine». The criteria which underlie these arguments are highly controversial in legal literature. For the most part they were discussed in the lawcase «International Association of Machinists and Aerospace Workers v. OPEC», which was settled by a Californian court. The case wase dismissed, among other things, on account of the immunity granted to the used States. According to this sentence it is not possible ... at least in the law of the United States of

America ... to take judicial action against those acts which have been performed **iure imperii.**(78)

bb) In regard to the second question, that is, whether OPEC as an inter-governmental producer association is in keeping with the principles of international law, it must be stated that the very admissibility of the establishment of producer associations is a very controversial question. In legal publications, a distinction is made between «commodity agreements», in which the interests of both producer and consumer countries are to be taken into due account, and «producer association», which only serves to safeguard the interests of the producer countries and seek to influence the market to the disadvantage of the consumer countries.(79) In the view of the United States of America, associations of commodity producers are «cartels» which, in the last analysis, give rise to trade restrictions which are incompatible with GATT (which so far has been ratified by 87 States); according to the American position the activities of OPEC bring about such a restriction. Hence, the American «Trade Act» of January 3, 1975, provides sanctions to be applied against the Member States of OPEC and comparable producer associations (denial of the general preferences granted by the United States.(80) The American authorities are empowered to take retaliatory measures against members of a cartel in case of a damage. Thus the U.S. administration is referring only to that part of the Charter of Havana which has been ratified so far by 87 States, i.e. to GATT.(81)

On the other hand, nearly all developing countries, but also some threshold countries hold the view that GATT does not contain any provisions applicable to producer associations. They rather base their opinion on the non-ratified part of the Charter of Havana, which contains rules on Inter-Governmental Commodity Agreements, and on § 5 of the Charter of Economic Rights and Duties of States (1974), in which not only the admissibility, but also the further development of producer associations have been recommended. The importance of this provision depends, of course, on the Charter's legal binding force which still is a controversial point, however.(82)

Some States with a market economy (including Canada, Australia and some E.C. countries hold a conciliatory view on this question. Thus, Canada and Australia have tave taken part in several producer associations, while certain EC countries have engaged themselves to establish a producer association for particular nuclear substances. In the opinion of these States, an exclusive association of exporting countries is admissible in principle. This admissibility is not given, however, if the association brings about detrimental restrictions on trade. In the view of the above-named States, the conclusion of commodity agreements is admissible at any rate, because they take into account the positions of both producer and consumer countries.(83)

In fact, those who are in favour of the admissibility of unilateral associations of primary commodity producers (that is, with the consumer countries being excluded), are gaining more and more ground. As early as the years between the two World Wars, commodity agreements have been concluded which, however, remained singular measures and were not carried on in later years. At the end of World War II, an international regulation for primary commodities was called for. In contrast to the principle of free play of market forces which was proclaimed for international trade, the admission of appropriate agreements was recommended. For this reason, the Charter of Havana in Chapter VI provided a general regulation for commodity agreements, which (in contrast to OPEC) were to be concluded by mutual consent between exporting and importing countries. According to the Charter of Havana this standard of parity between the two trading partners is to be observed in all cases of international commodity control agreements, i.e. agreements which provide a control of production, a supervision of quantities of imports and exports, or a control of prices. The Charter of Havana has not been ratified so far and has not come into force. Nevertheless, its Chapter VI is of a certain importance on account of the resolution 30-IV of the UN Economic and Social Council, which advises the Member States to observe the principles set forth in Chapter VI as their guide-lines.(84)

The initiatives for the further development of international commodity control agreements launched by the UN Economic

and Social Council, namely the establishment of the Interim Coordinating Committee for International Commodity Arrangements in 1947 and of the Commission for the trade with commodities in 1954, have as yet not produced the desired result. In its original version, GATT contained no special regulation regarding primary products. In response to the convocation of UNCTAD, which marked the beginning of the development of an international trade policy for primary products, GATT was supplemented in 1964 by part IV regarding «trade and development» Although its Article XXXVIII § 2a refers to international arrangements regarding primary products, this cannot be considered a sufficient legal basis for producer associations.

Due to the lack of international market regulations for commodities, the agreements on particular commodities which have been concluded between producer and consumer countries after World War II have no common basis. At present, seven agreements of this type are in force. In addition, there are two agreements on dairy products and beef, initialled in 1979 in the framework of the «Tokyo Round» convocated by GATT, and put into force on January 1, 1980.

There are diverging opinions on the efficiency of the present commodity agreements. The developing countries are discontented with the revenues realized in the framework of such agreements. Their criticism caused the producer countries of various commodities to create producer associations (with the consumer countries being excluded) and to concentrate their efforts in UNCTAD on a global and integrated strategy regarding the world primary commodity markets.(86) OPEC is the oldest producer association and its successes have given an impetus to the establishment of further organizations of this type, including OAPEC.

To sum up it can be said that the overwhelming number of UN members favours the establishment of producer associations. The Western industrialized countries, which are few in numbers, but important with respect to their share of world trade, level their criticism especially at the trade-restricting practices brought about by these associations. The question arises, however, whether the position of the industrialized countries is

relevant in regard to international law and can offer possibilities of intervention against such measures.

The industrialized countries as bulk consumers of primary commodities are interested in maintaining a world market which gives them the possibility of purchasing the necessary quantities at calculable prices at any time. But the primary commodity producers, in principle, have the same interests; they are discontented, however, with their market power which in their view is too limited and puts them at disadvantage. The question is whether legal consequences can be derived from this interdependence in the field of world economy. The answer presumably would be negative. In the opinion of Tomuschat([86]), interdependence cannot constitute an appropriate foundation of a norm because it does not describe a behaviour of States which may be allowed or forbidden. The formulation of a rule of international customary law presupposes, however, that a precisely defined pattern of conduct corresponds with what the international community considers to be law. The general principles, such as collective economic security, common heritage of mankind, human rights and the obligation of all States to co-operate in the economic and social field, are not effective in this context as well. Not only are legal rules lacking which impose the duty to co-operate, but there is also a series of relatively well-defined rules of law which emphasize the sovereignty of the individual country in economic policy. Thus, Article 2 (1) of the Charter of Economic Rights and Duties of States of 1974 says that every State has full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

Even if, at present, an international obligation regarding a guaranteed supply of commodities in terms of quantities and prices cannot be established, the question remains whether legal action can be taken on the basis of international law against unexpected restrictions on the supply of goods, as it has been attempted by OAPEC. Although, in general legal opinion, the use of the «economic weapon» does not seem to come within the scope of the ban on the use of force laid down in Article 2 (4) of the UN Charter, it has to be examined whether a petroleum embargo amounts to a violation of the principle of non-intervention set

forth in GA Res. 2»25 (XXV). An embargo must notbe aimed at making a State «tractable». This, however, was the aim of OAPEC which intended to force certain countries to deny any further support to Israel. Even if these stipulations were reduced in so far that by such a measure a State must not extort a particular political behaviour form another State in an unconnected matter, the petroleum embargo imposed by OAPEC — according to this judgement — would still come within the scope of these provisions : the supply with petroleum and the support of a hostile country by the consumer countries may hardly be considered connected matters.

This relatively uniform legal opinion, according to which a petroleum embargo is illegal under the above-mentioned circumstances, contrasts sharply with the general embargo practice of the powerful States and organizations of States. Examples of recent years are the EEC embargo against Iran and Argentina, as well as the embargo of the United States against the USSR([87]) which also affects legally binding agreements. In view of this situation, the only possible conclusion is that OPEC and OAPEC may not be condemned on the basis of international law for their plicy of dirigism and interferences with the world petroleum market.

IV. Evaluation

OAPEC is an international, regional and specialized organization of those Arab States which produce petroleum. In three respects, however, OAPEC's scope of action exceeds that of a producer association.

Firstly, it deals with the question of how to invest the revenues from petroleum transactions profitably in the Member States. For this purpose, among other things, particular intergovernmental implementing companies have been set up.

Secondly, due to the importance of the petroleum industry of all its Member States, the Organization has become a strong political force in the world market. OAPEC is embedded in the association of petroleum producers (OPEC). Through

OPEC, it has exercised its influence and control upon the international petroleum market, and on its own it has tried to impose a petroleum embargo against particular States. On the one hand, OAPEC has been very successful in realizing its demands for price increases. Whenever the Member States of OAPEC have come to an agreement regarding the level of a price increase, they have succeeded in carrying their point in OPEC. Or the other hand, there have also been political successes in favour of the Arab States, such as the two declarations of the European Communities for a peaceful settlement of the Middle East conflict, which were made in 1973 after the oil embargo and in June, 1980, in Venice.

And thirdly, OAPEC is the first international organization with supranatioal features outside the Western industrialized countries. Among its supranational features, the function of the Judicial Board is worth mentioning. The individual States, however, still hold a strong position, which is manifested by the outstanding role of the Council of Ministers and the Executive Bureau, in both of which the Member States have an organ of constant control over the common Secretariat. The absolute or qualified right of veto attributed to the founding members points in this direction also. Due to the recent establishment of OAPEC, a balanced evaluation of the supranational development cannot yet be given. Its work in the field of harmonization of the law relating to oil in the Member States seems to be promising though.

For the future it will be important in which way the powerful States and groups of States will react to the activities of OAPEC and OPEC. From the viewpont of international law. the controversial points are not so much OAPEC's being embedded into OPEC as a producer association, but rather OAPEC's policy of exercising its influence and control on the world petroleum market, and especially the embargoes imposed against particular States. On the one hand, there are principles fo international law which might condemn the imposition of a raw-material embargo carried out with such aims as pursued by OAPEC. Other rules of international law and especially the general embargo practice of powerful States and groups of States, however, contrast with these principles and,

in the last analysis, do not justify a condemnation of OAPEC. Hence, the question arises whether an understanding may be reached regarding a political balancing of interests.

With regard to questions of petroleum policy, the International Energy Agency (IEA), set up by the most important Western industrialized countries, might be a possible partner of OAPEC. One aim might be to reach an arrangement in the form of a classical commodity agreement. It should be examined, howevr, whether IEA could take up a global dialogue without any organizational reforms within the Agency itself. Although several attempts have been made (by Japan and Venezuela, for instance), no understanding could be reached so far between the Western countries)[80]. In the near future, at least an attmpt should be made to strengthen the existing and rather informal bilateral contacts between the IEA, OAPEC and OPEC.

In regard to general political and economic questions, an institutionalized form of the so-called Euro-Arab dialogue must be taken into consideration which should be set up by the EEC and OAPEC and should be open to further participants. In its framework, especially those issues should be discussed which are and will continue to be of political importance to both sides: that is, the policy towards Israel and the imposition of embargo measures. But in this field, too, it is to the future to show whether on both sides the willingness to come to an understanding is strong enough to develop existing instruments in such a way they might contribute to an easing-off of the existing conflict of interests.

Notes

1) Strictly speaking, the efforts of the Arab League towards an Arab cooperation in the field of petroleum industry data back as early as 1951, when on recommendation of the Political Commission of the Arab League a commission of petroleum experts was established in the framework of this Organization. This commission was charged with the task of coordinating the Arab petroleum policy, of founding joint undertakings in the field of of petroleum industry and deal-

ing with the question of a petroleum boycott against Israel. It submitted several draft agreements concerning the legal provisions of this cooperation. The results of these efforts the basis of the activities of the Arab Petroleum Congress held annually since 1959. In its framework, the plans for the establishment of OPEC and OAPEC were prepared.

See Mustafa El Sayed, L'Organisation des Pays Exporteurs de Pétrole (Paris : 1967), p. 124 ff. ; Mohamed Ali Al Saqqaf, L'Organisation des Pays Arabes Exportateurs de Pétrole (unpublished thesis for the degree of Doctor of Law, Université Paris I : 1977), p. 8 ff.; Yakan Les Congrès Arabes du Pétrole (doctoral thesis, Lausanne: 1977), p. 188 - 189, 252.

In addition, by a resolution of the Council of the Arab League of January 25, 1956, a subordinate office for questions of petroleum matters was established (Bureau du Pétrole), which in 1959 was transformed into a Department for Petroleum Questions. In 1959, it was charged with the task of gathering all data concerning the petroleum industry in the Arab countries and making them available to the Commission. An English translation of the OAPEC Agreement was published under the title «Agreement of the Organization of Arab Petroleum Exporting Countries», Kuwait. A French translation was made by Abdelkader Maachou (see note 26).

2) As far as OPEC in general is concerned, see El Sayed, op. cit., (note 1), p. 124 ff.; Kuhayr Mikdashi/Avi Shalim, OPEC and the Politics of Oil, in International Organisations in World Politics, Yearbook 1975, edited by Avi Shalim (London : 1976), p. 133 ff.; Zuhayr Mikdashi, The International Politics of Natural Resources (Ithaca/London/1976), p. 51 - 81. The Member States of OPEC belong to different regions (Africa : Gabon and Nigeria; Latin America : Venezuela and Ecuador; Middle East : Saudi Arabia and Iraq; Asia : Iran and Indonesia).

3) This plan was developed in March 1965 by the resolution for the foundation of an «Arab Petroleum Organization» (AOP),

adopted by the 5th Arab Petroleum Congress organized by the Arab League (third recommendation). It is based on a study carried out by the United Arab Republic (Egypt). See Mahmud Rushdi, Tatawur saytarat ad-duwal al-'arabiya al-muntiga alâ tharawatiha an naftiya, in Asâsiyât sinâ atan-naft wa-l-gaz (1977), Vol. 3, p. 47 ff-; Dirâsat masrû' manuzama 'arabiya lil-bitrôl, ibid., p. 9; 'Adel Amîn Hânki, Munazamat al-aqtâr al-'arabiya al-mussadira lil-bitrôl wa-dawruha fi l-'alâqat ad-dawliya (1968-1977), (unpublished thesis, University of Cairo, Kuliyat al-iqtisâd wa-'l-'ulûm as-siyâssiya (qism al-ulûm as-siyâsiya), p. 59-60; Gamil Yakan, op. cit., (note 1), p. 241, 252, 363.

4) See Salah El-Gebali, Die OAPEC als Organization zur Interessenvertretung der Arabischen Olländer in den intrenationalen wirtschaftlichen Beziehungen (Francfort on Main/ Bern 1981), p. 30; Al Saqqaf, op. cit. (note 1), p. 89-90; Hânki, op. cit., (note 3), p. 62 ff.

5) More precisely : since the 14th OPEC Conference held in Vienna in November, 1967; see Al Saqqaf, op. cit., (note 1), p. 16.

6) See El-Gebali, op. cit., (note 4), p. 30 ff.; Al Saqqaf, op cit., (note 1), p. 33.

7) See Hânki, op cit., (note 3), p. 95 ff.; Al Saqqaf, op. cit., (note 1), p. 34 f. At the time when Egypt and Syria became members of the Organization, their oil revenues did not constitute a significant part of their national incomes.

8) Year of accession : Algeria : 1970; United Arab Emirates: 1974 (superseding the membership of Abu Dhabi of 1970): Bahrain : 1970; Qatar : 1970; Iraq : 1972; Egypt : 1972; Syria : 1972; Tunisia : 1982. Further potential members could be Oman and the Sudan.

9) The decisions taken by OAPEC are kept secret. Occasionally, the international press is given some general information. The most important information about what can be considered the Organization's official attitude is given in

the annual report, issued with the consent of the Council of Ministers.

10) See Malka Abdallah -Itai, L'Organisation des Pays Arabes Exportateurs de Pétrole; Etude institutionnelle et juridique (unpublished thesis for the Doctorat de Spécialité en Administration Internationale, Université de Paris-Panthéon-Sorbonne :1980), p. 99 ff.; Al Saqqaf, op cit., (note 1), p. 260 ff.; El-Gebali ,op. cit., (note 4), p. 99 ff.; Hânki, op. cit., (note 3), p. 131 - 132.

10) See Malka Abdallah-Itia, L'Organisation des Pays Arabes et Etudes Politiques No. 4122 - 4134 of November 15, 1974, p. 10; B. Bolleker-Stern, L'OPEC et la crise de l'énergie, in La crise de l'énergie et le droit international, Colloque de Caen (Paris : 1975), p. 49 - 50.

12) For the resolution of 1973, see Al Saqqaf, op. cit., (note 1), p. 3»» ff.; for the legality of this measure according to international law, see I. Shihata, The case for the Arab Oil Embargo, Institute of Palestinian Studies (Beirut : 1975); J.J. Paust/A.P. Blaustein, The Arab oil weapon, a threat to international peace, A.J.I.L. (1974), p. 10 ff.; Ch. Rousseau, Légalité douteuse au regard du droit international de la politique pratiquée depuis le 17.10.1973 par les Etats Producteurs de Pétrole, in Chronique des faits internationaux, RGDIP (1964), p. 1126 ff.

13) The following figures may serve as a gundeline ·

COUNTRY	EXPORTS OF OIL AND NON-OIL GOODS AND OF SERVICES, 1981 (Million dollars)	IMPORTS OF GOODS AND SERVICES, 1981 (Million dollars)		INHABITANTS (Millions) (1980/81)
Algeria				
Oil	10820	Goods	9665	17.8
Non-oil	974			
Services	710	Services	4833	
Bahrain				
Oil	3882	Goods	3715	0.4
Non-oil	465			
Services	774	Services	929	
Egypt				
Oil	2742	Goods	7918	42.3
Non-oil	1278			
Services	2938	Services	3385	
Iraq				
Oil	10388	Goods	16100	13.1
Non-oil	142			
Services	424	Services	6601	
Kuwait				
Oil	14915	Goods	5705	1.4
Non-oil	2649			
Services	10384	Services	3687	
Libyan AJ				
Oil	15650	Goods	13933	3.4
Non-oil	8			
Services	1619	Services	4107	

COUNTRY	EXPORTS OF OIL AND NON-OIL GOODS AND OF SERVICES, 1981 (Million dollars)	IMPORTS OF GOODS AND SERVICES, 1981 (Million dollars)		INHABITANTS (Millions) (1980/81)
Qatar				
Oil	5316	Goods	1362	0.2
Non-oil	375			
Services	...	Services	....	
Saudi Arabia				
Oil	113227	Goods	30142	8.5
Non-oil	101			
Services	14918	Services	37637	
Syria				
Oil	1285	Goods	4767	9.0
Non-oil	818			
Services	454	Services	1192	
Tunisia				
Oil	1331	Goods	3627	6.3
Non-oil	1150			
Services	1183	Services	978	
UAE				
Oil	18761	Goods	8771	1.0
Non-oil	1497			
Services	....	Services	....	

Sources: Organization of Arab Petroleum Exporting Countries: Secretary General's Ninth Annual Report AH 1402: AD 1982 (Kuwait: 1983). - D. Nohlen, F. Nuscheler (eds.), Handbuch der Dritten Welt. Vol. 6: Nordafrika und Naher Osten, second edition (Hamburg: 1983).

The extent of balance-of-payments surpluses per head of population indicates which Member States can bear a decrease in the revenues from petroleum exports without any limitation of its economic efficiency.

14) For the admission of associated members in OPEC which can take part in meetings and discussions without, however, having the right to vote, see El Sayed, op. cit. (note 1), p. 162.

15) For OPEC ,see Article 8 of the OPEC Statute which regulates th qustion of withdrawal; se also El Sayed, op. cit. (note 1), p. 163.

16) See El-Gebali, op. cit., (note 4), p. 52 ff.

17) See Article 10 of the OAPEC Agreement.

18) For the voting majority required, see Article 7 (3) and Article 11 (c - e). In OPEC, however, unanimity is required; see El Sayed, op. cit. (note 1), p. 167f. For the voting majority required in procedural questions, see Article 27 (2) of the UN Charter.

19) See Al Saqqaf, op. cit., (note 1), p. 256 ff. providing various examples.

20) See Article 15 of the OAPEC Agreement.

21) See Article 16 of the OAPEC Agreement.

22) So far, the following Secretary Generals have been in office: Ahmad Kaki al-Jamani from Saudi Arabia, 1968 - 70; Suhail Saadawi from Libya, 1970 - 73; Ali Ahmad Attiqa from Libya, since 1973.

23) The «Fonds Arabe de Développement Economique et Social» (FADES) is attached to the Arab League. FADES and and OAPEC agreed by exchange of letters that the former in to accept responsibility for the administration of these funds. See Al Saqqaf, op. cit., (note 1), p. 415 ff. For

instance, in its meeting on September 10, 1974, in which also the Secretary General of OAPEC took part, the Administrative Council of FADES granted interest-free loans to the amount of 80million $ to Arab petroleum-importing countries (which are to be paid back after 10 years within another 10 years) : Mauritania : 4.7 millions; Sudan : 37.5 millions; Somalia : 7.3 millions; North Yemen : 11 millions; South Yemen : 11.3 millions; Morocco : 8,2 millions. Only Lebanon and Jordan did not obtain any financial aid, the former because of its favourable financial situation, and the latter because of oil supplies obtained free of charge from Saudi Arabia.

24) Examples of «ad hoc» commission established by the Council of Ministers are the commissions for the harmonization of the law governing petroleum transports at sea, for questions of refinery and for questions of petroleum protein. See Al Saqqaf, op. cit. (note 1), p. 195f.; Hânki, op. cit. (note 3), p. 119 f.

25) See Muhammad Yûsuf 'Elwâan, al-Hai'a al-qada'ya li-munazzamat al-aqtar al-'arabiay al-mussaddira lil-bitrôl «OAPEC», aw-wal mahkama 'arabiay mutahasisa, in Magallat al-huqûq wa-l 'sarî'a (Kuwait : 1981), p. 149 ff., 153. Hâlid as-Sawi, al-Hai'a al-qada'iya li-munazamat al-aqtar al-'arabiya al-mussaddira lil-bitrôl, in an-Nafat wa-l-tawun al-arabi (1981), p. 25ff.

A comparable institution was the Court of Justice for Central America which had been established as a «regional» tribunal on the basis of a treaty concluded on December 20, 1907, between Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador, but which stopped working after about ten years. See Aguyen Ouoc Dinh/Patrick/Daillier/Alain Pellet, Droit International Public (2nd edition, Paris : 1980), p. 825 f.

The establishment of a similar court is provided for in Article 11 of the founding treaty of the Economic Community of West African States (ECOWAS); as yet it has not been set up, however. See J.-Cl. Gautron, La commu-

nauté économique de l'Afrique de l'Ouest, antécédent et perspectives, in Annuaire Français de Droit International (1975), p. 197ff.; S.A. Akintan, The Law of international economic institutions in Africa (Leiden : 1977), p. 187, who points out that it is not clear whether the tribunal mentioned in Article 11 has a judicial or a merely administrative function. This depends on its composition and its procedural rules. Since 1963, there have been plans to establish such a tribunal also in the framework of OPEC; see J. Vafai, Conflict Resolution in the International Petroleum Industry, in Journal of World Trade Law (1971), p. 441ff. and OPEC resolution No. 16 - 20 of 1968; see International Legal Materials (1969), p. 1168.

According to Article 16 b (iii) (2) of the Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait) concluded in 1978 a Judicial Board comparable to such tribunals is provided for, but it has not been set up so far. The efforts towards the foundation of a tribunal in the framework of th Arab League, which date back as early as 1950, still continue. Recently a draft statute was drawn up in connection with a draft charter of the Arab League which is intended to replace the existing charter that needs to be revised.

26) See Article 43 of the Protocol which is considered a component part of the founding agreement (Article 35 of the agreement, Article 42 of the Protocol). Its revision is thus subject to the rules which apply to the founding agreement. It took several years to draw up the Protocol due to existing differences of opinion regarding the mandatory jurisdiction of the Judicial Board and the binding force of its decisions. See M.Y. 'Elwâan, op. cit., (note 25), p. 150. When the founding agreement was drawn up, there have also been differences of opinion on the question of whether a permanent and independent court should be established, or rather a court of arbitration. Finally, the first solution was given preference; see Tabrizi Bensaleh, Note sur le Protocole relatif à la création d'un organe judiciaire au sein de l'OAPEP, in: Annuaire Français de Droit

International (1979), p. 293 f. A French translation of the OAPEC Agreement and the Protocol of 1978 is to be found as an annex in : Abdelkader Maachou, L'OAPEP et le pétrole arabe (Paris : 1982), p. 153 ff.

27) For the rules concerning the revision of the Statute of the International Court of Justice, see its Article 69. As-Sawi, op. cit., (note 25), p. 28.

28) See Articles 4, 5, and 6a of the Protocol. The proposed judges are to be Arab citizens. According to this , the Member States can also propose Arab citizens for judges who do not have their own nationality. In contrast to Article 4 of the Statute of the International Court of Justice, the Protocol does not recommend that the governments should hold consultations with their Highest Courts or the Faculties of Law about the candidates to be proposed.

The Secretary General has the right of proposing candidates, too, if the Member States have not recommended the necessary number of candidates. The Council of Ministers is bound to follow the proposed list of candidates. It can refuse all proposed candidates, however, so that the Member States or the Secretary General have to submit a new list. It is admissible to propose the same person a second time.

29) See Article 7 of the Protocol. This Article and Article 40 differ in regard to their contents. The former is based on a three-year term of office for half of the judges who are the first to be nominated after the establishment of the Board, whereas in Article 40 the whole number of these judges is mentioned.

30) See Article 12 of the Protocol and Article 3 of the Statute of the Court of Justice of the European Communities.

31) See Articles 16 and 17 of the Protocol and Article 5 of the Statute of the Court of Justice of the European Communities. The Protocol of the Judicial Board does not provide

that the immunities granted to the judges are also extended to the chacellor and the employees during their terms of office, as well as to witnesses and experts.

32) See Article 18 of the Protocol and Article 7 of the Statute of the Court of Justice of the European Communities.

33) See Article 4 for the Statute of the Court of Justice of the Eurapean Communities.

34) See Article 11 of the Protocol; an exception regarding full-time employment is mentioned in Articles 40-41 for for those judges of the Judicial Board who are the first to be nominated after the establishment of the Board.

35) See Articles 10 and 20 of the Protocol.

36) See Articles 22 and 23 of the Protocol.

37) See Article 19 of the Protocol.

38) Article 33 of the Protocol; see also the regulation of the Court of Justice of the European Communities which does not allow the deliverance of divergent opinions.

39) The rejection of the institution of ad hoc judges follows from Article 8 of the Protocol, according to which a Member-State is not allowed to demand a change in the composition of the Judicial Board because of the nationality of a judge or the absence of a judge who is a national of this Member State. In accordance with Article 31 of the ICJ Statute, Saudi Arabia had opted for such a regulation, but was defeated. See M.Y. 'Elwâan, op. cit., (note 26), p. 156f. and note 20; in its note of August 7, 1973, Algeria had voted for the rejection; see Al Saqqaf, op. cit., (note 1), p. 215, note 1.

40) In Article 24 of the Protocol which, with the exception of a few comments, contains the rules given in Article 23 of the OAPEC Agreement, there are still some uncertainties regarding the jurisdiction of the court, since the Member-

States did not come to an agreement about the Judicial Board's jurisdiction. They thus accepted a general version of this rule so that the Protocol could be passed. See M.Y. 'Elwâan, op. cit. (note 25), p. 164 - 165. This combined jurisdiction thus represents a synthesis of the regulation for the International Court of Justice (principle of States' consent) and for the Court of Justice of the European Communities (principle of mandatory jurisdiction). See Article 31 EKGSV, 164 EuGVerf., 136 EAGV and Article 36 of the ICJ Statute.

This restriction was made as a concession to some Member States which had spoken out against a mandatory jurisdiction, particularly in the field of the petroleum industry. The delegate from Iraq in particular had made his objections in October 1974 when the draft version of Article 23 was discussed. He said that the jurisdiction prescribed in Article 23 was incompatible with the Constitutions of the Member States. He added that it exceeded the jurisdiction given to other international courts.

See Al Saqqaf, op. cit. (note 1), p. 223ff.; generally for the objections raised against mandatory jurisdiction : As-Sâwi, op. cit., p. 44.

41) The jurisdiction exercised due to assignment by the Council of Ministers is not clearly formulated, a fact which will make its interpretation difficult. As-Sâwi, op. cit. (note 25), p. 44, hopes that these uncertainties will be eliminated by the procedural rules for the Judicial Board which are still to be enacted.

The persons who are entitled to refer to the Court are not obliged, however, to do so if they have found another way of settling their dispute (preamble of the Protocol).

See also Article 95 of the UN Charter. Different rules are in force within the European Communities (Article 87 EGKSV, 87 EECT and Article 219 EAGV).

42) A dispute arising between two companies established under the auspices of OAPEC on questions concerning the application and fulfilment of the duties resulting from the OAPEC Agreement is hardly conceivable, since the Agreement deals primarily with the structure of the Organization and the duties of the Member States. In this framework, however, the responsibility of the Judicial Board for the interpretation and application of contracts which affect the companies concerned should have been regulated. See M.Y. 'Elwâan, op. cit., (note 25), p. 172. For instance, disputes between those companies about the definition of their respective activities are well imaginable. In my opinion, these cases are not within the jurisdiction according to Article 24 (1) (a) of the Protocol. For a different opinion See M.Y. 'Elwâan, op. cit. (note 25), p. 172.

43) Reference to the Judicial Board is to be considered a decision on a procedural question which can be taken, according to Article 11 of the OAPEC Agreement, by a simple majority of the votes; see as-Sâwi, op. cit. (note 25), p. 45; for a different opinion see M.Y. 'Elwâan, op. cit., (note 25), p. 175, who considers it a decision on non-procedural questions which has to be taken by majority of three quarters of the votes, including those of at least two founder members.

44) A permision is not required in the rules concerning the International Court of Justice; in impairs the independent work of the Judicial Board. The other rules given in the Protocol, however, are very similar to the corresponding rules of the EuGH State, as, for example : commencement of an action (Article 28), the official language and permission of foreign languages (Article 29), legal representation of the parties, their rights and their duties (Article 30), written and oral form as well as motions for closed session (Article 32), quorum and delivery of dissenting opinions in case unanimity has not been reached among the judges, particulars to be contained in the judgement (Article 34), default judgements, reopening of a case (Article 36), entry of a member into a dispute pending in court (Article 38), temporary injunction (Article 37).

45) In cases of optional jurisdiction, the Judicial Board has more or less the function of a court of arbitration.

46) See article 25 of the Protocol. The OAPEC Agreement does not contain any rules concerning the authority of experts. For the limitation of this authority to legal questions, also in the International Court of Justice, see Article 96 of the UN Charter. The organs of OAPEC and the companies established in its framework can request at the Council of Ministers the reference of a legal question to the Judicial Board for the experts observation. According to M.Y. 'Elwân's opinion, op. cit., (note 25), p. 179 f., the Council of Ministers could even permit this reference in advance and in general for all cases to be considered in the future. In contrast to the rules of the International Court of Justice, this general regulation does not apply, however, to the Member States of the Organization. These States must have their application for the experts' observation confirmed by the Council of Ministers or take legal action.

47) See M.Y. 'Elwân, op.cit. (note 25), p. 180; for a different opinion see As-Sâwi, op. cit., (note 25), p. 48, who considers the experts' observation as binding for OAPEC, its organs, the companies established under its auspices and the country applying for this measure. In contrast to the International Court of Justice, request for an opinion is made mandatory in certain cases at the Court of Justice of the European Communities (Article 95 (4) EGKSV), and the opinion delivered is binding even in those cases where reference to it is only made optional (Article 288 (2) EECT); see L.-J. Constantinesco, Das Recht der Europäischen Gemeinschaften, Vol. I (Baden-Baden 1977), p. 804 ff.

48) Article 26 of the Protocol and Article 6 of the OAPEC Agreement.

49) Article 36 of the OAPEC Agreement.

50) Article 4 (1) of the OAPEC Agreement.

51) Brotokoll bi-hasânâat wa-imtiyâzat minazmat al-aqtâr al-arabiya al-mussaddira lil-bitrôl wa-numwaezafîha. The Protocol was passed in the third session of the Council of Ministers of OAPEC on July 11, 1969, and signed the following day by the three founding members; see Al Saqqaf, op. cit. (note 1), p. 153. On June 24, 1965, OPEC concluded an agreement with Austria, the State in which it located and which is not a member of OPEC, regulating the privileges and immunities of this Organization. Kuwait, the country where OAPEC is located and which is also a member of OAPEC, has not concluded such an agreement so far. Thus the Protocol of 1969 remains the only law applicable to OAPEC. See for this agreement between OPEC and Austria, El-Sayed, op. cit. (note 1), p. 153 ff. In contrast to the Agreement on Privileges and Immunities of the Arab League (Convention concluded May 10, 1953), reservations relating to the OAPEC Protocol of 1969 are not permissible (Article 7 of the OAPEC Agreement). Egypt, where the Arab League was located at that time, has made reservations relating to the Convention of 1953, especially to Article 11 (1) according to which particular categories of civil servants were exempted from military service.

52) See for the United Nations as a party in the Convention on Privileges and Immunities of 1946, which has been signed by the Member States, the declaration of the legal adviser of the General Secretariat in the 1016th session of the Sixth Commission (UNO-Doc. General Assembly, 22 Session, Annexe, Item 98 of the Agenda, doc. A/C. 6/385.

53) See for the different definitions of the (bait al-mâl» (public treasury, fiscus), N.P. Aghnides, Mohammedan Theories of Finance (reprint, Lahore : 1961), p. 421 ff.; contributions by N.J. Coulson, B. Lewis and R. Le Tourneau sub «Bayt Al-Mal» in The Encyclopaedia of Islam, new edition, Vol. I (London : 1960).

54) See Muhammad Abû Zahra, at-Takâful al-igtimâ, fi 'l-islàm, Cairo, Dar al-fikr al-'arabî, p. 27 ff.; 'Abd as-Salâm Dawûd al-Abâdi, al-Milkiya fi 'Isharî'a al-islâmia (Amman:

1974), Part I, p. 364 ff.; 'Ali al-Hafif, al-Milkiya fi 'l-sarî'a al-islâmiya, vol. I (Cairo : 1966/67), p. 49 ff.; Vol. II (Cairo : 1969), p. 145 ff.; Muhammad al-Muzaffar, Ihyâ' al arâdi al-mawât (Cairo : 1972), p. 248 ff.; Abdul Hamid Ahdab, Le régime juridique du pétrole en Arabie Saoudite (Beirut), p. 76 ff. The differences in opinion between the Malekit law school and the other Sunnite schools of law are not considerable in the final analysis, since all law schools agree that the territories conquered by the Moslems (as, e.g., Egypt, Iraq, Persia, North Africa) are public property and not property of private owners, with the exception of houses and shops. See Abu Zahra, op. cit., p. 29 f.

55) For particular rules in Islamic law relating the question of territory and sovereignty, see M. Flory/R. Mantran, Les régimes politiques des Pays Arabes (Paris : 1968), p. 316 ff.; M. Flory, La notion du territoire arabe, Annuaire français de droit international (1957), p. 73; H. Krüger, Fetwa und Siyar (Wiesbaden :1978), p. 17 ff.; 89 ff.; for a support of their view, Mauritania and Morocco referred to the Islamic conception of territory and sovereignty expressed in the legal opinion given by the International Court of Justice about the Western Sahara, see. M. Flory, L'avis de la Cour Internationale de Justice sur le Sahara Occidental, Annuaire Français de Droit International (1975), p. 256 ff., 271 ff.; Jean-François Prévost, Observations sur l'avis consultatif de la Cour Internationale de Justice relatif au Sahara occidental, Journal du Droit International (1976), p. 831 ff.; (842); the Islamic conception of an inviolability of diplomatic missions and their members was cited by Tarazi in his dissenting vote given in the decision of the International Court of Justice of May 24, 1980 relating to the United States Diplomatic Staff in Teheran, I.C.J. Reports 1980, p. 59 f.

55a) For the question of whether, according to valid international law, there is a legal obligation to grant development aid, see A. Bleckmann, Anspruch, auf Entwick-lungshilfe? Verfassung und Rech in Übersee (1979), p. 5ff.; W. Benedek, Entwicklungsvolkerrecht — neuer Bereich oder neue Perspektice (Gestalwandel) im Volkerrecht ? in Reformen

des Rechts, Festschrift zur 200-Jahr-Feier der Rechtswissenschaftlichen Fakultät der Universität Graz (Graz : 1979), p. 881 ff. with further references.

56) See Hânki, op. cit. (note 3), p. 309ff. The relevant Article 2 (b) of the OAPEC Agreement does not speak of the harmonization as such, but of measures appropriate for a harmonization of the legal systems which are to be taken in so far as required by the activities of OAPEC. The pursued aim of a harmonization of legal systems is a difficult task to achieve, since the laws relating to of the OAPEC members differ considerably from each other, see Muhammad Halîl Halîl, Tatawur at-tasri 'at an-naftiya fi l-'âlam al-'arabi ,in Assâiyât Sinâ'at an-naft, Vol. 3 (Kuwait : 1977), p. 103ff. In November, 1967, the Arab League has elaborated a draft version of the principles of a uniform law relating to the petroleum industry.

57) See El Gabali, op. cit., (note 4), p. 132.

58) See Hânki, op. cit., (note 3), p. 252 ff. : 256 ff.; 272 ff.; 281ff.; 287ff.

59) See Ahmad Qismat al-Giddâwî, as-Sarikât al-'arabiya al-munbythiqa 'an muazzamat al-aqtâr al-'arabiya al-mussadira lil-bitrôl, in Assâsiyâat Sina'âtan-naft, Vol. 3 (al- Kuwait : 1977), p. 68ff.; A. Kesmat Al Geddawy, The Arab Companies established under the auspices of OAPEC, in Petroleum and Arab Economic Development (Kuwait : 1978), p. 129ff.; Nûr ad-Dîn Farrâq, Dawr as -sarikât al-munbathiqa 'an munazamât al-aqtâr al-'arabiya al-mussadira lil-bitrôl, in Dirâasât fin sinâa'at an-naft al-'arabiya, OAPEC (Kuwait : 1981), p. 236ff.; H. al-Gazi, Siyag at-a'âwun al-iqtisâdi al-'arabi fi-'l-amgâl an-anafti, Magallat an-naft wa-'lt'âwun al-'arabi (1977), p. 48ff.; Mohamed Al Saqqaf, Les entreprises communes créées au sein de l'O.P.A.E.P., in Annuaire Français de Droit International (1977), p. 709ff.

60) See Article 6 of the founding agreements of AMPTC and ASRY.

61) See Article 6 and 8 of the founding agreements of APIC and APSC respectively.

62) Article 9 of the founding agreement.

63) Al Saqqaf, op. cit., (note 59), p. 720.

64) See Article 4 of the OAPEC Agreement.

65) See the Protocol of July 21, 1969.

65a) The formation of a bloc of the conservative countries is to be expected at present as a consequence of the establishment of the Council for the Cooperation of the Gulf States in 1981.

66) The lack of an agreement on a common petroleum policy in OAPEC is due to the following difference : the political regimes (progressive/conservative, pro-Western/anti-Western), the economic and financial structures (diversified/non-diversified production, balance of payments surpluses/deficits), the demographic situation (overpopulated/under populated), and the geographical position (small/large distance to the European consumer countries). These differences have their impact, e.g., on the countries's absorptive capacity in using petroleum revenues for the economic development on the country, in their dependence on foreign workers and on transport facilities leading through transit countries (e.g. Suez Canal, Syria). In addition, many Member States have not developed a coherent national petroleum policy of their own.

67) See for the price development L. Mihailovitch/J.J. Pluchart, L'Organisation des Pays Exportateurs de Pétrole (O.P.E.P.), (Paris : 1980), p. 19ff.; Nirou Eftekhari, Crise pétrolière et guerre économique, in Peuples Méditerranéens (1982, No. 19), p. 69ff.; B. Bollecker-Stern describes also the way the respective countries exercise a control over their petroleum production, a fact which improves the possibilities of influencing prices. The Member States gained control over their petroleum production by means of nationalisation measures (Algeria, Iraq and Libya) or

by agreements concluded with the big oil companies who were holding the concessions (Kuwait, Saudi Arabia, and Qatar). The agreement concluded in New York in 1971 prescribed the assumption of control over the oil production step by step in the period up to 1982. This agreement was outdated, however, by the dramatical events of the year 1973. B. Bollecker-Stern, Problèmes récents du droit pétrolier, in Droit économique, edited by Ch. Rousseau and Prosper Weil (Paris : 1978), p. 6ff.

68) Two agreements on the indexation of petroleum prices were reached on January 20, 1972, and June 2, 1973, in Geneva. See B. Bollecker-Stern, op. cit. (note 67), p. 24f.

69) See the results of the Doha Conference of December 1976, Mihailovitch/Pluchart, op. cit. (note 67), p. 45ff.

70) See Mihailovitch/Pluchart, op. cit., (note 67), p. 53ff.; and for the influence exercised at that time : Noreng. Le marché pétrolier et le rôle croissant des pays producteurs arabes, in Le Monde Diplomatique (September, 1981), p. 4-5.

71) See Neue Zürcher Zeitung, January 22, 1982, p. 13.

72) See Neue Zurcher Zeitung, March 27, 1982, p. 14.

73) Saudi Arabia regards the fixing of production quantities as a question of national sovereignty and thus declares its reduction in output as a voluntary measure rather than a consequence of the production quota agreed upon at the OPEC Conference in Vienna.

74) See generally for the producer association, G. Fischer, Les Associations d'Exportateurs de Produits de base, in Annuaire Français de Droit International (1976), p. 528ff.; Chr. Tomuschat, in International Encyclopaedia of Comparative Law, Vol. XVII (State and Economy), (Tubingen/Alphen a/d Rijn : 1982), sub International Commodity Agreements, p. 65ff. No. 7, 25, 40ff.; Martin/Osberg, Producer Cartels : Trade Unions of the Third World, in The Internatioal Law

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75) B. Bollecker-Stern, L'O.P.E.P. et la crise de l'énergie, in La crise de l'énergie et le droit international (Paris : 1976), p. 76ff. ;D. Carreau/R. Juillard/Th. Flory, Droit international économique, second edition (Paris : 1980), p. 328 ff.; M. Flory, Droit international de développement (Paris : 1977), p. 292; Horstmann, Der Drang sub Rohstoffkartell, die OPEC als Vorbild internationaler Produzenten-Organisationen?) Europa-Archiv : 1974), p. 738ff.; Abder-rahmane Khene, Die Krise aus der Sicht der OPEC, in Erdöl und internationale Politik, edited by W. Hager (Munich : 1975), p. 19. The «Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practice», elaborated by UNCTAD and passed by the United Nations General Assembly on December 16, 1980 (UN Doc. A/RES/35/36), explicitly excludes intergovernmental agreements and restrictive business practice directly resulting from them from its scope (Section B ii 9).

See H. von Kahn, Kodex der Vereinten Nationen gegen Wettbewerbsbeschrankungen im internationalen Handel — Chancen und Risiken, in Wettbewerbsordnung und Wettbewerbsrealität, Festschrift für Arno Sölter zum 70. Geburtstag (Cologne : 1982), p. 374ff. Fikentscher/Straub, Der RBD-Kodex der Vereinten Nationen : Weltkartellrichtlinien — part 2 (GRUR International : 1982), p. 729f. The consideration of the general principles of the Code agreed upon by the States (section 9 of the Preamble, B (i) 3, B (ii) (6-7) sets bounds to the exception given in Section B (ii) 9.

The «Guidelines for Multinational Enterprises» of the OECD of the year 1976 (§ 1 Compétition), which do not have a legally binding character as well, are applicable, however, in principle to intergovernmental agreements. See Fawcett/Parry, op. cit. (note 75), p. 136. For the application of competition and cartel law to economic activities of the German authorities, see P. Ulmar, Die Anwendung von Wettbewerbs- und Kartellrecht auf die wirtschaftliche Tätigkeit der offentlichen Hand beim Angebot von Waren oder Dienstleistungen, ZHR (1982), p. 466ff.

76) See Article 3 of the OAPEC Agreement.

77) See El Gebali, op. cit., (note 4), p. 120f.; P. Fischer, Rohstofflenkung und Monopolisierungstendenzen im internationalen Wirtschaftsrecht, Osterreichische Zeitschrift für Wirtschaftsrecht (1976), p. 71; G. Fischer, op. cit. (note 74), p. 540f.; M.H. Arsanjani, International regulations of internal resources (University Press of Virginia/Charlotte-ville : 1981), p. 479ff.; J.E.S. Fawcett/A. Parry, Law and International Resources Conflicts (Oxford : 1981), p. 126ff.; instructive and critical for the qualification of OPEC as a cartel : Salah El Serafy, The Oil Price Revolution of 1973 - 1974, in OPEC : Twenty Years and Beyond, edited by Ragaei El Mallakh (London : 1982), p. 113ff., 125ff.

78) 477 F. Supp. 553 (C.D. Cal. 1979). The sentence was upheld by the US Court of Appeals, but the argument given was different — «act of state doctrine» instead of «sovereign immunity», the argument given by the first instance. See 649 F. 2nd 1354 (9th Cir. 1981), and the informative comment by C.A. Corcoran, IAM v. OPEC : Commercial activity — One factor in a balancing approach to the Act of State Doctrine, in Law and Policy in International Business (1982), p. 215ff. For the sentence given by the first instance, see Stanley E. Hilton, IAM v. OPEC : The Demise of the restrictive theory of sovereign immunity and of the extraterritorial effect of the Sherman Act against foreign sovereigns, in University of Pittsburgh Law Review, Vol. 41 (1980), p. 841ff.; Lawrence Crocker, Sovereign Immunity and the suit against OPEC, Case Western

Reserve Journal of Internal Law, Vol. 12 (1980), p. 215ff.; Ibrahim Mustafa Makarim, al-Hawiyya al-qanuniya lil-ubik, Magallat idarat al-'fatwa wa-tasri' (Kuwait : 1981), No. 1, p. 171ff.; David D. Williams, OPEC's status under US Antitrust Law : An application of the Foreign Sovereignty Immunities Act, Houston Journal of International Law (1980), p. 115'f. D. Schloss, «Commercial Activity» in the Foreign Sovereign Immunities Act of 1976, in Journal of International Law and Economics, 14 (1979), p. 170ff. For the two decisions and the definition of both sovereign immunity and State doctrine, see M. Sornarajah, Problems in applying the restrictive theory of sovereign immunity, ICLQ (1982), p. 677ff.

79) See Tomuschat, op. cit., (note 74), p. 54ff., No. 14ff.; P. Fischer, op. cit., (note 74), p. 67ff.; Nguyen Qoc Dinh/ Patrick Daillier/Alain Pellet, Droit international public, second edition (Paris : 1980), No. 691ff.; D. Carreau/ P. Juillard/Th. Flory, op. cit., (note 77), p. 318ff.; M. Flory, op. cit. (note 75), p. 290ff.

80) See 19 U.S.C. § 2562b) 2) (Trade Act of 1974); Fawcett/ Parry, op. cit. (note 75), p. 127 note 9; for the limited importance of this measure for the Arab members of OPEC and the sharp reaction shown by Venezuela and Ecuador, see «Amendment of Generalised Tariff Preference Provisions of Trade Act supported by Department (of State)», Statement of Deputy Secretary Rebort S. Ingersoll, made before the Subcommittee on Trade of the House Committee on Ways and Means, in Dep't State Bult., Vol. LXXII, No. 1876 of June 9, 1975, p. 773.

81) Among the OPEC countries, Kuwait, Indonesia, Nigeria and Gabon are members of GATT, Algeria, Bahrain and Qatar are de facto members.

82) See D. Carreau/P. Juillard/Th. Flory, op. cit., (note 75), p. 331f.; according to Tomuschat, Article 5 does not represent a deviation from traditional international law; for this reason, comments on the legal obligation of the Charta in connection with this article (Internationale

Abhangigkeiten im Rohstoffbareich, in : Völkerrecht und Internationale wirtschaftliche Zusammenarbeit, edited by W.A. Kewenig, Berlin : 1978, p. 158); for the conception of consumer association represented in the UN General Assembly by the United States, the Federal Republic of Germany and Australia, see Francis, op. cit., (note 74), p. 746f.

83) See D. Carreau/P. Juillard/Th .Florry, op.cit. (note 75), p. 319.

84) See ECOSOC Res. 30 (IV) of March 28, 1947, Resolutions adopted by ECOSOC during its Fourth Session, Doc. E/43713.

85) For the decisions of UNCTAD, see G. Fischer, op. cit. (note 74), p. 534ff. and the resolutions of the OAU of January 15, 1971, of the Conferences of the Non-Allied Countries (III. Lusaka 1970; IV. Algiers 1973; V. Colombo, 1976) and the Programme agreed upon at the Third Meeting of the Ministers of the Group of 77 in Manila in 1976, dealing with producer associations; for the Statute of a Counsel of Associations of Developing Countries' Producers - Exporters of Raw Materials, passed by the developing countries at the state conference (5.-7.4.1978) in Geneva, see Francis, op. cit. (note 74), p. 749ff.; generally for the development of a coordination of international raw-material policy in the Charter of Havana, GATT and UNCTAD, the General Assembly of the United Nations, see W.G. Schirmer/G. Meyer-Wobse, Internationale Rohstoffabkommen (Munich/New York/London/Paris : 1980), p. 98ff.

86) In the following section, the theories developed by Tomuschat, op. cit. (note 82), p. 150ff. will be summarized.

87) The embargo was imposed against Iran because of the hostages in the US Embassy, against Argentina because of the war in the Falkland Islands, and against the Soviet Union because of the crisis in Poland. See for further examples of embargos, B. Lindemeyer, Das Handelsembargo als wirtschaftliches Zwangsmittel der staatlichen Au-

Benpolitik, RIW/AWD (1981), p. 12ff. Practical experience shows that trade embargos are «one of the realities of present times» (see Tomuschat, op. cit., note 86, p. 160).

88) See Neue Zurcher Zeitung of May 26, 1982, p. 13. In 1962, the Minister of Venezuela, Mr. Perez Alfonso, suggested to hold a conference between OPEC and the most important consumer countries of petroleum in order to fix a new pricing system which is combined with the price index of industrial commodities. This suggestion did not find an echo among the consumer countries; see Fuad Rouhani, A History of O.P.E.C. (New York/Washington/London : 1971), p. 147.

AN OUTLINE ON THE EGYPTIAN JUDICIAL SYSTEM

by

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Introduction

The Judicial System in the Arab Republic of Egypt is branched into :

The Supreme Constitutional Court, the Judiciary, the Administrative Judiciary (Conseil d'Etat), The Department of State Solicitors, and the Administrative Prosecution.

To ensure the proper and just enforcement of the law, the Judicial system is independent. All matters concerning the appointment and promotion or otherwise of any of its members are settled by the «Supreme Council for the Judiciary» (Law No. 35 of March 27, 1984).

This Council is composed of the President of the « Court of Cassation», as chairman, three deputy presidents of this Court, three presidents of courts of appeal and the procurator general.

All members of the Judicial system are officials of career, and are selected from law graduates of the various universities of the Republic, and members of the Bar. They retire at the age of sixty.

In principle, hearings of all courts are open to the public. Deliberations are held «in Camera». Judgements are always rendered in a public hearing. (Article 169 of the Constitution).

Article 168 of the Constitution stipulates that Judges are irrefutable; and that measures relating to their discipline are regulated by law.

Chapter I

THE SUPREME CONSTITUTIONAL COURT

Established by law No. 48 for 1979, this court is composed of a President, and a sufficient number of counsellors. They are appointed by Decree of the President of the Republic from among those who fulfil the conditions stipulated in the aforementioned law. The choice of the counsellors of the Supreme Constitutional Court must be submitted to the «Supreme Council for Judicial Organs» before their appointment.

The Supreme Constitutional Court has jurisdiction over the following matters :

1) The control of the constitutionality of laws and regulations, whenever an exception of non-constitutionality of a certain law and its regulations is raised before any court during judicial proceedings.

2) The interpretation of any text of law.

3) The adjudication of cases of conflict of jurisdiction between the judicial jurisdiction and the other jurisdictions such as the administrative jurisdiction.

The Department of State Commissioners which is composed of a president and number of counsellors and assistant-counsellors, undertakes the preparation of the cases before they are heard, then submits the case together with a report containing its opinion, to the president of the court to fix the date of the hearing.

THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT

Cairo — September 1971

Article 174 :

The Supreme Constitutional Court shall be an independent judiciary body, having its own moral person in the Arab Republic of Egypt, and having its seat in Cairo.

Article 175 :

The Supreme Constitutional Court alone shall undertake the judicial control in respect of the constitutionality of the laws and regulations, and shall undertake the explanation of the legislative texts, all of which in accordance with the manner prescribed by the law.

The law shall determine the other competences of the court, and regulate the procedure to be followed before it.

Article 176 :

The law shall organise the way of formation of the Supreme Constitutional Court, and prescribe the conditions required in its members, their rights and mandates.

Article 177 :

The status of members of the Supreme Constitutional Court shall be irrevocable. The Court shall call to account its members, in the manner prescribed by the law.

Article 178 :

The judgement issued by the Supreme Constitutional Court in constitutional cases, and its decisions concerning the interpretation of legislative texts, shall be published in the official Gazette. The law shall organize the effects subsequent to a decision concerning the inconstitutionality of a legislative text

Chapter II

THE JUDICIARY

The Judiciary contains the different courts and the Public Prosecution.

Article 166 of the Constitution of the Arab Republic of Egypt states that judges are independent and that there is no

power above them is their function except by law. Furthermore the constitution states that members of the Judiciary are irrefutable and that the law shall organize their discipline.

The law of the judiciary (No. 46 of 1972) states that a special committee, headed by the President of the «Court of Cassation has jurisdiction over disciplinary matters relating to the members of the Judiciary.

Section I

A — THE COURTS

There are many courts in the Arab Republic of Egypt, to cover the wide territory of the Republic. The Courts are basically divided into four categories and each court comprises criminal and civil divisions.

Criminal Divisions try criminal cases referred to them by the public prosecution, or in which an appeal is filed by the accused or the Public Prosecution as the case may be.

Civil Divisions hear litigations in civil, commercial, tax and personal status matters.

In all legal proceedings, the law is applied to all citizens on a basis of equality regardless of their nationality, race, religion or social origin. To ensure such application and equality, the courts are completely independent and their judgements and decisions are totally dependent upon the discretion and conscience of the members of the court. Judgements rendered by the court are, however subject to revision only by a higher court in cases where an appeal is lodged by any of the litigants in civil matters — or by the accused, the civil responsible or the representative of the public prosecution in criminal matters.

The Jury System is not applied in the Arab Republic of Egypt. However, the law on Civil Procedure (No. 13 for 1968) which came into force as from November 7th. 1968, established a new system by creating a «Council of Peace» in each district headed by the representative of the Public Prosecution in the

district and assisted by two assessors elected from the people. These bodies serve as a preliminary stage to help solve disputes. If either party does not accept the compromise of the council, he may submit his case to the tribunal according to the normal steps.

The same for the Court of Ethics established by law No. 85 of 1980, it contains three members of the public persons inside its main composition (Article 27 of this law), they sit as juries after taking an oath to judge fairly (Article 30 of this law).

Categories of Courts :

The Courts in the Arab Republic of Egypt are divided into four categories, as follows :

1. The «Court fo Cassation».
2. Courts of Appeal.
3. Primary Tribunals.
4. Summary Tribunals.

Two specialised courts have been added to these courts, they are Court of Ethics and State Security Courts.

1) The Court of Cassation :

It is the highest court of Law in the Republic, its sessions are held in Cairo and its jurisdiction covers the whole territory of the Arab Republic of Egypt.

Final decisions rendered in criminal and other matters may be submitted to the Court of Cassation by the accused, the civil party, the civil responsible or the Public Prosecution in criminal matters and by any of the litigants in civil matters, — in cases of mis-application or misinterpretation of the law as applied by the competent court in a final judgement, as well as in cases of irregularity in the form of the judgement or in the proceedings having effect on that judgement.

Final judgement may not — for any reason — be attacked and referred to the Court of Cassation on any grounds relating to the facts of the case, unless there is lack of motivation or false facts in the decision itself.

Where a judgement is referred to the Court of Cassation — as aforesaid — that court controls only the application and interpretation of the law as applied or interpreted in the attacked final judgement. If the Court of Cassation finds that the law has been misinterpreted or wrongly applied in the attacked judgement and it orders that the case be returned and revised by the same Court which rendered that judgement. In this case, the law stipulates that the court should be composed of members other than those who had rendered the rescindered judgement.

There are, however some cases where the law stipulates that the Court of Cassation acts as an initial court, thus facing the facts of attacked judgement and that happens when a case is referred to the court of cassation for the second time. Moreover, in cases of capital punishment, such decisions must be submitted by the Public Prosecution to the Court of Cassation, even if the person sentenced to death does not file any appeal before that court. In this case the Court of Cassation must examine the whole case from all points of view relating to both facts and law.

The Court of Cassation is composed of the President, vice-President and counsellors. There are specialised divisions in the forum of the court, dealing with different matters of law.

2) The Courts of Appeal :

There are seven courts of Appeal situated in the more important Governorates of the Arab Republic of Egypt.

Each of these courts contains a criminal ambulant chamber «the high court «Court of Assises» to try cases of felonies — and a civil chamber to hear appeals filed by any of the litigants in civil matters against a judgement rendered by Primary Tribunal, where the law so permits.

Judgements rendered by the courts of Appeal are final and enforceable; they are subject to rescision only by the Court of Cassation, unless this court decided to suspend such execution until it renders its judgement.

There is, however, one exception to that rule and that in case of capital punishment which is not to be executed until the court of Cassation renders its judgement.

3) **Primary Tribunals :**

In each governorate there is a Primary Tribunal, each of which contains several chambers. Some of these chambers try criminal cases while others civil litigations.

Primary Tribunals sit as Courts of Appeal in certain cases, and as courts of first degree in other cases, according to the following details :

a) The Primary Tribunal sits as a court of appeal and is composed of three judges to hear appeals filed against judgements rendered by Summary Tribunals in both civil and criminal matters — where the law permits appeals against such judgements.

b) Primary Tribunals sitting as courts of first degree, are composed of 3 judges, and hear civil litigations wherever the litigated sum exceeds 500 pounds; in which cases the law stipulates that such litigations be brought directly before the Primary Tribunals.

Judgements rendered by Primary Tribunals, sitting as Courts of Appeal are final and enforceable, subject to rescision only by the Court of Cassation within the afore-mentioned limits.

On the other hand, judgements rendered by Primary Tribunals, sitting as, courts of the first degree are subject to appeal before the Courts of Appeal.

4 — Summary Tribunals :

Summary Tribunals are branches of the Primary Tribunals and are situated in the different districts of the Republic. Each of these tribunals is composed of a single judge.

Summary tribunals hear civil litigations and criminal matters of minor importance, according to the following details :

a) Cases of contraventions and misdemeanours are tried by summary courts. Judgements passed in misdemeanours are subject to appeal, before the Primary Tribunal sitting as court of appeal, by the accused or the Public Prosecution.

Judgements rendered in contraventions are subject to appeal as follows :

1. From the accused if he is sentenced to more than a fine and costs.

2. From the Public Prosecution if it had requested him to be sentenced to more than fine and costs.

Apart from these cases, judgements rendered by Summary Tribunals may be appealed only in cases of misapplication or misinterpretation of the law.

b) Civil litigations are brought before the summary tribunals whenever the sum under litigation does not exceed L.E. 500. If, however, such sum does not exceed L.E. 50, the judgement rendered by the summary tribunal is final and enforceable.

Judgements rendered by these tribunals are subject to appeal before the Primary Tribunal sitting as a court of appeal, whenever the sum under litigation exceeds L.E. 50 (and is of course within the limit of competence of these tribunals L.E. 500).

Such judgements are subject to appeal, regardless of the sum under litigation, in cases of irregularity in the form of the judgement or in the procedures having effect on that judgement.

5 — Court of Ethics :

This court has been established by law No. 95 of 1980, about the legal protection of ethics against immorality or imperfection. It is headed by Vice-President of the Court of Cassation, three counsellors and three public persons as members. This court hears litigations brought by the Socialist Public Prosecutor who is responsible — according to Article 179 of the constitution — for taking the procedures which secure the people's rights, the safety of the society and its political system, the preservation of the socialist achievements and commitment to the socialist behaviour.

6 — State Security Courts :

Established by law No. 105 of 1980 : High Courts of State Security, composed of three counsellors of Appeal and two members of the armed forces officers may join them, have jurisdiction over the felonies against the external and internal state safety and security, embesslement, bribery and the other felonies prescribed by law. — State Security summary tribunals, situated in every summary tribunal, hear the offences prescribed by law such as offences of official tariff.

State Security Courts are branches of the criminal Judicature. The Egyptian legislator derived their system from the French law which established state security courts by date 15 January 1963 as a result of the accidents happened in France.

Section II

B — THE PUBLIC PROSECUTION

The Public Prosecution is headed by Procurator eneral, and consists of a large number of Attorneys, Chiefs du Parquet and substituts du Parquet (District Attorneys); who are distributed among the various districts of the Republic.

Criminal investigations are carried out by the Public Prosecution with the aid of the «Police Judicial Officers» who act under the supervision and direction of the Public Prosecution.

As the Courts, and being part of the Judicial System, the Public Prosecution is independent, and investigations are carried out according to the law regardless of the race, religious belief or social standing of the accused. Nevertheless, the Minister of Justice exercises supervision over all members of the Public Prosecution.

At the close of the investigation, the Public prosecution may decide to prosecute or sustain the prosecution of the accused and in so doing — it is subject to the stipulations of Law.

The Public Prosecution is represented before all criminal courts.

Furthermore, the enforcement of judgements rendered in criminal cases is controlled and supervised by the Public Prosecution.

The Public Prosecution is also represented before the courts in certain civil matters which involve public interest as well as cases of minors and incapables.

The law of Civil Procedure stipulates that the Public Prosecution must be represented before the court of cassation in all civil and commercial matters. The Law on Taxes also necessitates such representation.

Furthermore, in personal status matters, the Public Prosecution may attend before summary tribunals, and must attend before Primary tribunals, Courts of Appeals and Court of Cassation.

The President of the Court of Cassation, the President of the Court of Appeal at Cairo, Procurator general and the President of Cairo Primary Court, are members of the Supreme Council for Judicial Organs.

The Constitution of the Arab Republic of Egypt

Cairo — September 1971

Article 165 :

The Judiciary Authority shall be independent. It shall be exercised by courts of justice of different sorts and classes, which shall issue their judgements in accordance with the law.

Article 166 :

Judges shall be independent, subject to no other authority but the law.

No authority may intervene in the cases or in justice affairs.

Article 167 :

The Law shall determine the judiciary organisations and their functions, organise the way of their formation, prescribe the conditions and measures for the appointment and transfer of their members.

Article 168:

The status of judges shall be irrevocable. The law shall regulate the disciplinary actions with regard to them.

Article 169 :

The sessions of the courts shall be made public, unless a court decides to hold them in camera, for considerations of public order or morality. In all cases, judgements shall be pronounced in public sessions.

Article 170 :

The people shall contribute in maintaining justice, in accordance with the manner, and the limits, prescribed by the law.

Article 171 :

The law shall regulate the organisation of the State Security Courts, and prescribe their competences and the conditions to be fulfilled by those who occupy the office of judge in them.

Article 172 :

The State Council shall be an independent Judiciary organisation which has the competence of decisions in administrative disputes, and disciplinary cases. The law shall determine its other competences.

Article 173 :

A Supreme Council, presided over by the president of the Republic shall supervise the affairs of the judiciary organisations. The law shall prescribe its formation, its competences, and its rules of action. It shall be consulted with regard to the draft laws organising the affairs of the judiciary organisations.

Chapter III

The Administrative Judiciary

«Le Conseil d'Etat»

The adminstrative Judiciary in the Arab Republic of Egypt was established in 1946, its function being to give legal advice to the different ministries and departments of the state on the one hand, and to adjudicate administrative litigations on the other. It is accordingly divided into two divisions, namely :

a) The Section for Legal Advice and Legislation.

b) The Judicial Section.

A — The Section for Legal Advice and Legislation

This section acts as legal counsel for the different branches of the administration. To facilitate its function; this section of

the Administrative Judiciary has a branch in each ministry as well as in the more important departments of the administration, to give legal opinion or consultation in matters referred to it. However, according to the law relating to the Administrative judiciary, matters of major importance are referred to the «General Assembly of the Section for Legal Advice and Legislation». Whenever the matter concerns two departments of the Administration, the opinion of that assembly is compulsory.

B — The Judicial Section

This section consists of :

1 — The Supreme Administrative Court.

2 — The Court of Administrative Judicature.

3 — The Department of State Commissioners.

The Court of Administrative Judicature adjudicates the following cases :

1 — Complaints relating to the election of regional and territorial organisations.

2 — Litigations relating to the salaries, pensions and compensation of government employees.

3 — Complaints against administratve decisions concerning the appointment of public employees, their promotion or raise of salary.

4 — Requests brought by public employees for the annullment of final decisions of Disciplinary Authorities.

5 — Requests brought by public employees for the annullment of administrative decisions relating to their retirement or expulsion through disciplinary measures.

6 — Requests filed by employees of organisations for the annullment of final administrative decisions.

7 — Complaints against final administrative decisions relating to taxes.

8 — Final orders and decisions of the state accountancy.

9 — Suits relating to nationality.

10 — Requests of indemnity against any of the pre-mentioned decisions.

11 — Disputes relating to contracts of concession, public work or furnishing or any other administrative contracts.

The competence of the Administrative courts is restricted to:

1 — Requests of annullment of decisions pre-mentioned under No. 3, 4 and except those concerning officials of high grades and officers.

2 — The adjudication of disputes relating to the salaries, pensions and compensation due to persons mentioned under No. (1).

Judgements rendered by the court of Administrative Judicature, Administrative and Disciplinary Courts are subject to appeal before the Supreme Administrative court in cases of wrong or misapplication of the law, in cases of default in the judgement or in the procedures having effect on the judgement and if the judgement contradicts previous case law.

Cases which fall within the competence of the Supreme Administrative court and the court of Administrative Judicature, are first prepared by the Department of State Commissioners, which is headed by one of the deputy-Presidents of the Administrative Judiciary and composed of a number of its members. After the case is prepared it is submitted, together with a report containing the department's opinion to the president of the court to fix the date of hearing.

The said department is also represented at the sessions of these two courts.

Chapter IV

The Department of State Solicitors

This department represents the government, public establishments and municipal councils before the courts in all cases.

The department has branches in various parts of the Republic to enable it to carry out its task in the proper manner.

Chapter V

The Prosecution for Administrative Matters and Disciplinary Adjudications

A — The Prosecution for Administrative Matters

Its function is to :

1 — Undertake the necessary supervision and investigations to detect any administrative or financial infractions.

2 — Investigate complaints referred to it by official departments concerning the infraction of law carelessness in carrying out duty.

3 — Investigate administrative and financial infractions uncovered through said supervision or referred to it by the competent administrative authorities or brought to it by any organisation or person.

B — Disciplinary Courts

These courts try cases of administrative or financial infractions referred to them by the Prosecution for Administrative matters against public employees.

The composition of the courts differs according to the grade of the accused.

ANNEXES

1 — Grades of Magistrates

1. President of the Court of Cassation, President of Cairo Court of Appeal, Procurator General.
2. The Vice-Pressident of the Court of Cassation, the Presidents of other courts of Appeal, the Assistant Procurator General.
3. Vice-Presidents of the Courts of Appeal, and the First Attorney General.
4. The Counsellors at the Court of Cassation and Courts of Appeal, and the Attorneys General.
5. The Presidents at the Tribunals of First Instance and Chiefs du Parquet.
6. Judges at the Tribunals of First Instance, and Substituts du Parquet of First Class.
7. Substituts du Parquet (District Attorneys).
8. Assistant Substituts du Parquet.
9. Attachés at the Prosecution.

II — Number of Magistrates (1984)

a) At the Court of Cassation :

1.	President	1
2.	Vice-President	49
3.	Counsellors	89

b) At the Courts of Appeal :

1.	Presidents	99
2.	Vice-Presidents	157
3.	Counsellors	468

c) At the Trimbunals of First Instance :

1.	Presidents at those Tribunals	625
2.	Judges	683

d) At the Public Prosecution :

1.	Procurator General	1
2.	Assistant Procurator General	2
3.	First Attorneys General	11
4	Attorneys General	71
5.	Chiefs du Parquet	223
6.	Substituts du Parquet (First Class)	418
7.	Substituts du Parquet	464
8.	Assistant substituts du Parquet	501
9.	Attachés at the Prosecution	500

NATIONAL DEVELOPMENT STRATEGY AND LONG TERM SOLUTIONS TO THE BALANCE OF PAYMENT PROBLEMS IN AFRICAN ECONOMIES *

by

Dr. Mohamed Dowidar **

I

To present our proposal concerning the national development strategy and long term solution to the balance of payments problems we will :

— explicit, first, same basic premises from which we start, and

— present, second, the elements of a framework for the discussion of such strategy.

First : The basic premises from which we start:

a) In the situation where we are now, our economics will not get from the international market economy in its crisis more that what we have now; which means almost increasing misery for the majority of our people.

b) If this is our lot, it is mostly our responsibility. A colonial heritage ? There has been, and still there. But, what has taken place since is our own responsibility. It is nobody's else, taking for granted the aggressive nature of the international capital. And we have to face it, with and a city.

c) To face it, action must be from within, starting from our own resources. And they are tremendous if we can provide

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the appropriate social organisation for our social activities, we must rely on our own forces, and do it boldly.

d) The action from within does not mean, in any sense self-isolation. We are, whether we like it or not, an integral part of the human society. This human society has got its heritage, on all levels : level of material achievements, and level of intellectual realisations. This heritage is ours, we must use it, scientifically and critically. Certainly we have our own specificities. But we share with the rest of the human society the common laws governing the process of the world society's development.

e) If it is a matter of development strategy we are dealing with conscious action of qualitative transformations, i.e., with what to do over a long period to come, to see what major transformations have to be and could be, effectuated, and how they could be realised : Here, at the least in the domain of thinking, the margin of liberty is wider, though it is conditioned by the necessity of adopting a scientific method of envisaging the future, starting from the present, seen as a history.

These are the main premises from which we start own presentation of the elements of the national development strategy.

Second : The framework for the discussion of the national strategy of development : To present it, we will proceed through three stages :

— at a first stage, we will attempt to spell out the real significance of the monetary approach to the problems of the balance of payments, as well as the real significance of the adjustment measures recommended by this approach to remedy the balance of payments problems, especially in the actual situation of the crises of the international capitalist economy with the specific characteristics it gives to the international price system.

— at a second stage, our tentative will be to propose a frame-

work for the discussion of a strategy of development, its objectives and its means. It goes without saying that we will not be giving a prescribed development strategy for all the African economies, not even for any single African economy. We intend only to raise the main questions that have to be studied and discussed whenever the problem of a development strategy is worked out at the actual phase of the development of the World economy,

— at a third, and last, stage, we will try to spell out the requirements, within such a strategy, as far as the balance of payments is concerned, emphasising that we will be talking about strategic requirements.

II

The real significance of the monetary approach to the balance of payments problems and of the adjustment measures recommended by it :

It is well known that most of the African economies have balance of payments deficits. It is also known that such deficits are getting aggravated during the last decade, especially from the second half of the seventies. These deficits are usually seen as expressing financial difficulties leading to borrowing, external debt services(1), future indebtedness, financial dependency, etc. This is the proper of **the monetary approach**, which :

— envisages the phenomenon as a monetary one in the domain of circulation, which is illusive, especially when we remember how complex (and opaque) is the monetary phenomenon

(1) For the years 1978, 1979 and 1980, the debt service ratio (service payment on external public debt as percentage of exports of goods and services) has been as follows for some selected African countries : Cameron : 6.6, 7.7 and 9.5 — Chad : 9.3, 13 & 14.4 — Zaire : 10, 31.3 and 9.1 — Malawi : 5, 8.5 and 9.4 — Zambia : 18.6, 20 and 19.7 — Algeria : 15.5 — 20.9 and 25.6 — Egypt : 22.9, 22, 2 & 15.8 — Sudan : 8.7, 9.4 and 33 — Guinea : 43.5, 17.4 & 22.2 — Ivory Coast : 12.3, 14.1 and 15.2 — Senegal : 8.4, 14.9 & 13.7 — Sierra Leone : 9.8, 16 and 22.2 — Togo : 11.8, 15,2 and 24.4 — ACMS, financial Journal, Year 1981, vol. 2, No. 1 p. 77.

provided it is taken with its though ramifications in all the corners of the structure of the commodity monetised economy.

— According to this approach, the difficulties of the balance of payments, when seen as financial ones, are rarely related to real indicators of development indicators to rates of growth of GNP(2), indicators of the standard of living of the majority, moreover,

— They are rarely seen as experession of structural unbalances, with the ctructure of the economy conceived, not in the technical sense of the word as expressed by the relative weight of the sectors of the economic activity (primary, secondary and tertiary), but from the viewpoint of mastering the conditions of reproduction and hence the subordinate role played by the national economy in the actual form of the international division of labour. A form which reflects the nature and the level of capital accumulation in the different economies constituting the capitalist international economy.

To illustrate this point let us take an example from the Egyptian situation. The current account of the balance of payment knew a deficit all over the 1970's. Its ratio was rather high in 1975, starts decline till 1977, then high again and higher than ever in 1979, to decline in 1980, the deficit being very small (1.3% of payments for the first half 1980) (3). This improvement of the balance of payments situation resulted from the increasing dependence on types of revenues which do not express an increasing mastery over the conditions of reproduction within the Egyptian economy. On the contrary, these revenues are : revenues from the exportation of oil, remittances of the Egyptian working abroad (specially in the oil producing

(2) The average annual rate of growth for Africa south of the Sahara was about zero for 1980. It was negative for 15 countries, less than 1% for 5 countries, less than 1.5% for 4 countries and less than 1.8% for 9 countries for 1981, the annual rate of growth was negative for 15 countries, less than 1% for 9 countries, less than 1.5% for 2 countries and less than 1.8% for 6 countries. Le Monde, Bilan Economique et Social 1980, p. 87 et 1981, p. 91.

(3) The Central Bank of Egypt, Annual Report, Jan - June 1980, p. 17 - 20.

Arab countries), revenue from the Suez Canal and revenue from tourism. They all depend on external factors. Moreover, shifting from the exportation of cotton, a product whose conditions of reproduction are almost mastered from within, to the exportation of oil, extracted now through a dominant role of foreign capital with techniques, not mastered by the Egyptian labour force, means that we are reducing the degree of mastery over the conditions of reproduction. If we add to this that the country depends more and more on the external world for the reproduction of its labour force, with the increasing imports of food, reproduction becomes more and more dependent, especially when its conditions are badly affected by the massive departure of the most skilled and dynamic elements of the labour force. So although the balance of payments situation shows a financial improvement, the real course is towards a decreasing mastery over the conditions of reproduction. Hence, more future vulnerability in real as well as in financial terms.

— Anyhow, a deficit means, given the difference in the levels of capital accumulation in the different capitalist economies, an inflow of capital towards the country with deficit, an inflow which is certainly conditioned by not only economic but also social and political factors. This inflow means, in the case of our economies :

- a certain shapening of the productive system of the indebted country through the pattern of the investment realised (certain international banks refuse to finance technological research, for example), or through the absence of investment if the loan is a short term loan used for the service of a previous debt.

- future outflow of the economic surplus (interest, repayment etc.), and

- Some economic, especially financial, (and may be political) control on the indebted economy. Such control (fashionably practiced by a «club») if facilitated by

the social groups for whom some interests will rise with the inflow of capital.(4)

If seen in this different way, different from that of the monetary approach, the balance of payment will be the lieu in which we find the manifestations of the structural relationship between the African economies and the rest of the world economy and especially its capitalist part. It is this structural approach to the balance of payments problems which we adopt. This does not mean overlooking the monetary and financial problems expressed by the balance of payments difficulties. It means only that such problems should be seen in their structural set-up if aware to understand their being and, in turn, their effects on the structure of the economy, taken within the world economy.

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(4) For the effective capital movement during the 1970's, one can observe :

a) that the rate of private lending (especially by the Transnational banks) for financing the deficit of the non-oil underdeveloped countries has been increasing. This means that the «suitable atmosphere», on the creation of which the IMF and the International Bank always insist, became dominant in the indebted economies.

b) that West Germany and Japan, the two advanced countries having the largest surplus in their current account in 1977 and 1978 were not net exporters of capital on a large scale. But they start, with the deficit in their current balance of payments in 1979, to receive the surplus of others, the oil-produiing countries, with the intention to re-export it. Japan announces that investment in the Third World will be one of the pillars of its policy of the 1980's vis-à-vis the underdeveloped countries.

c) that the net movement of the private capital of the USA, the country which needs big inflows to finance the deficit of its current account (and it was the biggest among the developed countries for 1977 and 1978), this net movement was essentially outside the USA. The export of capital and the deficit in the current account were financed through big increase in the obligations of the USA government towards foreign official authorities, the monetary authorities of other countries accumulating their reserve in dollars.

d) the main pattern of capital movement with the international economy was that from the advanced capitalist countries towards the underdeveloped non-oil countries but producing raw materials. This movement is more and more alimented by the petro-dollars, the surplus of the underdeveloped oil producing countries, mainly held by the banking and financial institutions of the advanced countries.

This is the real significance of the monetary approach to the balance of payments problems : direct but illusive. For it fails to uncover the structural roots of the balance of payments difficulties, structural not only in the technical sense of the word (inbalances between branches of the same sector, between sectors of the economic activities and between spheres of material production and services...), but also in the sense of increasing or decreasing degree of autonomy of the conditions of reproduction, hence the degree of economic, social and subordination. And, on the image of such approach will be the adjustment measures recommended by its advocates.

What is the real significance of such adjustment measures ?

III

The real significance of the adjustment measures recommended by the monetary approach to the balance of payments problems, when such balance is in continuous trouble, could be clearly seen if we realise that :

— according of the balance of payments itself. this means emphasising the umbilical cord without really examining the two bodies tied by it.

— the remedy of the crisis is looked for through the attempt to restore all sorts of financial balance; balance of foreign earnings and uses, state budget, credit balance, etc.).

— this is to be achieved, as recommended by such approach in the proxis of the African economies, through a number of monetary and financial instruments : devaluation of the national currency (whose value is believed to be kept too high through exchange control) changes in the rates of interest, limitation of public expenditure especially by the elimination of subsidies, rendering the tax system more favourable to capital, non intervention with prices. The well known host of measures usually recommended by the International Monetary Fund to the African (an other underdeveloped) countries with balance of payments difficulties. These measures are usually presented as necessary for the «liberalisation» of the economy in general and local prices in particular. And such «liberalisation» is usually asked for as a condition for lending.

What is the real meaning of such «liberalisation » of the economy and especially of the price system; wages included ? to where such «liberalisation» leads ?

The real meaning of this so much required «liberalisation» is:

— to eliminate all hindrances between local and international price systems, we being the part and the weak part, of the whole, the capitalist international economy in which dominates the international prices system,

— it means then that our economic calculation while elaborating an economic policy measure or a plan within an African economy, will be based on the international prices.

— This finally means that the economicability of any decision taken in any African economy is to be defined according to the type of relations which is already dominating in the international capitalist economy.

But, we wonder how, if we look really for getting out of the process of underdevelopment, we could «liberate» our prices in the benefit of a domination of the international price system. This means :

a) to let dominate the price system which represents, **in its nature,** the mechanism through which the surplus has been mobilised during the historical process of the formation of underdevelopment, giving this unbalanced structure of the economy.

b) this means, too, to let dominate the price system, whose **actual historical** form reflects the monopolistic structure of the international market in which dominate the Transnational corporations giving no hope of survival to any project outside the range of their domination.

c) how can one «liberalise» his ecbnomy and his price system to expose ourself, through the open door, to the sweeping winds of inflation dominating, as a secular trend, the advanced capitalist economies, winds which even the state in such economies cannot, or do not hearthy want to, remedy despite the significant arsenal of economic policy instruments, instruments which no underdeveloped government masters.

d) how can one «liberalise» his economy opening the door to other peoples (strong ones) exports if ones industrial export originating from the underdeveloped world are confronted with protectionist measures adopted by the advanced capitalist economies, even those to whose regional economic blocks some African economies are tied through economic agreements.

But still, the IMF is jealous for a rentable laissez-faire of the international price system within the underdeveloped countries. In Africa its most famous «dialogues» were carried out with Egypt, Tanzania, Ghana, Zambia, Sudan, Zaire, Somalia, Gabon and some others. The IMF cedes only as a matter of factories : when it becomes politically very dangerous to carry out its recommendations. Take the case of state subsidies, especially for the basic consumption goods. When we look at them from the viewpoint of public finance, taxation represents the main source of the state revenues. Taxes, in African countries, are mostly indirect ones. Their burden falls on the majority who, it is supposed, benefit from this sort of subsidies. If the subsidies are financed through a deficit budget financing (inflationary borrowing of the state) it is the majority of low and stationary income brackets who is mostly hit by inflation. Forced saving is made out of their real income. So, if we relate the state finance to the final pattern of income distribution, these subsidies are paid for by the majority, the low income social classes and groups. However, they are usually as adjustment for keeping wages without increase despite the rise in the prices of commodities other than those which are subsidised. Why then the IMF insists on the abolition of such subsidies ? We believe that the cry is for a real laissez-faire of the international price system (with the types of relations between the productive forces it reflects) within the underdeveloped economy : **no independent standard of measure for decision - making** should be adopted : no values other than the commodity system of values dominating the international capitalist economy should be introduced. Hence a **consecration of the actual structure of the international market economy and consequently the actual pattern of exchange with the pattern of the international income distribution it realises between and within the economies constituting this international capitalist economy.**

The problem becomes more acute when we remember that such **international economy is in crisis** since practically the late 1960's crisis which bears specific characteristics for the international price system. This expresses a secular trend of inflation within relative stagnation which characterises capitalist development in the 20th Century (this secular trend does not exclude recessionary cyclical phases). This secular trend, with the interaction of structural changes that took place in the international capitalist economy since the 2nd World War, together with conjunctural factors such as the energy question and the international monetary disorder, give the actual long lasting crisis which forces the underdeveloped economies with many challenges : the challenge of the crisis itself which lays base the crisis of the growth strategies adopted since political independence and accentuates the day to day economic problems for the great majority of the population, the challenge of the price of energy and the other raw materials, especially metals, in their relation to the prices of the industrial commodities and food, the challenge of the disintegrating international monetary system implying severe fluctuations of exchange rates of principal currencies and dependent ones; the challenge of the protectionist policies adopted by the advanced capitalist economies vis-à-vis industrial exports of the underdeveloped economies (as with the case of North African countries, Tunisia, Algeria and Morocco and the European Common Market), the challenge of the increasing indebtedness to private international capital and the utilisation by it of the petrodollars as a means of reshaping a sort of dependent relations with the indebted countries.

This crisis bears for the international system of prices a number of characteristics which render it still more unusable as a standard of measure for development decision-making with speculation becoming a common and continuous practice. Acute fluctuation in prices of raw materials and especially the industrial characterise the international market. Besides, speculation on gold, which remains, given its monetary past, the most capable among commodities to play the role of the function of money as a store of value although it cannot carry out its function as a means of account and payment, in a situation where the USA dollar is still used as a means of account and payment but with its value declining and where, in the same situation,

oil is transformed into petro-dollars. We say that speculation on gold increases the uncertainty of the price system. Such system is characterised too by a continuous rise in the rate of interest, a rise which takes place through seasonal fluctuations. The only certainty that remains for the international price system is the rising trend of the industrial commodities especially those exported by the advanced market economies, and the prices of basic food, in relation to prices of export of the underdeveloped economies.

It is obvious that we should take all the prices as an ensemble : the prices of oil and other primary commodities, prices of manufactured goods especially the ones exported by the advanced capitalist economies, prices of food especially grains. prices of arms, price of gold, the rate of interest and the rates of exchange of principal currencies, for it is the relative relations between all these prices which realise the final outcome of the internal economic relations, i.e. the final distribution of income between countries a distribution which shows the direction in which the surplus of the underdeveloped economics is mobilised.

So, even if we are tempted, out of the mechanical habit. to use such price system as a basic for decision - making this highly uncertain character prevents all reasonable predictions. let above socio-economic planning.

The overall result for the African economies, a result that has been crystallised by the actual crises of the international capitalist economy, is an increasing of loss of control over the conditions of reproduction, a relative contraction in productive activity (especially when the country lives the fashionable rush for oil), hence a more vulnerable financial situation. And the crisis of the balance of payments starts to express not only economic structural imbalance but also social and political tensions.

The moral is that : any measure suggested for the balance of payments problems, be it a short-run or a long-run measure, should be related, in the case of any African economy, to the theory of underdevelopment (that is of the historical formation of underdevelopment within the capitalist development on a world

level) and hence to the theory of development : the theory of the process of a veritable negation of underdevelopment within the framework of the actual world economy in its movement. taking into consideration the specific conditions of each underdeveloped economy.

IV

When **related to the theory of underdevelopment,** the actual crisis of the balances of payments of many African economies reflects the crisis of the growth strategies which were adopted since political independence, a crisis which has been made very evident with the crisis of the international capitalist economies in which the African economies are more and more individually integrated. With the failure of such strategies to negate underdevelopment and their success to increase the economy's structural dependency which makes it more vulnerable in its international relations. It is natural that such failure and success reflect themselves through the umbilical cord which ties them to the rest of the international capitalist economy; through the balance of payments in crisis.

When the problems of the balance of payments are related to the theory of development one cannot help, on the light of the historical experience of the last 20 - 30 years of African history, thinking in terms of an alternative strategy of development.

V

Although the alternative strategy of development should be conceived simultaneously, given the actual structure of the World Economy, on national, regional and international level, this paper is limited to the national strategy of development and its implications for the balance of payments problems. For such strategy, we will limit ourselves to a framework for the discussion of its objectives and policies(5).

It goes without saying that when strategies are evoked, it is a decision that has to be taken politically in the real life of

(5) See M. Dowidar, The Egyptian Economy Between Under-development and Developmnt, (in Arabic), Alexandria, 1980.

society. What we attempt here is to draw up the outlines of a framework that aims at raising the principal questions. The different answers given to these questions would give different development strategies.

Within a specific development strategy, on a country-level, differences is socio-economic and environmental conditions between the sub-regions within the same country might give rise to different development patterns.

Supposing that the goal of the general development policy is to get out of the process of underdevelopment (development then being the historical process of the negation of underdevelopment, at the current phase of development of human society and within the specific situation of a certain underdeveloped, (say African society), the discussion of development strategies would be a discussion of choice. This would define a more-or-less coherent ensemble of objectives and means, an ensemble that would determine the pace and pattern of development for a period of 20 to 30 years to come. Of course, the objectives and the means of the strategy cannot be separated. But, by necessity, to present them for discussion is to separate them over time. Still, we hope that this way of presentation would show that they are mutually interdependent. Let us start by the objectives. The principal objective of the strategy would be the satisfaction of the internal needs of the majority of the population. Starting from these needs, seen potentially in a dynamic perspective, a pattern of consumption is to be defined. It is in respect of this consumption pattern that the necessary structural transformations in production will be conceived, these transformations in turn implying the objectives to adopt in order to achieve the satisfaction of such a pattern of needs. To put it this way avoids posing the question in terms of catching up with the developed countries or closing the gap between the developed and the underdeveloped countries which implies a mechanistic view of history and amounts to inviting the underdeveloped societies to accept. socio-political frustration.

To take the satisfaction of the needs of the majority of the population as the basic objective of the strategy raises two questions. The first is that of the relation between accumulation and consumption and the second is that of defining a pattern of

consumption for the majority of the population.

With respect to the relation between accumulation and consumption, one can distinguish historically two possible types :

— In capitalist development, accumulation of capital is an objective in itself, for it is the basis of social (and political) power and prestige. It occurred first in the domain of consumption goods for which there existed a demand, and then in the fields of production goods, giving rise to a certain pattern of consumption corresponding to the pattern of income distribution that came to be shaped and controlled especially at the current stage of monopolistic manipulation of the market. (This is carried out as far as consumption is concerned through the so-called sales promotion costs).

— In the experience of planned development in the Eastern European countries, accumulation was taken as an objective at the first stage of development. During the process of accumulation priority was given to heavy industries of the types known in the Western countries. Consumption was considered (along with agriculture) a non-priority area. It was a residual element. The fact that they built up the type of heavy industries that existed in the capitalit economies, and that the pattern of consumption chosen to be generalised was the one already existing in urban societies, gave, at the end of the first stage, along with the industrial base, a pattern of consumption similar to that prevailing in the capitalist Western economies — with the qualitative difference that basic services are much better looked after and that a far larger proportion of needs are satisfied collectively and not individually.

Is it possible, in the light of these historical experiences, to think in terms of a different type of relations between accumulation and consumption that we will work out the framework for discussion of the alternative strategies development.

We have already seen how social needs could be defined. We saw too that the real significance of defining a pattern of consumption is that accumulation will be defined by consumption. This amounts to a historical reconsideration of the type of relation between the immediate objective of production

decisions and the final objective of the economic activity.

From this broad objective, we can then define the other objectives of the strategy. To do so, two types of changes have to be considered :

— Firstly, these structural transformations necessary to change the pattern income distribution in favour of the majority of the population, and to liberate at the same time necessary material resources. This could be done through a new complex of production relations which eliminates the control of foreign capital, liberates the economic surplus from internal social groups and classes wasting it in one way or another, and seeks new forms of organisation of the production units, forms which come out from the concrete conditions of each society and prove themselves more appropriate for development.

— Secondly, changes in the level of development of the production forces of the society, these forces being conceived of as basically the labour force acting in a certain technological milieu (with a certain quantity and quality of means of production and knowledge corresponding to them). (This avoids seeing the productive forces in a «technicist» way). The development of the productive forces would take place through the liberation of the creative power of the working people through ideological consciousness and continuous improvement of their living conditions, the technical formation of the labour force, and the increase in the quantity and quality of the means of production.

In the light of these two types of structural changes, other objectives of the strategy could be conceived. This will be done through those choices concerning the pace and the modality of development.

The pace of development is determined by the type of relationship between accumulation and consumption and hence the size of mobilisable surplus (It is determinned too by the pace of accumulation in the different sectors of the economy). Here the logic of our strategy implies the elimination of lavish consumption. Additionally, it implies that both accumulation and consumption of the working people increase over time both

in absolute and per capita terms (remember that resources are not «fixed» but that they are called forth), and as well favouring the strata of the working people with a relatively low standard of living.

The modality of development is determined by the modality of accumulation (allocation in different sectors, technical form of projects, the pattern of location of projects). The modality of accumulation could be determined in the light of the following considerations :

- In agriculture the long term objective would be to transform it into a branch of industry where science and technology could be applied. (The length of the term will differ from one economy to the other depending on the nature and pace of mechanisation of the agricultural labour process). What emphasis is to be laid within agriculture ? This depends on the nature of the agriculture what we are to start with. If it is not producing food, we will have to transform it over time partly into an agriculture producing food for the working population. If food is produced, it will be necessary to carry-out diversification into agricultural goods we consider appropriate, as in some cases it might be of the countryside (say, when the peasants are producing a wide variety of products, but each on a tiny portion of land).

For accumulation in projects basic to agricultural expansion, (land reclamation, construction of irrigation and drainage networks, etc.), a strategy of self-reliance would permit a local definition of this type of accumulation and the mobilisation of the local labour force and resources for its realisation. If other primary production activities (mining and oil extraction) exist besides the agriculture which produces food products this will help a transformation of both agriculture and industry with a simultaneous and relatively high increase in consumption. Agricultural development would not mean merely the increase of agricultural productivity. It would mean the transformation of the rural society, of its mode of life through the creation of a sort of agglomeration that eliminates the contradiction between the town and the countryside : This would involve rural industrialisation (type and scale of industries, pro-

duction and consumption goods industries) : and at a later stage, de-urbanisation of the over-crowded areas. Hence, one can imagine the possibility of an integration of both activities outside commodity relationships.

• In industry, and connected mining fields, the long-term objective would be to build up the basic industries and the consumption industries necessary for the production of goods corresponding to the defined pattern of consumption. What emphasis should be placed within industry ? This depends on the type of resources actual and potential; the type of already existing industries, the necessity of building up the appropriate industrial basis, so as to assure the industrial requirements necessary for the transformation of agriculture, as well as to assure a relative independence.

It would be necessary to conceive the construction of the industrial base around a number of industrial axes representing integrated technological processes. In elaborating a strategy of development through industrialisation for the Arab World, for instance, we have conceived the following five axes : the oil industry and petrochemicals, steel and machine tools industrialisation requires certain types of industries), and indigenous technology.

The relationship between agriculture and industry and between industrial branches is not conceived in terms of one pole versus the other, but rather in terms of each representing a simultaneous stimulus to the other. If a certain emphasis is to be given to some basic industries, its type and development are conditioned by a certain proportionality that has to exist in relation to agriculture and light industries.

In the domain of services; we will need to think in a totally different manner, to take some examples :

1. In education, instead to the quantitative expansion of colonial educational and the mechanical transplantation of contents and methods from other societies it is necessary to elaborate, taking into account the cultural background of the country and its subregions, a new pattern of education.

To do so, we must keep in mind that education and real are the same; realise that the main function of education is to remould the mentality by establishing a system of values that negates the alienation and subordination dominating African societies.

The objective should be a type of man, who while having a speciality, can at the same time perform productive labour, pursue political activity, and so on. To realise this, it would be necessary to combine productive labour with learning. This implies attaching a new significance to the right to an education : it would not merely mean the right to receive but also to practice education. The educational reforms should affirm the transformation from passive recipient to active (and critical) participant and, ultimately, prime mover.

2. In health, special attention could be given to preventive medicine to change the conditions of chronic diseases along with creation of small units of medicine with physicians living with the working people.

3. In housing, furnishing decent houses beginning with social strata having lower, standards of living. At a second stage, it would be necessary to construct new type of accommodation not necessarily large-scale, at the point of production which would be built by the working people themselves using both techniques mastered by them and locally available construction materials.

* * *

So much for the objectives of the strategy. It is important in discussing these objectives, as well as in discussing all the problem of the strategy, to be clear-mined with respect to the type of division of labour to promote (from the viewpoint of the division between intellectual and manual labour, labour of conception and labour of execution, division of labour between sexes, etc.) the role of commodity production as well as the type of relationship between the town and the country-side especially between the classes of the working people in agriculture, industry and other activities, Intimately related to this is the pattern of management and decision-making on which level ? By whom ? According to which criteria ?

We turn now to the policies that could be adopted for the realisation of such objectives.

THE POLICIES OF THE STRATEGY :

To consider the means is to consider the possibilities, so as to make a number of choices concerning the most efficient means. For this it might be useful to recall what we said earlier about how resources should be viewed, not as a fixed amount but rather in terms of calling forth the resources through creative power of the labour forces. In addition it is vital to consider the different levels at which self-reliance should manifest itself within the national economy, with self-reliance particularly necessary at the level of the units of production and local communities.

In this approach to policies, a word should first be said about the methodology of viewing the society's possibilities (actual and potential), followed by a survey of the general means for the realisation of the strategy objectives. Here, we will limit ourselves to policies regarding to the national economy as a whole leaving aside policies specific to the different domains of activity.

As for the methodology, we believe that to group the society's possibilities and estimate them properly, a three-dimensional view is indispensable. This would be a view in physical terms (labour force and resources), which would enable us to see the possibilities in real terms : a view in financial terms, which would allow us to see the financial resources necessary for the mobilisation of real resources, and an organisational view, permitting us to find the appropriate organisational framework for the mobilisation of the society's possibilities. In the absence of appropriate organisation, resources could be, and usually are, wasted. In deciding upon efficient policies, it might be useful to bear in mind that the efficiency of policies depends on the realistic nature of the objectives (and realism does not exclude ambition) on one hand, and on the degree of the society's effective control nature of the objectives (and realism does not exclude ambition) on one hand, and on the degree of the society's effective control on its natural and material resources, on the other.

With respect to the general policies of the strategy, we will limit ourselves to policies relative to the labour force and resources and their mobilisation, at a first stage, and the policies concerning relations with the rest of the world, at a second stage.

Adopting the three-dimensional approach, the discussion of policies of mobilisation should cover labour force, material resources and related problems of technology and location in the space, financial resources; and the organisational framework.

LABOUR FORCE :

As the quantity and quality of labour force, and the degree of development of its creative power, represent the limits beyond which production cannot be extended, a basic policy would be that of the mobilisation of the labour force. Hence, the need for a profound appreciation of the African labour force (within and outside the African countries), in quantity and quality. (This quality could be underestimated if we ignore the waste of «cadre» in the underdeveloped countries and the brain drain affecting the qualified labour force).

The mobilisation of the labour force acquires an additional importance in situations where a surplus of labour force acquires an addiitonal importance in situations where a surplus of labour exists. In a self-reliance strategy, such a mobilisation can play a significant role in the process of accumulation and current production. This mobilisation has its conditions requirements and possible unfavourable effects.

Firstly, it is possible if different technical methods are available for carrying out the same accumulation activity. Secondly, it requires the availability of a surplus of comsumption goods, especially foodstuffs. In addition, it requires a certain minimum of complementary investment in basic services as well as an appropriate organisational framework. Finally, it might affect unfavourably the labour process in the principal activity (e.g. agriculture).

To satisfy the conditions, minimise the cost and avoid the unfavourable effects, the mobilisation of the agricultural labour surplus could be realised by employing the labour force locally so that the labour force lives and eats at home. Since being employed locally, the labour force remains available for farming at the busy seasons. The mobilisation could also be carried out through the cooperative as the organisational unit. If relatively rich members are associated, this could guarantee the supply of tools. Finally, construction works could be phased to eliminate a significant gestation period (e.g. the construction of a drainage canal in winter increases the income derived from the subsequent harvest).

The mobilisation of the labour force in a productive way depends on the appropriate organisation, especially the political one. It depends on how far the conditions of economic democracy are satisfied through the consciousness of the labour force, its direct participation in the process of decision-making and control as well as its receiving an appropriate share of the social product.

MATERIAL RESOURCES :

A policy concerning material resources has to assure their utilisation in terms of completing the technological series of their transformation within the economy. (This does not exclude the exportation of some material resources not completely transformed, when the necessity is historically imposed while awaiting the construction of units of transformation or when the country's output exceeds what is necessary for internal needs). The policy must envisage the search for substitutes for exhaustible, non-reproducible resources.

As sources of energy have a particular importance, an energy policy has to envisage its different sources. And in the long run, this policy should consider the different sources of energy, their possibility and how far they are economic (on the basis of criteria related to the society's development) considering their availability among the natural resources of the country; the technology of the production of energy with respect to the sources, how far they have developed, and whether in a complicated and economic fashion, their effect on the

environment, as well as other factors relating to the nature of the specific sources of energy.

TECHNOLOGY :

The problem of technology is related to labour and material resources and the alternative uses of both This problem, although of vital importance, is oftenly posed wrongly, thus implying a mistaken conception of the process of industrialisation as a process of filling the technological gap' or of «transfer o ftechnology», a transfer which does, in fact, confirm the subordination of the economy.

To put the problem correctly, for the underdeveloped economies, one has to see historically, the penetration of capital in the structure of the economy during the process of «primitive» accumulation of capital as it took place and continues to do so. In the African economies, this penetration has deversed the labour force not only from the main means of production but also from its technological milieu as was historically determined in each society by the level of development of the precapitalist society. With the penetration of capital, techniques elaborated and utilised elsewhere were introduced. The national labour force (in the broadest sense of the word) was transformed over time into a force that cannot but receive techniques. (Think of the number of industrial planners that any African economy has). Put rightly, the problem is that of the national labour force recovering a technological milieu, one within which it can not only assimilate but also create new techniques. (Of course that milieu will not be the one that existed before capitalist penetration, but a milieu which benefits from all sorts of scientific and technological achievements). The creation of such a technological milieu realises itself through the process of socio-economic transformation itself. But for this to happen, a clear policy should be looked for.

This policy should be based on a critical study of the historical experiences of societies that have assimilated the technology of other societies and developed their specific technological methods, such as Japan, the USSR, China, and Vietnam.

This critical study should cover also the experience of growth that took place in African societies during the past 15 to 20 years.

This study should crystallise the elements of a scientific and technological policy based on a critical appreciation of foreign techniques from the viewpoint of resources, objectives and the possibility of being potentially manipulated by the national labour force, with the purpose of effecting the appropriate selection of these techniques. Such a policy should aim at the development of local techniques on the basis of a historical study of the process of their social selection (which will be related by definition, to the environment) in order to see whether they can be used as they are, with modification or have to be further developed.

Such a policy should elaborate the organisational framework necessary for the realisation of its objectives. In addition, this policy should lead to the elaboration of a plan for scientific and technological innovation, one which embraces the necessary material bases and the types of scientific and technological knowledge that have to be acquired and formulated. (This requires a reconsideration in general and those of technical education in particular).

This plan should specify, in particular, how to deal with transnational corporations in the domain of technology, if dealing with them is found necessary. Here, concrete and practical methods should be envisaged, such as the formation of multidisciplinary teams to assimilate, during the period of the construction of the new project. the imported new techniques and eventually develop them : the formation of teams bringing together members from a country which has already lived the experience of the imported techniques and a country negotiating for these techniques. The team task would be to study the project and consider the basis of negotiation with the transnational corporation; the ways of formation of industrial planners, etc.

So much for viewing the labour force, material resources and the related problem of technology in real terms as possibi-

lities. To these is related the problem of the location of new projects, if this problem is to be considered from a viewpoint which differs, even partly, from the market point-of-view. For the way the labour force and material resources are located affects its efficiency from the standpoint of satisfying the needs of the majority of the population. Hence the need to say a word about location policy.

LOCATION :

We do not mean here to tackle the questions raised by the problem of location. We mean only to point out that, if the objectives of our strategy are to be realised, our choice of the most efficient location pattern must be based on a different view of space, as a result of which our view of location and its criteria will be different.

The essence of this different view of space is that economically, space is not mere geographical distance measured by trasport cost, but the geographical distribution of socio-economic relations on the basis of natural endowments. Accordingly, space must be seen historically in order to understand the significance of the «region» in the field of regional analysis. Each region will thus be defined by the type of dominating relations which distinguishes it from other regions and gives it a predominant role to play within the socio-economic totality (not only on a material level), but also on an internatioal one, if the case of regions within the underdeveloped economies is considered. Our view of location will thus be a global one : the pattern of location of the socio-economic process in its development. If the process is based on inequality, the pattern of location would, of course, crystallise regional inequalities within the economy or within the international economy (as is the case with the capitalist economy).

Going by this global view of the pattern of locations, we find that it is the pattern of distribution of the basic economic relations in the space which determines the networks of transport and the material basis for other basic services. These later, once in place, will affect the behaviour of the private

enterprise with respect to its decision relative to its location. With this perspective we can understand how within the framework of a process of spontaneous development (the capitalist process), a spontaneous pattern of location emerged which produced regional inequalities and aggregated, within the subordinated African economies, the inequalities between the town and the countryside.

If this global viewpoint is necessary to understand the real nature of the location pattern in the past, a pattern which still characterises the actual reality of the African economies, it is just as indispensable in seekeing the most efficient location policy while elaborating the development strategy.

We need first to start from the objectives of our strategy, the actual pattern of location and resources (in the sense defined above), to reach the location policy. Furthermore, we need to see the necessity for the new pattern of location to rectify the colonial pattern, a pattern that was aggravated in many cases, with the post-independence growth strategies.

In considering the location policy, a distinction should be made between private investment which would be located according to profit criteria with the necessity for a degree of state intervention to minimise the negative effects of spontaneous location, and public investment which would be allocated according to criteria of social profitability and the considerations of the development strategy.

The location policy, based on respect for the cultural reality of the region and its resources, should aim at the decongestion of the towns through a pattern of location which realises rural industrialisation. As for the units of services, the location policy should take them to the people, and not ask the people to move to these units.

In general the location pattern should in the first place, care for the population in the countryside, especially those strata with lower income and the lower-income strata within the urban population. The process of development should not take the form of expanding urbanisation in the form discussed earlier.

Emphasis should be placed instead on the process of rural industrialisation with the possibility of certain degree of de-urbanisation at a later stage.

Thus, we see that the policies we have to formulate with respect to labour force, material resources and the related problems of technology and location represent the basic guarantee for the realisation of the objectives of the development strategy, especially in a world plagued by increasing inflationary pressures and neo-monopolistic manipulation of strategic resources. But in dealing with a monetary economy, this view in physical terms has to be coupled with a discussion of policies concerning financial resources.

POLICIES CONCERNING FINANCIAL RESOURCES :

Here, we discuss policies concerning the mobilisation of financial resources necessary for the realisation of the objective of the strategy. A proper discussion of these policies cannot but start from the notion of economic surplus. Given some prevalent misleading ideas which form the basis of policies harmful to the African people, it is necessary to clarify what is meant by this notion.

Whatever may be the different connotations of the surplus the following suffices for our purpose : Starting from a certain stage in the development of the productivity of labour, society can produce a quantity of net product which exceeds the necessary consumption of those who carry out the process of production. With respect to development, it is the notion of the potential surplus which deserves more attention. This represents the difference between the social product that could be produced under the socio-technological conditions dominating in the society and what could be considered as necessary consumption. In an underdeveloped economy, this surplus exists in the following forms :

- Luxurious consumption, which usually takes the form of lavish consumption.

- The production lost to society due to the existence of un-

productive persons (i.e. those whose social status permits them to live without participation in the process of social labour) or to the existence of persons carrying out unproductive labour :

- The production lost to society because of the irrational organisation of the productive apparatus :

- The production lost to society due to the existence of unemployment and underemployment.

This surplus represents, in the final analysis, the source of all addition to productive capacity, that is of accumulation. That is why it is necessary to recognise the different forms the surplus takes. And for that, two criteria could be used, firstly, the nature of the economic activity which creates the surplus — agriculture, extractive activity (metals and oil) and industry; and secondly, the form of property of the production unit to which is related the form of the unit of exploitation. According to this second criterion, a distinction could be made, within agriculture between the surplus created in the peasant units of production and that produced on the big farming units. For non-agricultural production, a distinction could be made between the surplus produced in the private units of production and that produced in the state enterprises.

As for the monetary from which the surplus takes, it exists in the following incomes the rent of agricultural land, the interest on loans in the countryside, profits realised in agriculture, other primary activities, industry, transport and commerce, rent of buildings, interest on loans in the town, etc.

It is this economic surplus which represents the starting point in considering the financial resources. And to study the alternative policies relative to them means to locate the surplus economically and socially; to recognise the activities where the surplus is produced, its volume and its physical and monetary forms; to define the social strata or groups which appropriate the surplus in the form of incomes : to identify the ends to which the surplus is put to use by them in luxurious consumption, in speculation, in lending, in unproductive investment

which does not add to the society's productive capacity (like the transfer of land from one owner to another), in productive investment and in which branch of the last.

In the light of this, it is necessary to make explicitly some basic facts which are often ignored. Starting from the notion of economic surplus, there is no underdeveloped economy which does not process the financial resources for its development, especially if we identify all forms of waste of the actual economic surplus and effect changes necessary for the production of the potential surplus through the employment of the unemployed and underemployed sections of the labour force as well as the utilisation of idle material capacity.

Everything thus depends on the policies adopted for the mobilisation of the surplus to run it away from being used for lavish consumption (within and outside the African economy) and in unproductive investment, and use it for financing development. These policies could be firstly to reconsider the pattern of income distribution to liberate the surplus for financing investment; secondly to find new organisational forms for the units of productions, forms that increase production and facilitate the mobilisation of a part of the surplus (the other part to be used locally); thirdly, to adopt a taxation policy which takes the volume of the surplus as a basis for the taxable capacity, fourthly, to adopt a price policy which helps in the mobilisation of the surplus.

Another important point often forgotten is that the existence of oil or mining rent, although it facilitates the process of the structural transformation of production does not make countries receiving this rent rich except in as far as these rental revenues are transformed into productive capacity according to an appropriate strategy of development.

It is clear therefore that the discussion of policies related to financial resources for a development strategy should be based on a profound knowledge of the surplus in the underdeveloped economies. Such knowledge is usually, to say the least, neglected and almost non-existent in both the current literature on the problems of underdevelopment and develop-

ment in African economies and the documents of «development» and «planning» organs in the African economies. Its absence leaves the ground open for all prevailing erroneous ideas about poverty and wealth in underdeveloped countries as well as for the continuation of policies which, in the name of eradicating poverty, result in the waste of the elements of the surplus.

Yet, it is only in the light of a knowledge of the economic surplus, its mobilisation and the rationalisation of its use for financing developmental efforts, that one can define one's attitude vis-a-vis foreign capital in general and transnational corporations in particular. Lacking such knowledge, it is unjustifiable to talk about lack of financial resources and, consequently, the recourse to foreign capital.

As for attitudes vis-a-vis foreign capital, we will limit ourselves to raising a number of considerations and questions. The considerations are :

- The awareness that underdevelopment has historically been experienced by the african societies within the framework of their relation to foreign capital.

- The ability of the underdeveloped economies to produce a surplus not less than 20 to 25 percent of their national product, and that the most a society needs in order to develop itself economically, is to invest between 20 to 25 percent of its annual income, provided that it is properly allocated and the resulting productive capacity is used efficiently ;

- The need to grasp the nature of the actual international economy and the strategy or strategies of international capital towards the Third World in general, and the African countries in particular.

- The need to be clear with respect to the strategy of development of the underdeveloped countries.

As for attitudes vis-a-vis transnational corporations, which actually determine the international division of labour with

the capitalist economy, the real question — as well as its answer — can only be grasped through a profound study covering especially :

- Those transnational corporations having activities in the African economies especially in mining, oil, engineering, petrochemical, manufacturing, transport and banking, to see what sort of activity they practise in order to find out the sort of division of labour they are trying to realise :

- The conditions under which the transnationals deal with the African economies; the economic condition (the availability to natural resources, of a cheap labour force, of a local capital, or of a market, the taxation system, etc.), the political conditions (the guarantees and institutions required by them, how far they are acceptable and the social forces articulating with them) :

- The technological aspect of their activity : the role of the transnational units found in the African economy within the integrated technological processes; how far it is dependent on other links existing abroad; the level of technology adopted in this unit, how developed it is compared with the parent unit; their effort in the adaptation of technology and in which direction, how far they interest themselves in the development of local technology, patents, conditions of using them, the price.

- The financing of the units totally or partly built in the African economies by the transnationals : how far they are financially independent, how far they are married to local interests, the role of the State subsiding in their financing, to what extent local participation is accepted in the ownership of the parent corporation.

- With respect to the marketing of their products : to what extent it is possible to sell them on the international market, to what extent the transnationals honour their obligation concerning the marketing of a part of the output, the conditions of marketing, to what extent transnationals are interested in the local (and regional) market, and in which social groups in the market.

- Management : its modality, how far the process of decision-making is tied to the parent corporation, the participation of nationals, and in what sort of decisions (strategic and planning, coordination or execution), the behaviour of the managerial groups and their system of values.

All this is for the purpose grasping the relative weight of foreign capital existing in the underdeveloped economies through the transnationals (and hence the part of the economic surplus mobilised outside the national economy), their domains of activity, the type of local agents with whom they prefer to deal be it the government or private capital, and how they deal with them, whether through a package deal which contains capital or a part of it, technology and management, or on other bases. This would enable us to visualise the pattern of division of labour the transnationals try to maintain or establish. And the question would be : what this pattern represents for the African economy, a confirmation of subordination and underdevelopment, or away out of it ?

It is only on the basis of such a study, which reveals the nature of the transnationals and their role in Africa (and in the whole of the international economy) that we can grasp the real question which poses itself at the end : Have the African economies, in order to realise the objectives of the development strategy, to confront the transnationals or to deal with them ? And, if they have to deal with, in which domain ? In what form ? In the form of putting onself under their umbrella ? or in the form of participation with them ? Or that of using them consciously and cautiously in order to realise as rapidly as possible the conditions of doing without them ?

To look for an efficient policy with regards to financial resources is to think, then in terms of a services mobilisation of the economic surplus, the abolition of all forms of waste of its constitutent elements and the nationalisation of its utilisation. This would be the only way for the African economies to get rid of their indebtedness. For indebtedness cannot be realised through a policy of further aid from abroad or recourse to foreign capital.

So much for the physical and financial policies concerning

the society's possibilities. But this is not enough. These possibilities have to be seen also in the light of the organisational framework of their utilisation.

THE ORGANISATIONAL FRAMEWORK :

Organisational policy aims at a choice concerning the general organisational framework within which economic and other activity would be carried out, It should be clear, from the outset, that a choice such as this is a political one, and has a direct impact on the outcome of the socio-economic activity as well as on the distribution of the social product among the different classes and groups.

By organisational framework is meant the institution from which determines for the national economy its mode of functioning through determining the mode of managing the units constituting this economy.

As far as the mode of functioning of the national economy is concerned, the distinction is made between firstly, an organisational framework which permits an a priori determination of objectives for the national economy, through coordination among the objectives themselves and between them and the means, and an attempt to have these objectives realised with the conceived means. In this case, the functioning of the national economy tries to be a planned one. Secondly, an organisational framework which leaves the functioning of the national economy principally to the forces of the market, as expressed by prices, on the basis of which decisions are taken by the different production units independently. Here the functioning of the national economy is spontaneous whatever the degree of state intervention, since the final result depends always on the forces of the market.

The type of organisational framework is intimately related to the dominant form of property, to which corresponds a certain mode of management of the production units. By management is meant the direct control on the means of production, a control translated in decision making concerning the possible utilisation of resources, the effective utilisation of these resour-

ces and the controls on such utilisation. The ensemble of these decisions determines the pattern of resource utilisation and the pattern of the distribution of the social product. A distinction could be made between two modes of management, the «privative» and the collective modes of management.

Within the «privative» mode of management we can distinguish the «privative» individual mode and the ««privative» state mode where the «privative» individual mode dominates the private enterprise based on the division of labour between conception labour and execution labour, between skilled and unskilled labour, with the hierarchy such division implies within the labour force. Here decisions are taken according to the criteria of individual profits. It is individual rationality which is looked for.

On the other hand. The «private» state mode exists when the state (which has a socio-political nature) owns some production units (a public sector) within which the effective control on the means of production is in the hands of a limited social group. This mode of management is based on the same pattern of division of labour as the individual mode. The production units are usually managed by directors appointed by the state, with possibility of a certain degree of workers participation. Here, decisions are taken according to what may be called the criteria of «bureaucratic rationality» which is a pseudomarket nationality, according to which decisions are, objectively, taken with the goal of maintaining or enhancing the control of the state apparatus over the means of production as a basis for political power. Furthermore, thanks to this political power, the members of the state apparatus can appropriate, with other social groups (e.g. traders) a significant part of the economic surplus, despite a considerable waste of resources.

As for the collective mode of management, it presents an attempt to lay down a collective form of decision-making based on the control of the means or production by those who carry out production. It aims at the negation of the existing pattern of division of labour within the production unit. This mode of management characterises the situations of transition towards collective economies.

It is necessary, hence, to have a three-dimensional view of resources so as to effect a clear choice on the organisational framework. This choice goes much more beyond the question of private sector and/or public sector. Here, different historical experiences should be critically studied, not so as to be imported (for no social experience can be transplanted) but to see what lessons could be learnt from them.

These are the questions relating to policies concerning the mobilisation of the society's resources. It remains to discuss the policies of the development strategy and to consider policies concerning relations with the rest of the world.

POLICIES CONCERNING RELATIONS WITH THE REST OF THE WORLD :

If production is to take place for the satisfaction of the needs of the great majority, the economy would import what it cannot, actually or potentially, produce. Its capacity to import will be determined by its capacity to export plus the aid and facilities it receives. The economy's capacity to export depends on the types of exports as well as the market and its conditions. As for the types of exports, distinction has to be made between traditional exports, the result of the colonial pattern of the division of labour, and new exports for which the demand is increasing on the international market at an increasing rate; it is for the purpose of production of such exports that some resources are to be allocated.

With respect to traditional exports, it is the receipts from their sale abroad, and not their production which one should try to maximise. (In the long run, they are supposed to be either processed within the economy or replaced). Even for traditional industrial products the terms-of-trade tend to be unfavourable; think of textiles. As fo rthe export market, the problem is not one of competitive prices (exports could be always subsidised), but a problem of finding the market since the international capitalist market is highly oligopolistic and advanced capitalist countries (e.g. the US and Japan) adopt protectionist policies.

In view of that, there is a need to :

— Protect national industries (in an oligopolistic market, a new industry has to be protected if it is to be efficient at birth), as well as a need to conclude trade and payments agreement, for a rather long period, by association the prices export fetch with import prices.

Foreign aid might be helpful if not tied to conditions and restrictions. Otherwise is would importantly, discourage national savings, stimulate waste and breed vested interests for those social groups tied to foreign aid.

* * *

Thus, we see that if development is conceived of a process of negation of underdevelopment and as a process of mobilisation of the creative power of the labour force and of non-utilised resources, having the satisfaction of the needs of the great majority as the main objective, a process whose decisions are taken according to social, and not profit-making, criteria, all the dimensions of the process are integrated.

What is the conclusion ? It is that a self-reliance strategy of development implies a different basic approach, firstly, in conceiving the process of underdevelopment and socio-economic development in the underdeveloped parts of the capitalist world-system, and secondly, in conceiving the negation of the pattern of the international division of labour that begets underdevelopment and perpetuates it, albeit under changing forms.

It is through the adoption of such a strategy within the different parts of world society, coupled with the struggle to improve exchange conditions at the international level, that such a pattern of division of labour will be negated and replaced by another one.

It remains now to explicitly the requirements of such a strategy from the viewpoint of the balance of payments.

V

Let us now crystallise the specific requirements of such a strategy from the viewpoint of the balance of payments :

a) If development is to be realised at all, it must be realised through an independent model of decision making. This requires an **autonomous price system which takes social preferences, and especially that of getting out of underdevelopment, into consideration.** This price system will serve as a standard of measures during the period of the construction of lde industrial basis for the transformation of the whole economy. It should guarantee a minimum of price stability (wages included) which is indispensable for the mobilisation and utilisation (for accumulation purposes) of the economic surplus, through direct means of mobilisation (such as taxation) are socially and politically preferable.

b) To guarantee such system of prices in the case of African economies a certain monetary, and not economic, isolation will be necessary. Hence, the necessity of envisaging, in each concrete situation, its significance, and the means of its realisation, internal as well as external.

c) To enable such monetary isolation to produce the desired effects the country's economic relations with other countries should be organised by agreements :

— Covering all aspects of economic relations : commercial with the modes of payments, aid and loans and technological exchanges, and

— Concluded for long period that they could provide the national policy maker with a minimum of certainty with respect to external outlets and sources of inputs, suitable technology and unconditioned aid. This does not exclude that such agreements should imply mechanisms

of their modification with major changes in international conditions.

d) This national policy could be supported :

— On a regional or sub-regional level, by some collective agreements : commercial as well as monetary and even financial with respect ot the financial capacity of the African oil-producing countries.

— On an international level : by a hard struggle for a short-run improvement of the terms of trade in the interest of the African economies through means as the ones discussed within the efforts for the New International Economic Order.

e) Still, the indebted African countries will, even when this strategy is adopted, have to face the pressing problem of indebtedness : this evokes the question of rescheduling the debt outstanding, provided that such rescheduling implies a real transfer of resources, the appropriate ones, from the advanced to the indebted country, and that it easens the conditions of debt services. This implies too the necessity of canceling some of the external debt : a certain percentage of the conditioned loans, a part of loans concluded to finance projects that turned out to be a failure, a part of loans to finance the purchase of food in as far as the price of food was higher than the world level at the time of delivery, a part of loans concluded for financing projects that were destroyed by factors out of the control of the indebted country (natural disasters, wars, etc.) (6).

We could be asked if such strategy of development is possible. We would say that it is possible at the level of conception

(6) See for all the problems of indebtedness, Ramzy Zaki, The Crisis of External Debts, A vision from the third World (in Arabic), Elhaia Elmisria Lilkitab, Cairo, 1977.

as well as the level of its technical elaboration(7). The real question would be that whether it is politically possible. This depends on the level of our consciousness and our capacity to strive for it. In thinking in terms of such strategy we might be saying a heresy. But, today's heresies are usually tomorrow's guide line. And only those who grasp the proper direction of history can master their tomorrow, through a conscious action which starts today.

(7) See for the quantitative elaboration of such strategy for the Arab World, M. Dowidar, M. Noureldine, S. Elantry and G. Elhevnawi, The self-reliance strategy : Towards a new approach to Arab development through industrialisation starting from social needs. Alexandria, 1980.

THE TARGET WORKER HYPOTHESIS : THEORY AND EVIDENCE

by

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ABSTRACT

The target worker hypothesis maintains that labor supply behavior is irrational in the sense that higher wages result in less effort supplied, and it has been applied to Third World nations on the grounds of cultural differences. This paper presents a rigorous definition of the target worker phenomenon based upon microeconomic theory, and examines the empirical relevance of the phenomenon to the labor supply behavior of married Egyptian women. The conclusion reached is that their behavior can be better explained by a rational market model than by the target worker model.

One variation on the general theme that cultural differences determine differences in the level of economic development is the idea that the supply of effort in less developed countries (LDCs) is backward bending. With respect to labor supply, the implication of this idea is that higher wages result in fewer hours of work since an income target is more quickly realized. Many who have written on Europe's colonial domination of Africa and Asia have noted the widespread adherence to this idea amongst colonial investors and administrators.(1)

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(1) The most notable discussion of this idea is found in J. H. Boeke, **Economics and Economic Policy in Dual Societies**, New York, 1953. See also Wilbert Moore, **Industrialization and Labor**, New York, 1965 (especially chapter VII).

Various development economists have expressed skipticism over the idea that cultural differences lead to individual economic behavior that is nonrational by the standards of conventional microeconomic theory.(2) Though there is no systematic evidence to prove that these critics represent the thinking of the vast majority of development economists, it is the author's impression that such is the case. However, the idea is still discussed in various contemporary textbooks including Higgins' discussion of cultural determinism and Kindleberger and Herrick's discussion of target workers.(3) There appear to be two reasons why economists have failed to completely discredit the idea. The first is the failure to give a clear theoretical definition of the phenomenon of a target worker, and the second is the shortage of microeconomic empirical evidence on labor supply behavior in LDCs.(4) The theoretical problem is explored in the section of this paper, and some empirical results from a limited sample of Egyptian workers are presented in the second section.

I. The Theory of the Target Worker :

The main theoretical problem associated with the idea that cultural differences generate unorthodox behavior in the supply

(2) For example, see Peter Kilby, «African Labor Productivity Reconsidered», **Economic Journal**, 71 (June, 1961), 273 - 291, Elliot Berg, «Backward-sloping Labor Supply Functions in Dual Economies — the Africa Case», **Quarterly Journal of Economics**, 75 (August, 1961), 468 - 492, Marvin Miracle and Bruce Fetter, «Backward-sloping Labor Supply Functions and African Economic Behavior», **Economic Development and Cultural Change**, 18 (June, 1970), 240 - 251, and Marvin Miracle, «Interpretation of Backward-sloping Labor Supply Curves in Africa», **Economic Development and Cultural Change**, 24 (January, 1976), 399 - 406.

(3) Benjamin Higgins, **Economic Development**, revised edition, New York, Norton, 1968, chapter 12 and Charles Kindleberger and Bruce Herrick, **Economic Development**, third edition, New York, McGraw-Hill, 1977, chapter 6.

(4) The only empirical study of labor supply behavior in a LDC known to the author is Pranab K. Bardhan, «Labor Supply Functions in a Poor Agrarian Economy», **American Economic Review**, 69 (March, 1979), 73 - 83. Bardhan examined various sectors of India's of labor market and found mixed evidence on the impact of the wage rate on labor supply behavior.

of labor is the difficulty of distinguishing such behavior from the behavior of workers for whom the income effect dominates the substitution effect. A decrease in the hours of labor supplied in response to a rising wage rate is completely consistent with rational utility-maximizing behavior when the increased consumption of leisure resulting from higher income exceeds the substitution of market income for leisure due to the pure price effect. Clearly it is inadequate to define the concept of the target worker in terms of a negatively sloped labor supply function and then maintain that it is cultural factors which differentiate such workers from Western workers. Not only is a negatively sloped labor supply function perfectly consistent with utility-maximizing behavior, but some of the existing empirical evidence indicates that American workers are characterized by a dominant income effect.(5) Yet nobody has suggested that their behavior be described as target oriented.

If the target worker is to be a useful concept whose existence can be tested for empirically, then some unique pattern of behavior must be defined. The most obvious approach is to define a target worker as one who exhibits no tendency to substitue market work for leisure in response to a rising wage rate after controlling for income effects. The absence of a substitution effect would imply that the supply curve must be negatively sloped because the income effect would totally dominate the supply decision.

The basis for the above definition is a 1961 article by Elliot Berg.(6) In this paper, Berg developed a microeconomic model

(5) For example, see T. Aldrich Finegan, «Hours of Work in the United States : A Cross-sectional Analysis», **Journal of Political Economy**, 70 (October, 1962), 452 - 470, Sherwin Rosen, «On the Interindustry Wage and Hours Structure», **Journal of Political Economy**, 77 (1969), 249 - 273, J. D. Owen, «The Demand for Leisure», **Journal of Political Economy**, 79 (1971), 56 - 76, and M. Abbot and Orley Ashenfelter, «Labor Supply, Commodity Demand and the Allocation of Time», **Review of Economic Studies**, 43 (1976), 389 - 411.

(6) Elliot Berg, «Backward-sloping Labor Supply Functions in Dual Economies — the Africa Case», **Quarterly Journal of Economics**, 75 (August, 1961), 468 - 492.

of labor supply behavior that combines traditional indifference curve analysis, the explicit definition of a target income level, and the assumption that indifference curves are approximately L-shaped with the joints located at the target income. Thus, for levels of income below the target level, the marginal rate of substitution of income for leisure approaches zero while at levels of income above the target level, the marginal rate of substitution is close to infinity. For the purpose of refining this definition of a target worker in a manner that will facilitate empirical testing, assume the case of perfectly L-shaped indifference curves. In this extreme case, the worker places an infinite value on his leisure time at income levels above the target and thus will not give up an hour of leisure for additional income. On the other hand, for levels of income below the target, the worker places no value on his leisure time, and is willing to give up any amount of it to reach the target. The actual amount he must give up depends upon the wage rate.

The extreme case of L-shaped indifference curves is presented in Figure 1. Y and L are income from market work and hours of leisure respectively. OT is the target income, and TG represents the «income constraint» in the sense that workers do not want to fall below income OT and are willing to sacrifice any amount of leisure to avoid a lower income. W_1 and W_2 represent two budget constraints associated with alternative wage rates ($W_2 > W_1$). I_1 and I_2 are two indifference curves which overlap along TG. Thus the indifference curves are defined by the line segments I_1 AG and I_2 BG. The way the model is specified, the worker will always be in equilibrium (in the sense of achieving the highest indifference curve) at the joint of an indifference curve, all of which fall along TG.

The standard decomposition of a worker's response to a change in the wage rate into income and substitution effects can be analyzed by assuming initial equilibrium at point A with a wage arte of W_1. If the wage rate increases to W_2, the new equilibrium will be at point B. The hypothetical budget line that allows the worker to achieve the higher level of utility associated with I_2 at the old wage rate W_1 is represented by the broken line. There is a complete absence of a substitution effect as seen by the fact that the hypothetical budget line and

the budget line of W_2 are both tangent to I_2 at B. The movement from A to B is completely explained by the income effect, and the level of income in the new equilibrium is the same as in the old equilibrium. The worker is better off only because of the increased consumption of leisure.

These indifference curves represent an obvious contradiction of terms in the sense that a point such as B falls on both I_1 and I_2. This implies that the worker prefers this income-leisure combination to itself. Thus, by specifying that the indifference curves overlap along the income constraint TG, the model clearly assumes an irrational element in the labor supply behavior of workers. It is doubtful that anyone would argue that this extreme case of perfectly L-shaped, partially overlapping indifference curves exactly describes labor supply behavior in LDCs. However, the model does provide a precise theoretical definition of a target worker, and if it approximates supply behavior in LDCs, then it is reasonable to describe such behavior as unorthodox and attribute it to cultural factors. The model also provides the basis for a simple empirical test to determine whether workers in LDCs fit the model of the target worker, and this is the topic for consideration in the second half of this paper.

II. An Empirical Analysis of Labor Supply Behavior for Married Egyptian Women :

If the labor supply behavior of workers in LDCs is approximated by the target model presented above, then one would expect the coefficient of the wage variable in a labor supply model to equal zero after controlling for income. One approach to modeling labor supply behavior is to assume that it can be decomposed into two sequential and independent decision. First, the worker decides whether to participate in the labor force, and if this decision is affirmative, then the worker decides how many hours of labor to supply. Specifically :

1. $P = a_0 + a_1 W + a_2 Y$ and
2. $H = b_0 + b\ W_1 + b_2 Y$

where P = a dummy variable measuring whether a person chooses to work ($P = 1$ if $H > 0$ and $P = 0$ if $H = 0$), H =

hours of labor supplied in the market, W = the opportunity cost of time, and Y = all household income except the worker's own wage income. In the context of this model, the relevance of the target worker hypothesis can be tested for by observing the signs of a_1 and b_1 . If workers are indeed target oriented, then one would expect to observe $a_1 = b_1 = 0$, but if workers behave in an orthodox fashion, then one would except both a_1 and b_1 to be greater than zero.

This empirical test has been performed using data collected in a small private survey of 128 married Egyptian women living in Cairo. The survey was conducted in the spring of 1977. Married women were selected on the assumption that they represent secondary workers in the household. If household labor supply decisions are made in relation to a target income, then the impact of this seems most likely to be observed in the marginal hours supplied by secondary workers. Empirical evidence of labor supply behavior in American households indicates that the substitution effect of males is positive but highly price inelastic. However, the supply response of American women to the wage rate is much more elastic(7). This is interpreted to reflect the social norm that a male head of a household should work full time, and thus the marginal allocation of the household's time between market work and other alternatives is primarily reflected in the wife's supply of labor. Thus, testing the target worker model with data on Egyptian women is a stronger test of the hypothesis since the absence of a substitution effect would represent a sharp contrast with the empirical evidence for American women .

The major problem with the data is that the survey is not based upon a sampling design that insures a random sample. Since the sample is small, the raw data themselves were examined for biases and irregularities that may be associated with the attempts of student assistants to survey a representative cross-section of married women in Cairo. On the basis of the author's familiarity with the labor market in Cairo and the

(7) See Orley Ashenfelter and James Heckman, «The Estimation of Income and Substitution Effects in a Model of Family Labor Supply», Econometrica, 42 (January, 1974), 73 - 85.

demographic characteristics of its population, the sample was judged to be representative except for a large over-representation of college-educated women. To compensate for this problem, subjects whose education exceeds twelve years have been dropped from the sample. Besides their obvious overrepresentation in the sample, this procedure also can be justified on the basis of the argument that this segment of the population is the least likely to exhibit target-worker behavior. This is due to their likely contact with Western values via their education. If the target worker hypothesis is valid, it intuitively seems to be the case that this behavior would be observed amongst the common segments of the population. Thus, to avoid an empirical test that would be biased against the target worker hypothesis from the outset, the college-educated portion of the sample have been excluded from the empirical analysis in this paper.

The survey asked respondents to account for the allocation of their time between hours of market work versus all other activities during a typical fifteen-hour day. Respondents were also asked to indicate number of days worked per week, total personal income earned per week from market work, and total household income per week. Finally, they were asked to indicate their age, their years of schooling, and the ages of their children.

Variables to be used in the empirical analysis below which were obtained directly from the survey are defined as follows :

H = hours per typical day allocated to market work,

AGE = respondent's age, and

ED = respondent's years of schooling.

Three variables were derived from information in the survey as follows :

P = labor force participation defined as P = 1 if H > O and P = O if H = O,

Y = total household income per week minus the wife's income earned per week from market work, and

CHILD = the number of children in the household weighted

by the inverse of their ages. (This variable is larger the greater the number of children and the younger the children's ages).

The final variable in the analysis below is W which attempts to measure the opportunity cost of the respondent's time. In the case of respondents who worked for wages, W is the estimated wage rate. It is calculated as respondent's income per week from market work divided by the product of hours worked per typical day and days worked per week. For respondents who did not work for wages, an opportunity cost was assigned on the basis of their education. Since the vast majority of these non-working respondents were either uneducated or had a high school diploma (which is not a surprising result in light of the top-heavy structure of Egyptian education), the assignment of a value for W was not a difficult task. The author based these assignments upon his past experience working with earnings profiles of Egyptians. Since uneducated workers exhibit a uniformly flat earnings profile, there is little chance of significant inaccuracies in this assignment procedure. Further, since uneducated workers represent 81% of the total number of non-working respondents, this assignment procedure should not distort the empirical results.

The basic model to be estimated is an extension of the conventional labor supply model defined by equations 1 and 2. In particular, this model is extended to include variables that control for the respondents' ages, years of schooling, number of children, and their ages. Thus, the model is specified :

3. $P = \alpha_0 + \alpha_1 W + \alpha_2 Y + \alpha_3 ED + \alpha_4 AGE + \alpha_5 CHILD + \varepsilon_1$

4. $H = \beta_0 \ \beta_1 W + \beta_2 Y + \beta_3 ED + \beta_4 AGE + \beta_5 CHILD + \varepsilon_2$

where all of the variables are as defined above, and the ε_i are the error terms of the two equations. Since the dependent variable in equation 3 is binary, the Probit model is used to estimate the coefficients. Equation 4 is estimated with the subsample for which P = 1 since the model assumes an independent sequential decision-making process with regards to participation and hours. Therefore, the coefficients of equation 4 can be estimated by ordinary least squares because all of the observations that would make for a truncated dependent variable (H = 0) have been dropped.

The regression results are presented in Table 1. Collectively the Profit-estimated coefficients of equation 3 (column 1) are significantly different from zero at the .01 level as indicated by a likelihood ratio test. (Minus two times the log likelihood ratio is distributed χ^2 with degrees of freedom equal to the number of independent variables in the equation). The coefficients measure the marginal changes in standard deviations of a normally distributed dependent variable that result from a one unit change in the independent variable. The probabilities associated with the predicted Probit values (obtained from the cumulative normal distribution) are the probabilities of labor force participation. A prediction is defined to be correct if for $P = 1$, the predicted probability is greater than .5, or for $P = 0$, the predicated probability is less than .5. In this case, the estimated equation makes correct predictions for approximately 85% of the observations. Individually the coefficients of W and Y have the proper signs ($\alpha_1 > 0$ indicates a positive substitution effect and $\alpha_2 < 0$ indicates a negative income effect) and are significant at the .01 and .05 level respectively.

The coefficients in column 2 are the OLS estimates for equation 4. The R^2 of .187 is significantly different from zero at the .01 level. The wage and income variables once again have the proper signs and once again are statistically significant (.05 level). In general, the overall statistical results suggest that the labor supply model defined above provides a good basis for interpreting the behavior of married Egyptian women.

In conclusion, the most important empirical results in Table 1 are the positive and highly significant coefficients observed on W in both equations. In economic terms, this implies that married Egyptian women do substitute hours of work for leisure in response to a rising wage rate after controlling for income effects. This in turn suggests that the model of the target worker is not applicable to the behavior of this particular group of workers. Naturally, care must be exercised in generalizing from such a limited sample in one LDC, but the fact that the results described above were observed in a LDC raises strong doubts that cultural differences manifest themselves in unorthodox labor supply behavior.

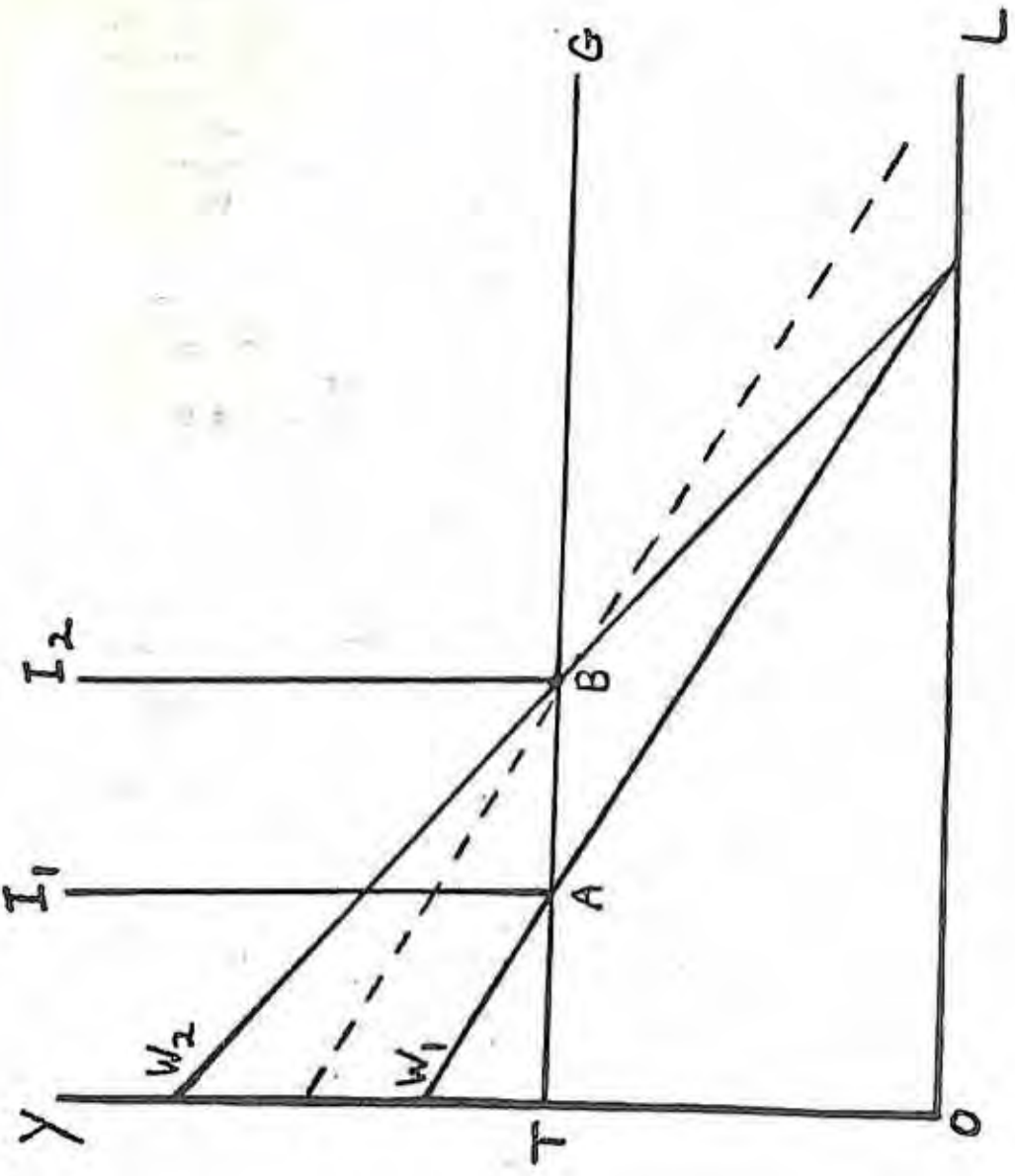
G
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Table 1

Regression Coefficients for Analysis of the Labor Supply of Married Egyptian Women

Independent Variables	Dependent Variable (1) P	(2) H
W	0.00513**	7.650*
	(0.00123)	(3.686)
Y	—0.0476*	—0.0192*
	(0.0235)	(0.0083)
ED	—0.0248	—0.136
	(0.0497)	(0.078)
AGE	0.0101	0.0387
	(0.0194)	(0.0377)
CHILD	—0.0092	—0.027
	(0.0072)	(0.0156)
Constant	—0.018	3.937
Observations	99	64
—2 (Log Likelihood Ratio)	66.8	
% Correct Predictions	85.9	
R^2		0.187

* indicates significance at the .05 level.
** indicates significance at the .01 level.
Standard errors are in parentheses.