

The Rising Utility of the Public International Corporation

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I. INTRODUCTION

Recent international economic problems call for new and imaginative mechanisms for interstate relations. The ascent in the post-World War II era of positivist forces for cooperative uses of international law, as contradistinguished from the international law of coexistence in which law was employed mostly as a sanction, leads to increasing use of the public international corporate device.¹ The corporate mechanism emphasizes the functional approach in international law. By perceiving the diverse and quickly fluctuating character of international society, the functional approach mandates many kinds of legal and institutional patterns.² The late Professor Wolfgang Friedmann, the eminent spokesman of both the positive and functional schools, described the new types of transnational law and the growing roles of the public international corporation.³

In today's world both theoreticians and international political leaders are urging a rearrangement of the international system in order to accomplish a more equitable distribution of the world's resources, thereby reducing world tension.⁴ In the interim period, the coalescence of functionalism and regionalism represents a trend for overcoming the antiquated statist

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1. Friedmann, *Droit de Coexistence et Droit de Cooperation: Quelques Observations sur la Structure Changeant du Droit International*, 6 *REVUE BELGE DU DROIT INTERNATIONAL* 9 (1970); see also McDougal, *International Law, Power and Policy: A Contemporary Conception*, 82 *RECUEIL DES COURS* 137 (1953); and J. BEGUIN, *LES ENTERPRISES CONJOINTES INTERNATIONALES DANS LES PAYS EN VOIE DE DEVELOPPEMENT* 249 (1972).

2. W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 276-77 (1964).

3. *Id.* at 230.

4. Friedmann, *Governmental (Public) Enterprise*, XIII *INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW* 24-27 (1972); Friedmann, *Government Enterprise: A Comparative Analysis*, in *GOVERNMENT ENTERPRISE: A COMPARATIVE STUDY* 333-36 (W. Friedmann & J. Garner eds. 1970); and W. FRIEDMANN, *THE PUBLIC CORPORATION passim* (1954).

system.⁵ International lawyers can help governments become leaders in directing their authority in positive ways, rather than in divergent and competitive directions. In addition, the proper formation of transnational sources of power, which can become important actors themselves, aids the transformation of the international order. This article describes the role of the public international corporation as a valuable and creative mechanism for achieving positive cooperation between international actors to attain a more equitable distribution of the world's resources.

The public international corporation offers an excellent tool for solving three related problems in international economics and politics: (1) the problem of regional interstate development and economic integration; (2) the problem of distribution of aid to developing countries; and most importantly, (3) the reduction of tension in the relations between multinational corporations (MNCs) and host developing countries. The use of the corporate mechanism to accomplish these objectives has been proposed by Professor Zacharias Sundström.⁶ In addition to extending and updating these ideas, this article discusses new areas of application in commercial endeavors and the evolution of the multinational corporation.

Some brief remarks on the current roles of states in the international economy are important background for this analysis. Nation-state governments have increasingly intervened in both the public and private sectors of the national economy as well as the international economy in an attempt to further national interests.⁷ The growing government role in the national economy can be seen partly as a function of the increasingly strong element of public law in international trade and the degree to which domestic economies interact and depend upon world trade.⁸ These trends combine with ideological fac-

5. R. FALK, *A STUDY OF FUTURE WORLDS* 189-90 (1975).

6. See generally, Sundstrom, *The Legal Procedures and Techniques of Economic Co-operation*, 16 *J. OF AFRICAN L.* 229-43 (1972). Since several of Professor Sundstrom's works are cited, to avoid confusion, abbreviated footnote form will be utilized.

7. W. FRIEDMANN, *supra* note 2, at 341-61.

8. Sundstrom, *Comparative Law in the Development of the Law of International Corporations*, XIV *ACTA INSTITUTI UPSALIENSIS JURISPRUDENTIAE COMPARATIVAE* 238-39 (1972); J. BEHRMAN, *CONFLICTING CONSTRAINTS ON THE MULTINATIONAL ENTERPRISE: POTENTIAL FOR RESOLUTION* 1-38 (1973); Bergstedt, *Coming Investment Wars*, 53 *FOREIGN AFFAIRS* 135 (1974).

tors to remove many elements of economic life from private hands to the public sector, often by means of public corporations.⁹ Similarly, international trade has become inextricably connected with government policy (tariffs, customs, regional trade arrangements, and bilateral agreements).¹⁰ The evolution of "international transactional law" has blurred distinctions between public and private international law.¹¹ The use of the public international corporation reflects both the new trends in trade law and the changing character of international law.

II. THE CONCEPT OF THE PUBLIC INTERNATIONAL CORPORATION

Before setting forth examples of current uses of and projections for the public international corporation, some basic definitions of the concept, and its unique organizational structures and advantages serve as background.

The public international corporation is best defined as an organism with a particular function, subject to an international or community regime, possessing autonomous powers and devices, and designed either to make disbursements to individuals or to regulate their use of the public domain under state or interstate control.¹² Presently, various public international corporate organisms exist. They usually have as a common denominator an international agreement, which often also contains the fundamental legal regime of the corporation.¹³

Since the public international corporation embraces many distinct types, the term can be best understood as only a generic concept.¹⁴ On the one hand, certain public international

9. Sundstrom, *Comparative Law in the Development of the Law of International Corporations*, XIV ACTA INSTITUTI UPSALIENSIS JURISPRUDENTIAE COMPARATIVAE 238-39 (1972); Ghai, *Current Problems of Economic Integration among Developing Countries*, UNCTAD, U.N. Doc. TD/B/436 (1973).

10. Bergstedt, *supra* note 8, at 135.

11. W. FRIEDMANN, *supra* note 2, at 221-31.

12. I H. ADAM, *LES ORGANISMES INTERNATIONAUX SPECIALISES* 9-35 (1965).

13. Examples of various types include: the Inter-American Development Bank, the International Finance Corporation, the International Moselle Company, the European Investment Bank, Air Afrique, the European Company for the Financing of Railway Equipment (EUROFIRMA), the Central African Power Corporation, and the Interim Telecommunications Satellite Committee (INTELSAT). Z. SUNDBSTROM, *PUBLIC INTERNATIONAL UTILITY CORPORATIONS: CASE STUDIES OF PUBLIC INTERNATIONAL INSTITUTIONS IN CORPORATE FORM* 8 (1972) [hereinafter cited as SUNDBSTROM, *PIUC: CASE STUDIES*]. Also, for examples from an earlier work, see C. FLIGLER, *THE MULTINATIONAL PUBLIC ENTERPRISE passim* (1967).

14. H. ADAM, *supra* note 12, at 34. Professor Louis Sohn in his description of

corporations have close structural similarities to the domestic public corporation, for example where one constituent state occupies a dominant position in the corporate relationship, and can thus impose its own will.¹⁵ On the other hand, public international corporations exist which functionally emulate an international organization, with a high degree of member autonomy and limited independent decision-making power in the organization itself.¹⁶

Since the types, objectives and scope of activities of a public international corporation vary widely, the best classification criterion is derived from a functional test based on the original purposes of the corporation, the scope of its activities, and the resulting structure.¹⁷ Using this test, five types of public international corporations have been distinguished:

1. the public international utility corporation;
2. the public international commercial corporation;
3. the public international financing corporation;
4. the public international development corporation;
5. the public international research and training center.

Some public international enterprises possess, of course, elements of more than one type.¹⁸

The procedures for decision-making that different types of international organizations possess indicate an interaction between the objectives of the organization and the powers ac-

African organizations does not classify river basin organizations as public international corporations although he discusses the difficulty of distinguishing between technical categories. Sohn, *The Organization of Economic Co-operation in Africa*, 16 J. OF AFRICAN L. 215-16 (1972). The emphasis of this work is on the concept of the public international corporation as it relates to its functional and positive roles in international law. Many authorities would probably disagree on the technical terminology.

15. SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 9. The best example of the public international corporation of this type is the Basel-Mulhouse Airport in which France has the dominant role. See the text in 2 H. ADAM, *supra* note 12, at 223; see also Z. SUNDSTROM, THE PUBLIC INTERNATIONAL UTILITY CORPORATION: CORPORATE LAW AND PUBLIC INSTITUTIONS IN INTERNATIONAL ECONOMIC CO-OPERATION 216 (1971) [hereinafter cited as SUNDSTROM, PIUC: COMPARATIVE STUDY]; and SUNDSTROM, PIUC CASE STUDIES, *supra* note 13, at 84 *et seq.*

16. The Central African Power Corporation and the Scandinavian Airlines System are the best examples. They are described in SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 63 *et seq.*, and 100 *et seq.*; and SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 177 *et seq.*, and 275 *et seq.*

17. SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 9; Glaser, *A Functional Approach to the International Finance Corporation*, 57 COL. L. REV. 1089 (1957).

18. SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 9.

corded to it.¹⁹ A distinction must be made between the two elements which together gauge the functional ability of an international organization. In order to act decisively, an organization needs adequate constitutional powers and independence from the special interests of its members.²⁰

The public international corporation has two chief advantages. First, its decision-making capabilities are more efficient than those of its counterpart, the traditional international organization. Unlike the structure of the traditional type of international organization in which most powers of decision are vested in the assembly with little in the secretariat, the public international corporation acts through its executive, and thus has a personality distinct from the individuality of its shareholders.²¹ It also has autonomy in financial and other essential decision-making.²² Hence, a strong and independent executive can save an organization which would otherwise collapse during political crises. This will be illustrated below.²³ Secondly, the integration effects of the public international corporation offer benefits which its counterparts, the MNC and the state enterprise, cannot provide.²⁴

Before considering applications of the public international corporation, reference is made to numerous legal issues pertaining to this mechanism. They include their connection to public international organizations,²⁵ the trend toward an international regime of the public international corporation,²⁶ their formation,²⁷ composition,²⁸ decision-making,²⁹ privileges and immunities,³⁰ conflict-solving mechanisms,³¹ and residuary

19. Sundstrom, 16 J. OF AFRICAN L., at 231. See also 1 H. ADAM, *supra* note 12, at 83-85, 152-74.

20. Sundstrom, 16 J. OF AFRICAN L., at 231.

21. 1 H. ADAM, *supra* note 12, at 27-34.

22. Sundstrom, 16 J. OF AFRICAN L., at 233-35; and SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 50-54.

23. *Id.* at 56-80, 345-48.

24. Sundstrom, 16 J. OF AFRICAN L., at 236.

25. 1 H. ADAM, *supra* note 12, at 83-87.

26. *Id.*

27. *Id.* at 104-31; SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 348-51.

28. 1 H. ADAM, *supra* note 12, at 132-37.

29. *Id.* at 138-51.

30. SUNDSTROM, PIUC: COMPARATIVE STUDIES, *supra* note 15, at 369-71.

31. See case examples in *id.* at 137-30, 166-69, 206-07, 236-38, 302-03, 332-34.

law.³² All these and other legal issues are important, but beyond the scope of this article.

III. INTEGRATION PROBLEMS AMONG DEVELOPING STATES AND THE EMERGENCE OF THE PUBLIC INTERNATIONAL CORPORATION

Traditional regional interstate integration schemes have, especially in developing countries, failed to attain their objectives. Although several factors can be cited as causes, the lack of proper institutional structures and the failure of governments to surrender sovereignty to intergovernmental organs have prevented the establishment and efficient functioning of organizations capable of achieving regional integration.³³ The public international corporation, however, has demonstrated that it can be effectively used as a complement or alternative to integration schemes. This section highlights organizational problems in regional integration schemes among developing countries and the solutions offered by the public international corporation.

An overview of the major regional integration schemes of developing countries illustrates some common trends. Recent examples of integration schemes are:

1. the East African Economic Community (EAEC)—Kenya, Uganda and Tanzania;
2. the Central African Customs and Economic Union (UDEAC)—Congo (Brazzaville), Gabon, Cameroon and the Central African Republic (Chad left the Union in 1968);
3. the Maghreb Common Market (Maghreb)—Algeria, Tunisia, Morocco and Libya;
4. the Central American Common Market (CACM)—Guatemala, Nicaragua, Honduras, El Salvador and Costa Rica;
5. the Latin American Free Trade Area (LAFTA)—all the South American republics plus Mexico;
6. the Andean Group—Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela;
7. the Caribbean Community and Common Market (CARICOM)—Barbados, Guyana, Jamaica, Trinidad and Tobago;
8. the West African Economic Community (CEAC)—Dahomey, Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta;

32. *Id.* at 268-70, and especially the peculiar case of the Franco-Ethiopian Railway Co., which uses a draft code, *id.* at 142-44.

33. Stoutjesdijk, *LDC Regional Markets: Do They Work?*, 5 *COL. J. OF WORLD BUS.* 53 (1970); Sundstrom, 16 *J. OF AFRICAN L.*, at 229. Also, for historical background regarding African balkanization, see H. GREEN & A. SEIDMAN, *UNITY OR POVERTY? THE ECONOMICS OF PAN-AFRICANISM* 11-17, 33-37 (1968).

9. the Economic Community of West African States (ECOWAS)—Dahomey, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo, and Upper Volta.³⁴

The above schemes have similar basic institutional structures. The policy-making authority consists of either the Heads of State or Ministers with an executive committee preparing the recommendations approved by the authority. The committee is usually assisted by a varying number of commissions and subcommissions as well as by a secretary general with a permanent secretariat. In no case, however, have the cooperating countries been prepared to delegate any meaningful decision-making power to a supranational authority. This factor and the lack of sufficiently qualified personnel to prepare good regional studies have generally hampered progress toward a regionally integrated economy. Capital, technical skills and managerial ability also pose important constraints on economic growth.³⁵ The corporate device now enhances integration possibilities within and, in some cases, between these regional groups.

The emergence of the public international corporation, in which executive decision-making is a normal, indispensable aspect, has introduced increased autonomy and a corporate-type, executive decision-making into interstate relations.³⁶ The combination of efficient decision-making and the insulation of the organisms from political decision-making within regional integration schemes provides a firm solidarity and prevents disintegration over national political issues.³⁷ In this respect the public international corporation has provided an important contribution to regional integration schemes. Two areas of activity are particularly amenable to the public international corporation framework: financial-development activities and basic infrastructure activities, such as transport and communications.

34. For a more complete listing, see Sidjanski, *Current Problems of Economic Integration—The Role of Institutions in Regional Integration among Developing Countries*, UNCTAD, U.N. Doc. TD/B/H22 (1974). The individual texts may be obtained by consulting the U.N. Treaty Series, International Legal Materials or the Secretariat of these organizations.

35. Stoutjesdijk, *supra* note 33, at 5.

36. Sundstrom, 16 *J. OF AFRICAN L.*, at 231.

37. *Id.* at 233; SUNDSTROM, *PIUC: COMPARATIVE STUDY*, *supra* note 15, at 29.

Most integration schemes have established an integration bank (the European Investment Bank and European Development Bank in the EEC,³⁸ the Bank for Economic Integration in the CACM),³⁹ a development bank (the East African Development Bank in the EAC⁴⁰ and the Caribbean Development Bank in CARICOM),⁴¹ or a development corporation (the Andean Development Corporation (ADC) in the Andean Group).⁴² These are constituted within the public international corporation framework, and are created to stimulate new regional economic activities and to correct certain existing imbalances. The autonomy of these organisms facilitates participation by states which are otherwise not members of the scheme, such as Venezuela's initial participation in the Development Corporation,⁴³ and Colombia's and Venezuela's participation in the Caribbean Development Bank.⁴⁴ The advantages of autonomy for these financial institutions was recently demonstrated in the case of the CACM, in which the Monetary Council, the Bank for Economic Integration (CABEI), and the Clearing House are examples of public international corporations. These institutions continued to function normally during, and since, the 1969 "soccer war" crisis, which caused the closing of the frontier between El Salvador and Honduras, impeding the flow of goods between the two countries.⁴⁵

The use of the public international corporation for common services represents the second main area of use for this framework. In the EAC, in addition to the numerous specialized institutions and organs (*i.e.*, centers for industrial, agronomic, forestry, fishery and meteorological research), other important activities in the Community are performed by the four

38. Treaty of Rome, art. 129 and Protocol No. 1 annexed to the Act of Accession, modified by art. 35 of the Adaptation Decision for the European Investment Bank; and EUROPEAN COMMUNITIES COMMISSION, *THE EUROPEAN DEVELOPMENT FUND* (1973).

39. Sidjanski, *supra* note 34, at 65; Avery & Cochrane, *Subregional Integration in Latin America, the Andean Common Market*, 1972 *J. OF COMMON MARKET STUD.* 98.

40. Treaty for East African Cooperation, art. 21 and Charter of the East African Development Bank, annex VI to the Treaty.

41. Uchegbu, *The Caribbean Development Bank: Implications for Integration*, 7 *J. OF WORLD TRADE L.* 568 (1973), and text in *DOCUMENTS OF INTERNATIONAL RELATIONS IN THE CARIBBEAN* 412-17 (R. Preiswerk ed. 1970).

42. Avery & Cochrane, *supra* note 39, at 98.

43. *Id.* at 98-100.

44. Uchegbu, *supra* note 41, at 575-77.

45. Sidjanski, *supra* note 34, at 166.

major corporations for railways, aviation, ports, and post and telegraphs.⁴⁶ These organisms have helped to offset the economic and commercial advantages enjoyed by Kenya, and to insulate the integration activities from the political and ideological problems and, more recently, financial difficulties.⁴⁷ Similarly, in the CACM, the specialized autonomous organs within the public international corporation framework, such as the Central American Institute of Public Administration (ICAP), the Central American Institute of Industrial Research and Technology (ICAITI), and the Central American Air Services Corporation (COCESNA), have continued to function normally since the 1969 crisis.⁴⁸ The effectiveness of this institutional structure has led to its implementation in other groups such as the Maghreb Group, the Association of South-East Asian Nations (ASEAN), and CARICOM.⁴⁹

The utility of the public international corporation in integration schemes can be seen not only in the areas of financing institutions and common services, but also in the more extensive use of the framework and the granting of special privileges to these enterprises within regional integration schemes. The European Economic Community has facilitated the growth of the public international corporation by allowing cumulative rules of origin. The Latin American Economic System represents the latest and perhaps most significant attempt to foster the use of the corporate framework.

In West Africa, use of the corporate device is increasing in integration schemes. A recent UNIDO advisory report recommended the use of the framework to the Mano River Union, which has recently been formed between Sierra Leone and Liberia.⁵⁰ As a complement to the initiation of a customs union and harmonization of investment incentives between the two states, a public international corporation has been proposed for

46. Treaty for East African Co-operation, Chapter XIX, *Corporations within the Community*. R. HAZELWOOD, *ECONOMIC INTEGRATION: THE EAST AFRICAN EXPERIENCE* 96-104 (1975).

47. Pomonti, *La Communauté de l'Afrique de l'est est menacée d'éclatement*, *Le Monde*, Oct. 17, 1975, at 6, col. 3. Kiapi, *Distributing the Gains from Integration in East Africa*, 7 *J. OF WORLD TRADE L.* 328 (1973).

48. Avery & Cochrane, *supra* note 39, at 98-100.

49. Sidjanski, *supra* note 34, at 150-51.

50. Mano River Declaration, *signed* in Malema, Oct. 3, 1973, and Protocols to the Declaration, *signed* in Bo, Oct. 3, 1974.

the production of power from the Mano River. The device can then, if desired, be employed subsequently for development of the river's basin and even for telecommunications.⁵¹ Other public international corporations have been proposed for certain research and training boards and for the training of technical personnel for telecommunications.⁵² Some of these devices can be structured so as to permit participation by other states, such as members of the recently signed Treaty on the Economic Community of West African States.⁵³ For instance, a public international corporation framework has been proposed for the creation of a regional maritime institute to include students from Ghana, Gambia, Liberia, Sierra Leone, and includes participation by international aid donors. This arrangement is discussed below in Section IV.⁵⁴

A significant recent development in economic integration has been the establishment of a regional legal framework granting new regional companies special status and privileges connected with the aims of the integration scheme.⁵⁵ Although the EEC has considered enacting uniform company laws,⁵⁶ and the Central American States have created a special regime for "integration industries" prior to the formation of the CACM,⁵⁷ the

51. Sundstrom, *Legislative Measures, Mano River Union I*, TS/RAF/74/002, Terminal Report, prepared for the Mano River Union Secretariat, March 31, 1975, Appendix II, Draft Protocol Concerning the Establishment of a Union Training and Research Board, a Union Training Levy Fund and other Facilities (restricted document).

52. Sundstrom, *Legislative Measures, Mano River Union II*, IS/RAF/74/092/11-01/10 Preliminary Report prepared for Mano River Union Secretariat, July 31, 1975 (restricted document).

53. Treaty of the Economic Community of West African States (ECOWAS), signed May 28, 1975, Lagos, Nigeria, —U.N.T.S.—. See also Penouil, *Le Traite de Lagos Efface la Chivage Entre Pays Francophone et Anglophone*, *Le Monde Diplomatique*, Oct. 1975, at 24; and *Spotlight on ECOWAS—Historical Evolution*, *AFRICA*, Dec. 1975, at 45-49.

54. Draft Agreement for the Establishment of a West African Regional Maritime Institute, undated, Secretariat, Mano River Union, Freetown, Sierra Leone.

55. Pazoc, *Regional Integration of Trade among Developing Countries*, in *TRADE STRATEGIES FOR DEVELOPMENT* (P. Streeten ed. 1973); Behrman, *International Sectoral Integration*, 6 *J. OF WORLD TRADE L.* 269-72 (1972).

56. Treaty of Rome, art. 149, and *Proposition d'un reglement du Conseil portant Statut de sociétés anonymes europeennes*, *BULLETIN DES COMMUNAUTES EUROPEENNES*, May 13, 1975.

57. Convenio sobre el Regimen de Industrias Centroamericanas de Integracion, signed on June 10, 1958, by Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica, and the Protocol to this Convention, signed on Jan. 29, 1963, in *INSTITUTO INTERAMERICANO DE ESTUDIOS JURIDICOS INTERNACIONALES, INSTRUMENTOS RELATIVOS A LA INTEGRACION ECONOMICA LATINA* 57 (1964).

first comprehensive legislation has arisen in the Andean Common Market. This legislation will facilitate regional transnational corporations and sectoral programming.

According to the Cartagena Agreement establishing the Andean Common Market, the signatory countries have pledged themselves to "balanced and harmonious development" and "acceleration of growth rates."⁵⁸ In addition to these familiar objectives, the Andean countries have aimed to facilitate the participation of their member-states in LAFTA. In addition, the signatories have agreed to joint programming and coordination of policies in various fields. Joint industrial and agricultural planning is complemented by coordination of exchange, financial and fiscal policies, as well as national economic and social plans. Common treatment of foreign capital is also provided.⁵⁹

The adoption of Decision 24 sets forth precise rules for common treatment of foreign capital, and prohibits the establishment of foreign companies in some fields, and limits their establishment in other fields. Decision 24 also restricts trade liberalization within the regional market to domestic corporations (containing at least 80 percent local capital participation or ownership) and mixed or joint corporations (those with at least 51 percent regional domestic ownership). Foreign corporations (those with less than 51 percent regional ownership) cannot participate in this scheme.⁶⁰ The recent decision of the presidents of the national airline companies to create the Association of Andean Airlines (A.A.L.A.) in order to coordinate their services provides an example of the type of cooperative projects which are occurring in the Andean Group.⁶¹ Potential now exists in economic activities such as petrochemicals for existing state enterprises to join multinational corporations (as managers) in commercial endeavors. Other potential economic areas for such a framework include transport (*i.e.*, airlines, shipping and railways) and communications.⁶²

58. For background on economic and public policy, see M. MORAWITZ, *THE ANDEAN GROUP: A CASE STUDY IN ECONOMIC INTEGRATION AMONG DEVELOPING COUNTRIES* (1974).

59. Avery & Cochrane, *supra* note 39, at 89-90.

60. *Id.* at 90.

61. *Le Monde Diplomatique*, Dec. 1975, at 38, col. 2.

62. Avery & Cochrane, *supra* note 39, at 90-91.

The Lomé Convention, entered into by the European Economic Community and the signatory African, Caribbean and Pacific states, provides many opportunities for the public international corporation mechanism.⁶³ The Convention departs from the usual practice of restricting the rules of origin in the determination of the application of tariffs, and allows the developing A.C.P. states to combine all of their member countries in the calculation of the rules of origin for products exported to the EEC.⁶⁴ These provisions facilitate regional integration and combinations between states and their own corporations as well as between states and MNCs.⁶⁵ For instance, two A.C.P. states in the Caribbean could take raw materials within their own borders, transport them for processing in a nearby place such as Puerto Rico (which is a tax haven for manufacturing and for U.S. corporations),⁶⁶ and then ship finished goods to the EEC. As long as 51 percent of the value can be attributed to activities within the Caribbean state, the goods would reach the European markets with trade preferences.⁶⁷ Since the A.C.P. states have recently engaged in a series of integration projects among themselves and with adjacent states and groups (*i.e.*, CARICOM with CACM and Andean Pact and the West African integration agreements referred to above), the public international corporation mechanism assumes importance for commercial and development undertakings.⁶⁸

Subsequent to the Lomé Convention, the EEC has agreed to follow, as part of its system of generalized preferences for developing countries, the principle of cumulative rules of origin for products from states belonging to particular integration

63. Convention of Lomé Between the European Economic Community and African, Caribbean and Pacific Countries, *done at Lomé, Togo, Feb. 28, 1975*, 14 INT'L LEGAL MAT. 595 (1975) [hereinafter Lomé Convention].

64. Rules of origin are contained in a protocol which is a part of the Lomé Convention. See title I, art. 1; see also note 67 *infra*.

65. Lomé Convention, title IV, art. 3, and the application of Protocol 2 on Financial and Technical Cooperation, Chapter 4.

66. Woods, *Business Operations in Puerto Rico*, TAX MANAGEMENT (FOREIGN INCOME) 139-2d, A-7-A-13, A-23-A-28 (1972); and Francis, *Foreign Corporations Doing Business in the Commonwealth of Puerto Rico*, 26 REV. JR. U.P.R. 347 (1957).

67. Protocol No. 1 Concerning the Definition of the Concept of Originating Products and Methods of Administrative Cooperation, art. 3, describing processing and List A which itemizes 290 tariff items in which the value added, when specified in percentage terms, is 50 percent.

68. See discussion of SELA in text accompanying notes 83-88, *infra*.

schemes: Association of South-East Asian Nations (ASEAN), CACM, the Andean Group,⁶⁹ and the Maghreb Group.⁷⁰ These states, who were not signatories of the Lomé Convention, now have incentives to accelerate regional integration. The example of the EEC should be adopted by more developed countries.

Professor Sundström has noted that the public international corporation has had considerable success, not available to the multinational corporation or the state enterprise, in achieving a type of "limited integration" among nation-states.⁷¹ "Limited integration" means such cooperation as is a result of a specified project, such as the undertaking of a service jointly by two or more states (*e.g.*, the Basel-Musel Airport),⁷² the construction and operation of a multinational waterway (*e.g.*, the International Moselle Company),⁷³ or the regional development of natural resources (*e.g.*, the utilization of the water resources of the Zambezi River in the Kariba Dam project—the Central African Power Corporation).⁷⁴ All these examples illustrate "limited integration" on a geographically local level. Due to the coordination of national policies necessary to ensure the success of a project, "limited integration" occurs.⁷⁵

Concrete examples of limited integration can be set forth. In the case of the Central African Power Corporation, to make the Kariba Dam an economic proposition, Rhodesia and Zambia must coordinate their policies on power generation to a substantial degree.⁷⁶ In a similar fashion in order to make the

69. Europe Agence International d'Information Pour la Presse, Release, at 8 (Dec. 20, 1975).

70. Europe Agence International d'Information Pour la Presse, Release, at 4 (Dec. 29-30, 1975).

71. Sundstrom, 16 J. OF AFRICAN L., at 236; SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 56-80.

72. See description of Basel-Mulhouse Airport in SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 216 *et seq.*; and SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 40 *et seq.*

73. See description of the International Moselle Company in SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 145 *et seq.*; and SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 40 *et seq.*

74. See descriptions of the Central African Power Corporation in SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 177 *et seq.*; and SUNDSTROM, PIUC: CASE STUDIES, *supra* note 13, at 63 *et seq.*

75. Sundstrom, 16 J. OF AFRICAN L., at 238; also SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 69.

76. Sundstrom, 16 J. OF AFRICAN L., at 239; also SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 69.

most efficient use of the Moselle Canal, Luxembourg, Germany and France must coordinate their transport policies.⁷⁷ In these two projects integrated decisions are made on issues concerning all constituent states in the limited subject matter area. Combining this with the concept of the "limited integration effect," *i.e.*, the theory that any amount of integration will always result in a progressive degree of coordination, one logically views these limited projects as instruments of integration, though their effect on the total economy and the total political and legal institutions of the constituent countries may vary. To this extent, the public international corporation can act as a substitute for the traditional international organizations of a regional integration scheme.⁷⁸

When the "limited integration" effect is cumulative, an acceleration of interaction is achieved. This is noticeable in the Latin American-Caribbean-Central American region, where functional interstate cooperation via the corporate device has been often discussed and attempted.⁷⁹ The CACM has a policy for regional enterprises;⁸⁰ the Andean Group has a scheme for sectoral integration through creating special benefits for regional companies;⁸¹ the Caribbean Community has as an objective unspecified functional cooperation in common services and sixteen designated areas.⁸² Recent creations of new forms of institutional cooperation among these groups represent the "cumulative result" of the "limited effect."

A new integration activity among Caribbean, Latin American and Central American countries portends dynamic achievements for functional cooperation on a regional scale via the public corporate device. On October 18, 1975, 23 countries

77. Sundstrom, 16 *J. OF AFRICAN L.*, at 239; also SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 69.

78. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 69-75.

79. C. FLIGLER, *supra* note 13, at 4, 12-13.

80. Rosenstein-Rodan, *The Consortia Technique*, in FOREIGN AID 226 (J. Bhagwati & R. Eckaus eds. 1970).

81. Bergstedt, *supra* note 8, *passim*; Behrman, *Governmental Policy Alternatives and the Problems of Institutional Sharing*, in THE MULTINATIONAL ENTERPRISE 289-303 (J. Dunning ed. 1970); and Penrose, *The State and the Multinational Corporation in the Less Developed Countries*, in *id.*, at 221-40.

82. Treaty Establishing the Caribbean Community, July 4, 1973, 12 INT'L LEGAL MAT. 1033 (1973), arts. 4, 18, and Schedule entitled "Areas of Functional Cooperation."

signed a treaty creating the Latin American Economic System (SELA).⁸³ SELA will coordinate existing regional integration mechanisms (*i.e.*, LAFTA, CACM, CARICOM, and the Andean Group), and has a fundamental objective of fostering the efficient exploitation of regional resources through the creation and support of multinational Latin American enterprises. The equity of these enterprises will consist of state and public shares, all of whose national shares will be guaranteed by the respective constituent states.⁸⁴ The SELA consists of three major institutions: a Council of Ministers or their designees; Action Committees; and a Permanent Secretariat.⁸⁵ The Council exercises political supervision and final authority over important decisions.⁸⁶ The Action Committees which can be created either by the Council or merely by interested constituent States, will last as long as specific projects warrant. Financing of Action Committees will be by assessments on the participating States.⁸⁷ SELA represents the quintessence of the institutional mechanism with a large potential for coordinating ad hoc projects on a regional level. The recent announcement of the formation of NAMUCAR, a Caribbean multinational shipping company, with a starting capital of \$30 million and an initial capacity of one million tons, is an example of the forms of integration which are occurring in Latin America.⁸⁸

Other institutional advances to coordinate integration schemes in Latin America have occurred recently. On August 25, 1975, an extraordinary meeting of the LAFTA permanent

83. Convenio de Panama Constitutivo del Sistema, Economico Latinamericano (SELA), based on the agreement reached in the Conference of Panama of July 31-Aug. 2, 1975. Treaty was obtained from the Venezuelan Mission to the European Commission in Brussels. Labreveus, *Vingt-trois pays ont signe a Panama le traite instituant le systeme economique latino-americain*, *Le Monde*, Oct. 21, 1975, at 2. For background, see Agor, *Latin American Inter-State Politics*, *INTER-AMER. AFF.*, Autumn 1972, at 25-26; and Roett, *The Changing Nature of Latin American International Relations: Geopolitical Realities*, in *THE AMERICAS IN A CHANGING WORLD: A REPORT OF THE COMMISSION ON U.S.-LATIN AMERICAN RELATIONS* 95-111 (1975).

84. Convenio de Panama, Ch. 2, art. 5, 1(a).

85. *Id.* at Ch. 4, art. 8.

86. *Id.* at Ch. 4, arts. 9-19.

87. *Id.* at Ch. 4, arts. 20-26.

88. Europe Agence Internationale d'Information Pour la Presse, Release, at 14 (Dec. 8-9, 1975); also mentioned in *Le Monde Diplomatique*, Dec. 1975, at 38, col. 3. For background on attempts by developing countries to alter shipping arrangements, see Zamora, *UNCTAD III—The Question of Shipping*, 7 *J. OF WORLD TRADE L.* 91-99 (1973).

executive committee accorded Costa Rica, Honduras, Guatemala and Nicaragua observer status. Although a coordinating commission had been formed between CACM and LAFTA in 1967, it has met only once since that date.⁸⁹

Potential stimulus for increased South-South relations between the states benefiting from the cumulative rules of origin and, in the case of the Lomé Convention substantial integration assistance, exists even outside regional schemes. An example is in the sphere of Afro-Caribbean relations. Cultural communication and transportation ties are likely to be the initial areas of cooperation.⁹⁰ The Festival of Black Arts in Nigeria has already precipitated the initiation of flights from Lagos to the Caribbean at reduced rates.⁹¹ A primary aim of increased Afro-Caribbean relations will be to eliminate middlemen profits of multinational corporations as when a West African nation buys sugar from the United Kingdom. In this example, the raw sugar often originates in the West Indies, but is transported by a multinational shipping company to the U.K., where it is processed, and then shipped again by a multinational shipping company to West Africa.⁹² With the signing of the Lomé Convention, the West Indies has an incentive to process raw sugar, and use its new merchant fleet (NAMUCAR) to ship sugar to West Africa and Europe. Joint training programs should promote the acquisition of common skills, such as tourist promotion, training of nautical and customs personnel, and so forth. Accelerated programs and activities will occur among other states and regional groups, which can take advantage of the principle of cumulative rules of origin in trade with the EEC and other developed countries following this principle.

In assessing the recent developments within and among integration schemes, the corporate device represents an invaluable vehicle to accomplish varied objectives. Although the historical perspective is not developed sufficiently to assess the overall impact on the international order of the different pro-

89. *Le Monde Diplomatique*, Oct. 1975, at 26, col. 2.

90. Note, *Afro-Caribbean Links*, 50 *AFRICA OVERSEAS* 59 (1975). Also see generally, Rosenbaum & Tyler, *South-South Relations: The Economic and Political Contents of Interaction Among Developing Countries*, 29 *INT'L ORG.* 243 (1975).

91. *Id.*

92. *Id.*

jects being undertaken, the initial impression is favorable, especially if the projects' cumulative impact is considered.

IV. AID DISTRIBUTION

The public international corporation can be utilized by states in coordinating and managing traditional frameworks of distributing aid; therefore, the corporate mechanism may help overcome current political, geographical and institutional barriers.⁹³ Current attempts at coordinating aid distribution will provide alternatives against which the corporate mechanism can be measured. New objectives and concrete legal devices for their implementation will be examined.

Six types of coordination efforts between donors and donees have been identified:

1. coordination of aid by recipient country;
2. coordination through an international finance agency;
3. coordination of aid from several sources to a particular integration group;
4. coordination of bilateral aid policies in general among several donors;
5. coordination of aid from several donors for particularly large projects;
6. coordination of aid on a regional basis by several donors and several recipients.

These types of aid coordination can be combined. Different institutional mechanisms can provide the means for coordination.⁹⁴

Existing political and institutional arrangements impede international cooperation in aid distribution: donors, such as states and international institutions, often divide their efforts by functions, resulting in competition and overlap rather than cooperation and often without regard to effectiveness of total aid efforts;⁹⁵ efforts among recipients are fragmented by national boundaries which cut across and prevent rational subregional development planning.⁹⁶

93. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 381-82.

94. Hoffman, *Aid Coordination*, paper presented at the Ditchley Conference on Improving the Effectiveness of Aid for Overseas Development, at 5, Ditchley Park, England, June 3, 1966; see also Frank & Baird, *Foreign Aid: Its Speckled Past and Future Prospects*, 29 INT'L ORG. 133-68 (1975).

95. P. STREETEN, *AID TO AFRICA: POLICY OUTLINE FOR THE 1970s* 125 (1972).

96. *Id.*

Despite many academic discussions on the necessity to coordinate aid, donors have largely failed in this endeavor. Bilateral donors have achieved a measure of cooperation among themselves, but are still in many respects competing with one another, rather than cooperating in achieving maximum aid efficiency.⁹⁷ Multilateral agencies, such as the Food and Agricultural Organization (FAO) and the United Nations Industrial Development Organization (UNIDO) are designed not to overcome obstacles in bilateral competition, but rather for division by function—education, agriculture, health, industries, etc.⁹⁸

Development can be best accomplished by recognizing developing societies as social systems. By not isolating industrialization, nutrition, agriculture and education, but by dealing with them as a complex of interrelated problems, policies could then assume the form of a concerted and appropriately phased attack on several fronts.⁹⁹ In spite of progress towards an integrated approach to aid, individual and multilateral donors still facilitate fragmentation, separation and autonomy, with donors stressing the technical aspects of their contributions instead of the social, cultural, political and economic settings in which these measures are to occur.¹⁰⁰

Fragmentation on the part of the recipients constitutes another major impediment to effective aid coordination. The recipients are grouped by historical, political and administrative functions, and not by economic principles. National separation has been promoted by the World Bank's requirements of national development plans, which do not embrace the plans of other countries.¹⁰¹

The corporate device can be employed by states and multilateral organizations to coordinate and manage the framework of distributing and receiving aid. The consortium and consultative (advisory) groups should be distinguished: in a consor-

97. *Id.*

98. *Id.* See also Sewell, *Functional Agencies*, in *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* 480-523 (C. Black & R. Falk eds. 1972).

99. P. STREETEN, *supra* note 95, at 126. See also Hoffman, *supra* note 94, at 22-28.

100. P. STREETEN, *supra* note 95, at 126-27. See also Hoffman, *supra* note 94, at 22-28.

101. P. STREETEN, *supra* note 95, at 126-27.

tium, member governments undertake to attend sessions in which specific pledges are made;¹⁰² in the consultative group, bilateral aid only is given, and member states meet to discuss possibilities for coordination.¹⁰³ New ways of using the corporate device for coordination of aid now interact with the established coordinating mechanisms. Most promising are new ways to simultaneously coordinate donors and donees.

On the level of multilateral aid the consortia established under the auspices of the World Bank, as in the Aid India Consortium and the OECD Consortium for Turkey, provide useful models.¹⁰⁴ The disappointment of the Aid India Consortium can be attributed not to the structure, but partly to the failure to include India, the state primarily involved, in the Consortium, and to the lack of coordination of policies between the donor states.¹⁰⁵ More promising has been the World Bank's attempts to combine several donor countries in advisory groups for a single or a group of countries, thereby achieving a certain measure of coordination of aid.¹⁰⁶ Another consultative group has been the Development Assistance Committee (DAC) of the OECD, which facilitated discussions and criteria-setting for aid coordination.¹⁰⁷ On a regional level the European Development Bank offers an example of a body, autonomous of its Member-states, and under the direction of the Commission of the European Communities, which distributes aid to the associated countries on a non-political basis. The concept is extended by the Lomé Convention, which is discussed further below.¹⁰⁸

The consultative group technique has been used on the regional level with varying degrees of success. The Alliance for Progress in Latin America, the Nordic Cooperation group, and

102. Hoffman, *supra* note 94, at 9-15.

103. *Id.*

104. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 379-81. For descriptions of the Aid India Consortium, see W. FRIEDMANN, INTERNATIONAL FINANCIAL AID 137-40 (1966); for descriptions of the OECD Consortium for Turkey, see *id.* at 142. For a general description of consortia, see J. WHITE, PLEDGED TO DEVELOPMENT: A STUDY OF INTERNATIONAL CONSORTIA AND THE STRATEGY OF AID (1967).

105. W. FRIEDMANN, *supra* note 104, at 137-42; see also Rosenstein-Rodan, *supra* note 80, at 223.

106. Sundstrom, 16 J. OF AFRICAN L., at 241.

107. Rosenstein-Rodan, *supra* note 80, at 225.

108. EUROPEAN COMMUNITIES COMMISSION, THE EUROPEAN DEVELOPMENT FUND (1973).

the European Economic Community cooperative efforts merit attention.

The advisory group technique employed in the Alliance for Progress in Latin America has served as a model for years. The Committee of Nine, an impartial and objective body composed of members from the constituent States, performs the service of evaluating development programs of applying nations and making recommendations. The Inter-America Committee on the Alliance for Progress (CIAP) acts as a consulting and coordinating agency, which acts upon the recommendations of the Committee of Nine both with the contributing and the developing countries. The CIAP coordinates its relations not only with contributing countries in the Alliance for Progress, but also with other countries and international aid and distributing organizations.¹⁰⁹

The Nordic countries have employed both consortia and consultative groups in order to coordinate assistance from all sources to countries of primary interest in their bilateral programs.¹¹⁰ By virtue of an agreement, signed in 1968, Denmark, Finland, Norway and Sweden have combined resources for financing several technical assistance projects in Africa. The projects are administered by a Nordic intergovernmental board which in turn usually delegates the administration to one of the Nordic national aid administrations.¹¹¹

In the European Economic Community, the Community Council has been meeting to try to coordinate aid efforts for situations not covered under their associated agreements' arrangement (see statements above concerning the European Development Fund). Recently, a debate has concerned issues such as aid to India, Pakistan and Bangladesh, which are not associated members, but still have close ties to the U.K., an

109. Rosenstein-Rodan, *supra* note 80, at 227; I H. ADAM, *supra* note 12, at 33-34; Hoffman, *supra* note 94, at 24; see also comments on the use of a consortium to facilitate university institutions to assist in research and operational programs in developing countries in R. POATS, *TECHNOLOGY FOR DEVELOPING NATIONS* 241 (1972).

110. Westring, *Swedish Aid to Developing Countries*, 4 *J. OF WORLD TRADE L.* 271 (1970).

111. Agreement between Sweden, Denmark, Finland and Norway concerning the Administration of Common Assistance Projects in the Developing Countries, dated July 16, 1968.

EEC member.¹¹² Other important issues have included: policy positions and representation in the North-South dialogue in Paris in December 1975; the Commission's request for funds so that it can collaborate with non-governmental bodies in providing aid to the Third World; participation in the International Agricultural Development Fund (IDAF); and overall coordination of national aid programs.¹¹³

Three main schools of thought have arisen in the EEC concerning coordination of national aid programs. The first school of thought is that a specific program should be adopted. The second school of thought is that the current approach should be continued: discussions should be held, and coordination should occur according to circumstances, *i. e.*, aid to Portugal, food aid, special emergency aid (the Cheysson Fund), and aid to Palestine refugees. The third and intermediate approach is that the Community should periodically (*i. e.*, annually) allocate a ceiling for non-contractual aid, and then allocate the funds according to established criteria, which would not mention exactly the recipients or the means of aid.¹¹⁴ The overall approach to aid in the EEC will not be resolved for some time. However, the common discussions have forged many common programs towards aid.¹¹⁵

The flexibility of the public international corporate device in coordinating aid by recipients can be seen in a recent international agreement establishing the West Africa Maritime Institute (WAMI), and entered into by Gambia, Ghana, Liberia and Sierra Leone. The institute provides for expansion of the Ghana Nautical College.¹¹⁶ This institute is run by a director with the assistance of a Technical Committee, and under the policy guidance of a Council of Regents.¹¹⁷ In order to maintain

112. Europe Agence Internationale d'Information, Release at 10 (Oct. 9, 1975); at 4 (Oct. 15, 1975).

113. Europe Agence Internationale d'Information, Release at 10 (Oct. 9, 1975); at 4 (Oct. 15, 1975).

114. Europe Agence Internationale d'Information, Release at 10 (Oct. 9, 1975).

115. See COMMISSION OF THE EUROPEAN COMMUNITIES, THE COMMUNITIES' CONTRIBUTION TO THE INDUSTRIALIZATION OF DEVELOPING COUNTRIES (1975); COMMISSION OF THE EUROPEAN COMMUNITIES, EIGHTH GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN COMMUNITIES 226-44 (1975); 2 BULL. OF THE EUROPEAN COMMUNITIES 50-52 (1975).

116. Secretariat, Mano River Union, Draft Agreement for the Establishment of a West Africa Maritime Institute (undated).

117. *Id.*

aid from international sources, and enable them to effectively participate in decision-making, the international aid agencies may have associate, non-voting membership in the Council of Regents.¹¹⁸

The use of the corporate device to give multilateral aid on a regional level can be illustrated by analyzing the Venezuela Trust Fund (Fondo de Inversiones). The grantor of the trust is Venezuela and the trustee is the Inter-American Development Bank. On February 27, 1975, a trust agreement set forth the terms of the aid arrangement.¹¹⁹

The funds of the trust are to be used to finance programs or projects which have a significant effect on the development of those member countries of the Bank which are relatively less developed or of limited market size or of intermediate size.¹²⁰ The funds are to be used specifically to promote better use of the natural resources and of the industry and agro-industry of the beneficiary countries.¹²¹ Financing includes equity financing in the form of share subscriptions or bond purchases.¹²²

In the administration of the fund, the trustee must use the criteria of security and profitability of its investments.¹²³ Financing activities of private corporations are limited to those corporations in which at least 80 percent of the ownership comes from the developing countries of the region who are members of the Bank.¹²⁴

The impact of this regional multilateral aid is reflected in the initial investments of the funds, such as the recent agreement to finance \$10 million of debt obligations of the CACM.¹²⁵ This type of aid illustrates the use of a corporate mechanism to cooperate in aid distribution, both on the part of the donors and the donees.

The recently signed Lomé Convention provides a concrete

118. *Id.*

119. Trust Agreement between the Venezuelan Investment Fund and the Inter-American Development Bank, *done at* Washington, D.C., Feb. 27, 1975. 14 INT'L LEGAL MAT. 316 (1975) [hereinafter cited as Trust Agreement].

120. Trust Agreement, art. I, § 2.

121. *Id.*

122. Trust Agreement, art. II, § 3.

123. Trust Agreement, art. IV, § 10(a).

124. Trust Agreement, art. IV, § 11.

125. *Le Monde Diplomatique*, Dec. 1975, at 38, col. 2.

example of how many of the principles of coordinating aid can be facilitated within a legal framework. The aid provided for in the Lomé Convention gives the recipient A.C.P. countries the right to participate in the selection of management and execution of projects and programs.¹²⁶ In addition, eligible recipients are not limited only to individual countries, local authorities, and public or semi-public development agencies, but include regional interstate bodies to which A.C.P. states belong.¹²⁷ Projects eligible for aid may involve developed countries other than the A.C.P. states.¹²⁸ Specific mention is made of assistance which will promote regional and interregional economic integration. Provision is made for aid projects to consider, where feasible, operation with other A.C.P. states.¹²⁹

Of paramount importance, the Lomé Convention represents a step towards further integration of relations between North and South. Hence, the Convention deals with trade issues, not as separate items, but as integrated into a complex system of cooperation, covering several fields, including economic and technical assistance, transfer of technology, payments arrangements and the creation of a link between the plans and programs of developing and developed countries so as to lend assurance on both sides. The attempt at a more comprehensive linkage in international relations can also be seen in the decision, taken in the second meeting between the Organization of Petroleum Exporting Countries (OPEC) and the oil consuming nations to include not only energy, but also raw materials, development and financial affairs in the substantive negotiations.¹³⁰

In designing aid policies, the consortia and consultative (advisory) group techniques, use of a corporate framework to combine donors and donees, the trust mechanism, and the comprehensive approach of the Lomé Convention provide good examples combining donors and recipients within frameworks which transcend both national and unifunctional categories.

126. Convention of Lomé, title IV, art. 50.

127. Convention of Lomé, title IV, art. 49.

128. Convention of Lomé, title IV, art. 56.

129. Convention of Lomé, title IV, art. 50.

130. *Final Declaration on the Preparatory Meeting of the Conference on International Economic Cooperation and Annexed Documents*, Europe Agence Internationale D'Information (Special Release No. 866, Oct. 20, 1975).

These legal instruments and principles offer nations and international organizations many new concrete possibilities for coordinating aid effectively.

V. SOME PROJECTIONS

The public international corporation framework can be used advantageously in some new areas where relations among principal international actors are still fluid. Although academic ordering of these areas is arbitrary, especially in view of the trend of nations to perceive relations more comprehensively, four principal areas are set forth: natural resource and development programs; new commercial endeavors with political implications; dealing with multinational corporations; and the evolution of the multinational corporation.

A. *Natural Resource and Development Programs*

An area in which the corporate device can be effectively implemented is development programs or projects in which high capital costs are a major factor. This area embraces relationships which fall within traditional development of natural resources which lie in a region, but transcend state boundaries. More recently, such programs and projects focus on critical sectors such as energy development or ocean resource development. A separate section is provided for this discussion since the programs and projects being devised or pondered transcend normal integration schemes. Although this discussion will focus primarily on river basin development in the troubled Sahel area of Africa, many other examples could be used.

Prerequisites of national and regional development now make interstate cooperation imperative throughout the world and especially the developing countries. National boundaries often do not coincide with natural resources.¹³¹ Many development programs require assistance from international sources; technical assistance and international funding may both be most easily secured through pooling.¹³² Interstate cooperation is also often essential for combining markets and in establishing infrastructure improvements, both of which are prerequisites for development schemes. For instance, power and river basin development, railways, canals and various transport works

131. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 21-25; C. FLIGLER, *supra* note 13, at 1.

132. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 21-25.

often transcend national boundaries.¹³³ Since traditional inter-governmental organizations can no longer provide the required efficiency and flexibility, and since multinational corporations cannot always be allowed for various economic, ideological and political reasons to reap the profits of such projects, new means must be found to execute these vital projects. The amount of capital required and the low profitability of these projects often make assumption of them by some, especially small governments, impossible.¹³⁴

River basin development is an area in which the corporate device has been essential in promoting interstate cooperation. International agreements establishing a corporate mechanism of river basin development have involved the Lower Mekong, La Plata, the Niger, the Senegal, and the Chad.¹³⁵ The corporate device has been used to provide a permanent body with technical capability, access to international aid, the capability of coordinated and sometimes quick action. This is an acceptable way to limit sovereignty.¹³⁶

Important examples of river basin development are found in the Sahel region of West Africa. In this zone between the Sahara Desert and the River Niger, a severe, protracted drought has caused calorie insufficiency and starvation to become constant problems, affecting at least one-third of the region's population.¹³⁷ Several corporate devices for river basin development—the Organization for the Development of the Senegal River (Mise en Valeur de Fleuve Senegal—OMVS), the Lake Chad Basin Commission, the Niger River Commission, and the Permanent Drought Control Committee for the Sahel (CILSS)—offer the best hope for a long-term solution by achieving agricultural self-sufficiency.¹³⁸

The OMVS, of which Mali, Mauritania, and Senegal are members, was created in 1972, along with a Convention con-

133. C. FLIGLER, *supra* note 13, at 5; Sundstrom, 16 J. OF AFRICAN L., at 234.

134. *Id.*

135. Menon, *Water Resource Development of International Rivers with Special Reference to the Developing World*, 9 INT'L LAW. 441, 456 (1975).

136. See Legal Aspects of Hydroelectric Development of Rivers and Lakes of Common Interest, U.N. Doc. E/ECE/136, at 181-92, 251-61 (1952).

137. Dow, *Famine in the Sahel: A Dilemma for United States Aid*, 68 CURRENT HISTORY 197-98 (1975).

138. *Id.* at 201.

cerning the Senegal River. The essential aims of the OMVS are as follows: (1) to promote cooperation and the economic development of the river basin and its resources; and (2) to support the efforts of the Member-states in accomplishing the objectives of the adjoining Convention.¹³⁹

The structure of the OMVS gives it organizational flexibility. The Conference of the Heads of State is the chief organ, making decisions on general political matters of importance with unanimity required for action. The Council of Ministers, which meets once a year, sets forth priorities with regard to the management of the basin and development of resources as well as establishing the budget. The most important organ of the OMVS is the executive—the Secretariat. The Secretary-General directs the Secretariat, and is appointed by the Heads of State for a three year term. The Secretariat encompasses a Technical Branch including Energy, Transport, Agriculture, Hydroagricultural Programs, Financial and Administrative Services, and a Documentation Center.¹⁴⁰ Each of these divisions is engaged in a series of short- and long-term programs.¹⁴¹

The Lake Chad River Basin, consisting of the four riparian states of Cameroon, Niger, Nigeria and Chad, was formed in May 1964. Its objectives are to intensify Member-states' cooperative efforts in the economic development of the river basin, especially surface and ground water utilization, agriculture, livestock, minerals, industry, transportation and telecommunications development.¹⁴²

The Commission is composed of two Commissioners from each state and, along with five permanent subcommissions, meets twice annually in plenary sessions. The Secretariat is directed by an Executive Secretary who is appointed for three years, subject to extension. He is assisted by a small administrative and technical staff (10 in 1972), a number of foreign technical experts, and miscellaneous other local personnel.¹⁴³

The Secretary-General coordinates the work of the Sub-

139. Amar, *L'Organisation Pour la Mise en Valeur de Fleuve Senegal*, 16 J. OF AFRICAN L. 299 (1972).

140. *Id.* at 300.

141. *Id.* at 301-02.

142. Towne, *Lake Chad Basin Commission*, 16 J. OF AFRICAN L. 343 (1972).

143. *Id.*

commissions and regional infrastructure projects, such as telecommunications, road building, bridge construction, tsetse fly eradication, livestock development, and an agricultural experimental station.¹⁴⁴

The Niger River Commission created by Nigeria, Niger and Mali provides another example of the use of a corporate organism for river basin development. Its objectives are to maintain liaison between the riparian states for the most effective use of the basin resources; to conduct studies and recommend to the Member-states joint projects for utilization of the basin; and to examine complaints and settle disputes.¹⁴⁵

The organization of the Commission is unique. The highest organ consists of nine Commissioners, one from each riparian state, but not necessarily the Heads of State or even Ministers. They meet once a year, and decision-making is by two-thirds vote of a quorum.¹⁴⁶ The executive, called the Administrative Secretary, is appointed by the Commission for a term of three years. His duties are determined by the Commission.¹⁴⁷ Since the Administrative Secretary's duties, term, and even staff are substantially constrained by the Commission, the authority required by the executive of a public international corporation is circumscribed, and the autonomy of the organism is thus limited.

As a result of the severe drought in the Sahel in 1973, another corporate device was formed. On September 12, 1973, the states of Chad, Mali, Mauritania, Niger, Senegal and Upper Volta entered into a Convention establishing a Permanent Interstate Drought Control Committee for the Sahel (CILSS).¹⁴⁸ Its functions are to coordinate all action to combat the drought by seeking financial and technical assistance for Member-states.¹⁴⁹

144. *Id.* at 344.

145. Agreement Concerning the River Niger Commission and Navigation and Transport on the Niger River, *done* at Niamey, Niger, Nov. 25, 1964, art. 2, 287 U.N.T.S. 19 [hereinafter cited as Niger River Agreement].

146. Niger River Agreement, arts. 3-5.

147. Niger River Agreement, arts. 6-9.

148. Convention Establishing a Permanent Inter-State Drought Control Committee for the Sahel among Chad, Mali, Mauritania, Niger, Senegal and Upper Volta, *done* at Ouagadougou, Upper Volta, Sept. 12, 1973. 13 INT'L LEGAL MAT. 537 (1973) [hereinafter cited as Sahel Convention].

149. Sahel Convention, art. 4.

The organizational structure consists of a Conference of the Heads of State and another of the Council of Ministers.¹⁵⁰ However, broad power is endowed upon an executive, known as the Regional Coordinator, who is appointed by the Council for two years.¹⁵¹ The Regional Coordinator is assisted by a Technical Secretariat and a staff,¹⁵² and is to take all steps required to fulfill the aims of the Convention.¹⁵³ The Committee may be joined by any African state whose economy is directly affected by Sahelian conditions.¹⁵⁴

The survival of the Sahel region depends on the success of these and similar mechanisms. Recognition of this fact has led the various African states to limit their sovereignty to the extent necessary to promote cooperative projects.¹⁵⁵ This is reflected in the relative autonomy of the executive in areas such as river basin management. Through use of a corporate mechanism, in which the Heads of State retain only major political decision-making, and the executive possesses substantial power and is charged with coordinating the work of functional subdivisions or committees, efficiency, technical skills and continuity can be achieved.

In addition to the river basin projects in the Sahel, other new natural resource projects will require enormous pooling of resources, which neither private enterprise nor individual governments can afford to make alone. Long-range development of energy sources is an example of such a program. To be able to meet their goals, even the industrialized nations are pooling their financial resources and have proposed, within the International Energy Association, the creation of a corporation to make the requisite investment expenditures.¹⁵⁶ Recent business forecasts warn that many high risk, but socially important, projects will entail investment expenditure so large that only national governments or interstate schemes will be capable of

150. Sahel Convention, art. 3.

151. Sahel Convention, art. 5.

152. Sahel Convention, art. 8.

153. Sahel Convention, art. 6.

154. Sahel Convention, art. 13.

155. Sohn, *The Organization of Economic Co-operation in Africa*, 16 *J. OF AFRICAN L.* 215, 218 (1972).

156. See, e.g., R. GARDNER, *THE WORLD FOOD AND ENERGY CRISES: THE ROLE OF INTERNATIONAL ORGANIZATIONS* (1974).

financing and executing such projects.¹⁵⁷ Cooperation in this field can be achieved efficiently through a corporate device which facilitates public and private participation.

B. *New Commercial Endeavors with Political Implications*

Commercial opportunities are arising in the international arena which have important international political implications. The success of OPEC is attributed partly to the political will of the Arab countries. Although decision-making in the operation of the cartel itself is too important to surrender authority to a public international corporation, the latter can be effective in investing oil profits. Such an institution might also provide a method by which OPEC can participate in the Third Window of the World Bank. Another area for potential use of the corporate mechanism concerns the exploitation of non-ferrous nodules in the ocean seabed in the continued absence of a comprehensive law of the sea treaty.

The issue of reinvesting oil profits—"recycling petrodollars"—has assumed international importance. Use of the public international corporation mechanism can enable OPEC countries to employ mutual funds or investment trusts to channel oil profits into economically sound projects while retaining their political and negotiating strength. Establishment of special funds or banks for the financing of development projects which are not necessarily connected with the increased cost of oil has been employed as a substitute for the proposed all-OPEC development fund.¹⁵⁸ Such investment mechanisms can also accommodate other cartels as well.¹⁵⁹

The likely structure of such funds or trusts and their operations will be described. (These ideas have been set forth, with emphasis on the political context, in an article by Khodadad Farmanfarmanian and others in *Foreign Affairs* in 1975.¹⁶⁰) As is normal in public international corporations, participating states will be represented on a supervisory board by Ministers

157. L. TURNER, *MULTINATIONAL COMPANIES AND THE THIRD WORLD* 263-69 (1972).

158. Williams, *The Aid Programs of the OPEC Countries*, 54 *FOREIGN AFFAIRS* 308, 315 (1976).

159. See, e.g., R. GARDNER, *A TURNING POINT IN NORTH-SOUTH ECONOMIC RELATIONS* (1975); and R. GARDNER, *OPEC, THE TRILATERAL WORLD, AND THE DEVELOPING COUNTRIES: NEW ARRANGEMENTS FOR COOPERATION, 1976-1980* at 9-16 (1975).

160. Farmanfarmanian, Gutowski, Ohita, Roosa, & Wilson, *How Can the World Afford OPEC Oil?*, 53 *FOREIGN AFFAIRS* 201 (1975).

or designated representatives who will provide the necessary political supervision of such mutual funds or trusts. Any mutual funds or trusts that may be created would be autonomous juridical persons with a board of directors responsible for all operational decisions. The decision to commit new funds and certain other specific decisions of importance would be made by the Member-states through the supervisory board. The directors would be selected by the Member-states on the basis of their investment management abilities. A manager would be responsible for daily management of the funds subject to directives of the board of directors. The expertise of international investment firms and trust managers of the highest competence and integrity could be employed if the board were allowed (with the possibility of veto by the supervisory authority), to select such firms to act as technical advisors to the manager or by making them directors.¹⁶¹

The funds and trusts could channel investments into a variety of areas. Diversification of investment among firms, industries and countries would provide safeguards to OPEC investors that their equity and earnings would be maintained. To raise more capital, the funds and trusts could allow different types of private participation.¹⁶² The chief advantages accruing from the trust or fund approach via a corporate management device is that it would serve as a buffer between investor and direct foreign holdings of stock. Moreover, the funds or trusts would be able to utilize the best international management acting on non-political, economic criteria.¹⁶³ The pooling of capital and the public nature of the corporate structure would enhance the negotiating strength of the funds.¹⁶⁴

A dynamic stability in the funds could be achieved within the public corporate model in a number of ways. For diversification, percentage limits within the total of a specific trust or fund might be set for holdings in a given country, currency area or individual company. Several trusts or funds could be created for different objectives, such as capital or income. Individual trusts could be open-end or closed-end. Shares of any trust

161. *Id.* at 218-22.

162. *Id.* at 219.

163. *Id.* at 221.

164. *Id.* at 219-20.

could be limited to a relatively small number of countries while other trusts could be partly open to outside participation. To ensure repatriation of earnings, trust shares would be made redeemable according to terms connected to the kinds of assets held by a particular trust. Guarantees against nationalization and tax benefits could be negotiated on a project-by-project basis. Minimization of the consequences of changing rates of foreign exchange would be realized both through diversification and through specific guidelines set forth in the trust agreement.¹⁶⁵

By channeling petrodollars into funds and trusts in the framework of the public international corporate device described above, OPEC countries can solidify their economic and political strength. Recent discussions on cooperation between the OPEC and the "Trilateral Countries" (U.S., Japan, and the EEC) in order to recycle petrodollars has focused on the creation of a "Third Window" in the World Bank to borrow money from OPEC countries, and lend it to low-income countries at subsidized interest rates. Although an initial barrier was the low proportion of representation of OPEC in the current structure of the World Bank, an agreeable compromise has been put forth by the Shah of Iran. He has proposed the establishment of a special fund associated with, but autonomous from, the World Bank, with a tripartite directorate, and the administration and lending activities performed by a professional staff. This ad hoc, functional approach provides an alternative to proceeding through established international law channels.¹⁶⁶

As the Third Law of the Sea Conference in Geneva and New York has so far failed to produce a treaty, individual countries are increasingly discussing and taking unilateral and multilateral action.¹⁶⁷ In this regard, a multilateral agreement

165. *Id.* at 219-22.

166. R. GARDNER, OPEC, THE TRILATERAL WORLD, AND THE DEVELOPING COUNTRIES: NEW ARRANGEMENTS FOR COOPERATION, 1976-1980 at 19-20 (1975). *But see* Erb, *Petrodollars and Multilateral Development Financing*, in THE U.S. AND WORLD DEVELOPMENT: AGENDA FOR ACTION 1975 at 112-113 (J. Howe ed. 1975).

167. Stevenson & Oxman, *The Third United Nations Conference on the Law of the Sea: the 1974 Caracas Session*, 69 AM. J. INT'L L. 1 (1975); Stevenson & Oxman, *The Third United Nations Conference on the Law of the Sea: the 1975 Geneva Session*, 69 AM J. INT'L L. 763 (1975). For United States threat to unilaterally pursue deep-sea

among the industrialized nations to mine the ferro-manganese deposits on the ocean floor is a real possibility. Such a plan may involve, for instance, Japan, the United States, the EEC and the Soviet Union.¹⁶⁸ The structure of such cooperation would best be executed via a supervisory authority of participating states, a board of directors charged with awarding contracts and investing profits, and a director, assisted by technical groups for implementation. A large proportion of the profits could be channeled into aid institutions and projects as the four above-mentioned powers have already agreed at the session of the Law of the Sea Conference in Geneva. Although such a scheme would be inferior to a universal solution (*i.e.*, a U.N. sponsored convention), it would be better than unilateral action for which pressure is currently being exerted.¹⁶⁹

The potential for interaction between major international blocs increases when corporate and similar devices insulate decisions from political considerations. A look at some potential combinations in the areas of energy and ocean mining will serve as illustration. As discussions of cooperation increase among these four groups in solving energy problems, the potential increases for the employment of profits from mining manganese deposits for development of long-term energy sources. And with the commercial application of some new energy sources twenty years away, even OPEC could wisely invest some profits of a trust scheme in energy investments in industrialized countries, since the maturation of new sources is expected to coincide with the depletion of oil as a primary energy source.¹⁷⁰

C. *Dealing with Multinational Corporations*

A vital and much discussed contemporary problem has been the inability of national or world organizations to satisfac-

mining, see speech by Secretary of State Kissinger in 122 CONG. REC. 5223, 5225 (daily ed. Apr. 8, 1975).

168. Knight, *Alternatives to a Law of the Sea Treaty*, in *THE LAW OF THE SEA: U.S. INTERESTS AND ALTERNATIVES* (R. Amacher & R. Sweeney eds. 1976).

169. For example, Deepsea Ventures Inc.—a consortium of Belgian, Japanese and American companies—filed a claim of exclusive rights of exploitation in a 60,000 square kilometer area in the northeast Pacific with the United States Department of State, in Nov. 1974. 10 *COL. J. WORLD BUS.* 10 (1975).

170. The Ford Administration has reportedly requested the Saudi Arabian government to invest up to \$1 billion in U.S. electric utilities. *N.Y. Times*, Jan. 1, 1976, at 24, col. 1.

torily control the enormous power and activities of the multinational corporation.¹⁷¹ States have increased their regulations and/or incentives to simultaneously attract and control the MNC.¹⁷² The increased role of the states in their relations with the MNC coincides with the widespread assumption of responsibility by states in the national economy.¹⁷³ Until international law can deal comprehensively with the problem of MNCs, the public international corporation can promote better interaction because two or more nation-states can combine their resources to regulate the MNC. A sketch of current trends between MNCs and host countries serves as background.

In dealing with the MNC, states have identified four broad categories of productive factors and functions which are thought to be desirable contributions to the host country: (1) capital formation, especially risk capital required for exploration of natural resources, creating necessary infrastructure, etc.; (2) technical skills possessed by a multinational firm with long experience; (3) managerial ability, including the accumulated experience of the multinational firm; and (4) marketing skills and arrangements, including those arising from integrated operations contracts with consumers.¹⁷⁴

States, in dealing with and effectively controlling the MNC, have separated ownership and management, with the state assuming immediate partial or total ownership.¹⁷⁵ For purposes of our discussion, state participation in the multinational corporate venture will be separated into two categories—joint ventures and management contracts—although the concepts are not always distinguishable.¹⁷⁶

171. Comprehensive treatment of this subject is found in *Multinational Corporations in World Development*, U.N. Doc. ST/ECA/190 (1973); R. VERNON, *SOVEREIGNTY AT BAY* (1971); and other works in the Harvard Multinational Enterprise Project.

172. Bergstedt, *supra* note 8, *passim*; Bergstedt, Keohane, & Nye, *International Economics and International Politics: A Framework for Analysis*, 29 INT'L ORG. 3 (1975).

173. *Id.*

174. Mikesell, *The Contribution of Petroleum and Mineral Resources to Economic Development*, in *FOREIGN INVESTMENT IN THE PETROLEUM AND MINERAL RESOURCES INDUSTRY* 3, 26 (R. Mikesell ed. 1973); see also J. BEHRMAN, *supra* note 8, at 68-77; and R. VERNON, *supra* note 171, at 151-88.

175. Mikesell, *supra* note 174, at 436-38; J. BEHRMAN, *supra* note 8, at 92-102; and R. VERNON, *supra* note 171, at 151-88.

176. Mikesell, *supra* note 174, at 436.

The joint venture is advantageous to the host country in satisfying the nationalistic, ideological demands of a developing country as well as increasing the share of the government in resource revenues. Since many host governments currently impose diverse controls such as export, price and other marketing controls over foreign-owned enterprises, the increased *de jure* control afforded by joint ventures may not change substantially the degree of *de facto* control by the government.¹⁷⁷

In situations where the host government wants to assume full ownership but cannot yet perform complex technical tasks, such as management and marketing, the trend has been to execute service or management contracts, whereby the multinational corporation agrees to perform specified services.¹⁷⁸ The compensation received by MNCs for their services range from straight payments to fees representing a percentage of profits. Since the assumption of risk together with the responsibility for marketing the products often remain a part of the services contract for natural resource development, the contracts do not substantially alter what were formally called concessions contracts.¹⁷⁹

Unless the host government can provide requisite technical skills, the joint venture, in which the risk and marketing function is either shared or taken primarily by the multinational firm, stands out as the preferable scheme for the host government. Assuming that the multinational firm is usually more efficient as risk-taker, producer and marketer than is the host country, the host country can maximize its objectives by refraining from assuming those functions, at least until it develops the requisite capabilities.¹⁸⁰

Regardless of whether the joint venture or service-management contract is chosen as the method to combine a MNC with a host country, the public international corporation provides a means to combine the participation of two or more

177. *Id.* at 437; J. BEHRMAN, *supra* note 8, at 92-102; R. VERNON, *supra* note 171, at 140-44.

178. Mikesell, *supra* note 174, at 437; J. BEHRMAN, *supra* note 8, at 94-98.

179. Mikesell, *supra* note 174, at 438.

180. *Id.* See also Drucker, *Multinationals and Developing Countries: Myths and Realities*, 53 FOREIGN AFFAIRS 121 (1974). Governments are more likely to take complete ownership of service sectors while industrial and especially extractive sectors necessitate a transitional learning period. J. BEHRMAN, *supra* note 8, at 94-95.

states with MNCs. Either a private or public firm can serve effectively as general manager of a large venture in the framework of a public international corporation.

An example of a national public corporation serving as general manager is provided by the Interim Telecommunications Satellite Committee (INTELSAT), which is controlled by a committee made up of the various interested governments who are simultaneously shareholders in the enterprise and one General Manager. In this case the General Manager is the Communications Satellite Corporation (COMSAT), which is a private corporation with public participation, and partial public control through publicly appointed directors of the board.¹⁸¹

Many examples exist where a private company serves as the General Manager. For instance, the Liberian-American-Swedish Mining Company (LAMCO), which extracts iron ore in Liberia, uses the mechanism. LAMCO has, as its constituents, a group of international steel industry interests including Bethlehem Steel Company of the United States and a major mining concern in Sweden. Financing is provided by German and United States banks. The General Manager in this group is the Swedish Grangesberg Corporation, which is at the same time a major shareholder of the enterprise.¹⁸²

Although the structure is similar in the two examples, the participation in the first example is largely public while in the latter it is 50 percent private and 50 percent by the Liberian Government. The ownership by the Liberian Government amounts to only a revenue and safeguard device. The Liberian Government receives dividends on its shares in lieu of taxing the enterprise. However, the ownership of shares by the Government, combined with diversified private ownership, inhibits the Government from nationalizing the corporation, or taking action to reduce the value of its holdings in the company.¹⁸³

181. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 311-37.

182. R. STORETTE, *THE POLITICS OF INTEGRATED SOCIAL INVESTMENT* (1971) sets forth the historical and structural data for the LAMCO operation. See also T. CARLUND, *LAMCO IN LIBERIA* (1969).

183. Sundstrom, *Comparative Law in the Development of the Law of International Corporations*, 24 *ACTA INSTITUTI UPSALIENSIS JURISPRUDENTIAE COMPARATIVAE* 238-39 (1972). For criticism of this arrangement due to negative aspects for Liberia, see Smith & Wells, *Mineral Agreements in Developing Countries: Structures and Substances*, 69 *AM J. INT'L L.* 560, 574 (1975).

Other arrangements, such as government ownership as a supplement to, and not in lieu of, taxation, are possible.¹⁸⁴

Variations are also possible in the ownership structure of the corporate body. If ownership is based on the possession of shares, as is usual, the shares may be held by governments only or by governments and non-governmental interests in varying proportions. Arrangements can differ in the constituent states according to whether the activity pursued by the public international corporation is domestically entrusted to the private or the public sector.¹⁸⁵ A possible arrangement would be to have as shareholders not only governments of the constituent members and of public enterprises, but also of public, mixed private-public, and private corporations, as is the case with Eurochemic.¹⁸⁶ Another alternative is the ownership of the public international corporation by a holding company, as is the case of the Scandanavian Airlines System, or directly by its shareholders, as is usually the case.¹⁸⁷

The clearest advantage of a joint venture or a management contract within the framework of a public international corporation is that it furnishes an institutional basis for the exercise of governmental control over the corporation. The difficulty and time consumed in dealing with a plethora of ministries and commissions and in obtaining prompt favorable decisions on export policies necessary to adapt to changes in world competition can be reduced greatly if the government member of the board of directors or shareholders of a public international corporation also represent the principal ministries of government concerned with resource policies.¹⁸⁸

D. *The Evolution of the Multinational Corporation*

In predicting the evolution of the MNC, there seems to be a growing consensus on the structure of new forms. The principal theory can be described as the geocentric imperative. With Howard Perlmutter as its principal proponent, the geocentric imperative views the multinational corporation as evolving in stages from its current policy of ethnocentrism to polycentr-

184. *Id.* at 575.

185. Sundstrom, 16 J. OF AFRICAN L., at 239-40.

186. W. FRIEDMANN, GOVERNMENTAL (PUBLIC) ENTERPRISE, *supra* note 4, at 26.

187. Sundstrom, 16 J. OF AFRICAN L., at 239-40.

188. Mikesell, *supra* note 174, at 437.

ism.¹⁸⁹ The importance of this theory, which will be related in this section, is that new roles and interactions are forecast in the international arena. As MNCs, states, and international organizations struggle against one another on a number of fronts, the public international corporation mechanism offers one of many different frameworks in which actors can come together in the international arena.

Perlmutter describes a three-decade view of a global industrial system. His theory can be best set forth as follows:

1. Stage One (the 1970s) is a time in which the principal identification of the MNC is home country-oriented, or "ethnocentric." During this decade the public policy milieu of the MNC will vary widely from ethnocentric-protectionist to geocentric-laissez-faire.¹⁹⁰
2. Stage Two (the 1980s) is a time when the mounting pressure of restrictive legislation by host countries will gradually lead to disintegration of fully-owned subsidiaries, which will be replaced by joint ventures, co-production agreements and service contracts.¹⁹¹ In this decade binational and trinational MNCs and rising state and interstate enterprises in developing and socialist countries (including transideological enterprises) will take form ("polycentrism"). Public policies are likely to range from regiocentric-protectionist (i.e., current Andean Code on Foreign Investment) to geocentric-laissez-faire.¹⁹²
3. Stage Three (the 1990s) is a time in which many institutions have found that they must be more "geocentric" than regiocentric or ethnocentric.¹⁹³ Hence, the MNC will become an organization without any specific country-orientation.¹⁹⁴ The MNCs will be regulated by various kinds of intergovernmental and global institutions.¹⁹⁵ During this era the most successful firms will be the super-giants or megafirms and the little fishes. Super-giants will be the huge companies that will be the great manufacturers worldwide. The little fishes will be some firms (including transi-

189. See Perlmutter, *Tortuous Evolution of the Multinational Corporation*, 5 *COL. J. WORLD BUS.* 160 (1969).

190. Perimutter, *A View of the Future*, in *THE NEW SOVEREIGN: A VIEW OF THE FUTURE* 168 (A. Said & L. Simmons eds. 1975).

191. Venn, *The Multinationals and Developing Societies: A Profile of the Future*, 6 *FUTURES* 133, 137-38 (1974). See also the discussion and table of possible ownership-control arrangements in Behrman, *Taxation of Extractive Industries in Latin America and the Impact of Foreign Investors*, in R. MIKESSELL, *supra* note 174, at 73-74.

192. Perlmutter, *supra* note 189, at 168.

193. *Id.* at 169-70.

194. R. VERNON, *supra* note 171, at 260-72.

195. *Multinational Corporations in World Development*, U.N. Doc. ST/ECA/190 at 80-95 (1973).

deological firms from developing states, regional and socialist owned enterprises) who will possess the advantages of specialization, fast decision-making, and adaptability because of their size and closeness to customer needs.¹⁹⁶

The significance of the Perlmutter theory is found primarily in the vast new combinations which are forecast among international legal persons. In the not too distant future the existence of the "genuinely international company," which the late Professor Wolfgang Friedmann has discussed, will be common.¹⁹⁷ As socialist and developing state enterprises accelerate their entrances into the multinational sphere, the use of the public international corporation becomes instrumental. The beginning of this can be seen, for example, in the recent announcement of a plan to combine Brazilian iron ore with German know-how and Japanese financing to serve Egyptian needs through shipping iron ore from Brazil to a sponge-iron plant in Alexandria, which is jointly owned by Brazil's Companhia Vale do Rio Doce (CRDV), West Germany's Korf Industries and Handel, Japan's C. Itoh, and Egypt's state-owned General Organization for Industry. Interestingly enough, the project marks the first time that the Brazilian-owned company, the world's newest mining giant, has taken a multinational role.¹⁹⁸ As states necessarily enter into ownership or enterprises to accomplish the accelerating responsibilities to their citizens, the existence of the public international corporation as a framework will become indispensable.

In the end, international law and geocentric organizations such as the United Nations are the only capable devices to order and regulate the changing combinations between corporations and states.¹⁹⁹ Meanwhile, the corporate body, whether public or private, can be brought into harmony with nation-states. To achieve their beneficial use as a form of extra-governmental force internationally and nationally the private and public corporations must be brought together, not only

196. Perlmutter, *supra* note 188; see also L. TURNER, *supra* note 157, at 263.

197. W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 181-84 (1964).

198. *BUSINESS WEEK*, Feb. 3, 1975, at 30.

199. *Multinational Corporations in World Development*, U.N. Doc. ST/ECA/190 at 80-95 (1973).

functionally and operationally, but also administratively.²⁰⁰ Until international legislation to effectively control the MNC is enacted, the principal actors in the international arena, namely the nation-state and the MNC, can reap dividends by using flexible devices in the context of the public international corporation to steer themselves through the maze of impermanence in today's international economic order.

200. SUNDSTROM, PIUC: COMPARATIVE STUDY, *supra* note 15, at 385.

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