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New International Economic Order and International Economic Laws

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Preface

This paper presents a study on how the New International Economic Order (hereinafter often referred to as "NIEO") being advocated by the Third World countries affects international laws, particularly international economic laws.

The study begins with a brief survey of what the concept of the NIEO means, and presents some criticisms on this concept.

The paper then discusses how the demands of the Third World countries affect international laws, particularly international economic laws.

I. Meaning and Substance of New International Economic Order

(1) Meaning of New International Economic Order

The United Nations, at its Special General Assembly on Natural Resources held in April, 1974, adopted "A Declaration and a Programme of Action on the Establishment of a New International Economic Order". The Declaration stated that the present international economic order is a product of the age of colonialism and is designed to help



the industrially advanced countries only to gain profits. It stressed the need to establish a NIEO to achieve fairness and equality for all the countries of the world, including the developing countries. As the fundamental principles, it advocated the equality of national sovereignty, self-determination by all peoples, disapproval of acquisition of territory by force, non-interference in the affairs of other countries, permanent sovereignty over natural resources, adoption of special measures for the most seriously affected countries, promotion of producer cartels, restrictions on activities of multinational corporations, and so on. As the action plan, it called for the formation of an overall program for raw materials and primary products, extending loans to the developing countries for their development programs, helping promote industrialization and transfer of technology, restricting activities of multinational corporations, promoting cooperation among the developing countries, and so on. This is an outline of the NIEO.

In December, 1974, the General Assembly of the United Nations adopted by an absolute majority a Charter of Economic Rights and Duties of States (generally known as the Echeverria Charter), a codified version of the New International Economic Order Declaration and a Programme of Action. The Charter lays down concrete rights of the developing countries to be for improvement of their economic and social position. Specifically, it calls for, among others, (1) guarantee of permanent sovereignty over natural resources, (2) right to restrict and supervise foreign capital investments and principle of non-interference in the affairs of other countries by foreign business enterprises, (3) right to nationalize and appropriate foreign assets, (4) right to form producer cartels for primary products, and (5) unlimited expansion of preferential trade agreements for the developing countries.

The basic spirit of the NIEO is outlined in the above-mentioned "Declaration and Programme of Action" and Charter of Economic Rights and Duties of States. The Western industrial nations, however, are not necessarily willing to accept these resolutions of the United Nations so readily, because they do not have legal binding power. The Third World countries voted for the Algeria Declaration in February,

1975 on the strength of the Group of 77 and once again demanded the establishment of the NIEO. In March of the same year, they passed the Lima Declaration at the Second General Assembly of the United Nations Industrial Development Organization. In this Declaration, they touched on not only economic affairs involving permanent sovereignty over natural resources, producer cartels, price indexation, multilateral trade negotiations, and transfer of technology, but also political matters including apartheid, and neo-colonialism in an attempt to pressure the industrially advanced countries. The ideas set forth in these declarations are the essence of the NIEO. To help give you a better understanding of the substance and nature of the NIEO, I will brief you on the background factors behind the above-mentioned Declarations.

(2) Historical Background of New International Economic Order Declaration

The New International Economic Order Declaration is a challenge to the existing international economic order. What then is the existing international economic order?

(a) Development of International Economic Cooperation System

(i) An international economic cooperation system came into being for the first time in the 20 th century, particularly after the end of the World War I. Former United States President Wilson, in his Fourteen-Points Declaration, stated that the elimination of all economic barriers and the creation of equality of trade terms are indispensable to world peace. At the world economic conference held at Geneva in 1927, proposals were made for liberalization of international trade and elimination of tariff barriers, but with no concrete results. As for international cooperation, the International Labor Organization (ILO) assumed a concrete form under the Covenant of the League of Nations,

but international cooperation in the economic field made little progress. In the 1930's, following the world-wide depression, the major powers of the world adopted a policy of forming their own economic bloc. The international economy became an isolated and closed system aptly described by such terms as regionalism, bilateralism or discriminationism. Economic confrontations among individual blocs were heightened and gradually developed into political confrontation and eventually war.

(ii) With the World War II marking a turning point, international cooperation in the economic field made rapid progress. From 1943 to 1944, the United Nations Relief and Rehabilitation Administration, Food and Agriculture Organization of the United Nations (FAO), International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD), etc. came into existence one after another. This was the reflection of the deep recognition among individual countries, stemming from the experience of the World War II, that the promotion of international cooperation is closely related to the preservation of peace. A manifestation of this is the Charter of the United Nations which declares the need to promote social progress and better standards of life in larger freedom, and to employ international machinery for the promotion of the economic and social advancement of all peoples. Thus, the United Nations termed international economic cooperation as equally important as security for the preservation of world peace. Important problems relating to politics and safety are handled by the Security Council, while important economic and social problems are handled by the General Assembly which has the Economic and Social Council and Trusteeship Council. Various specialized international organizations handling international economic and social problems function in close cooperation with the Economic and Social Council. Among the specialized organizations of this kind are International Finance Corporation, International Development Association, IMF, FAO, ILO, ITU, ICAO, International Atomic Energy Agency and so on. In this way, international cooperation in the economic field made rapid progress after the World War II, with the

formation of a variety of international organizations which now function under the auspices of the United Nations.

(iii) Most important among the international economic organizations formed after the World War II are IBRD (World Bank), IMF, GATT (General Agreement on Tariffs and Trade). IMF and IBRD were established on the basis of the Bretton Woods Agreement concluded at an allied currency conference held in 1944, while the International Trade Organization (ITO) was formed on the basis of the International Trade Charter adopted at an international trade and employment conference held in 1947. The objectives of these three organizations closely related with problems of international currency, international finance and international trade were to ensure cooperative development of the international economy after the end of the World War II.

The IMF started functioning in March, 1947 with the aim of promoting currency stability and assisting member countries to service temporary deficits in their international current accounts. IBRD began functioning in June, 1946 with the prime objective of providing long-term loans to member countries for reconstruction and development of production facilities and resources. ITO, however, did not materialize because the United States refused to ratify the International Trade Charter. As a substitute for ITO, 23 countries which took part in drafting the International Trade Charter signed the GATT in October, 1947.

(iv) Besides the international organizations under the United Nations, there also appeared various regional international economic organizations. A representative example is the European Economic Community. Other organizations include the Latin American Free Trade Association (LAFTA), the Central American Common Market (CACM) and the East Africa Common Market (EACM). The Association of South East Asian Nations (ASEAN) is now taking shape as a regional economic organization.

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(b) Limitation to Functions of International Economic Organizations

As the political and military confrontation which ensued after the World War II in the form of the cold war between the East and West and the struggle for independence of colonies became more serious, international economic cooperative organizations began to reveal their limitations. The international cooperative organizations mentioned above, oblige member countries to perform their duties within the scope of the respective agreements. But even the Economic and Social Council does not have any binding power over the member countries, and its activities are limited to study, research and making recommendations. As the clash of interests among individual countries becomes more serious, each country has tried to make use of organizations for international cooperation for its own ends, thereby preventing the formation of really effective international organizations. In the 1960's, an increasing number of Asian and African colonies gained their independence, and the number of the Third World countries increased. These countries began to raise increasingly strong voices of criticism that the specialized organizations under the United Nations paid less attention to the benefits of the developing countries. They thus demanded the establishment of an international economic organization which will give priority to the problems relating to the developing countries.

The world economy after the World War II expanded rapidly along the principles of freedom, non-discrimination and multilateralism under the leadership of the United States. This was the free economy system based on the theories of free trade and international division of labor. In the early stage, there inevitably existed the vestiges of the colonial economic system. There was indeed a system for international economic cooperation, but this system was more for the benefit of the industrially advanced countries. Consequently, the disparity between the industrially advanced countries and the Third World countries tended to expand further.

(c) Necessity of New International Economic Order from Standpoint of the Third World

In order to understand the inevitability of the demands by the Third World countries for the establishment of a NIEO, let us follow the process of their efforts under the Bretton Woods system. From around the middle of the 1950's, the developing countries carried out a policy of promoting their industrialization through assistance from foreign countries rather than through foreign trade, but this policy ended in failure. At the first United Nations Conference on Trade and Development, the developing countries sought foreign trade rather than assistance and shifted emphasis toward promotion of their own industrialization through increasing exports. Some of them succeeded in their new policy, but most other countries suffered setbacks. At the second UNCTAD, they sought both assistance and trade. They then realized that economic development needs both capital and technology, and began to welcome direct investments which bring about capital and technology at the same time. Free entry of foreign capital, however, could eventually lead to control of domestic industry by foreign capital. Thus, the developing countries found they had to place restrictions on direct foreign investments and multinational corporations. They also tried to expand their trade through economic cooperation among themselves, but this attempt, too, ended in failure. The only results of their efforts were a widening of the gap between the North and South and an accumulation of debts to the industrially advanced countries. In view of these developments, they realized that it is impossible for them to achieve political and economic independence, equality with the industrially advanced countries, and fair distribution of profits under the existing international economic system, and began to demand the revision of the existing system. This is the background factor behind the Third World's demand for the NIEO. It may be true that such a movement was stimulated to some extent by the successful strategy of OPEC, but there were undeniably some circumstances which urged them to resort to political settlement in order to solve their accumulated economic problems.

(3) Substance of New International Economic Order

As stated above, the developing countries demanded the expansion of assistance and trade after the 1960's so as to rectify the disparity between the North and South. Specifically, they sought preferential treatment and opening of markets in the field of foreign trade. Against a background of the growth of this new resources nationalism, they found it absolutely necessary to reform the international economic system in order to solve the problems between the North and South. They made it clear that they would use their natural resources and their solidarity as weapons in the struggle to that end. Thus, as time wore on from the 1960's to the 1970's, the focus of the North-South problems changed toward a demand for reformation of the modern international economic system. The Third World adopted the Dakar Declaration in February, 1975 and the Lima Declaration in March, 1975, following the New International Economic Order Declaration and the Charter of Economic Rights and Duties of States in December, 1974.

The main points of the NIEO as demanded by the Third World are as follows :

- (a) The existing international economic order which exists solely for the benefit of the industrially advanced countries must be abolished.
- (b) The Third World should be granted their justified rights and establish sovereignty in the field of the international economy using their natural resources and solidarity as the main weapons.
- (c) The existing international trade structure based on neo-colonialism must be replaced by a new international economic order based on the principles of justice and fairness. In order to reform the free trade system after the war, the developing countries should intervene in, and regulate the markets for primary products and, thereby, organize the markets. This would be the best method of solving the North-South problems.
- (d) The Third World is determined to claim the principle of permanent sovereignty over natural resources. This is based on the concept that the natural resources of the developing countries are essential for economic development and should be used for a long period

in a planned way for the economic development of the developing countries themselves. This concept originates in the resources nationalism which takes the position that the countries possessing natural resources should regain control from huge multinational corporations which now command control over the entire aspects of development, production and distribution of natural resources, and they should make the decision on production and pricing of natural resources.

- (e) The Third World should form producer cartels with respect to copper, bauxite, mercury and iron ore, following the pattern of the Arab oil products. In view of the worsening economic conditions on the part of the non-oil-producing developing countries and the decline in market prices of primary products since the oil crisis, international buffer stocks of primary products should be established, and countries possessing natural resources should be allowed to intervene in the pricing mechanism and regulate the markets.

The above-mentioned concepts, that is, the principle of permanent sovereignty over natural resources, restrictions on multinational corporations and direct investments, formation of producer cartels based on their solidarity, and market control and its reorganization, represent a firm rejection of the conventional capitalistic market principle. The capitalistic market mechanism and market principle may admittedly bring about an expansion in the disparity between the North and South, but it is still questionable whether the denial by the NIEO of the free market principle will really help develop the economies of the developing countries without causing any friction.

(4) Critical Examination of New International Economic Order

The industrially advanced countries are not willing to readily admit the concept of the NIEO. Some economists are of the view that such an idea is not acceptable in itself from the standpoint of international

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economic theories. Will an idea that is scientifically unacceptable be able to survive the current of history? This makes it necessary to critically analyze the concept of the NIEO.

Following are some important views about the proposed NIEO from the standpoint of economics:

(a) Some economists¹⁾ consider that the NIEO is one of the methods of redistribution of income. They take the stand that the NIEO is acceptable if it serves to foster the income creating ability on the part of the developing countries, but, if not, it can be taken only as a form of intimidation and blackmail by the developing countries against the industrially advanced countries. However, there is no guarantee that redistribution of income in the form of expanded aid and a moratorium of debts will help strengthen the income creating ability of the developing countries. Even if it is urgently necessary to settle debts for some specific countries, the economists in this group hold, the concept of a new international economic order will not conform with economic theories unless the developing countries with accumulated debts show some positive attitude toward solving the problem. As long as the developing countries make no efforts, income redistribution forming the core of the NIEO will become no more effective than an international social security system or a price support system, and can hardly help the developing countries to promote their own economic development. The greatest defect of the NIEO, they argue, is that the developing countries have failed to present a detailed and convincing schedule of how they can strengthen their income creating ability, while demanding a redistribution of income. According to them, it is highly questionable whether the denial of the existing market mechanism by the NIEO will help develop the economies of the developing countries without any frictions. They also point out that the NIEO requires the developing countries to reform their own policies through their own self-help efforts on the one hand, and for the industrially advanced countries to revise their economic policies so as to adapt the free trade system to the NIEO, on the other hand.

(b) Some other economists²⁾ take the view that the aim of the NIEO

is to ensure equality, and it is a little harsh to connect the new idea directly with income creating ability. It is well-known, they say, that the market pricing mechanism does not necessarily guarantee equality. To say that the essence of economic development under the NIEO lies in the self-help efforts on the part of the developing countries tends to ignore the viewpoints of the development of events leading to the birth of the concept of the NIEO and its true aims. The developing countries actually made efforts in the past in accordance with the guidance of the industrially advanced countries. Sometimes they asked for more aid. Sometimes they tried to step up their exports. Sometimes they welcomed direct foreign investments. The end result, however, was a widening of the disparity between the North and South and an accumulation of their debts. It is only natural, they say, that the developing countries should no longer sit silent if they are simply asked to make self-help efforts alone.

(c) Still other economists are of the opinion that the developments leading up to the NIEO should not be taken from the viewpoint of the conventional economics alone.³⁾ They say that there are still many problems left unsolved with respect to future global industry distribution under the NIEO, the division of labor among individual countries, and how the transfer process under the new concept will end. These problems are of an international political and economic nature. The North-South problems should not be approached from the viewpoint of economics alone, but should be studied from the comprehensive viewpoints of world history, politics and international economy as a whole. An attempt will inevitably have to be made to change the world system toward the concept of the NIEO.

Notes : Main Reference Materials

Materials of the United Nations.

Kiyoshi Kojima, Japan and a New World Economic Order (Croom Helm, London, 1977)

Tadashi Kawata, The North-South Problems (Tokyo Univ. Press, 1977)

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Special Issue of the North-South Problems (Journal of Contemporary Economics, 1976, No. 2), and other several books and papers.

- 1) Harry G. Johnson, The North and South Issue (Contemporary Economics, 1976, No. 2) pp. 20 ff., Prof's Atsushi Murakami and Taro Watanabe are also opponents to the NIEO.
- 2) Tibor Mende, NIEO and New Development Models (Journal of Contemporary Economics, 1976, No. 2). pp. 42 ff.
- 3) Kiyoshi Ikemoto (Kobe Univ.) is a representative of this opinion (Review of World Economy, 1977, vol. 21. No. 9). pp. 8-9.

II. New International Economic Order and International Economic Laws

1. New International Economic Order and International Law

(1) New International Economic Order That Challenges to Modern International Law

The NIEO is not only a challenge to the old international economic order but also a challenge to the traditional international law as well as international economic laws. Specifically speaking, what points of modern international law is the NIEO challenging?

(i) Characteristics of Modern International Law¹⁾

Throughout the 18 th and 19 th centuries, Western European countries became modern nations through their awareness of national sovereignty founded on racial unity. They adopted the form of a constitutional state with government based on the principles of independent legislative, executive and judicial powers. Furthermore, they built up capitalism as their economic system based on the principles of private ownership and freedom of contract. Modern international law (hereinafter referred to as "the law"), therefore, was a legal

system upheld by modern states which were supported by the aforementioned awareness of national sovereignty. Again, modern international society which supported “the law” was formed by modern European nations with a common social foundation. Accordingly, this international society was stamped with the mark of the European heritage, Christianity and capitalism.

The second characteristic of “the law” was that it was tied closely to modern colonialism from the beginning. Among nations comprising European populaces only, it was believed that all Europeans possessed equal rights and duties since they were mutual equals. Non-Europeans and non-Christians, however, were not recognized as equal human beings with the right of the protection of the international law. Europeans regarded the land on which non-Europeans lived as “unclaimed land” and based on the legal logic of “prior occupation”, therefore these territories became the target of colonization. The expropriated colonies were exploited wholly for the benefit of the colonizing countries through the plundering of resources, harsh treatment of the natives bordering on slavery and exploitative business management. It is said that “the law” was established as a tool to justify these ends. This is the aspect of colonialism found in “the law.”

The third characteristic of “the law” is that it is a law of nations and a manifestation of national sovereignty founded on the modern concept of sovereign power. Since the concept of sovereignty was a theory to justify the concentration of power in the hands of modern nations, no international machinery was set up to pass judgement on any violations of the international law and, consequently, no organ to apply sanctions against offenders was established.²⁾

As noted from the foregoing, “the law” was a manifestation of the policy of the strong and advanced nations to acquire new territories and conduct international transactions. It did not function as a law to protect the weak. If the mutual restrictions which bind the strong can be prescribed as the “merkmal” of law, it is doubtful whether “the law” can be called an international law.

(ii) Challenge to Modern International Law

The challenge to "the law" originated in the resistance against the aforementioned three characteristics of "the law."

(a) The first opponent appeared in the form of socialism. The new socialist nation, Russia, born after the World War I, rejected the principles of capitalism and liberalism contained in the law and opposed it by introducing altogether foreign elements into the international society. This socialist State was established as a result of the opposition to the principles of liberalism and capitalism as well as their off-shoot, imperialism. Accordingly, it emerged as a doctrine which rejected the principles of liberalism and constitutional government embodied in the law. In other words, the international law of socialist States prescribes that the existing international law is a bourgeois law and a tentative legal system to remain in effect only during the transition from capitalism to socialism. That is, territorial acquisition through prior occupation, prescription, cession, and conquest etc. are rejected on the grounds that these are the principles of imperialism. Conversely, self-determination of peoples is emphasized as a right incorporated in the international law. Furthermore, the recognition of national sovereignty, inviolability of territory, equal rights of nations, and non-intervention are stressed as democratic principles and any restrictions imposed on or abolishment of sovereign power are opposed.

Since the World War II, the number of socialist countries emphasizing the above doctrine has increased greatly and the trend to reject "the law" is growing stronger.

(b) After the World War II, the peoples living in the vast regions of Asia and Africa who had been satisfied by wholly playing subservient role under the international law became independent and joined the international society as legal entities (persons) on an equal footing with their former European rulers. Their independence was won as a result of the battle against the traits of colonialism found in the law.

(c) In short, this means that socialist and developing countries have challenged the law, which possesses the characteristics of liberalism and capitalism as well as the tendency to recognize only Christian nations practicing colonialism as equitable and legal entities, and are

gradually achieving their goals.

After the oil crisis, specifically, this challenge of the developing nations against the existing international legal order became stronger as they were inspired by the oil strategy of the Arab countries and they began to employ their solidarity and natural resources as weapons. Judging from the demands and aspirations of developing nations which won their independence and became a majority in the United Nations, it can be said that the international society has now reached a world-wide scale in the true sense of the word.

(iii) United Nations as a Place for the Development of the NIEO

Along with the internationalization and wider expansion of the world economy, the international law has clearly emerged as a law of the international society. It first appeared as a world-wide organization in the form of the League of Nations. In the era of the United Nations, the organization was further consolidated and separated into the organ for maintenance of peace (Security Council) and the organ for the economic and social development. Even in the United Nations, however, many systems were established which functioned advantageously for advanced nations at the outset. Since 1960, when the majority of the AA nations won their independence, the situation has gradually changed. By relying on the UNCTAD and other organs of the United Nations which operate on the "one vote, one nation principle", these countries began to fight for the rights of developing nations. Thus, the law which was established as a legal system of advanced countries is being forced to undergo a significant change.

(2) Impact the NIEO against the International Law

The new nations consisting of the group of AA countries which won their independence in the 1960's wielded a serious impact on the existing international legal order. This is because they began to act in concert to confront colonialism, to abolish racial discrimination, and to demand the closing of the economic gap between the nations of the North and South. They also began to fight for their aims in cooperation

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with socialist States. It was inevitable, therefore, that these new forces should have influenced the existing international law. At this point, a study will be attempted confined to the impact on several fundamental principles of the international law.

(i) Impact on the Concept of National Sovereignty

Under the NIEO, the concept of sovereignty of the modern state developed along the lines of permanent sovereignty over wealth and natural resources (1962). That is, the natural resources of developing countries were valuable assets in their economic development and should be utilized for the economic developing of the owner country based on long-term planning (the Declaration and Programme of Action on the Establishment of a New International Economic Order, 1974). This belief in permanent sovereignty over wealth and natural resources developed parallel with the concept that restrictions should be placed on giant foreign multinational enterprises which exercised control over all aspects of the development, production and distribution stages of natural resources, and that the right to control these development activities should be returned to the nations which own the natural resources so that they can make their own decisions on production and prices.

(ii) Principle of Self-Determination

The anti-colonialist nations, which had already won their independence, assisted other peoples in the remaining colonies to achieve their political freedom based on the principle of the traditional (national) self-determination. 1960 was acclaimed as the “year of Africa” in view of the impressive results achieved in this field (17 new nations joined the United Nations in this year).³⁾ It was in the same year (1960) that the “Declaration on Granting Independence to Colonies” which confirmed the rights of self-determination, was adopted by the United Nations General Assembly. The NIEO was effective in promoting the application of the self-determination principle to natural resources and international economic issues.

(iii) Criticisms against the Binding Power of Traditional International Legislation

As a result of the independence won by AA countries, the weight of influence among the constituent groups of the United Nations was reversed. Today, the AA countries are the largest of the main groupings in the United Nations. By becoming members of the international society, the AA countries are demanding the revision of the traditional international law by raising questions as to why they should be automatically bound by the international law which functions to their disadvantage and which they did not participate in forming. In regard to the international economic order, they cast serious doubts on the basis for the existence of the old international law. In addition, they have made new declarations and demands in succession in order to achieve a new international economic order.

iv) Impact on the Theory of National Obligation

Supported by the theory of "permanent sovereignty over wealth and natural resources" and the principle of "self-determination", many AA States which had achieved independence, expropriated or nationalized foreign property in their countries (e.g., the nationalization of the petroleum industry by Iran, similar measures taken by Indonesia and Cuba, the nationalization of the Suez Canal by the Egyptian government). The international legal theory on national obligations covers a wide field of which the conflict of opinions between the advanced and developing countries regarding nationalization is notable. For example, in regard to the pros and cons on the need for suitable compensation, the NIEO is demanding the revision of the traditional international law in respect to national obligations. This is because if the traditional international law is maintained, it will result in protecting the assets plundered from the former colonies.

As to national obligations, this is a serious issue confronting new States in terms of overseas investments, especially, in connection with attracting foreign investments to their countries in the future. If they insist on alleviation of their national obligations, investments from advanced nations for economic development cannot be expected and the necessary capital and technology required by new States cannot be obtained.

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As a result, the NIEO is forcing a change in the concept of overseas investments as they are conducted today. That is, overseas investments should be made on the understanding that the economic development of lesser developed countries will eventually work to the advantage of the entire international society.⁴⁾ In other words, foreign investments should be provided in the form of international aid until the lesser developed countries are able to function as independent participants in the international economic market. Therefore, an investment guarantee system on a national or international basis should be set up to promote private overseas investments.

Notes: 1) On the characteristics of modern international law, refer to Kanae Taijudo: "Chap. 2 New Developments of International Law", The Development of Modern Law (Iwanami Lecture Series, Modern Law I), pp. 323 ff.

- 2) In the case of both the Treaty Abolishing the Slave Trade, 1841 and the Brussels Treaty of 1890, no international organ was established to conduct surveillance on their execution.
- 3) Kanae Taijudo, above mentioned article pp. 345 ff.
- 4) Tadashi Kawata, the North-South Problems (Tokyo University Press), How the North-South Problems are Viewed? (Special Issue of Keizai Seminar published by Nihon Hyoron-Corp.).

2. New International Economic Order and International Economic Laws

When studying the impact of the NIEO on international economic laws, it is first necessary to clarify the point as to what constitute international economic laws. This¹⁾ is because the effects of the NIEO will differ in accordance with their contents. Since we have no space

in this article to present a detailed explanation on the conceptual stipulation of international economic laws, only a brief note will be made on the main sections of international economic laws which will be affected by the NIEO.

- (A) Controls on restrictive trade practices in the international markets (international anti-trust laws).
- (B) Domestic legal controls which directly affect international economic activities, e.g., laws restricting trade, tariff laws, foreign exchange control laws, and laws on external credits.
- (C) Laws on international economic systems for the purpose of promoting cooperation and adjustment between countries and within international joint organs, e.g., GATT, IMF, and commodity treaties; the EEC treaty; and the treaty on settlement of investment disputes between multiple nations.

The world today raises international economic (as well as political and social) issues of divergent characteristics such as the East-West and the North-South problems. Take the example of economic issues. They are not so simple that they can be placed in their proper context just by the application of a single principle. However, international trade can be considered as being controlled by the principle of comparative advantage (though this is a static theory) and the international division of labor under the capitalistic economic system. Here, it is believed that the international market structure and the legal framework of international economic transactions as well as the economic systems for adjustment between restrictive trade practices in international transactions and international economic cooperation, constitute vital parts of international economic laws.

In this section, an attempt will be made to study several points, focusing on those which will be affected by the NIEO in particular from among the above-mentioned problems of international economic laws.

(1) Impact of the NIEO on Trade Practices Which Restrict Competition

Here, comments will be presented on the impact of the NIEO on international monopolies, oligopolies, and cartels.

(i) Impact of the NIEO on International Monopolies and Oligopolies

The NIEO which was founded on the basis of resources nationalism has eliminated the international monopolies and oligopolies maintained by colossal multinational enterprises by appropriating the property of foreigners as well as their production and sales facilities through expropriation or by payment of fair compensation based on the principles of permanent sovereignty over wealth and natural resources as well as self-determination. As mentioned previously, the principle of permanent sovereignty over wealth and natural resources stems from the concept that natural resources constitute a vital factor in the economic development of the owner country and that they should be utilized systematically over a long period. Accordingly, the control over natural resources exercised by huge multinational enterprises was removed (e.g., the recovery of such important resources as petroleum, bauxite, copper, and others in and after 1970). As the positive logical basis for removing the monopolistic controls held by multinational corporations over natural resources and world markets, it is believed that the NIEO concept on permanent sovereignty over wealth and natural resources will be understood. As to nationalization and expropriation, they are only some of the available methods for controlling monopolistic activities of multinational corporations and, of course, not the only means to this end. For developing nations which cannot promote the development of their resources and economies through nationalization, there are other methods such as participating in the business management of multinational firms and enforcing the disclosure of their accounts. Again, controls can be imposed on the direct activities of the multinational firms and thus restrict international monopolies. For developing nations to promote their own development, it is consistent with the spirit of the NIEO to keep in mind the profits

of the multinational corporations and adopt a flexible position in controlling their international monopolistic activities. It is also reported that such means as restricting the activities of multinational firms and forcing them to disclose their accounts are being studied by the UNCTAD to control monopolistic activities (Articles 103 and 104, General Principles on Multinational Corporations and their Activities, United Nations Report) of the multinationals. The impact of the NIEO as the theory for the control of international monopolies will show up strongly in the UNCTAD studies.

On the other hand, it must be noted that actions stemming from the NIEO which employ unity and resources nationalism as weapons are of a political nature and will not be tolerated indefinitely as an economic theory, to say the least. The AA countries must clearly recognize that the above actions are just unavoidable measures taken in self-defence until they can establish their firm position within the international economic markets as operators of international businesses. They must promote their own economic development by endeavoring to achieve fair and equitable trading in the international economic markets. These efforts on the part of AA countries are also believed to be necessary to achieve greater efficiency of the world economy. Toward the end of the 20th century in particular, it is expected that demands will be made to review the viability of the NIEO as the international economic order.

(ii) Influence of the NIEO on International Cartels

As a result of the 4th Middle East War which broke out in October 1973, the OPEC sharply increased the price of crude oil by cutting back on production and supply. As a result, the international oligopoly maintained by the international petroleum majors, which had controlled the world production and sale of crude oil, was undermined and this dealt a severe blow to advanced industrial nations which had depended on these majors for their supply of crude oil. When expressed in terms of international economic laws, it was a conversion of the international cartel of the majors to a petroleum cartel of oil-producing countries. From the standpoint of economics, the OPEC

offensive had the effect of redistributing the income of wealthy advanced nations and expropriating the excess profits which they had collected in the past. Politically, it had the significance of reinstating their sovereignty over the international petroleum capital and rectifying the economic disparity between the North and South, and finally, it was a link in the series of efforts to change the out-dated international economic order which was built and centered around the profits of monopolistic capital of advanced nations. Nonetheless, it cannot be overlooked that this was a new international cartel taking the form of an alliance of oil-producing countries and it besides immediately precipitating confusion and recession of the global economy, it also created new problems between the North and South nations. The developing nations declared they have the right to form an alliance of oil-producing countries in order to make full use of their price-fixing prerogative based on the spirit of the "Charter of Economic Rights and Duties" but whether or not to guarantee the cartel as a permanent right under international economic laws poses a problem. This is because many of the non-oil producing developing nations have been driven into further poverty as a result of the raise in the crude oil prices. Since it is believed that the return to the principle of fair competition, a theory found in international economic laws, will be beneficial to the efficient distribution of global resources, the NIEO should be reconsidered. There is a need to distribute resources fairly and equitably because they are necessary for the survival of the human race. Though the principle of permanent sovereignty over wealth and natural resources may be effective against multinational enterprises and colonialism, it should not be utilized merely as a special right of the resources holding countries. It is believed that the UNCTAD should also probe for a rational solution to this problem. Of course, developing countries should have their say on this issue, but instead of seeking their own profits through agreements on export prices and restrictions of exports, it will be more desirable for them to strive in the direction of free trade in the international economic markets in order to promote the efficient development of the world economy.

(2) Supplementary Issues on Market Mechanism——Revision of the Principles on Free Trade of Primary Products

(i) On the primary products issue, the NIEO is advancing in the direction of market intervention, market control and organization of the market.²⁾ In the world-wide recession which followed the oil crisis of 1973, the market mechanism (price mechanism) had a strong effect in the case of primary products and the decline in their prices was notable. As a result, the market intervention based on the establishment of international buffer stocks and the organization of markets were taken up. The developing countries have presented numerous demands including price stability of primary products, liberalization of markets, establishment of import goals by advanced countries and the extension of loans. In addition, they have recently begun to advocate price indexation and the establishment of an export compensation system. These demands by the NIEO regarding primary products are tantamount to a major revision of the principles of international free trade.

In respect to primary products, the UNCTAD has proposed an overall comprehensive program including the forecasting of market trends to prevent violent price fluctuations, establishment of buffer stocks, fixing ceiling and floor prices and the signing of agreements on related commodities. In the sense that it is aimed at stabilizing prices, the UNCTAD system is called a "price guarantee" system.

On the contrary, advanced nations are contemplating solving the issue by introducing the export income compensation system (the Rome Convention signed by 46 African and other States with the EEC in March 1975, and the proposal made by former Prime Minister Miki of Japan at the Rambouillet Summit Conference in November 1975 which is an identical arrangement) by providing compensatory financing to developing countries in order to make up for any decrease in their export income instead of taking direct interventional measures to stabilize prices. The former is the approach adopted by the UNCTAD centered on the establishment of international buffer stocks and is the "price guarantee" system while the latter can be said to be the "income guarantee" system based on compensation of any decline in the export

In terms of the international economic theory, the "income guarantee" system centered on the price and market mechanisms is believed to be appropriate but from the point of view of the development of the primary products industry of developing countries, the market structure should be gradually consolidated, along the UNCTAD approach.

(ii) In the sense that it violates the principles of the price mechanism in the market structure, price indexation which automatically links the price (sliding system) of industrial goods to that of the primary products is an artificial and restrictive practice. Accordingly, it is important for the healthy development of the international economy that efforts be taken to revert the practice of price fixing to the market pricing mechanism as much as possible. However, the NIEO is trying to revise the basic principles of the international economy in order to support the price level of primary products.

The primary products issue is more a political problem than an economic issue. It is a problem which cannot be successfully solved by international economics (economic laws) which depends on the market medium.

(iii) The NIEO and Regional Cooperation. Regional Unification

The moves toward cooperation and unification on the regional level among developing countries have become very active recently. As a link in the movement of the NIEO, the mutual formation of regional markets among developing countries is a more desirable step than trade between advanced nations, where the industrial gap is large, because the possibility of inequities, control and exploitation is much smaller. However, the trade in primary products between developing countries (regional markets) is not a form of trade leading industrialization as desired by these countries. Therefore, it is believed that there will be a limit to such trade in terms of economic development. The mutual liberalization of their markets by developing countries, however, is the first step in the direction of regional unification and will lead to an expansion of the basis for international economic transactions.

Accordingly, it should be encouraged from the standpoint of the need to find the ideal way to the NIEO.

In the world today, the geographical location of natural resources differs from the population distribution and is not in proportion to the economic capacity of respective countries. Therefore, the promotion of market unification which crosses boundary lines will result in an expansion of the scale of self-development of the economic environment and raise the efficiency in distribution of resources. Eventually, this is expected to promote international cooperation.

The problem of the NIEO and technical transfer is also an important issue but since this article deals with the impact of the NIEO on international economic laws and related issues, explanation on technical transfer has been omitted.

- Notes: 1) In this article, the terminology has been used without a strict definition of the word "international economic laws". The writer's concept of international economic laws is close to that held by Professor G. Erler, but concerning international private law, personal relations which involve the legal problems between individuals were omitted from the study, and in this respect the writer's position is closer to that of Professor G. Schwarzenberger.
- 2) On the primary products issue, many treatises have been published. See Mitsuru Yamamoto, Historical Significance of Primary Products Issue, (Special Issue of "The North-South Problems of Today" Journal of Keizai Seminar by Nihon Hyoron Corp.) p. 18 ff., Masaru Saito, "Price and Income Compensation of Primary Products", above-mentioned Keizai Seminar, p. 35 ff., Tadashi Kawata, How the North-South Problems are Viewed ?, above-mentioned Keizai Seminar, p. 5.
- 3) Tadashi Kawata, How the North-South Problems are Viewed ? abovementioned Keizai Seminar, pp. 9-10.

〔あと書き〕 矢田先生の御退官に捧げる論文として、「経済統制法の政治的性格」を予定していたが、「ファッショニズム経済法」についての考えがまとまらない中に締切期限が到来してしまった。そこで窮屈の策として、一昨年夏ある国際学会の報告者に送った原稿でもって代替させて貰い、形式上の責をふさぐ非礼をお許しいただきたいと思う。