STATE RESPONSIBILITY FOR EXTERNAL CONSEQUENCES OF DOMESTIC ECONOMIC-RELATED ACTS

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The literature available on the international debt crisis is enormous. Numerous problems, solutions and suggestions have been made. The literature available comes from the parties involved in the issue and from outsiders as well. Many have attempted to diagnose the cause and prescribe a cure for this worldwide financial catastrophe. Meanwhile, the borrowers and their economies have suffered tremendous slowdowns while the lenders and their respective countries have coped successfully with the crisis. This difference occurred in Latin America for example, because the economic policies implemented by certain developed countries contributed in substantial part to the inflation of the debt.

This article does not attempt to repeat or reformulate the economic or legal propositions that have already been advanced on the matter. Instead, using the debt problem as an example, it will illustrate that a State is responsible under international law, for the adverse consequences abroad of its domestic policies. The Article will bring together several legal propositions which permit the formulation of a rule which is in the process of formation, and may be already recognized, in the hope that it will prevent future allocation of burdens solely on the lesser developed countries.

This Article demonstrates the emergence of a duty to consider the international consequences of domestic economic acts. This obligation has a correlative right, that the affected States may request due consideration by the State which is going to undertake the relevant economic measures. These rights and duties arise both where there is a breach of a duty and where there is damage as a consequence of a lawful act even if there is no breach of a duty. The latter basis for responsibility is based on the abuse of rights principle which will be examined below.

It is extremely important to consider the debt problem in light of respective rights and duties, because an open discussion of both is fundamental to an equitable conclusion. As stated by S. Sathirathai, an acceptable international economic order will not result if the rights are separated from their inevitably corresponding duties.[1] This analysis will begin to change the existing "rules of the game" and permit the recognition of new rules that further the goals of development and social justice.

The gap between the developed countries and the lesser developed countries has been widening in the last decade. Through the

1. Sathirathai, *An Understanding of the Relationship Between International Legal Discourse and Third World States*, 25 HARV. INT'L L.J. 409 (1984).

development of rules of law that establish strict, logical norms of conduct and sanctions for their transgression, it is feasible to achieve an improved level of life for all. Although this analysis tries to remain within the traditional Western conception of international law, certain formalities are too rigid and do not permit the necessary evolution of the law. It is important, therefore, to appraise the arguments presented in this Article with a flexible, rather than a rigid, juridical point of view. The law is neither what the Western nor the Southern nor the Soviet-Bloc coutries say it is. The law must be an understanding and, up to a certain point, a compromise between the different currents.

I. FACTS AND ISSUES REGARDING THE DEBT CRISIS

A. The Latin American Debt Problem

During the last decade many countries have been faced with a very difficult economic situtation. Particularly in the 1980's, Latin American countries have accumulated a huge outstanding foreign debt.[2] The problems of certain nations in meeting their obligations have come to be known as the "debt crisis." This crisis affects not only the debtor countries but also the home-states of the lenders.[3]

The debt crisis has been attributed to many factors including the oil price shocks of 1973-74 and 1979-80,[4] domestic policy errors of the debtor countries,[5] and the global recession and high interest rates of 1980-82.[6] Additional factors which have been cited include psychological shifts in the credit markets,[7] mismanagement of resources by borrowers,[8] and imprudent lending by commercial banks and

2. In June 1982 the debt owed to industrial country banks was, in billion dollars: Mexico 64.4, Brazil 55.3, Venezuela 27.2, Argentina 25.3, Chile 11.8, Colombia 5.5, and Peru 5.2. W. CLINE, INTERNATIONAL DEBT AND THE STABILITY OF THE WORLD ECONOMY 35 (1983).

Bank loans of 217.9 billion dollars in June 1983 to the Latin American countries represented almost three fifths of all bank loans outstanding to developing countries. T. ENDERS & R. MATTIONE, LATIN AMERICA: THE CRISIS OF DEBT AND GROWTH 1,9 (1984).

The total external debt of Latin America at the end of 1984 was 360.17 billion dollars. El Tiempo, Bogotá, Feb. 4, 1985, at 4C; ("EN 1984 10% creció servicio de la deuda de América Latina." Citing the CEPAL) [translation by author].

3. The debtor countries can no longer buy goods coming from the home-states of the lenders in the same quantities they used to. *See* R. DALE & R. MATTIONE, MANAGING GLOBAL DEBT (1983) Note 10 at 4 [hereinafter cited as DALE].

4. CLINE, *supra* note 2, at 20-22.

5. Wiesner, *Domestic and External Causes of the Latin American Debt Crisis*, 22 FIN. & DEV. 24, 25 (1985); CLINE *supra* note 2, at 26-29.

6. Wiesner, *supra* note 5, at 25; CLINE *supra* note 2, at 22-26.

7. CLINE *supra* note 2, at 29-30; Wiesner, *supra* note 5, at 25.

8. Corea, *The Debt Problems of Developing Countries*, 9 J. DEV. PLAN. 53 (1976).

other credit institutions.[9]

These factors all contributed to the situation to some extent and although this does not mean they are the only factors, for the purposes of this analysis, they are the primary ones. These factors can be classified in three groups: economic mismanagement by the borrowers, imprudent lending by the creditors, and exogenous circumstances.

Although some have argued that it does not matter where the blame is laid,[10] this Article will demonstrate that certain exogenous circumstances and imprudent lending by borrowers were the major causes of the debt crisis.[11] From that conclusion the question of responsibility will then be examined.

The exogenous circumstances cited as causes of the debt crisis are the two oil shocks (1973-74 and 1979-80) and the global recession and high interest rates of 1980-82.

How did the oil shocks cause the debt crisis? Until 1979, the non-oil developing countries, although very poor, managed to survive in the world arena through their commodity-export earnings. When oil prices rose, these countries used commerical loans to buy the petroleum they needed to maintain their standard of living. Some developing countries borrowed money to develop their own oil production and, subsequently, borrowed more money on the promise of oil exports.[12] This foreign borrowing created serious balance of payments and liquidity problems which are now part of the debt crisis.[13]

The second exogenous circumstance which contributed to the debt crisis was the global recession and high interest rates of 1980-82. The rise in real interest rates[14] created a new burden on the developing countries with outstanding debt.[15] At the same time the world recession meant less income from their exports and a decrease in the

9. Weinert, *Coping with LDC Debt*, 38 J. WORLD AFFAIRS 1 (1983).

10. *Id.*

11. *But cf.* ENDERS, *supra* note 2, at 3. (The author does not agree with our point of view).

12. CLINE, *supra* note 2, at 22.

13. Interview with Professor Yohannes Kassahun, Oklahoma University (Cambridge, Mass., Apr. 29, 1985). The oil price rises themselves were due primarily to the OPEC cartel formed by the major oil exporters. The question of the responsibility of OPEC members for the consequences of their decisions in the non-OPEC countries remains open although there remains some doubt regarding their liability to other developing countries for such acts. The non-OPEC developing countries have not attacked the OPEC policies, perhaps fearing a loss of sufficient supplies.

14. Interest Rate Minus Inflation Rate = Real Interest Rate.

15. For a technical explanation and analysis of the impact of the rise in interest rates see ENDERS, *supra* note 2, at 15-18; CLINE, *supra* note 2, at 22-26.

overall quantity of exports. The higher interest rates, in the words of Richard S. Cline were,

> caused by the unusual mix of monetary and fiscal policy adopted in the United States in 1980-82. . . . The basic cause of these excessive interest rates was the mismatch between loose fiscal policy and tight monetary policy in the United States, which drove up domestic (and international) interest rates in textbook fashion.[16]

Some maintain that the deregulation of interest rates and the resulting competition among banks for depositors led to these high interest rates.[17] The worst effects of these economic policies were felt by the developing countries where the floating interest rates on the outstanding debt and the continuous appreciation of the dollar made debt service an unbearable burden for many.

United States monetary policy is also considered to be one of the causes of overlending and overborrowing in the 1970's. The expansionary monetary policies carried on by the United States authorities from 1973 through 1981 led to a drop in dollar real interest rates. It became cheaper for the developing countries to borrow than to adopt policies reducing expenditures.[18]

As previously pointed out, private commercial banks made substantial loans to many developing countries during the last decade. The low risk premiums charged by the banks on these loans were a mistake because they encouraged excessive borrowing and thus contributed to the crisis.[19] This activity has been labeled as imprudent lending by the banks. There is also evidence that the regulatory initiatives undertaken in the United States over the last ten years contributed largely to encourage the banks' attitudes towards international lending.

Confidence in United States banks attracted huge amounts of money and placed these institutions in a good position to make loans. This high degree of confidence can be attributed to deposit insurance which covers deposits up to $100,000.[20] This insurance, actually covers 100 percent of the deposits as demonstrated by the Federal

16. CLINE, *supra* note 2, at 23, 24. The high interest rates also caused the severe recession experienced by the world economy in 1980-82. The fees charged by the banks to the debtors have been cited as another cause of the rapid growth of the debt burden, but fees are nothing compared to the cost of the interest rates which are controlled by the economic policies of the developed countries.

17. Thayer, *Restoring Sanity to Interest Rates*, N.Y. Times, Nov. 23, 1984, at A31, col. 1.

18. These rates were in fact negative in some circumstances. Folkerts-Landau, *The Regulatory Origins of the International Debt Crisis*, 167 BANKERS MAG. 44, 45 (1984).

19. Folkerts-Landau, *supra* note 18, at 47.

20. 12 U.S.C. § 1728(a) (1980).

Deposit Insurance Corporation's (FDIC) policy of supporting insured banks.[21] With this type of support, United States banks appear to be very secure places to deposit money.

This de facto insurance together with the lender-of-last-resort facilities (access to the United States Treasury in an emergency) were important attractions which brought the oil-bonanza dollars to commercial banks. This placed these institutions in a central position in the international lending arena. In the 1970's, commercial banks assumed the role that the multilateral institutions used to play in the financing field. The debtor countries began to deal with business-oriented creditors instead of the aid-oriented creditors they were used to. If United States regulations of the banking system had not provided such incentives for private banks to assume this role in international finance, there would not be such a huge debt crisis today.[22]

United States policies were not the only factors which developed these attitudes toward lending. International Monetary Fund (IMF) policies and the unlikely prospect of default on the part of sovereign borrowers were also incentives to place loans at the disposal of the lesser developed countries.

The IMF has been willing to support the weak economies of lesser developed countries with medium and long-term loans, provided these countries accept certain conditions and monitoring by the Fund.[23] This gives private banks the security expressed by a banker analyst: "[T]he greater the IMF's involvement in the business of long term international lending, the lower will be the credit risk assumed by the banks in making foreign loans."[24]

In sum, measures carried out by developed countries within their sovereign territory were directed at domestic affairs,[25] but these activities affected economic conditions in many other countries. The

21. By using the so-called "purchase and assumption" method of protecting depositors, the FDIC purchases all the bad assets of a failing bank and assumes possible losses. The result is that depositors with more than $100,000 are protected as if they were fully insured. This official support was recognized by the FDIC and the Comptroller of the Currency when they affirmed that they would not permit the eleven largest United States banks to default. *U.S. Won't Let 11 Biggest Banks in Nation Fail*, Wall St. J., Sept. 20, 1984, at 2, col. 2. For detailed description and complete statistics on the FDIC rescues see C. GOLEMBE & D. HOLLAND, FEDERAL REGULATION OF BANKING 1983-84 (1983).

22. Folkerts-Landau, *supra* note 18, at 45. "After all, how much of a financial crisis would there be today if OPEC nations were holding bond claims on other developing countries rather than holding deposit claims on money center banks?"

23. *Id.* at 51.

24. *Id.*

25. *See* Bernstein, *Do We Need a New Bretton Woods?*, 21 FIN. & DEV. 5 (1984) (the purpose was to slow inflation and costs).

effects, in many Latin American countries have been disastrous. The damage has been substantial and has contributed to a widening of the gap between developed and developing countries.[26]

The United States, refusing to recognize the implications of their domestic acts, have implemented policies such as the so-called "Reaganomics,"[27] which have kept real interest rates high.[28] As long as the lending policies of the developed countries do not adversely affect their own domestic economies they will not believe they are the cause of turbulence in the economies of other countries.[29]

The debtor's case, however, may not be hopeless. Recently, the United States stated that it is prepared to lead a monetary meeting.[30] In the announcement, the United States came close to recognizing the international scope of its domestic economic policies. The suggestions included the possibility of a revision of the operation of the current system of floating exchange rates for currencies "through better coordination of the countries' underlying economies."[31] This is as opposed to the French view that, "the discipline created by fixed exchange rates would force countries to avoid such excesses in their economies as high inflation and high interest rates."[32] In conclusion, both positions recognize the need to control the domestic economic policies of the different countries.

B. Colombia's Economic and External Debt Overview

Colombia's economic and debt situation will be described briefly with the focus on the external debt and some additional internal economic and political factors which were unavoidable. Colombia was

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26. DALE, *supra* note 3, at 5.

27. For a complete analysis of the U.S. government's plans and acts related to the economic policy see *Reagan's High Risk Growth Game*, N.Y. Times, Feb. 10, 1985, at F1, col. 2.

28. *See Economic Growth Will Quicken, Leading to Higher Interest Rates, Analysts Say*, Wall St. J., Jan. 14, 1985, at 23, col. 2.

29. *See* Wiesner *supra* note 5, at 25. "The rapid rise in real interest rates and the world recession precipitated the crisis and certainly aggravated it, but, important though they were (and continue to be), they did not produce the crisis. Had external debt levels not been what they were, these developments could not in themselves have brought on a crisis. . . ."

Some important officials at the IMF also agree with the position that interest rates were not the cause of the debt crisis. In fact, there have been suggestions among the developed countries that a new institution be established within the IMF to examine the international implications of the domestic policy of major nations and make recommendations. Farnsworth, *Currency Plan Stirs Skepticism*, N.Y. Times, Mar. 19, 1985, at D1, col. 6.

30. *See U.S. and its Allies Agree to Prepare for Trade Talks*, N.Y. Times, Apr. 13, 1985, at 1, col. 6.

31. *Baker Offers to Lead Currency Talks*, N.Y. Times, Apr. 13, 1985, at 4, col. 4.

32. *Id.*

chosen as an example for two reasons. First, it is the author's home. Second, and most importantly, Colombia has avoided, thus far, renegotiating or rescheduling its public external debt.

The total external debt (public and private; short, medium and long term) of Colombia was $10.9 billion at the end of July 1984. This is much smaller than that of the other major Latin American borrowers.[33] The size of the debt, however, does not give the complete picture. Some other economic indicators give us an overview of the reality:

> The *debt/GNP* ratio rose from 19% in 1980 to about 32% in 1984. The total *debt service* ratio which was 32% in 1981 (the public debt service ratio being 15% and the private debt service accounting for the difference: 17%) also increased to about 40% in 1983 (with the public sector ratio reaching 24% and the private debt service, 16%).[34]

Turning now to the borrower structure, 66% of the total external debt is owed by the public sector, 18% by the private corporate sector and 16% by the country's financial system.[35] The creditors, as of July of 1984, broke down as follows: 36% of the total debt is owed to official sources, (19% to multilateral agencies and 17% to bilateral sources) and 5% to supplier credit agencies; about 60% is owed to private financial institutions. Among the major creditors, two-thirds are United States banks.[36]

The difficulties Colombia has been facing stem from internal and external causes. The internal causes are primarily the lag in the rate of exchange and the public sector deficit.[37] This indicates that internal circumstances are partially responsible for the crisis. The Colombian government has taken measures to correct the internal factors. The measures include fiscal reform, the introduction of new taxes and reduced government expenditures.[38] At the same time, the de-

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33. Colombia's Economic Program and External Debt Management Strategy, presented by the Colombian Minister of Finance to the Creditor Banks in New York, Dec. 1984, (unpublished document) [hereinafter cited as CEPEDMS] (copy on file with California Western International Law Journal).

34. *Id.* at 29, 30 (emphasis added).

35. *Id.* at 30.

36. *Id.* at 32.

37. Pizano Salazar, *La Economia Colombiana en las Ultimas Dos Décadas*, El Tiempo, Bogota, Feb. 11, 1985, at 1, 6c. The lag in the rate of exchange has produced an over-valuation of the currency which is reflected in the decrease of export competitiveness. The public sector deficit generates pressure on the financial market as well as increases the rate of inflation, among other things. [Translation by author].

38. In 1982 a tax reform was adopted. In 1983 the income tax system was reformed; and

valuation rate has been accelerated. These measures have placed a heavy burden on the backs of the Colombian people.

The external causes are mostly the same as those which affect other Latin American countries, that is, the drop in commodity prices, the oil shocks, the high interest rates, and the world recession. The Latin American debt crisis itself and the international credit squeeze are additional factors which have affected Colombia. Each one of these will be considered separately after an overview of the economic setting is presented.

1. *Economic Setting.* Recall the consequences of high interest rates in the Latin American countries.[39] Colombia has suffered in the same way, especially the private sector debtors who had stipulated their debt in commercial terms. Table 1 illustrates how the payments of interest and fees on the public debt have grown disproportionately when compared to the growth of outstanding debt during the same period. In particular the sum of all payments including interest, fees and amortization has been growing tremendously since 1979.

Nominal interest rates have risen to the point that credit today is more expensive than ten years ago. Table 2 illustrates that the average amortization period has decreased from twenty-two years in 1970 to fourteen in 1984. As President Betancur noted recently: "Colombia has spent more than $3.5 billion on interest and repayments abroad, while receiving only about $2.5 billion in terms of resources disbursed by multilateral agencies and the international private banks."[40]

Table 3 shows the amount of the private debt outstanding and its service in the last fourteen years. The higher burden began in 1979 and it is reflected in the huge increases in the debt service. The amount of the debt has been increasing substantially and this illustrates the fact that many private corporations have been increasing their debt just to service their previously acquired obligations. In other words, there has been no real capital input, only accounting movements.

The debt service inequity has been inflamed by the commodity

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the sales tax was modified in 1984. Gasoline prices were increased in 1984, and an increase of 25% in import tariffs was adopted. *See* CEPEDMS, *supra* note 33, at 3.

39. *See supra* note 16 and accompanying text.

40. Address by President Betancur, *Colombia's Program of Macroeconomic Adjustment With Self-Discipline and Development*, Washington, Apr. 3, 1985. (Copy on file with California Western International Law Journal). *See also* Pizano Salazar, *supra* note 37, at 1, 6c.

slump. Colombia has the fifth largest economy of Latin America.[41] During the last twenty-five years Colombia "has been transformed from a predominantly agricultural and rural society into an increasingly urban and industrial society."[42] The urban population has increased from 39% in 1951 to 66% in 1981.[43] However, Colombia's foreign earnings depend mostly on coffee, which accounts for more than 50% of the export revenues. Coffee prices, though artificially sustained since 1960 by the International Coffee Agreement, have not been high enough to offset the country's expenditures in foreign exchange. The steep drop in coffee and other export commodity prices following the 1981-82 world recession affected the country's economy adversely. This is only partially offset by the fact that Colombia has been importing petroleum at a low rate, 27,000 barrels a day,[44] and is expected to become a net exporter of petroleum by 1986.[45]

2. *The Latin American Debt Crisis and the International Credit Squeeze.* The economic difficulties experienced by Colombia's neighbors and trading partners was another major factor in Colombia's current problems. The Colombian government's comments about this matter speak for themselves:

> Exports to Venezuela (one of Colombia's major non-traditional trading partners), Ecuador, Mexico, Argentina, Brazil, Costa Rica and Chile, have fallen significantly since 1982 following economic problems, major devaluations and import restrictions in those countries. In particular the speculation against the Colombian peso after the 1983 and 1984 Venezuelan devaluations exacerbated Colombia's problems. It is worth mentioning the impact of the Venezuela [sic] problems on the trade and service exchange with Colombia. It has been estimated that Colombia lost about US$450 million p.a. in foreign income as a result of the Venezuelan decisions to devalue its currency and restrict payments.[46]

This demonstrates clearly that domestic economic measures taken in one country can have direct consequences in the economy of another. In the Venezuelan case, the devaluation of the Bolivar and other related measures had adverse consequences on Colombia. This

41. After Brazil, Mexico, Argentina and Venezuela.

42. Address by President Betancur, *supra* note 40.

43. Colombia Today, Commemorative Issue, Visit of President Belisario Betancur of Colombia to the United States, Apr. 1985, at 4. (Copy on file with California Western International Law Journal).

44. *Id.* at 7.

45. Business Latin America, Oct. 17, 1984, at 332.

46. CEPEDMS, *supra* note 33, at 9.

economic injury was substantial and the relationship between Venezuela's domestic acts and the Colombian economy is undeniable.[47]

The Latin American debt crisis has resulted in an international credit squeeze. As a result, despite Colombia's good standing before multilateral agencies and its excellent record of paying outstanding debts, it is suffering from a lack of liquidity. International banks have decided to cut resource flows and tighten the loan terms to Colombia, even the commercial loans traditionally offered through financial institutions are unavailable.[48] This has resulted in a dramatic loss of Colombian reserves from almost $5 billion in 1982 to $1.5 billion in 1984. The tightening credit restrictions are difficult to explain since even the World Bank told the community of private bankers that, in its opinion, Colombia deserved new credits.[49]

The problems of other Latin American debtors and the international credit squeeze have both resulted in a decrease in Colombia's economic growth. The GNP growth fell from an average of 5.4% during the second half of the 1970's to 4.1% in 1980 and to 0.9% in 1983.[50] This reflects a lower quality of life, increased social problems and, to a certain extent, political unrest. Although Colombia is one of the few South American countries which has sustained a democratic government since the early 19th century, the unemployment and social unrest resulting from these economic measures have brought life to various armed groups which may threaten to topple the government.[51]

II. THE RIGHT-DUTY APPROACH TO STATE RESPONSIBILITY FOR EXTERNAL CONSEQUENCES OF DOMESTIC ACTS

This section will discuss the rights and obligations of States for the damaging external consequences of their acts. The following issues are relevant to this discussion: (a) the existence or nonexistence of a duty to take into account the external effects of domestic acts; (b)

47. Villamil, *The Outlook for Colombia's Creditworthiness*, 167 BANKERS MAG. 24, 25 (1984).

48. AMERICAN EMBASSY BOGOTA, *Foreign Economic Trends and Their Implications for the United States*, Colombia Nov. 1984.

49. *Colombia se Merece Nuevos Créditos: Banco Mundial*, El Espectador, Bogotá, Jan. 30, 1985, at 1, 7a [translation by author].

50. CEPEDMS, *supra* note 33, at 12, 13.

51. The author believes that democratic paths should be followed in order to reach any type of political, economic or social goal. It is true, nevertheless that the goals pursued by some armed movements in the world can be the social and economic justice. This implies that whenever changes are needed, there can be two opposite ways of reaching that same goal. The author supports the pacific path.

the scope of rights in the affected countries; (c) the legal effects and consequences of a breach of this duty in the international arena; and (d) the responsibility or liability of the acting countries for the injuries suffered and the right to compensation or another form of cooperation.

A. Relevant Sources of International Law

First, two traditional sources of international law, treaties and custom, will be discussed. Then a more non-traditional source, United Nations General Assembly Resolutions, will be examined.

1. *Treaties.* Provisions of two treaties, the Charter of the Organization of American States (0AS) and the IMF Agreement, will be considered. Both serve as valid sources of international law. Each of these treaties will be analyzed separately.

(a) *The OAS Charter.* Since the debt problem is centered primarily in the Latin American countries, all of whom are members of the OAS, it is helpful to analyze the provisions of that organization's charter which are relevant to this discussion.

Article 9 of the OAS Charter reads as follows:

> The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. *The exercise of these rights is limited only by the exercise of the rights of other States in accordance with international law.* (Emphasis added).

The wording of this provision suggests a limitation, imposed by international law, on the sovereign rights of States even within their jurisdiction. If there is such a limitation the State which is being limited has a duty to abstain from doing things it would otherwise be entitled to do.[52]

Article 15 of the OAS Charter indicates that States do not have the right to intervene in the affairs of other States including the political, economic and cultural elements of the State. Article 15 reads:

> No State or group of States has the right to intervene, directly or

52. Article 2(7) of the U.N. Charter supports the recognition as international law of the rule of non-intervention. Although it refers to the U.N. it can be extended to any third party, any juridical person under international law, including States.

> indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the state or against its political, economic and cultural elements.

Analyzing these two provisions jointly, a State has the right to regulate its domestic economic-related activities. However, like many rights, this one can be limited by international law, as outlined by Article 9. At the same time, a State does not have a right to interfere in the economic affairs of other States, as stated in Article 15. This provision does not mention the way in which interference can occur, so it is possible to conclude that one form of interference under this rule could be domestic economic acts which have damaging consequences on other States. A State therefore would have a duty to abstain from economic acts that interfere with the economic and political activities of other States. States have the right to pursue their domestic policies limited only to the extent that they do not conflict with the rights of other States. A State can pursue whatever economic policy it desires within its jurisdiction as long as this policy does not violate other States' rights.[53]

(b) *The IMF Agreement.* IMF has been an important part of international finance since the 1960's.[54] The IMF agreement is an international commitment by the member countries to comply with or carry out certain economic policies which are ultimately policed

53. Although the OAS Charter is international law only to the States which ratified it, the UN Charter stipulates the non-interference in domestic affairs. *See* U.N. CHARTER art. 2(7) and 55.

54. A. CHAYES, T. EHRLICH & A. LOWENFELD, INTERNATIONAL LEGAL PROCESS, MATERIALS FOR AN INTRODUCTORY COURSE 719 (1968) [hereinafter cited as CHAYES]. The IMF's role in the numerous crises, in which it has intervened, has been criticized. However, the fundamental role this institution has played in contemporary economics must be recognized. The Fund will continue to be important as long as the methods of financial assistance are managed by the surplus countries, who finance the IMF with their contributions.

In general, the Fund was a product of the post-war planning of United States and United Kingdom economists and politicians. The United States wanted to achieve "the reconstruction of a multilateral system of world trade." *Id.* The establishment of an international financial institution would therefore mean an alternative to exchange restrictions, competitive currency depreciations and other methods countries have used to keep their economies afloat. The United Kingdom's goal reflected a different position. "Our long-term policy must ensure that countries which conduct their affairs prudently need not be afraid that they would be prevented from meeting their international liabilitites by causes outside their control." *Id.* at 723. The British took this position foreseeing the day that they would be a debtor. If a country was in deficit, the British felt they should have automatic access to the Fund's resources. The United States thought the access should meet certain conditions. The last position prevailed. A country must meet certain conditions established by the Fund to be able to use its resources. *Id.*

by the Fund through the surveillance power conferred by Article IV § 3. This commitment constitutes an explicit recognition of the international scope of domestic economic-related activities and thus corroborates the existence of the duty. The members of the IMF have waived, to a certain extent, their sovereignty in financial matters. The IMF has assumed, with the consent of its members, some of the powers which belonged to them individually. The surveillance provision implies the existence of a duty to take into account the external effects of certain domestic acts such as the establishment of exchange rates. The most explicit obligations regarding domestic policies are established in Article IV § 1 which reads:

> In particular, each member shall: (i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances; (ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions; (iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and (iv) follow exchange policies compatible with the undertakings under this Section.

These commitments are quite broad and can include a wide range of economic measures. The countries which are controlling the IMF today are breaching the commitment set forth in subsection (1), since the Fund's policy toward the debtor countries has created negative growth through deflation. Furthermore, the maintenance of a policy of budget deficits, like the United States has done, could "tend to produce erratic disruptions" in the economic and financial conditions of the world. If a country has committed itself to promote stability and to avoid these kinds of situations, it is breaching the agreement where its domestic acts have injurious consequences in other countries which have acted in a prudent manner.

(c) *Conclusion*. States have recognized the existence of a duty that limits their activities and their sovereignty. At the same time, they have guarded against any measure that would imply a prohibition against certain activity they might wish to carry out later. The treaties examined are evidence that States recognize the existence of the duty but there is no mechanism to ensure the fulfillment of that obligation. In other words, there has been no enforcement provision established regarding this obligation.

2. *Custom.* It is difficult to determine whether or not there is a custom of international law on this point, but in order to find out it is necessary to examine the activities of the parties. The difficulty stems from the differences in opinions and practices between the First and Third World States. In fact, while the developed countries have denied the existence of the duty and any responsibility for the consequences of their domestic economic-related activities, the lesser developed countries have stated that the debt burden should be shared by both the creditor and the debtor governments. First the position of the developed countries will be examined and then the Latin American governments' position will be considered.

(a) *The Position of the Creditor Governments.* The position of the creditor governments is best illustrated by the actions they take with regard to the debt crisis. As previously indicated, the enormous government budget deficits of the United States have placed upward pressure on interest rates due to the extensive borrowing undertaken to finance those deficits. The United States Treasury asserts that the deficit's relation to the turbulence in the world economies cannot be proven by economic statistics,[55] and they have come close to saying that the United States has no responsibility for the problem at all.[56]

In the London Summit Communiqué of June 9, 1984,[57] the developed countries refused to recognize the real impact of their economic policies on the rest of the world. The Communiqué failed to recognize the link between the fiscal deficit and interest rates in the United States as well as the chance that high interest rates will close off economic recovery in America and the summit countries in general.[58]

A close analysis of the Summit Communiqué does provide some evidence of the recognition of "[t]he economic interdependence of the industrialized and the developed countries."[59] The Communiqué also stated that the goal of improving the operation and stability of the international financial system should be met by means of prudent policies on the part of the major countries. The seven nations agreed "[t]o strengthen policies to reduce inflation and interest rates, to

55. Meissner, *Debt: Reform Without Governments*, 56 FOREIGN POL'Y 81, 86 (1984).

56. Rogers, *The United States and Latin America*, 63 FOREIGN AFF. 577 (1984).

57. *London Communiqué on the Resolution of Debt Problem*, 23 INT'L LEGAL MATERIALS 1179-81 (1984).

58. Meissner, *supra* note 55, at 84. The Parties to the Communique are: Canada, European Communities, France, Federal Republic of Germany, Italy, Japan, United Kingdom, and the United States.

59. *London Communiqúe*, *supra* note 57, at 1179 (1984).

control monetary growth and where necessary reduce budgetary deficits."[60]

The developed countries expressed concern for the fate of the debtor countries, but have not provided any decisive aid. The United States believes that "[w]hat is good economic policy for America is good for the rest of the world."[61] In turn the developed countries have left the management of the debt crisis to the private banks and the IMF, which they control.[62] The developed countries have stressed that the appropriate forums for resolving international economic problems are the IBRD (World Bank), the IMF and the OECD. Furthermore, the Congress of the United States has declared, in section 1102 of Public Law 98-181 of 1983, that "the economic policies prescribed by the International Monetary Fund can be harmful to economic growth" and that "the International Monetary Fund should revise the conditions placed on its loans so as to encourage economic growth." The lesser developed countries long complained that the policies of the IMF lead to a negative growth of the economy. But, the express recognition of this fact by the United States authorities is much more meaningful since the Fund is controlled by the developed countries. This means that there is a consensus towards the negative effect of the IMF's "suggestions" whenever a country asks for financial help. This implies an acceptance of the fact that the IMF's policies and the existing framework are not working and need to be changed. This consensus is not reflected in the developed countries' actions.

The IMF has prescribed political measures in order to assure the participation of the private banks in supplying more funds to the ailing economies of the debtors. This indirect intervention is described by William D. Rogers as follows:

> Though the 1984 restructuring-cum-adjustment agreements were made in form between the private banks and the Latin debtors, they involved in practice large public policy decisions-how tight to turn the economic screws, how much to expand the flow of fresh financing. The United States was engaged in those decisions [. . .] in the inner councils of the IMF and determining how far to press the banks for new capital, lowered commissions and flexibility on stretching out repayment.[63]

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60. *Id.* at 1180.

61. *See* Pine, *The Outlook of Selling Reaganomics to the World-Again*, Wall St. J., Mar. 11, 1985, at 1, col. 5.

62. *See London Communiqué*, *supra* note 57, at 1179-81.

63. Rogers, *supra* note 56, at 578.

This demonstrates that the developed countries have indirectly participated in establishing the policy guidelines that the IMF follows. It is no secret that these conditions involve painful measures and, although directed to the economy, they are political in character.[64] Thus, we can deduce that the developed countries are setting up the political guidelines of the debtor countries. If they are doing so, the acceptance of the international scope of certain domestic measures is implied since, otherwise, the developed countries would not have any interest in the debtor countries' economies.

The fact is that the debt crisis is also a problem of the developed countries. The developed countries have to worry about the deteriorating economies of the Latin American countries which represent a very important market for their products.[65] For example, if the Latin American countries stop or greatly reduce the consumption of United States and/or European goods, the United States and/or European producers and their economies would suffer. This is not the only problem the creditor countries have. They also have to worry about the stability of their banking system. In fact, some of the largest United States banking institutions have overexposed themselves to Latin American countries.[66]

If the problem is a common one, all the parties involved should assume some responsibility and follow policies directed toward a solution. The Latin American countries have been carrying out painful policies looking forward to a recuperation, but what have the developed countries done?

The developed countries have made declarations, but have failed to act accordingly, leading to the conclusion that the summit countries believe that the debt problems must be solved by the developing countries. The lesser developed countries receive aid only through the institutional methods such as the IMF and the World Bank. Only if the developing countries apply the IMF's plans, which in the terms of the Summit Communiqué, bring "social and political difficulties,"[67] will they receive help in the sense of encouragement for

64. *See* Roberts, *World Debt: The IMF Solution Has Become the Problem*, BUS. WK., Jul. 9, 1984, at 12. "The involvement of the IMF, the U.S. Treasury, The Federal Reserve Board, and other government institutions in the contractual relationship between debtors and creditors has politicized the loans. . . ."

65. Poniachek, *U.S. International Banking and the Latin American Market*, 166 BANKERS MAG. 12 (1983). "Latin America is a major market for the U.S., accounting for 15-18% of U.S. international banking activities."

66. *Id.* at 14. "The 24 largest U.S. banks accounted for $66 billion, or 70% of total U.S. claims on Latin America by June 1982."

67. *London Communiqué, supra* note 57, at 1180 (1984). The U.S. has limited itself to

rescheduling by the commercial banks.

While, on the surface, the industrialized countries do not want to see the problem from a political point of view, they are manipulating the IMF to obtain policy changes in the lesser developed countries. It has become clear that if the debtor countries follow IMF policies, the developed countries will encourage "more extended multiyear rescheduling of commercial debts. . . . "[68] This evidences a negation of the political responsibility issue, as well as, any type of obligation on their part. The developed countries do not want to see the problem from a political point of view because they would have to assume, to some extent, their responsibility in the debt problem.

In summary, if the creditor States are responsible to any extent, they are not willing to admit it. Their attitude, as reflected in IMF policies, is concern for the international scope of their domestic actions, but there is no evidence of a belief in the existence of a duty.

First, since the developed countries are constantly taking domestic measures without considering the possible external effects, there is no sustained practice of accepting the duty to take into account the external effects of domestic acts. Second, the *opinio juris* may be present at some point, but the developed countries have been very careful in preserving their almost absolute sovereign rights. If the *opinio juris* implies a recognition of the limitation of the sovereignty, it is not present either.

To the contrary, if there is a custom in the process of formation which establishes the duty to take into account the effects of domestic economic-related acts, the developed countries have been persistent objectors to it.[69]

(b) *The Debtor Government's Position.* Eleven Latin American countries[70] have expressed their opinions concerning the debt crisis jointly through the "Consensus of Cartagena" Declaration, issued

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approving an increase in its quota to the IMF demonstrating that the developed countries have acted as if they were bankers. They are protecting commercial interests of a few private persons and ignoring the social and political unrest their policies cause in the developing world. To protect the interests of their financial monsters and their shareholders, they are trying to impose harsh economic policies on the developing countries. As previously stated, these policies generate slower, if not negative, growth of the economies of the poor countries, thus widening and perpetuating the gap between the First and Third World.

68. *Id.* at 1180.

69. *See* I. BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 10 (3d ed. 1979).

70. Argentina, Bolivia, Brazil, Chile, Colombia, The Dominican Republic, Ecuador, Mexico, Peru, Uruguay, and Venezuela.

June 22, 1984.[71] The Declaration stresses the fact that the debt crisis was largely a product of factors, which were beyond the control of Latin American countries.[72] The factors mentioned are the international recession and stagnation of the economies of the industrialized countries, restrictive trade policies and the increases in interest rates. Acknowledging the fact that the crisis cannot be solved through individual talks with the creditors, the Latin American governments strive for general policy guidelines on the restructuring and refinancing of debts. The declaration points out that:

> [T]his frame of reference ha[s] to take into account the co-responsibility of the parties involved in the search for a permanent solution to the problem. These parties are the governments of both the lender and debtor Nations, international financial institutions and the international banks. . . .[T]his frame of reference ha[s] to incorporate the concept of an *equitable distribution of the cost of economic adjustment*. This adjustment process ha[s] to be symmetrical and fair in order to be effective. Sustained world economic growth demand[s] changes in the economic policies pursued by some industrialized countries. The Ministers pointed out the need for these countries to move rapidly to adopt policies to provide a spur for economic growth at the same time facilitating a reduction in interest rates without prejudice to the goal of controlling inflation. . . .[T]hey (the Ministers) also referred to the immediate need to create conditions that would permit the resumption of the flow of funds between these two groups of countries and provide permanent and significant alleviation of the debt service burden. Without these measures, Latin American efforts at economic readjustment will be fruitless.[73]

After examining the situation of the debtor governments and finding, among other things, that direct foreign investment could not play a decisive role in solving the external debt problems of Latin America,[74] the Ministers went on to make seventeen proposals urging the governments of the industrialized countries to act in an effective way.

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71. *Cartagena Communiqué on Foreign Debt and Economic Development* 23 INT'L LEGAL MATERIALS 1169-78 (1984).

72. *Id.* at 1170.

73. *Id.* at 1172 (emphasis added).

74. *Id.* at 1173. The Communiqué reads as follows:

> The ministers went on to say foreign direct investment could play a supplementary role by contributing capital and technological transfer, creating employment and generating exports provided that it conforms to the policies and laws each country has established in this field. However, the contribution foreign investment could make in terms of providing foreign exchange in helping to solve the external deficit was limited, therefore, it could not play a decisive role in solving external debt problems.

Among the proposals, were two which are relevant to this issue. The first proposal calls for the adoption of measures to reduce the interest rates in international markets.[75] The other asks for a review of the IMF conditionality criteria.[76] These suggestions, together with the considerations above, give us an idea of the thoughts and feelings of the Latin American countries.

It can easily be deduced from the evidence that the Latin American governments give great importance to the domestic policies of the industrialized countries. They call for a change in those policies in order to be able to cope with the problem. They affirmed that they were willing to pay, but the burden should not be borne by them alone. They are partisans of "an equitable distribution of the cost of the economic adjustment." This means that the developed countries should assume a degree of responsibility in solving the problem. They are asking for a "fair adjustment process" which must include effective measures on the part of the developed countries.

The Latin American governments also believe that the problem is a political one, and as such, it must be dealt with in political terms through a common dialogue.[77] The governments, however, have acted in the opposite manner when renegotiating their debts individually and recently failed to reach an agreement to start the dialogue.[78]

The Latin American governments believe that the world economy and specifically their weak economies are directly affected by the domestic economic-related measures taken by developed countries. The Latin American governments not only believe this, but they have

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75. The proposal reads as follows: "The adoption of measures leading to the immediate and drastic reduction of nominal and real interest rates in international markets had to constitute a fundamental objective towards which the governments of industrialized nations ought to direct their best efforts." *Id.*

76. The proposal reads as follows:

> IMF conditionality criteria should be reviewed to: I. Give priority to expanding production and increasing employment keeping in mind the specific economic, social and political situation of each country. II. Exclude the impact of increases in international interest rates above the level assumed in stabilization programs when setting fiscal and balance of payment goals to avoid the excessive reduction of public investment and imports. III. Allow for modifications in monetary goals so that they might absorb unforeseen increases in inflation rates and avoid bottlenecks that run counter to the agreed stabilizations targets.

Id. at 1175.

77. Roberts, *supra* note 64, at 12. In the concept of the Latin American countries, the developed countries must start recognizing their responsibility in the problem and take the neccessary measures to alleviate the harm that their policies have in part caused.

78. *See* Dominican Republic Communiqué, Feb. 9, 1985, *Piden Solución Definitiva a la Deuda Latinoamericana*, El Espectador, Bogotá, Feb. 10, 1985, at 17. It can be concluded that they were compelled to negotiate individually to avoid the paralysis of their economies, and they could reconcile their acts with their words. [Translation by author].

also asserted this position. The consequence of this position is the political point of view, from which they have proposed to approach the problem. The political responsibility lies on both the debtor and creditor nations, as well as, on the multilateral institutions.[79] If there is co-responsibility from the political point of view, there is a duty on the part of the creditor States. This duty, for the time being, consists of not only extending enough aid but also abstaining from causing more economic fluctuations outside their borders. The Latin American countries firmly believe in this duty and in the co-responsibility because they blame, among other things, the economic policies of the industrialized countries.

The need for foreign exchange is such that the Latin American countries have been forced to act individually and no *opinio juris* has developed. They must abide by the conditions established by the developed countries and the multilateral institutions. Developed countries will not provide foreign currency unless the debtor governments play their game. If they do not, their countries would be paralyzed and the social costs would be great.[80] Colombia's case has been chosen to illustrate this fact. A country without foreign exchange cannot survive given the economically interdependent nature of the world today. So, the apparent contradiction between words and deeds is forced and cannot be taken as voluntary. The fact is that there is this contradiction and, as such, it is a strong argument against the existence of the duty. Therefore, one cannot say that there is a practice and an *opinio juris* since the Latin American governments maintain that the debt problem is common. The Latin American governments also maintain that developed countries have the duty to take into account the external effects of their domestic economic policies but, at the same time, the former have bowed their heads and accepted stringent programs imposed by the developed countries through the IMF, without requiring more decisive action on the part of the developed countries that would alleviate the burden. There is no consistent practice nor opinion that can lead to the assertion that the Latin American countries recognize as law the

79. The political responsibility is the joint determination and establishment of policies that can fulfill the obligations of economic cooperation and economic independence.

80. *See* Weatherstone, *International Debt Problems and the Banks: Some Questions and Answers, Sovereign Debt: Recent Regulatory and Lending Issues and Practices* 33, 34 (1983).

> There have been occasional proposals for organizing debtor countries for the purpose of increasing their leverage on lenders, but so far none of them has gone anywhere. Such efforts have failed because, in addition to reluctance to jeopardize future access to credit, the situations of individual countries are sufficiently diverse to make finding common ground extremely difficult.

duty to take into account the external effects of the domestic economic-related acts. It could be argued, however, that the Latin American governments have acted against their declarations of keeping the problem on a common basis because they have been in need of financial resources to avoid a paralysis of their economies. This argument is valid, if we can prove that there has been economic coercion. Although, could one say that there is a custom when there is only *opinio juris* not practice, arguing that the practice would have been present if there would not have been coercion to prevent it?

(c) *Conclusion.* There are two opposite practices which concurrently deny and accept the existence of a custom recognized as international law. Thus, there is a rule that is accepted by some States of the world, while others do not accept it. Alternatively, it is possible that two different rules of international law, in the process of formation, are before us. One recognizes the responsibility for the consequences of the domestic economic-related acts and the other reaffirms the old rule of *pacta sunt servanda.*

3. *United Nations General Assembly Resolutions.* The position of the resolutions and declarations adopted by the UN General Assembly is certainly one of the most controversial issues in contemporary international law. The traditionalists value them as mere evidence of a State practice, while some of the lesser developed countries believe they are equally as important as any of the traditional sources of international law.[81] Whatever their status UN Resolutions are important under international law and must always be taken into account when considering an issue of contemporary importance.[82] Provisions of the New International Economic Order Declaration (NIEO),[83] the Charter of Economic Rights and Duties of States (CERDS)[84] and the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Between States[85] are of particular relevance to this discussion.

(a) *Declaration of Principles of Friendly Relations.* This Decla-

81. *See* L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, INTERNATIONAL LAW CASES AND MATERIALS 103 (1980); BROWNLIE, *supra* note 69, at 14.

82. U.N. General Assembly resolutions are important because they express the needs and wishes of the international community, because they reflect the opinion of changing standards of international law, and also because they are adopted by the majority of the States of the world community.

83. G.A. Res. 3201, Sixth Special Sess. U.N. GAOR Supp. (No. 1), at 3, U.N. Doc. A/9559 (1974).

84. G.A. Res. 3281, 20 U.N. GAOR Supp. (No. 31), at 50, U.N. Doc. A/9631 (1974).

85. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28), at 121, U.N. Doc. A/8028 (1970).

ration was adopted by consensus and the member States acknowledged that the principles adopted in it are the agreed interpretation of the UN Charter. This means that there should be no dispute as to the value of the Declaration under international law. It is agreed that it expresses principles of international law.

The relevant principle expressed in the Declaration is the one which proclaims that a State has a duty to cooperate with other States to promote, among other things, international economic stability. The Declaration asserts that "States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries."[86] This implies a duty to carry on actions directed toward fulfilling the goal of economic growth. In order to reach this goal the States should implement policies in accordance with the Declaration. If a policy is not achieving the goal of economic growth but instead is promoting negative growth, that State is not complying with its duty to promote international economic stability. When a State has not taken into account the external effects of its domestic policies it is not complying with this duty. Therefore, the duty to take into account the external consequences of domestic economic-related acts can be derived from the principles adopted in the Declaration.

(b) *The New International Economic Order Declaration*. This Declaration was adopted by consensus of the UN General Assembly. It is the basic expression of the lesser developed countries against the established order. In the Declaration, the interdependence of the States is mentioned several times. Emphasis is made in the preamble that the NIEO is based on "common interest and cooperation among all States."[87] Further on, the declaration explicitly affirms that international cooperation for development is the "shared goal and common duty of all countries."[88] These affirmations imply that all States have a duty to cooperate to achieve development. If a country is acting in a way inconsistent with the goal of development, it would be breaching a duty and, therefore, would be liable under international law. One way of acting inconsistently with the duty to promote cooperation in development would be to carry on domestic economic policies that generate negative growth in other countries. Negative growth is inimical to the achievement of development which can only be reached through real positive growth. In this re-

86. *Id.*
87. *Supra* note 83.
88. *Id.*

spect, it can be said that the NIEO Declaration indirectly establishes the duty to take into account the external effects of domestic acts.

The Program of Action on the Establishment of a New International Economic Order[89] reasserts this interpretation of the NIEO. In fact, the Program of Action specifically stipulates that all efforts should be made to reform the international monetary system with measures "to check the inflation already experienced by the developed countries, to prevent it from being transferred to developing countries and to study and devise possible arrangements within the International Monetary Fund to mitigate the effects of inflation in developed countries on the economies of developing countries."[90]

This wording makes it clear that the drafters were referring to domestic policies, which had the possibility of having external effects. If the example of the interest rates is used, the same idea could be applied. The drafters were trying to assert the duty to take into account the effects of domestic policies when they insisted on measures to check inflation in the countries that were suffering. This was done to prevent the problem from being transferred to other countries.

(c) *The Charter of Economic Rights and Duties of States.* Since its adoption, the CERDS, as one of the pivots of the NIEO, has not achieved wide acceptance by industrialized States. Although it was intended to be a sign of the codification and progressive development of the international law of development, it is not representative of the status of the law, since the developed countries do not accept it as such. Nevertheless, it contains a provision that reaffirms the existence of a rule of international law recognized by the majority of the countries of the world community representing many different groups. Article 24 stipulates: "All States have the duty to conduct their mutual economic relations in a manner which takes into account the interests of the other countries. In particular, all States should avoid prejudicing the interests of developing countries."[91]

If the last sentence of the article, which could be controversial, is disregarded, the statement of a recognized principle can be found. In the monetary field, it is recognized in the IMF agreement.[92] It was recognized in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Between the States.

89. G.A. Res. 3202, Sixth Special Sess. U.N. GAOR Supp. (No. 1), at 25, U.N. Doc. A/9559 (1974).

90. *Id.*

91. CERDS, *supra* note 84.

92. *See supra* note 54 and accompanying text.

This is the clearest recital of the duty. It is obvious that the State's sovereignty has a limit. No State may act in a way that has a potential to harm other States. If a State takes certain domestic actions, that in turn have injurious consequences in other States, the acting State would be breaching its duty to consider the effects of its acts. It would be exercising powers beyond its sovereignty. It would be breaching the rule stipulated in Article 24 of the CERDS and, therefore, would be responsible to the injured States under international law. Furthermore, every State recognizes the right to self-determination. Thus, it could be argued that this right is violated whenever a State suffers injurious consequences due to domestic acts of other States, since the acting State is exercising indirect influence in the injured State's affairs.

A clear example of a breach of this duty can be seen in the relations between Colombia and the United States. As demonstrated already, United States domestic economic policies forced interest rates up, thereby injuring Colombia's interests. In addition, the current policies of the United States contributed to the international credit squeeze which only makes the debt crisis worse. The United States exercised powers beyond its sovereignty. It specifically did not avoid prejudicing a developing country, which is contrary to Article 24 of the OAS Charter.

(d) *Conclusion*. These declarations express a belief in the interdependence of nations and the need to avoid the damaging consequences which can arise from the domestic affairs of one country.[93]

The NIEO and the CERDS serve to develop the concepts expressed in the Declaration of Principles of International Law Concerning Friendly Relations. The Declaration expresses a duty to cooperate to achieve economic growth especially in the developing countries. The NIEO reaffirms the goal of cooperation for development while the CERDS spells out a duty to use due regard in the interests of the other States.

The declarations represent the single duty to think of other States when acting even when the acts are domestic in character. States cannot forget that domestic acts may have a broader influence than just within the national boundaries. This duty is expressed in

93. The Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Between States is an undisputed expression of international law. The other declarations are not neutral, however, as Professor Schacter describes them "[t]hey are, by and large, challenges to the existing order and their leading motif is the demand for a wider distribution of wealth." Schacter, *The Evolving International Law of Development*, 15 COLUM. J. TRANSNAT'L L. 1, 3 (1976).

the new developments of the law found through the UN General Assembly. When considered together the declarations are consistent with both traditional Western international law and the lesser developed countries law of development.

B. Affected Countries' Right

If a correlative right exists the affected countries would be entitled to demand measures be taken against the acting country to prevent the injuries which the acts could cause. They would also be entitled to compensation whenever there is damage.

The existence of this right can be inferred from the counter-obligations created by the UN General Assembly Resolutions cited above. The existence of this right, however, has not been recognized. The affected States have some rights that are recognized under international law. These rights are the right to noninterference, the right to nonintervention and the right to pursue freely any type of economic or social system. These rights are limited to requiring "cooperation" on the part of the acting States.[94]

C. Final Considerations on the Right-Duty Approach

International treaties, particularly the IMF Agreement which is concerned directly with economic matters, recognize the international scope of certain domestic activities carried on by the States. Consequently, a mechanism of surveillance has been created. The United States has enacted legislation to implement strict surveillance over the lending activities of its banks. The declaration of policy of 12 U.S.C. § 3901 states: "It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision."

Each day the developed countries are pressuring one another for a closer surveillance of their own economies. This indicates a recognition of the duty. However, the developed countries continue to deny their responsibility in the debt problem arguing that their acts

94. On the other hand, the lesser developed countries have affirmed their conviction in the existence of a duty to share with them their huge debt burden. Their claim is based on the assertion of co-responsibility on the part of the creditor nations. This duty has its roots in the duty to cooperate, in the duty to supervise its own economic activities, in the duty to take into account the effects of the domestic activities, and in the duty to abstain from interfering in other countries' activities.

have no international scope or, if they have, it is impossible to prove the relation between the acts and the injuries or damages.[95]

III. RESPONSIBILITY FOR LAWFUL ACTS APPROACH

According to the right-duty approach, the responsibility of the acting State arises when there is a breach of an international obligation. The following discussion examines the problem from a different approach, which assumes that there is no obligation under international law that prescribes the duty to abstain from carrying on certain domestic acts, even if the consequences of those acts are international in character. Instead it will examine whether there is liability when an injury occurs, without examining the legality of the act that caused the damage. This view is based on the fact that State sovereignty is not unlimited and that States cannot be permitted to harm one another with impunity even though the harm occurs as a result of an ostensibly domestic act. The law has already been evolving toward the acceptance of responsibility for lawful acts in environmental matters. Economic matters are also of extreme importance and should be subject to similar rules regarding responsibility. This conclusion is based on the theory of abuse of rights and on analogies made to case law.

A. Abuse of Rights

In all legal systems, subjects have certain rights. The normal exercise of these rights cannot give rise to responsibility on the part of the holder. As Ripert and Boulanger state, "[i]f I have the right to do a certain thing I am not at fault doing it, and if I have the right to abstain from doing it, I am not at fault for failing to do it."[96]

Today, the majority of the legal systems of the world accept the theory of abuse of rights where a subject of law is liable to compensate for the harm which it causes to another when it exercises its right in an abnormal, excessive or abusive way.[97] Only England and the United States have not recognized the independent concept of abuse of rights, although some similar concepts are included in actions for tort, private nuisance, malicious prosecution and abuse of

95. It is true that States act according to their interests. After the United States action in Grenada, one might ask, what place does international law occupy in the policy priorities of the developed countries. *See* Joyner, *The U.S. Action in Grenada*, 78 AM. J. INT'L L. 131 (1984).

96. XI INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, TORTS. 105 (A. Tunc, ed. 1983) (citing Ripert and Boulanger) [hereinafter cited as TUNC].

97. *Id.* at 105

process.[98]

The criteria employed to determine whether or not there has been an abuse of rights vary. The most frequently employed factors are: intention to harm; absence of proper interest; choice of the most harmful way out where there was an alternative; flagrant disproportion between damage and profit; disregard of the purpose for which the right exists; the principle of tortious fault; and improper behavior or conduct contrary to good faith.[99] Several of these criteria will be considered individually.

(1) "Intention to harm" is recognized in countries including Mexico, Morocco, Tunisia, Argentina and Spain.[100] There has been a change of opinion which now accepts the view that a right may be abused without having a malicious motive. If this is true in the international context, the intention of a government when performing an act which caused the damage would no longer be relevant. Because it would be very difficult, if not impossible, to determine the real intention of a State, especially when the authorities have acted within their discretionary powers, this criterion should not be used to determine whether a State has abused its rights.

To illustrate the difficulty, the United States system of government can be used as an example. In assessing the United States' economic policy and attitudes toward certain economic issues, one finds that there is no institutional process for formulation and execution.[101] It has been recognized that the Federal Reserve Board encouraged banks to loan to Third World countries while the F.D.I.C. and the Comptroller of the Currency were against it.[102] It would be impossible, therefore, to establish what was the will of the government since there are so many different offices, organizations, opinions and objectives.

(2) "Absence of proper interest" is recognized by the countries of the French legal family. According to this theory a person who causes damages by conduct not remotely beneficial to himself is considered to have acted with the intention of causing the resulting

98. For example, private nuisance is defined as "anything that by its continuous use or existence works annoyance, harm, inconvenience or damage to another land owner in the enjoyment of his property." BLACK'S LAW DICTIONARY 1076 (5th ed. 1979).

99. TUNC, *supra* note 96, at 105.

100. *Id.* at 108.

101. C. FERGUSON, THE NEW INTERNATIONAL ECONOMIC ORDER, 149, 158 (1978).

102. *See Mixed Signals: Rival Bank Regulators Agree only to Disagree*, Wall St. J., Jan. 23, 1985, at 1, col. 6.

harm.[103] Countries of the Germanic legal family have adopted a test of "absence of good faith" which operates in the same manner as the French test.[104] Although this criterion might be valid under international law, the burden of proof would be difficult to meet. Showing an absence of proper interest or lack of good faith when a State is acting on domestic matters would be very difficult. It would be unusual to find a State that had acted in such bad faith that the only purpose was to harm another State. It would be necessary to prove that the State did not recieve any benefits from the acts, while other States suffered damaging consequences. On balance, the evidence needed to use this criterion is so great that it makes it unfeasible to use it in practice.

(3) "Harmful alternative" holds that "[w]here there is a choice between equally beneficial ways of exercising a right, its holder may not choose the way that is harmful for others."[105] This rule of law is widely accepted within the French and Germanic legal families and provides a good source of international law concerning State responsibility. Whenever a State can obtain, through alternative means, the goals it is pursuing, it must choose the one which would avoid causing injuries to other States. If a State chooses to act in a manner likely to damage other States when it would be possible to avoid the damage without much inconvenience, the State would be liable for the damaging consequences of the act. This criterion can be applied clearly to economic-related matters where alternatives are usually present.

(4) "Flagrant disproportion between damage and profit" is widely accepted by both the German and French families.[106] The rule states that if the exercise of a right tends to satisfy an interest of minimial importance in comparison to the harm caused, then the right has been abused. "Such disproportion reflects excessive selfishness of the holder of a right and his utter disregard for the interests of others, in conflict with the general principle that rights are to be exercised according to the rules of good faith."[107] This test may also be used to determine whether a State has abused its rights in economic-related acts. The problems in applying this test would be determining what flagrant disproportion is, what types of advantages to mea-

103. TUNC, *supra* note 96, at 110.
104. *Id.*
105. *Id.*
106. *Id.* at 111 (the primary exception is France itself).
107. *Id.*

sure (e.g. social, economic, political), and who will measure them.[108]

(5) "Disregard of the purposes for which the right exists" is applied in socialist countries. According to this rule private rights can only be protected as long as they do not conflict with the interests of the community.[109]

The countries of the Germanic legal system also apply this rule based on the belief that rights must be exercised in good faith.[110] This criterion is not applicable to the effects of domestic acts in international relations because the only persons capable of determining whether an act has fulfilled the purpose for which it was undertaken are the nationals of the acting country.

(6) "General principles of tortious liability" indicate that, there is an abuse of rights when the actor has done so with simple fault. Simple fault is understood to mean "something which an ordinary careful and prudent man does not do when exercising his rights."[111] States must act with this same due regard for the interests of others. If a State acts and the consequence of those acts could have been prevented by exercising reasonable care, the State is liable. The problem would again be proof of the negligence or lack of prudence, because there is no test to determine what is the prudent exercise of a domestic right.

The best tests to determine the presence or abuse of a right are flagrant disproportion between damage and profits and choice of the most harmful way out where there was an alternative. The other tests may be used but with greater difficulty.

B. Case Law Supporting This Approach

Liability for ultrahazardous activities is recognized as an emerging principle of international law.[112] The importance of this theory

108. At an international level all States must "fulfill in good faith the obligations assumed by them." U.N. CHARTER art. 2.2. States have an obligation to promote "solutions of international econmic, social . . . and related problems." U.N. CHARTER art. 55 b. This obligation must be achieved through both joint and separate action in cooperation with the U.N. according to Article 56 of the Charter of Organization. If the act of a State is disproportionate that State would be acting in bad faith because it would not be acting in accordance with the obligations assumed in the Charter of the U.N. Therefore, it would be liable and would have to pay compensation for the injuries caused by the act.

109. TUNC, *supra* note 96, at 112.

110. *Id.* at 115.

111. *Id.* at 116.

112. THE CURRENT STATUS OF THE LAW OF STATE RESPONSIBILITY FOR INJURY TO ALIENS, 35 (R. Lillich ed. 1983) [hereinafter cited at Lillich]; I. BROWNLIE, SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY 50 (1983).

lies in the fact that the damages determine the liability. The legality of the act which caused the damages is not an issue. Generally, an act of this type is legal in the sense that it is not prohibited.

This approach has been used in the international law arena, especially in the field of environmental issues. It has also been developed in treaties related to damage caused by space objects and nuclear mishaps.[113]

The International Law Commission (ILC) has been working on the draft of what has been called "international liability for injurious consequences arising out of acts not prohibited by international law."[114] The ILC has recognized the broad scope of the issue of State responsibility for lawful acts but seems to have limited its study to environmental matters leaving the economic issues aside.[115] However, it should be noted that within the ILC there are members that believe that economic activities should be included in the Commission's study.[116]

The international law of State responsibility for transfrontier pollution has been evolving during the past few years. State responsibility for environmental damages has been based primarily on the *Corfu Channel Case*,[117] the *Trail Smelter Award*[118] and the *Lake Lanoux Award*.[119]

In the *Corfu Channel Case*, the International Court of Justice addressed Albania's obligation to notify others of the existence of a mine field in her territorial waters and said that this obligation was based on the well-recognized principle that every State has an "obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States."[120] This statement embodies the

113. Lillich, *supra* note 112, at 35.

114. Professor Lillich's denomination: "International Liability for Lawful Acts" is preferred. *Id.* at 33.

115. II INTERNATIONAL LAW COMMISSION YEARBOOK 226 (1980). The Special Rapporteur explained in 1980:

> The Commission is not asked here to espouse new principles, or to turn conventional exceptions into general rules; it is asked to develop existing principles of good lineage and great generality to meet an unprecedented need. In this task it already has the advantage of recourse to considerable State practice.

116. There was strong opposition expressed to this view, mainly by Sir Ian Sinclair, a representative of one of the developed countries. I INTERNATIONAL LAW COMMISSION YEARBOOK 276 (1982).

117. (U.K. v. Alb.) 1949 I.C.J. 4.

118. (Can. v. U.S.) 3 U.N. REP. INT'L ARB. AWARDS 1911 (1949). The Trail Smelter Award is of particular importance since it was between two common law countries, Canada and the United States.

119. (Fr. v. Spain) 53 AM. J. INT'L L. 156 (1959).

120. *Corfu Channel*, *supra* note 117, at 22.

abuse of rights principle, the good neighbor principle and the principle of the harmless use of territory.[121] Judge Alvarez, in his opinion within the *Corfu Channel Case*, expressly asserted that the decision was indicative of the movement of the abuse of rights theory into international law.[122] This decision has now been used as a basis for the theory of responsibility for lawful acts.[123]

In the *Trail Smelter Case*, fumes discharged from a Canadian company were causing damage in the United States. Both countries agreed to submit their dispute to a tribunal which was bound to apply "the law and practice followed in dealing with cognate questions in the United States of America as well as international law and practice. . . ."[124] The Court of Arbitration held Canada responsible based on a principle that "[a] State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction."[125]

This rule has been expanded to cover transfrontier pollution including not only damages caused to neighboring States but also to those in a wider geographical area.[126] Nevertheless, there is still a high degree of skepticism that the rule can be applied to water but not air pollution issues. In fact, it has been recognized that "[i]nternational liability as a legal instrument has been . . . ineffective for obtaining compensation for damages caused by transfrontier pollution . . . ."[127]

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121. Dupuy, *International Liability for Transfrontier Pollution*, TRENDS IN ENVIRONMENTAL POLICY AND LAW 366 (1980).

122. *Corfu Channel*, *supra* note 117, at 47.

123. Professor Brownlie is of the opinion that the basis of the assertion of Albania's responsibility was the breach of a particular duty. BROWNLIE, *supra* note 112, at 43. He believes that there should be no distinction between the ordinary regime of State responsibility for lawful acts since "[i]t is the content of the relevant rules which is critical and a global distinction between lawful and unlawful activities is useless." *Id.* at 50. It is evident that both positions have good arguments.

124. *Trail Smelter*, *supra* note 118, at 1941. The controversy was between two countries involving damage occurring in the territory of one of them and alleged to be caused by an industry located in the territory of the other.

125. *Id.* at 1963. Furthermore, the award states:

> No State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another neighboring State . . . when the case is of serious consequences and the injury is established by clear and convincing evidence.

Id. at 1065

126. Dupuy, *supra* note 121, at 367.

127. *Id.* at 363. For a discussion of this concept and the acid rain dispute between Canada and the United States *see* Rosencranz, *Transboundary Air Pollution: International Law, Agreements and Other Remedies*, COMMON BOUNDARY/COMMON PROBLEMS: THE ENVIRONMENTAL CONSEQUENCES OF ENERGY PRODUCTION 95-102 (1982).

The *Lake Lanoux* tribunal resolved a dispute between Spain and France in which Spain objected to France's use of lake waters to generate electricity because it would change the natural flow of the River Carol which entered into Spain. The arbitral tribunal held that France was not violating Spain's rights under the applicable treaty which guaranteed the natural flow of the river into Spain. The tribunal went on to refer to certain important issues and asserted that:

> The upstream State has, according to the rules of good faith, the obligation to take into consideration the different interests at stake, to strive to give them all satisfactions compatible with the pursuit of its own interests, and to demonstrate that, on this subject, it has a real solicitude to reconcile the interests of the other riparian with its own.[128]

This implies that the riparian State cannot abuse its rights by harming another riparian's interests. Whenever there is an alternative which can achieve the same goal, it must choose the way that will not harm its neighbor. If it does not it will be abusing its rights.

C. Conclusion

The abuse of rights theory was recognized in the *Trail Smelter Case Award*, and the *Lake Lanoux Award* also supported its decision on this theory. Moreover, the International Court of Justice recognized the abuse of rights principle as a "general principle of law recognized by civilized nations."[129] The abuse of rights principle is therefore a significant part of international law.

In the case of the Colombian debt, the domestic policies carried on in the United States and Venezuela caused serious damage when the interest rates were pushed up and trade decreased. If alternative methods of managing the economy were available without pressuring interest rates, then the United States abused its rights because it did not take an alternative that would have caused less distress. Therefore, the United States would be liable under international law. Similarly, Venezuela might have adopted alternative measures to cope with its economic problems in a gradual way, for example, rather than through a single large devaluation of its currency. Under the aforementioned principles, Colombia would be entitled to compensation or some other form of cooperation.

128. *Lake Lanoux*, *supra* note 119, at 169.

129. *See* HENKIN, PUGH, SCHACHTER & SMIT, *supra* note 81, at 79.

IV. SUGGESTIONS

One method to attack the problems created by certain domestic economic-related acts would be to draft a uniform law through which individual States would recognize that certain domestic acts may cause negative effects or damages in other States. Under this alternative no foreign State or organization would be imposing a condition on another State. Instead each State would implement mechanisms to control or at least provide notice of the potentially harmful acts on its own. The rules would provide a minimum set of requirements which would be recognized as compulsory at the international level. The requirements would provide for the notification of a specified government agency whenever significant international operations are to be conducted by individuals or corporations within its jurisdiction. These agencies, in turn, will notify the potentially affected States of the proposed activities.[130] Then, the State authorities would decide whether or not to permit the activities to be carried on. The potentially affected State could not prevent the activity but might then assert a claim under international law.

By establishing the legislation at a national level there would be no problem with restriction of sovereignty. It would simply be a recognition of the international scope of certain actions.

Whenever significant action is proposed, the benefits would be received not only by the States in which it is proposed but also by the States which could potentially be affected. States must be reasonable; the acts carried on by private parties in industrialized countries can affect the economy of a lesser developed country. It is well-known that certain multinational corporations have assets that are larger than the whole budgets of many lesser developed countries.

It is very important to distinguish between rights and interests in order to set up a clear observance of the States sovereignty. The State which is going to act has a right to do so because it is acting in matters within its jurisdiciton, and each State has the right of self-determination and economic independence in these matters.

On the other hand, States that may be affected by these actions only have interests at stake. They do not have a right to act. Therefore, they can only expect that the acting State take into consideration in a reasonable manner the interests of the other States. The

130. The obligation to give notice must be distinguished from that of obtaining prior agreement of the other States that may be affected. Mere notice is enough in this proposal. The obligation to give notice does not include the obligation to obtain the agreement of the State that has been notified.

remedy may exist when there has been an abuse of rights or a breach of an international obligation on the part of the acting State.[131]

The mechanism to be established is not going to be an easy one. It is obvious that something has to be done to prevent, for example, the filing of complaints or comments on a certain proposed action by all the nations of the world. That is why the country which is proposing the action or going to permit the action to be carried on should determine which countries may have an interest. In this respect, due consideration is given to the good faith with which each country must act when deciding which other countries may be interested. The proceeding could establish a kind of invitation to comment upon the proposed action within a limied time. If no formal invitation is received, no comment would be heard from a country which has not been invited.

The international lending to developing countries is a matter that must be considered fundamental when taking into account the effects of domestic policies of some countries on the economic conditions of other countries. The management of domestic economic policies in some countries definitely affects the economies of the rest of the world. These countries have to recognize their importance by establishing, at least, an opportunity to hear the affected countries' opinions before taking any measures.

Another feasible measure that could be adopted by the developed countries would be the establishment of maximums of indebtedness per country and per lender. The information could be furnished and coordinated by the IMF which possesses it.

V. CONCLUSIONS

The lesser developed countries and particularly the Latin American countries are facing a difficult economic and social period. The economic difficulties have been caused, in part, by the domestic poli-

131. For example, consider the kind of activity carried on by a sovereign State, such as fiscal and monetary policies. The only juridical person, recognized by international law as having jurisdiction to decide what to do in these matters, is the interested State. In certain occasions, there are multilateral agencies at an international level which may exert some influence in these affairs, especially the IMF, but in those cases the countries have previously consented to this intervention in their domestic affairs. The States that are affected by the fiscal and monetary policies adopted by another State have interests to protect. They can do so by requiring cooperation and due regard to their concerns, but they do not have the right to determine the domestic policies of another State. The States most likely to be affected may have a right, under international law, that would condemn the damaging consequences of domestic lawful acts.

cies of the developed countries. The issue this Article seeks to address is whether States have a duty to take into account the external effects of their domestic economic-related acts. If this duty exists under international law what rights do the affected countries have?

Two approaches have been taken in examining this issue. Under the right-duty approach similar duties were found to be embodied in treaties. The duty has been recognized as custom or at least is in process of formation. UN General Assembly Resolutions, on the other hand, put greater emphasis on the duty to have due regard for the interests of other States when acting. Although the duty is not found explicitly in the traditional sources of international law, it is clearly stated in the non-traditional sources.

The responsibility for lawful acts approach asserts State responsibility for the external consequences of domestic acts, by applying the tests used in municipal law to determine whether there has been an abuse of rights. Whenever there is an injury caused by a foreign State's domestic measure, there is responsibility on the part of the acting State. This approach is more strict since it only analyzes the result.

This overview leads to the conclusion that there are certain rights and duties under international law which come close to the duty this Article discusses. However, the duty to take into account the external consequences of domestic acts is not recognized as international law by all the States of the world community. Hence, it is a law in the process of development.

Whether the action of the States is labeled a breach of a duty or an abuse of a right the result is the same. The important matter is determining the content of the rule. If the right-duty approach is compared with the abuse of rights approach, similarities can be found that lead to the conclusion that they express the same idea. The cases supporting the abuse of rights approach establish duties. In this sense, the approaches come together to complement each other.

The major obstacle to implementing this duty would be coordinating the economic activities of government agencies and some influential private parties. This problem is particularly acute in the free-market countries like the United States. The creation of an international agreement on the matter would be the most feasible way of achieving this control. The problem is the lack of willingness to conclude such an agreement because no State wants to waive its sovereignty.

The sad truth is that this developing body of international law may be of no use at all unless enough States take interest. States tend to act according to what best suits them and they will always be reluctant to accept limits by other States on their domestic interests. Only when their own interests are at stake will States begin to take into account the external effects of their domestic acts.

The Latin American governments have expressed their view on numerous occasions, that the debt problem should be approached from a political point of view. They have insisted that the solutions must be obtained through a political dialogue that would have all the debtor governments as a group on one side and the creditors on the other.

The developed countries continuously defend the right to have a democratically elected government in all the countries of the world. They are opposed to the totalitarian regimes. History has proven, however, that when a country is in bad economic condition and painful measures have to be taken (such as those recommended by the IMF), it is difficult to maintain a democratically elected government. Only totalitarian regimes are able to impose the type of measures that the populous will not accept.

Today, the international financial framework protects the interests of lenders and causes more and more political and social unrest in the debtor countries. With the conditions present today, the possibility of governments being overthrown is greater and greater. Given this fact it would be wiser to create a system to control the financial flow to lesser developed countries and prevent the worsening social and economic conditions and to improve the welfare of those countries.[132]

This Article has shown how the economic policies of certain countries directly affected Colombia's economic performance and then examined whether Colombia can assert any type of liability on the part of those countries. The conclusion appears to be that Colombia cannot because the rule of law that establishes a duty to take into account other countries' interests when acting domestically has not yet been recognized as such.

132. It follows that the developed countries have a responsibility to prevent foreign influence in the determination of a country's political system. Although it could be argued that the developed countries are breaching the right of self-determination and economic independence when prescribing political measures indirectly through the IMF, this issue should be approached looking at the social conditions in the lesser developed countries. No matter what type of regime they have now, the conditions must be improved. Of course, the way not to improve the conditions is to follow the IMF's programs.

APPENDIX

Table No. 1
PUBLIC EXTERNAL DEBT
MOVEMENT DURING THE PERIOD
(Millions of Dollars)

	DEBT SERVICE			
Year	Amortizations	Interest and Fees	Total Debt Service	Outstanding Debt
1970	78	45	123	1,319
1971	92	53	145	1,472
1972	100	62	162	1,726
1973	133	77	210	2,022
1974	198	99	297	2,220
1975	125	117	242	2,470
1976	150	108	258	2,562
1977	182	142	324	2,779
1978	230	172	402	2,896
1979	418	231	649	3,456
1980	258	284	542	4,179
1981	266	402	668	5,168
1982	336	600	936	6,078
1983	415	565	980	6,958
1984 June	273	303	576	7,344

Source: Colombia Deuda Externa Publica y Privada 1970-1984, Banco de la República, Departamento de Investigaciones Económicas, Bogotá, Colombia.

Table No. 2
PUBLIC EXTERNAL DEBT
FINANCIAL CONDITIONS OF NEWLY ACQUIRED LOANS
(Millions of Dollars)

Year	Amount Acquired	Average Amortization Period (years)	Average Interest Rate
1970	412	22.0	5.5
1971	395	22.0	5.6
1972	336	22.5	5.6
1973	551	18.7	7.8
1974	218	16.7	7.4
1975	383	15.2	7.5
1976	525	16.1	5.9
1977	526	15.7	5.9
1978	793	14.3	7.9
1979	1,377	13.0	9.5
1980	1,580	14.2	12.7
1981	1,664	12.9	12.1
1982	2,357	14.0	10.5
1983	1,376	14.3	11.1
1984 June	809	14.0	10.9

Source: Banco de la República, Departamento de Investigaciones Económicas

Table No. 3
PRIVATE EXTERNAL DEBT
AMOUNT OUTSTANDING AND SERVICE
(Millions of Dollars)

Year	Amount Outstanding	Amortizations	Interest	Total
1970	457	59	36	95
1971	597	80	39	119
1972	642	89	47	136
1973	675	73	62	135
1974	956	88	90	178
1975	1,032	56	87	143
1976	1,143	72	102	174
1977	1,016	49	66	115
1978	1,137	64	83	147
1979	1,766	42	113	155
1980	2,121	75	195	270
1981	2,717	112	336	448
1982	3,332	94	388	482
1983	3,447	221	372	593
1984 June	3,576	89	150	239

Source: Banco de la República, Departamento de Investigaciones Económicas