The New International Regulation

A Global Straitjacket

Richard Berryman and
Richard Schifter

Lead the people by regulation and they will flee from you and lose all self-respect.

Confucius

IMAGINE THE FOLLOWING SCENARIOS:

- You are president of Company A, a U.S.-based multinational corporation that has already spent tens of millions on a novel process for mining the deep seabed. Millions more will be needed before commercial operations can begin and, even then, it will be years before the investment is recovered. But now a quasi-governmental international body says that your company will not be permitted to exploit the process commercially without first sharing its secrets with a competitor created and run by this very same international body.
- You are marketing manager in West Africa for B Corporation, a U.S. manufacturer of consumer products. For years you have routinely used computers to accumulate financial and marketing information and send it back to company headquarters. Suddenly you learn that the countries in which you operate will not allow computerized data to be sent abroad unless it is first reviewed by the host government. You protest and are told that such interference with your business is authorized in a multilateral agreement sponsored by the United Nations (UN).
- As chief executive officer of XYZ Pharmaceuticals of America, you take pride in your company's record for developing safe and beneficial drugs that have met the exacting standards of the Food and Drug Administration (FDA) and comparable foreign agencies, and have been marketed throughout the world. Now you are told that approval by na-

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tional agencies will no longer suffice. The World Health Organization is establishing an "international FDA" whose clearance will be required for all pharmaceuticals sold in countries acceding to its authority.

Unimaginable scenarios? Not if the new international regulators have their way. For in recent years, while Americans concerned about undue regulation have focused on our own government, a fast-proliferating assortment of international bodies have been moving to regulate various aspects of commercial, scientific, cultural, and political life worldwide. Little-heeded in the United States, even by those who keep track of foreign affairs, these efforts, if successful, could severely alter American life in ways that would be felt at home as well as abroad, and by U.S. industry and consumers alike.

The Genesis of the New International Regulation

Although not part of an explicitly coordinated global program, the international regulatory programs that have sprung onto the world scene during the past decade have a common source, a common body of principles, and common methods for attaining their goals. To be sure, there is nothing new about the concept of having an international body work out standards designed to govern particular areas of commerce. Such groups date back at least to the Hanseatic League of Medieval Europe. In their modern form, they range from the International Union for the Protection of Literary and Artistic Works and the Hague Conventions of the late nineteenth century to the International Telecommunications Satellite Organization and the Organization for Economic Cooperation and Development (OECD) of today. Such groups have been concerned with alleviating confusion and other difficulties arising in areas where nations rub up against each other —particularly maritime transportation, aviation, industrial property rights, meteorology, and trade. Typically, they have proceeded by drawing interested parties into an effort to draft minimum standards meeting common needs and acceptable to all of the parties concerned. Their objective has been to facilitate, rather than restrict, trade and, in so doing, to benefit all nations by benefiting none in particular.

In the 1960s and particularly in the 1970s, however, a number of countries that had only recently achieved independence began to see a new use for multilateral standard-setting bodies. The end of colonialism had not brought the expected better life, at least materially, for most of the so-called third world. Indeed, with the departure of expatriate armies and administrators, conditions in many new nations went from bad to worse. Nor was there much hope of quick improvement. UN and other multilateral development initiatives had failed to live up to expectations. Eastern and Western bilateral aid programs were viewed with suspicion. Multinational corporations and foreign investment in general were seen as exploitative. And few leaders in the third world were disposed to take the risks inherent in tackling head on the huge educational, cultural, and infrastructural problems that were so central to their countries' difficulties.

In this climate, the third world turned increasingly to multilateral organizations, particularly those within the UN complex, and to the idea of international regulation. Through such collective action, the third world nations, ever expanding in number, hoped to attain a power far exceeding what they might achieve individually or even regionally. And because those organizations operate on the principle of one-nation one-vote, they would provide the ideologically attractive trappings of democracy for attempts to fashion the world economy along egalitarian lines. Even more to the point, standard-setting bodies convened under the aegis of the various UN bodies could be counted on to produce majorities friendly to third world aims. Besides, those bodies were amply financed through substantial contributions from Western nations and, in contrast to most third world governments, were well supplied

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with the type of professional civil servant needed for tackling complex regulatory matters.

The movement to use international bodies as vehicles for transforming third world economies found one of its earliest concrete expressions in the United Nations Conference on Trade and Development (UNCTAD). Established in 1964 as a permanent body for formulating general rules on trade between the developed and less developed nations, with a view to aiding the latter's development, UNCTAD soon began interesting itself in "codes of conduct" strongly favorable to non-Western nations. It also served as the midwife for the birth of the UN Charter of Economic Rights and Duties of States, adopted in 1974 by a General Assembly vote of 120–6–10 (with the United States, Belgium, Denmark, West Germany, Luxembourg, and the United Kingdom voting "no"). The new international regulators have cited this charter, along with its call for a New International Economic Order arranged through UN-sponsored "Global Negotiations," to justify their schemes for recasting world economic relations.

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No consistent economic theory, save that of redistribution, underlies the charter. Its treatment of raw materials contrasts sharply with its treatment of technology: it would have the former fetch as high and the latter as low a price as possible. On the one hand, sovereign states should have an unrestricted right to form primary commodity cartels and are free to regulate foreign investment and multinational corporate activity. On the other hand, sovereign states must share the technology needed to exploit what is called the common heritage of mankind. The charter's "sovereign rights" will thus in practice be mostly enjoyed by the third world, while the "sovereign duties" will mostly belong to the so-called first world.

Among the areas in which the new international regulators have been most active in the seven years since the New International Economic Order was promulgated are the extraction of natural resources, the transfer of technology, multinational corporate conduct, shipping, exports and imports, news gathering, and the transmission of data via computer.

Natural Resource Extraction

The most celebrated of the new international efforts to regulate the extraction of natural resources is the draft treaty that the UN Conference on the Law of the Sea has been preparing since 1973. That draft treaty, echoing rhetoric first voiced by third world leaders, characterizes an area representing two-thirds of the earth's submerged lands and the resources therein as "the common heritage of mankind." To make this "common heritage" accessible to all peoples, the draft would create a major multilateral body, the Seabed Authority, and authorize it not only to decide who would mine in the area in question, but also to run its own seabed exploration and mining company and to control the activities of private competitors.

The proposed Seabed Authority outwardly resembles the UN in that both structures have an assembly, a council, and a secretariat. On the level of real power, however, the draft Law of the Sea treaty, would accord far less influence to the United States (and other free world nations) than does the UN Charter. Whereas the United States has permanent representation on the UN's Security Council (as have the United Kingdom and France), it would not be guaranteed a seat among the thirty-six members of the Seabed Authority's council, while the Soviet bloc would be guaranteed at least three. Despite this shift in representation, member nations would contribute to the Authority in proportion to their UN assessments—meaning the United States would pay roughly 25 percent of the total.

The provision that would create an entity designed to compete with private entrepreneurs from the developed world was included in the draft treaty at the urging of the Group of 77 (a third world coalition that now numbers more than 110 countries) and a handful of developed nations (most notably, Canada). This entity, known as the Enterprise, would carry out mineral exploration and recovery activities in the common heritage area under the Authority's direction and on its behalf. The Enterprise,

which would be governed by a fifteen-member board elected by the Assembly, would transport, process, and market the minerals it recovered.

It is in the operations of the Enterprise that the Authority's regulatory pinch would be felt most clearly. Private companies that had invested heavily to develop the complex and costly technology needed for deep seabed mining would not only be forced to fund a competitor having preferential rights, but would even be required to train, do exploration work for, and secure a market for that competitor. Specifically, to ensure that the Enterprise enjoyed up-to-date technology and choice mining sites, the draft treaty forbids the Authority from licensing applicants to mine in the common heritage area unless two key conditions are met. First, the applicant would have to agree to provide its technology to the Enterprise or to developing nations on "fair and reasonable commercial terms and conditions" determined largely by the Authority alone, and also to agree not to use in the common area any technology it refused to transfer. Second, an applicant wishing to mine a particular site would have to identify a second site as well, either one of which the Authority could then reserve for the use of the Enterprise or developing nations. To ensure that these competitors had the funds needed to do business, signatory governments would have to provide the Enterprise with start-up capital in the form of loan guarantees and interest-free loans—in proportion to their UN assessments; and private firms engaged in mining the deep seabed would have to pay the Authority license fees, royalties, and a portion of their profits. Finally, to guarantee a market for the Enterprise's production (and as a concession to land-based mining interests, particularly in Canada), mining operations in the common area would not be permitted to market nickel in amounts beyond the projected growth in world nickel consumption for two decades following the treaty's effective date.

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In June 1980, alarmed by the direction that the Law of the Sea Conference was taking and recognizing that U.S. companies (in consortia with private enterprises from other developed countries) had already invested hundreds of millions of dollars in developing deep seabed mining technology, Congress passed and President Carter signed the Deep Seabed Hard Minerals Resources Act. This act provides that the United States will not ratify any Law of the Sea treaty that does not (1) protect U.S. investments in deep seabed mining made before the treaty's effective date and (2) give all parties "assured and non-discriminatory access, under reasonable terms and conditions to deep seabed minerals." Furthermore, to protect the right of U.S. firms to secure a foothold before a treaty goes into effect, the act authorizes the National Oceanic and Atmospheric Administration to license U.S. firms for deep seabed exploration until January 1988 and, after that, to issue licenses for mining. (These provisions would of course be superseded by the treaty, should it be ratified.)

The 1980 act's assurances did not still the U.S. criticisms. In March 1981, before the opening of what was supposed to be the final session of the Law of the Sea Conference, the Reagan administration announced it would not carry out the Carter administration's agreement to conclude the treaty by May. In particular, the new administration criticized the treaty for discriminating against private mining enterprises, for inadequately protecting development investments made before the treaty's effective date, for failing to make any provision for the arbitration of disputes between the mining industry and governments, and for subjecting key U.S. interests to decisions made in a forum in which the U.S. vote would carry very little weight. Accordingly, the administration has been reviewing U.S. policy and formulating a position on proposed final negotiations scheduled for next March.

Other zones containing potentially important natural resources are the targets of international regulation as well. Treaties originating under UN auspices are now in effect for space and for the Antarctic. The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies became effective in 1980

by virtue of having been ratified by six member nations—Austria, Chile, France, Morocco, the Philippines, and Romania. Declaring that celestial bodies, too, are the common heritage of mankind, this agreement establishes an international regime to govern the exploration and extraction activities of (at least) those private entrepreneurs whose governments have signed up. Exactly how the countries involved are to "equitably share" the benefits of such activities, especially in view of an injunction to give special preference to developing nations, is yet to be worked out.

The U.S. Department of State and the National Aeronautics and Space Administration supported the draft space treaty throughout long negotiations that began in 1970. And even the U.S. aerospace and mining industries were indifferent to it until its dimensions became clearer in the late 1970s. By early 1980, however, the opposition had managed to enlist such allies as Senators Frank Church and Jacob Javits and, with their aid, had persuaded President Carter not to endorse the treaty.

As for Antarctica, a much more immediate concern, the treaty now governing the area mainly concerns scientific matters and explicitly does not override any claims made by any of the twelve contracting parties—the United States, the Soviet Union, and ten other developed nations. Recently, however, the Group of 77 and other third world nations, which are not parties to the existing treaty, have been pushing to remake it into an instrument for internationalizing the entire continent. That would mean declaring that the Antarctic is the common heritage of mankind and setting up some plan to share the mineral wealth extracted.

The Transfer of Technology

To many in the third world, the key to rapid economic gains for their countries lies in the internationally regulated transfer of technology from the developed world. In their minds —and in those of many in the international regulatory bureaucracy—traditional foreign aid is demeaning and ineffective. Moreover, they believe, ordinary arrangements for acquiring technology from multinational corporations are inadequate because of fundamental inequalities in bargaining strength.

UNCTAD has provided a sympathetic forum for efforts to redress that imbalance. From 1973 on, many in this organization have argued that its goal of promoting third world development could best be served through the adoption of a universal technology transfer code, whose details would be implemented through national legislation. The Group of 77 made the first move in 1975, submitting a draft code so one-sided that the developed nations countered with their own draft a year later. About the same time, the Soviet bloc weighed in with a third proposal. To UNCTAD's secretariat fell the unenviable task of putting together a tolerable compromise.

The likelihood of success seems slim. The Group of 77 draft draws heavily on the provisions of regional codes (especially the Andean Pact, encompassing five Latin American nations) and national laws (such as Brazil's and Mexico's) that impose severe limitations upon those who would engage in the business of transferring technology—a term, incidentally, that the document does not adequately define. It requires that foreign multinational corporations sell, rather than license, the technology they would use in a particular country. Moreover, reflecting the Group of 77's deep-seated bias toward regulation, this would have to be done at prices *no higher* than current world levels and on contractual terms to be established largely by the recipient country.

Scarcely less onerous are the requirements of the Group of 77's draft that multinationals wishing to market their technology guarantee its "appropriateness" for the local end user. Along with conventional warranties, the foreign company would have to ensure minimum production levels that could be reached through use of their technology, notwithstanding the directive that local personnel be used in relevant consulting, engineering, and servicing work. Where these local specialists would come from is unclear, even considering all the training that the multinationals would be ordered to provide.

Nor is that all. The Group of 77 draft ignores the many established neutral forums for resolving international disputes and instead relies exclusively on the courts of the receiving nation. And even though the government of the receiving nation would be heavily involved in the technology transfer, the transferor's gov-

ernment would not be allowed to intervene on behalf of its citizens if their property were unjustly taken.

A technology transfer code is not likely to move forward soon. As the issues were being focused in the late 1970s, the Carter administration began to express reservations, and the Reagan administration is even more doubtful. Lengthy efforts in the spring of 1981 failed to result in an acceptable compromise.

Multinational Corporate Conduct

Stymied on technology transfer, UNCTAD has made some progress with its Code on Restrictive Business Practices, which the UN General Assembly adopted in 1980 in spite of ongoing efforts by the OECD to reach consensual standards covering such concerns. This code requires multinationals to "unbundle" their technology and know-how, no matter how much technical and commercial sense it may make to offer them as a package. A second target of the code is restrictions imposed by technology owners on local recipients of technology as to acceptable sources for goods and raw materials, production goals, the use of competing and complementary technology, the sale of competing products, the local retransfer of the technology in question, and local research and development. Also prohibited are requirements that the recipients of the technology in question use personnel recommended by the technology owner, grant back to the owner all improvements made in the technology, and buy further improvements and inventions from the owner.

Lest UNCTAD be the only game in town regulating the activities of multinationals, the UN Economic and Social Council set out in 1974 to formulate its own code to govern relations between multinational corporations and interested (home and host) governments. Acting on the mandate provided by the New International Economic Order, the council established a forty-eight member Commission on Transnational Corporations which, through its Intergovernmental Working Group, has drafted a number of working papers and the outline of a code. Not surprisingly, given that the Western democracies are the home base of almost all multinationals but have only ten members on the commission, and given also that the commission made no provision for serious participation by business representatives, the working papers call for one more international regulatory regime heavily slanted against free market principles. To start with, the scheme would be directed only at private multinational corporations, even though some fairly powerful state-owned enterprises are engaged in foreign commerce. As for specific prohibitions, the working papers propose to require that multinationals submit, for host government approval, not only all technical agreements but also the underlying technical data. Should this proposal prevail, host governments would be free to exploit that information in certain contexts —becoming, in effect, third-party beneficiaries of technology transfers.

Nor are technical agreements and technology the only information that multinationals would have to communicate to host governments. Responding to third world nations' claims that the lack of hard information about multinationals makes oversight of their activities difficult, the working papers would require multinationals to disgorge volumes of business information at the request of the host government, including data on worldwide and intracompany pricing, marketing practices and performance, taxation, research and development goals, and the like. And the host government would be permitted to make much of this information available to private parties.

The working papers are also troublesome in their treatment of the binding effect of contractual agreements entered into by multinationals. They provide that such contracts may be renegotiated in connection with national development plans and regional integration arrangements. And they would permit host governments in certain situations to restrict the rights of multinationals to repatriate profits and other funds, notwithstanding contractual niceties or local law.

The Liner Code

UNCTAD has had even greater success with its code on world shipping, the Code of Conduct for Liner Conferences. This code has already been ratified by more than fifty countries, representing some four-fifths of the 25 percent of world tonnage required for adoption. Ratifica-

tion by the European Economic Community, postponed last May at the request of the United States but now imminent, will bring it into effect.

The Liner Code is an effort to promote the maritime industries of developing nations by mechanically allocating the shipping tonnage of ratifying nations. Under the most widely suggested formula, 80 percent of the cargoes in bilateral trade would be divided equally between the ships of the two trading partners, regardless of their ability to offer competitive rates and service. Only 20 percent would be left for third party ships. The pact contemplates the eventual abolition of "flags of convenience," such as those of Liberia and Panama, which currently are a chief source of maritime competition.

The 145-article code also limits rate increases to one every fifteen months and dictates that disputes be settled by a mandatory conciliation process, rather than pursuant to national law or practice, regardless of the disputants' wishes. In addition, it conflicts with U.S. customs and laws in a variety of ways. For example, it runs counter to the long-standing U.S. practice of maintaining open liner conferences, and it fails to accommodate U.S. laws which require that government and government-financed (Export-Import Bank) shipments be carried by U.S. flagships.

It is striking that third world governments should expect to benefit by such forced market-sharing. Nobody is going to give them any ships for free; they will have to either plow their scarce currency reserves into the highly capital-intensive shipping business, or circumvent the rule by in effect selling their flag rights to foreign operators. Any money they succeed in raising by the latter means will be taken directly from, and will serve as a hindrance to, their foreign trade, much like a tariff applying to both imports and exports.

Exports and Imports

Although the new international regulators take restrictionist positions on the goods and services imported from the developed nations, they would require those same nations to open their markets wide to the export products of third world countries. It is an exercise in self-serving inconsistency, where the developed nations' duty to heed the special imperatives of third world growth—as seen in that world—becomes the overriding principle.

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Textiles, apparel, footwear, leather products, and steel are the third-world exports most often at issue. Of late, much attention has focused on textiles, principally because the so-called Multifiber Agreement (Arrangement Regarding International Trade in Textiles) expires on December 31, 1981, unless it is renewed. Established in 1973, this agreement was an effort to increase third world textile exports to the developed world in such a way as to avoid market disruptions large enough to lead the United States, Japan, and the Western European countries to raise protectionist barriers. As the renewal date nears, the third world, together with the European Economic Community, is arguing that the United States should again accept the agreement's regulatory regime (which requires increases in U.S. textile quotas of 6 percent a year), rather than adopt the likely alternative of linking the quota to U.S. market growth (which is more like 1 to 3 percent a year).

Even while pushing such schemes, the less developed nations argue that, because they have trouble competing in the developed world, they should be exempt from the basic international trade standards that most of the world's nations have accepted through GATT (the General Agreement on Tariffs and Trade). GATT is a voluntary mechanism established after World War II to sponsor multilateral negotiations for reducing trade barriers. During the Tokyo Round of the GATT multilateral trade negotiations (1973 to 1979), the major trading nations agreed on rules designed to deter dumping (export sales at prices below home market prices or, in some cases, production costs) and unlawful government subsidization (as defined in the agreement). Although many less developed countries participated in these negotiations and

although the final agreements give such countries special treatment until they graduate into full membership in the world trading community, most of the third world joined in the denunciation of the entire Tokyo Round delivered at the 1979 UNCTAD session in Manila. As a result, few third world nations have signed the Tokyo Round agreements, though their failure to do so deprives them of GATT's benefits.

New proposals applying to pharmaceutical and health products offer additional examples of third world "regulationism." During the past six years no fewer than four different UN entities—UNCTAD, the UN Center for Transnational Corporations, the United Nations Industrial Development Organization (UNIDO), and the World Health Organization—have involved themselves with the pharmaceutical industry, necessitating the creation of a special UN task force just to coordinate their activities. So far, the products of this regulatory effort include the adoption by WHO of a worldwide ban on the advertising of infant formula (even though the industry had already imposed effective standards on itself); the development by UNIDO's staff of proposals to redistribute the wealth of the pharmaceutical industry by limiting royalties and prices and by giving third world governments the know-how and (where necessary) the rights to enable them to produce certain basic drugs; and the development by WHO's staff of plans for the international regulation of drug quality. The latter proposal, news of which has only recently come to light, would create a supranational regulatory agency to pass on drug quality and to bar, if it saw fit, the marketing of pharmaceuticals already approved by competent national authorities, such as the FDA. This "international FDA" would support the substantial bureaucracy proposed for it by exacting large fees from pharmaceutical firms. Under the provisions of the staff draft, this agency would not be compelled to give adequate protection to proprietary data submitted to it in confidence and, in some instances, would even be able to enforce its decisions by threatening to publicize the data "in the general interest."

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The New World Information Order

Running parallel to the New International Economic Order and perceived by many in the third world as a vital part of it is yet another "new order"—the so-called New World Information Order. Its stated objective of promoting the free movement of information across national borders is certainly appealing. As defined by much of the third world, however, with some prompting from the sidelines by the Soviet Union, the New World Information Order poses a regulatory threat of substantial magnitude to the accepted norms of free journalism, the free flow of ideas, and the free exchange of data.

The basic dimensions of this scheme have been crystallizing since the 1976 UN Educational, Scientific, and Cultural Organization (UNESCO) conference in Nairobi. At that conference, the Soviet Union sought final acceptance of its four-year-old proposal for restricting the role of foreign (that is, independent, Western) news agencies in the third world. The initiative failed. But it attracted enough support to cause the conference to appoint a sixteen-member commission, headed by former Irish foreign minister and Amnesty International official Sean MacBride, to study ways of "achieving a freer and more balanced flow of information."

The MacBride commission gave very short shrift to press freedom. It focused its attention, instead, on what it called the concentration of press power in the hands of a limited number of "transnational" news organizations headquartered in the West, including the Associated Press, the United Press International, Agence France-Presse, and Reuters. While rejecting the proposals of its more radical members to "correct imbalances" in the Western press by penalizing errant journalists, it did adopt and forward to UNESCO eighty-two recommendations for reshaping the manner in which news is gathered and transmitted.

Many of these recommendations were unprecedented. The commission urged, for ex-

ample, that thought be given to subjecting journalists to an internationally developed and monitored code of ethics and to providing them with some (as yet unspecified) form of international "protection." Journalists who practice their craft in nations having some semblance of a free press—all Western democracies, a number of Latin American countries, Japan, and a handful of other states—have opposed these ideas as thinly veiled limitations on a free working press. The same is true of the recommendations for opening the media (by regulation) to "previously unheard" groups and for controlling relations between international news organizations and local governments. On the former point, the commission suggested studying whether it would be feasible to establish an international broadcasting arm for UNESCO and to create an international right of reply—giving governments, groups, or individuals who claim to have been misrepresented in the news an opportunity to respond. On relations between the media and local governments, the commission's position is best summarized in its call for "effective legal measures designed to circumscribe the action of transnationals [news organizations] by requiring them to comply with specific criteria and conditions defined by national development policy [especially in the developing world]."

Suddenly awakened to the threat posed by the MacBride commission's recommendations, the United States and its allies managed at the 1980 UNESCO meetings in Belgrade to defer a budget resolution that would have funded work on a code of ethics for journalists and a definition (to be applied to the major news organizations) of what constitutes "socially responsible communication"—as well as one other proposal for global regulation, an international advertising code. It was not possible, however, to prevent the UNESCO secretariat from formulating, in the vague terms described above, an outline for the New World Information Order.

To date, the principal battles in this area have been over news. But growing numbers of third world countries are now seeking, in UNESCO and in other forums, to extend the effort to other aspects of information gathering and transmission, particularly computers and satellites. Their representatives have denounced multinational businesses for what they characterize as a one-way flow of the business and other data they generate from the third world to the developed world. Viewing information as a key to power, they have argued for both international and national regulation of that data flow—and without the safeguards for privacy built into the consensual codes on which OECD and the Council of Europe are at work. As a third world representative said at Belgrade, every nation has the "right . . . to develop national sovereignty and cultural identity by regulating transnational corporations."

Of Dubious Benefit for All

This new, highly politicized scheme of international regulation is replete with problems, for both developed and less developed nations and for their citizens as well.

For the United States and other developed nations, the proposals not only threaten immediate commercial, economic, and political interests but also conflict with the principles of free enterprise and a free press that are the foundation of the very affluence that the third world is seeking to share. At their boldest, the international regulators seek mandatory redistribution of wealth from the developed world. The space treaty and draft Law of the Sea treaty would bring it about by obligating multinationals to surrender part of the mineral wealth they extract. The proposals on technology transfer and multinational conduct would do it less directly by allowing host governments to cast and recast contractual terms involving foreign businesses, and the Liner Code and Multifiber Agreement would create artificial commercial opportunities for third world enterprises. Finally, striking at the free movement of information, many of the proposed codes urge the yielding up of data generated by the developed world and the closing down (or the shaping) of that produced by the third world.

Bad as much of this new international regulation might be for the developed world, it would be far more harmful to the developing world itself. By ignoring the realities of capital formation and economic incentives, it would greatly impede the accumulation and flow of capital and resources that are the true prerequisites to developing both the technology and the economic growth sought by the less developed nations. No reasonable person would

deny that the third world, with its abundance of natural resources and its populous markets, is important to Western business. But the fact is that, by and large, the less developed countries are by no means as vital as ideologues believe them to be. To use an example noted by Raymond Waldmann, the Commerce Department's assistant secretary for international economic policy, more than 90 percent of all technology transfers by private enterprises occur outside the less developed countries. It is folly to assume that the multinationals responsible for these transfers will freely divulge valuable data just to hang on to the little business and less profit that so many of these countries represent. What they are far more likely to do is refuse to undertake new technology transfers to, and investments in, the nations involved—leaving those nations the poorer for their futile regulatory effort.

But even if some in the multinational business community were to involve themselves in the third world under such terms, there is serious doubt that the recipient countries are equipped to administer the new controls they desire. Notwithstanding major efforts at training a new managerial class, most of these countries already are woefully short of the professional personnel needed to collect, evaluate, and act upon—in short, to use and regulate—technical and business data. Do they really want to devote their all too scarce educational resources to the task of training regulators?

Likewise, if businesses and news organizations cannot gather data freely in the third world, the developed nations will undoubtedly suffer, since they will lose access to accurate political, cultural, and economic information from that part of the world. But the less developed countries will lose even more. Not only will their concerns be less intelligible to the rest of the world, but they will lose what are, in many instances, the most reliable and forthright sources of information about themselves and about each other.

Looking Forward

For all the flaws of these international regulatory schemes, it is neither responsible nor practicle to ignore the circumstances that have given them birth. The hard fact is that the gap between rich and poor nations continues to widen—that, by the turn of the century, as many as 850 million people may be living in abject poverty.

Still, handouts are not the answer. Even if the United States and its allies were capable of sustaining a quarter of the world's populace indefinitely, wealth transfers have shown themselves to be all but useless in helping the masses of the less developed countries break out of poverty. Nor does the answer lie in international regulation. Much of that effort is just as demeaning and counterproductive as traditional foreign aid. Even worse, it would sap the vitality of the very economic forces and entities that could, given the chance, show the third world how to help itself.

Insofar as there is an answer, it lies in more decentralization and more freedom rather than in tighter regulatory fetters, whether of the national or transnational variety. The sorry economic performance of the world's command-and-control societies is itself the most convincing witness for the wealth-creating power of free institutions. Compare, for example, such pairs of nations as East Germany and West Germany, Burma and Singapore, Tanzania and Kenya—and, for that matter, the Soviet Union and the United States. In each instance, the country whose politics and economics are freer has grown far faster. What an irony it is that, in the face of this record, the international regulators have turned to the model that has failed—a model that can only spread the stagnation and dependence now gripping parts of the third world.

By the time these words are read, the basic issues underlying the new international regulation will have been aired at the Cancun Conference, held in Mexico on October 22-23. There, the leaders of the third world nations and others will have urged the United States to follow the course of international wealth sharing—Global Negotiations under UN auspices looking toward the creation of the New International Economic Order. There, also, President Reagan will have pressed the third world to focus instead on free market solutions—on combining cooperative international approaches with the use of positive incentives in order to promote true economic development. In many ways, then, to the extent that the proposal for Global Negotiations flourishes in the aftermath of Cancun, so will international regulation. ■