

# Trialogue

## IMPROPER CORPORATE PAYOFFS TERMED A "CANCER" WHICH WEAKENS FIRMS, SUBVERTS MARKETS AND THREATENS DEMOCRATIC VALUES

International business ethics and the reform of international institutional arrangements were the primary subjects of discussion at the Trilateral Commission meetings in Ottawa on May 10-11, 1976, drawing together distinguished citizens from Japan, Western Europe and North America. The Joint Statement adopted at the conclusion of the meetings (reproduced on pages 4-5 of this issue) proposed a wide-ranging program of institutional reform and supported much more extensive disclosure obligations as the best means to deter improper corporate payments. "The Commission concluded that while the recent disclosures involve only a small proportion of international firms, bribery, wherever it occurs, is a cancer which seriously weakens the international role of enterprises, subverts the case for free markets, and threatens the values of democratic societies. The Commission appeals to all international firms and governments of the Trilateral countries to form a consensus on the impropriety of bribery and related practices, and to consider disclosure regulations which, by insuring that both proper and improper payments are made public, will serve to deter the solicitation and the making of improper payments, and facilitate the prosecution of those that may still occur."

The recommendations for institutional reform included support for an annual "world development budget" to coordinate and enhance the legitimacy of the aid effort. The OECD "should examine whether its present membership adequately reflects the changing balance of international economic relationships." Consideration should be given to a new trilateral consultative mechanism, in which it would be desirable for the European Community to work through a single representative. In GATT, there should be an "elaboration of new rights and rules governing export controls, such as those which have for years covered import controls." These recommendations developed from two task force reports to the Trilateral Commission discussed in Ottawa — one directly concerned with reform of international institutions, the other with improved consultative arrangements among trilateral governments.



Prime Minister Pierre Elliott Trudeau speaks with members of the Trilateral Commission during the Commission's recent meeting in Ottawa. Excerpts of the Prime Minister's remarks are presented on pages 6-7 of this issue.

## CONTENTS

Ottawa Joint Statement .....	4
Prime Minister Trudeau .....	6
Canada Seminars .....	6
Lloyd N. Cutler	
The Payoff Muddle and How It Grew .....	8
Washington Consultations .....	12
Ford and Carter Statements .....	13
Nobuhiko Ushiba Becomes Japanese Deputy Chairman .....	15

Prime Minister Pierre Elliott Trudeau and Finance Minister Donald S. MacDonald spoke to Commission members on May 10. On May 12, after the Ottawa meetings, members were in Washington for a series of consultations with U.S. and international leaders, including Secretary of State Kissinger, Secretary of Commerce Richardson, Secretary of Transportation Coleman, World Bank President McNamara, and a number of members of the U.S. Congress.

### *International Business Ethics*

Recent disclosures of improper payments by particular international firms and the sharp political reactions in the countries involved were the focus of the Ottawa session entitled "Towards an International Business Code: The Political, Economic and Ethical Dimensions." Three speakers opened the session. The address by Lloyd Cutler — "The Payoff Muddle and How It Grew" — is printed on pages 8-11 of this issue. Mr. Cutler, a partner in the Washington law firm of Wilmer, Cutler & Pickering, saw wider disclosure obligations as the most useful path for reform action to follow, including disclosure of all payments in the "enormous gray area" beyond those clearly improper. "If we really want to stop improper foreign payments by international firms, the key is . . . to work out an effective system of current disclosure of who pays what to whom, properly or improperly. If all proper and improper foreign payments except normal commissions to regular agents have to be disclosed whenever they are paid, the improper ones will attract so much attention that they may be too foolhardy for the giver to offer or the taker to solicit. . . . Sunlight, as Mr. Justice Brandeis has said, is still the best of disinfectants."

Mr. Cutler noted the self-enforcement arrangements in many publicly-held American-based firms. With much prodding from the Securities and Exchange Commission, this self-enforcement system has worked fairly well to control domestic business conduct. Why the failures abroad? One reason may be that "the international operations of many large American firms have been run fairly

autonomously." There has been a lack of awareness at the top levels of corporate management at home that may seem incredible. Now that the awareness exists, the self-enforcers can be counted on to do a better job.

Mark Littman, Esq., Q.C., Deputy Chairman of the British Steel Corporation, and Mrs. Michiko Ariga, former member of Japan's Fair Trade Commission, also gave opening speeches during the session on international business ethics. Commentaries were provided by Mr. Jean Rey, former President of the Commission of the European Communities, and Mr. Edgar Kaiser, Jr., President and Chief Executive Officer of Kaiser Resources, Ltd.

Mr. Littman emphasized that a code of conduct for international business would properly involve obligations not only for businesses but also for the governments of the countries in which they operate. International businesses "want . . . and deserve the support they could receive from an international code of business conduct binding governments as well as themselves."

For attacking the problem of bribery, very few countries outside the United States have any authority or body of law like that on which the U.S. Securities and Exchange Commission is based. Other means must be found to strengthen disclosure obligations. As one possibility, government export financing or guarantees might require the applicants to declare they have no intention of offering or making improper payments. Annual corporate reports and accounts required by the government might be extended to require a declaration that no improper payments have been made. Host countries must move to develop and enforce laws against those who receive bribes.

Effective international action is complicated by the diversity of national laws and by the fact "that before people take action of this kind on their own, they wish to be absolutely certain that everyone else is doing it. If only some people restrain themselves from bribes, that leaves the way open for those who do not." Continuing doubts about U.S. corporations in this respect, at a time when the United States government is doing more than any other in the disclosure field, indicate the difficulties in building sufficient trust. It might be useful to have an international institution that could serve as a forum of complaint (for example, by a company that believed it had lost business to another by reason of corruption) and also as a forum of investigation. "But it is not entirely a matter of institutions. It is a question of defining the codes and the guidelines upon which such institutions should operate."

Mrs. Ariga noted that "multinational enterprises are the product of the policy of liberalization of trade and direct investment which the leaders of the world decided on to promote recovery and development . . . at the end of World War II." As they have grown, however, "various undesirable effects began to be felt in the host countries."



Discussion of the reform of international institutions at the Ottawa meeting of the Trilateral Commission. In the center is C. Fred Bergsten, Senior Fellow at the Brookings Institution and North American rapporteur of the Trilateral Task Force on International Institutions. To his left are Kinhide Mushakoji, Vice-Rector for Programs of the United Nations University and Japanese rapporteur of the task force, and Nobuhiko Ushiba, Japanese Deputy Chairman of the Trilateral Commission. To Bergsten's right are Gerard C. Smith, North American Chairman of the Commission, and Georges Berthoin, European rapporteur of the task force and European Chairman of the Commission.

Some objections have been raised in home countries as well. Mrs. Ariga reviewed international efforts in the private sector, the OECD and the United Nations to consider problems of multinational enterprises. The UN Commission on Transnational Corporations, at its recent meeting in Lima, decided to give "highest priority to the formulation of a code of conduct for transnational corporations." She recognized the rights of host countries to regulate corporations operating within their borders, and also the duty of the home country to restrain negative activities abroad. Developing country problems with multinational corporations, she concluded, "may be summed up as objections to the lack of respect of the sovereignty of the host country on the part of multinational corporations." Corporations must recognize their "social responsibility to the world community" and refrain from restrictive and unfair business practices.

Mrs. Ariga reviewed Japanese regulations on direct investment and the development of Japanese investment abroad. Japanese companies, she noted, are newcomers in the league of multinational corporations. And the tendency of Japanese companies to submit to "administrative guidance" from the Japanese government at home, "serves to reduce friction between Japanese subsidiaries and host governments (abroad)." Mrs. Ariga mentioned the case of a particular foreign company which "stubbornly (and unsuccessfully) insisted" on setting up a fully-owned subsidiary in Japan and exclusively manufacturing a particular patented product. "Such a story will never be reported from abroad in connection with Japanese companies, because of the . . . characteristics of the Japanese way of doing business," including this familiarity with "administrative guidance."

The discussion following the opening speeches emphasized the serious nature of recent revelations and their severe political impact in Japan and some countries of

Western Europe (particularly Italy). One European Commissioner described the situation as "extremely serious," with recent charges having the "most incredibly difficult consequences." One Japanese Commissioner described the Japanese people and media as "very angry" and advised that it would be dangerous to underrate this reaction. He noted that the connection with Yoshio Kodama, an extreme rightist from the years before World War II, is very distasteful. The current scandal follows rather soon on the Tanaka scandal, and involves payments made in the Tanaka period. Despite current turmoil, some Japanese Commissioners saw positive elements in the situation. The crisis of the governing party is not a crisis of the democratic system in Japan. The episode may improve the democratic system by making the country less tolerant of some old practices. Japan has shown its economic resilience in recent years, surviving various economic "shocks." It will survive this "political shock" as well. There is a "healthy reaction" in the realization that Japanese disclosure requirements must be widened, to bring more of that "disinfectant sunshine" to bear.

Much dismay was expressed about the unspecific, hearsay nature of many of the serious charges emanating from Washington in the Lockheed and related affairs. Since the charges are "totally without specifics," one of the "automatic sanctions" — namely, prosecution — cannot take its logical course. Some bewilderment and unsettlement was expressed about the workings of executive-legislative relations in the United States, and the role of the SEC. "I hail checks and balances, but please less checks now and more balances."

Arguments were advanced for and against the development by governments of some new international code of business conduct. One argument against was that it would mean yet another governmental body overseeing business. Corporations know, it was argued, when they are

stepping over the line. It would be much better, and certainly more efficient, if the corporations could take the initiative upon themselves to correct these abuses, while governments enforce existing laws. The great variety of local situations in the world was another reason for doubting the value of a code. What is "right" in one country is not always what is "right" in another. One Commissioner described a system in one country where bribes of government officials consistently ranged between 11 and 17 percent. It was a "very carefully regulated" system, he stated. Every national situation is different. General rules will not be workable.

On the other hand, the political cost in all countries of giving and taking bribes, despite great cultural diversity, argues for a code, at least among trilateral countries. A code might encourage governments to "ostracize" companies engaging in corrupt practices.\* There was also support for the idea of an international forum for complaint and investigation, providing an independent auditor for relevant transactions.

Doubts were expressed that self-enforcement arrangements within corporations would really work. Mr. Cutler agreed that it was not enough that the private sector develop rules which internal corporate controls would then enforce. It was vital for the government to establish rules, but the government did not have to enforce these rules itself on a day-to-day basis. With the "considerable stick" of personal liability over their heads, the self-enforcers in corporations would do the job of everyday enforcement. The idea of wider disclosure obligations, of more "sunshine" into this area, received wide support and was incorporated in the Joint Statement. Many applauded the rather strict obligations applied in the U.S., and the "vigorous pursuit of sad facts" there in recent cases.

It was emphasized that recent revelations about improper payments do not apply to the great majority of multinationals. We should not "tar all corporations with the same brush." Recent revelations may be "tempting fuel" for those who would pursue a "witchhunt" against multinational corporations. Action is needed to eliminate corruption while allowing the positive contributions of multinationals to continue. The problem of improper payments is not just a multinational corporation problem. "It takes two to tango," as the saying goes. It is a broader problem in society, and needs to be approached in this light.

It was suggested that the question of bribery is less important in itself than as a rather small indication of the development of multinational corporations as a sort of "second government." The fundamental issue in current

*(Continued on page 12)*

\*A few participants thought the Trilateral Commission would be a good framework in which to elaborate a proposed code, and hoped the subject would remain on the agenda.

# *Joint Statement*

## TRILATERAL COMMISSION

*Ottawa*

*May 11, 1976*

### I

During the past three years, the Trilateral Commission reports on major international issues have highlighted the need for reform of international institutions and consultative mechanisms. At its meeting at Ottawa on May 10-11, 1976, the Commission discussed reports by two task forces concerned with international institutional problems. In the light of the discussions, the Commission urges the trilateral governments to take initiatives to promote reform of international economic institutions and to improve international consultative processes.

### II

Institutional reform by itself cannot provide solutions to the world's problems. Nevertheless, strong political commitments by governments to use improved institutional and consultative mechanisms are essential. Governments should support essential institutions with national delegations of high quality and authority and encourage the creation of strong international staffs which can play a key role in proposing and implementing policies.

Continuous efforts are required to adapt the international institutional system to changing priorities and new patterns of influence so as to avoid friction and harmful disagreement. A cardinal requirement for reform in international institutions is that those whose interests are significantly affected by particular international problems participate in decisions about how those problems can be resolved. Flexibility and resourcefulness are needed to fulfill this requirement. Although some existing institutions, such as the IMF and IBRD, have partially adapted to changing circumstances, the response of the international system has been inadequate. As a result, the existing institutional framework has been seriously strained and is too weak to discharge the tasks that lie ahead.

### III

The Commission believes that institutional reform should involve:

### ***Strengthening Existing Institutions***

(i) Within the *GATT* framework, there is a growing need for the elaboration of new rights and rules governing export controls, such as those which have for years covered import controls. The provisions of Article XI of the *GATT* on quantitative restrictions have proved inadequate for the current political and economic circumstances.

(ii) In the *OECD*, member governments should place even greater emphasis on the coordination of macro-economic policies and on the concerting of constructive approaches to global economic problems. In addition, the *OECD* should examine whether its present membership adequately reflects the changing balance of international economic relationships.

(iii) The *IBRD* should increasingly play a coordinating role between the rapidly proliferating multilateral aid organizations and between national and international aid efforts even to the extent of drawing up an annual "world development budget" for discussion with full participation by developing countries.

(iv) In the *IMF*, new rules are required to achieve effective multilateral surveillance over the system of flexible exchange rates and control over international liquidity.

(v) The *UN System* should be reformed so as to improve coordination of international economic policies.

### ***Creating New Institutions to Meet New Needs***

New institutions should only be created where there is a real need. The problem of international investment and the management of the oceans are two areas in which such a need exists.

The structure of new institutions should depend on their functions. Institutions which would have to conduct operations, for example in deep seabed mining, would need a structure different from those whose purpose is to administer agreed rules or to develop a common policy consensus. But in all cases, the use of consensus as the basis for decision should be encouraged, so as to minimize the risks of confrontations arising from rigid voting procedures.

### ***The Improvement of Mechanisms for Informal Consultation Between Governments***

Formal institutions work best if their functions relate to specific problem areas. Less formal consultative mechanisms, participation in which may often be restricted, are needed to shape approaches to issues not yet ripe for collective action and to provide the necessary coordination between the different institutions concerned with international economic problems. The growing interaction between domestic and international policies makes inter-

national consultation at all levels increasingly important before national policy decisions are made. To this end:

(i) Keeping in mind the valuable experience of the European Political Cooperation machinery, consideration should be given to the creation of a trilateral consultative mechanism. In such a mechanism it would be desirable for the European Community to work through a single representative.

(ii) The Conference on International Economic Cooperation represents a potentially important and flexible device for consultation among developed and developing countries. If it proves to have continuing value, a small secretariat should be established to support its work.

The Trilateral Commission believes that its work can help to generate the necessary shared perspective and joint will to act in all these areas.

## **IV**

### ***Conduct of International Business***

The Commission also discussed questions concerning the conduct of international business. The discussion focused on the recent disclosures of improper payments by various international firms, and on the sharp political reactions in some of the countries where such payments may have been made. The Commission concluded that while the recent disclosures involve only a small proportion of international firms, bribery, wherever it occurs, is a cancer which seriously weakens the international role of enterprises, subverts the case for free markets, and threatens the values of democratic societies. The Commission appeals to all international firms and governments of the Trilateral countries to form a consensus on the impropriety of bribery and related practices, and to consider disclosure regulations which, by insuring that both proper and improper payments are made public, will serve to deter the solicitation and the making of improper payments, and facilitate the prosecution of those that may still occur.

## **V**

### ***Future Program of the Commission***

The Commission approved its policy program for the coming year. The program will consist of:

- (i) The completion of two trilateral reports already in hand — on how to involve communist powers constructively in dealing with global problems; and on a framework for a renovated international system;
- (ii) Three new trilateral task force reports — on East-West relations; on relations with developing countries; and on labor/management relations in advanced industrial societies.

The next meeting of the Commission will be held in Japan, January 1977.

## *Prime Minister Trudeau*

*Canadian Prime Minister Pierre Elliott Trudeau joined participants in the Trilateral Commission Ottawa meeting for a luncheon on May 10. After the meal, the Prime Minister made some introductory comments and then answered questions. The following are excerpts from the transcript of the Prime Minister's remarks:*

I am really interested in the work you are doing and I not only wish you well, but I would want you to feel that I participate in it. In many senses the success of the Commission will be a demonstration of the ability of industrial nations to understand the very serious international and national problems of our times and come to grips with them without being too hidebound by prejudice or tradition or small "c" conservatism.

### **Social Costs**

The only idea I would enunciate to start with, is one which has to do with social costs. . . . In our position as Government, we have to make sure that the social demands for either greater equality of opportunity or a greater quality of life are delivered. They can be delivered either by governments or by the private sector or by a combination of both, but in any eventuality it is important that the citizen understand the cost of what is being delivered. And this is, I believe, one of the main causes of inflation in Canada and I am sure in many other industrialized societies. It's that people demand of governments more social benefits — whether it be, in the case of Canada, medicare or old-age pensions or family allow-

ances and so on, or greater social benefits in terms of the environment or in terms of bringing industry to less-developed regions where it is more costly to operate but where we need to absorb unemployment — but too frequently the citizen refuses to pay for them. He says that's fine, this is part of our society, but I still want to have the same, shall we say, salary in Canada as in the United States, where they may have less costly social benefits. . . .

In just logical terms it would be a matter of informing people, but it is more serious because it also means dampening the revolution of rising expectations which roughly translated leads people to believe that they can have more of everything for everybody all the time, which is not possible.

Now just one more word, because I think this theorem has consequences in the international sphere; I think the same kind of reasoning should apply there. There are social and economic costs for instance, to what the industrialized nations are prepared to do at the UNCTAD Conference presently being held in Nairobi. There are social and economic costs to improving the generalized system of preferences, where you give less-developed nations privileged access to your market. My feeling is that we should bear these costs, but that we can bear them only if they are known to our citizens. . . .

### **Economic Nationalism**

I should tell you that, in spite of what you Americans might think, I am known in Canada as an anti-nationalist; I am not an economic nationalist. I think that, to quote Harry Johnson, a country doesn't get more independent by becoming poorer and I think that there are real costs

## *Canada Seminars*

New trends in the Canadian federal system and Canadian resources development policies and prospects were the subjects of Trilateral Commission seminars organized by the Canadian Group on May 9, just before the regular Commission meeting.

The discussion of trends in the federal system was led by Claude Ryan, editor of the influential Montreal newspaper *Le Devoir*, and Ian MacDonald, now President of York University and formerly the most senior permanent official in the Ontario provincial government. Ryan judged as "not settled" the overall issue of Canadian unity. He pointed out that the independentist party in Quebec received 30 percent of the vote in the last provincial election, and is even stronger in the more "future-oriented" sectors of Quebec society, a society which has undergone

remarkably rapid internal change in recent years. Language surveys do not show a trend toward bilingualism in the country as a whole, despite the federal government's efforts under the Official Languages Act of 1969 to elevate French alongside English as the nation's working languages. This bilingual policy is being implemented in Ottawa, but it has not taken hold in Western Canada or even in most of Ontario. It appears, Ryan stated, that the most we can reasonably hope for is a good system of bilingualism at the federal center, in the capital. In the federal government civil service, he noted, opportunities for French-speaking Canadians have widened quite considerably. It was in this civil service, interestingly, that the Quebec separatist movement had its beginnings a number of years ago. MacDonald spoke of the strength of provincial governments particularly in the large provinces, indicated by their capacity to follow fiscal policies which significantly countervail federal fiscal policies, as happened between Ontario and the federal government in the early

to nationalism. A friend of mine, an economist called Albert Breton, used to say, well if you want to consume nationalism you'll consume less bread or whatever else you want to consume. . . . We, in Canada, are prepared to pay a little bit to be more independent economically, to have more control over our economic environment, our domestic economic environment. The role of a politician must be, and it joins well with my earlier statement, must be to explain to the people that every time they buy nationalism, they have to pay for it by having less economic production of something else. It will cost something in taxes or it will cost something in their wages or something in their profits. . . .

### *Canadian Identity*

Strangely enough, I think Canadians now have stopped asking themselves about their identity. When I was in University some years ago, most of the books on political science, and so on, were about the Canadian identity; and there was a search for ourselves. The question is extremely important and relevant, but what I'm trying to convey is that in a sense now, Canadians feel like Canadians. They may not be able to articulate, any more than I will, an answer to your question, but it might help you to know that Canadians are no longer obsessed with trying to define their identity. You know, to use some of the sociological jargon, you're a Canadian if you say you're a Canadian, and you're a minority if you say you're a minority, and so on. In Canada, people are beginning to say they are Canadians, rather than trying to find exactly how they're different. . . .

### *Quebec Nationalism*

Without trying to be insulting to some of my Quebec

nationalist friends, this is, I would think, a sub-sub-case of the case of nationalism. . . . Nationalism, maybe it can be born spontaneously through spontaneous combustion, but in the historical cases I know and seeing its development even within our country — I'm thinking of Quebec nationalism now — it is generally the evil fruit of some form of, I would say intolerance if the press weren't here, but they are, so I'll say some unbalanced treatment of the minority. And I think, well certainly our government, and I would say the significant opinion leaders in Canada, have understood this now. The policy of bilingualism is meant to be a direct effort at eradicating the feeling of alienation that the French-speaking Canadian, mainly from Quebec, felt towards his national government who couldn't deal with him in French, who couldn't speak to him in French, who couldn't think about him in French, and so on. So even on this score, nobody knows what will happen. But I am of those who believe that the present understanding of the opinion leaders in English Canada of this reality, of Quebec nationalism, paradoxically enough will lead to a diminishing of that force of nationalism. We'll no longer have to fight the same abuses and therefore it will be less virulent. Just one illustration of that, it's rather significant. The separatist party in Quebec is now saying: if you elect us, we will hold a referendum to see if people want to separate. Well to me that is the end of separatism. They are no longer saying: elect us and we will separate; they are saying: elect us and we will exercise power on your behalf and then we will see what you want us to do. Which is fine, which I think expresses an understanding even by the separatist, that they can never be elected as a provincial party on the platform of separatism. . . .

1970s. Provincial government borrowing on international capital markets can likewise influence federal monetary policy. Federal policy thus must be particularly responsive to local needs, a matter complicated by the fact that federal schemes (such as the U.S.-Canada automotive pact) often have different impacts in different provinces.

The discussion of resources development was led by Douglas Peters, Vice-President and Chief Economist of the Toronto-Dominion Bank, and Senator Jack Austin, a Liberal from British Columbia who was Deputy Minister of Energy, Mines and Resources from 1970 to 1974. Canada is the foremost exporter of non-fuel minerals in the world, Peters noted, and the second largest exporter of grains. The traditional Canadian outlook saw inexhaustible resources to be developed as quickly as possible. This has now changed, Peters stated, and Canada seeks "more balanced" development. Among the key issues here are those of prices and of further processing of Canadian raw materials prior to export. Resource reserves

in the energy sector, Peters added, are rather tight. Exports from Canada of crude oil and natural gas are decreasing and will be phased out. Austin noted the high degree of foreign ownership in some resource sectors in Canada. The well-known Foreign Investment Review Act, he stated, grew from the conclusion that Canadians did not have enough control of their "economic destiny." The act requires it to be shown that proposed foreign direct investment projects will be of benefit to Canada. Foreign capital, in the energy sector for instance, will still be very much needed. Austin noted the importance of federal-provincial relations in the resource area. Provincial governments own the underground resources within their jurisdictions. The federal government is in this position only for the country's continental shelf and in the Yukon and Northwest Territories. The federal government, through its authority over money, banking, interprovincial trade and international commerce also has a major role in establishing national resource policies and priorities.

## LLOYD N. CUTLER\*

### The Payoff Muddle and How It Grew

Some five years ago, Jean-Jacques Servan-Schreiber was arguing that the multinational companies had become the most powerful institutions on earth. Prime ministers and the fate of their governments, he said, depended on where in Europe a Great Lord like Mr. Henry Ford would decide to start up or shut down a car factory. Governments and their peoples, he urged, had to recapture control over their destinies from the multinationals. M. Servan-Schreiber was probably overstating the case even then, but his view of the matter became the consensus of much of the First and Third Worlds. Even though it is manifestly less valid today, it has also been making some headway in North America.

Today multinationals are much less powerful than the state enterprises which compete with them. State-owned and state-financed enterprises have grown so rapidly that they now account for perhaps 50% of industrial output in Western Europe, with some variation above and below that figure from one nation to another. The governments and peoples of the European industrial democracies now need the multinationals as yardsticks of economic efficiency and rationality for the huge state enterprises they have created.

But just as the multinationals were earning the right to a somewhat higher place in world public esteem, along came the American disclosures of international corporate bribery, some of it by multinational firms. Nothing we have recently done to ourselves has helped more to discredit private enterprise both in the U.S. and abroad — especially multinational private enterprise — and to speed the spread of the corporate State. If we really believe that free markets are necessary to make rational economic choices on the basis of price, quality and service, why do we weaken the case for the free market by resorting to kickbacks and bribes? Is some moral corruption, like some environmental pollution, a price we have to pay for the output and efficiency of the free enterprise system?

Many businessmen say yes. They point to the need “to be competitive,” to “conform to local custom,” and to “how business is done.” They say that in many countries the choice is to pay bribes — either directly or through a middleman — or to get out of the market. They say that some of our own diplomats and Defense officials in these countries advised them that these were the facts of business life. There is much truth to these justifications,

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in some countries on some occasions, particularly for firms trying to win large contracts or license concessions from a State or State enterprise.

All the same, it is worth recording how infrequently American companies have succumbed to these supposed facts of life — some of them only under circumstances of extreme extortion, some of them not at all. Although it operates in Saudi Arabia, a country as vulnerable to reports of bribery and excessive commissions as any in the world, Aramco states it has never made such a payment. General Dynamics claims that it has sold its fighter aircraft throughout the world without doing so either. While most of the Fortune 500 Companies have responded to the SEC advice that their Audit Committees conduct a five-year review, only 10% have so far come forward with any such disclosure, and most of the facts disclosed have involved minor amounts relative to the company's business as a whole. The recent record of foreign-based multinationals is less well-known, and is likely to remain that way, but the number of publicly disclosed cases to date is still small. On the whole, although there were several real fires under all that smoke, the ethical record of the multinationals is not one that requires them to hang their heads in shame.

Payoffs and other forms of bribery are almost universally a criminal act. I know of no country where participating directly or through a middleman in the bribery of a public official to win a public contract is not a serious crime, or where specific evidence of bribery, especially by a foreigner, is not highly offensive to national self-respect. The political impact of recent American disclosures on public opinion in such advanced industrial democracies as Japan, the Netherlands, Belgium and Italy — where we have unwittingly created a bonanza for the parties of the Left — provides ample proof on this score. The reaction was far stronger than the evidence justified; the evidence we have disclosed is mostly second or third hand hearsay about what some American salesman thought some foreign middleman was doing with the commission he extracted. Very little hard evidence has come out, except in Belgium, that any important government official in these countries actually received a bribe. Yet the Japanese, Dutch and Italian press and publics have jumped to the bribery conclusion just as our press and public did. They feel as offended as we would at the disclosure of similar evidence that a German or Japanese firm had bribed a TVA official into buying its generators.

However, there are many other less advanced countries where even hearsay evidence about bribes remains secret and the laws against them are not rigorously enforced, and that is the rub. The habits of centuries and the instinct to match one's competitor then take over. Public belief that bribery is customary becomes a self-sustaining prophecy.

Even where foreign laws against business bribery have

gone unenforced, it is worth asking what happened to the multinational management's internal controls. Many publicly-held American-based firms already have built-in self-enforcement teams — outside directors, inside and outside auditors and lawyers — who are supposed to detect and prevent the types of corner-cutting that threaten the integrity and the long-term goals of the enterprise, and who risk personal liability for heavy damages if they fail to perform this duty. Remember we have perhaps three times as many lawyers per capita as any other nation — fifteen times as many as Japan — and we are the most litigious people in the world. With much prodding from the SEC, and with the now corrected exception of illegal domestic political contributions, this self-enforcement system has worked well to control domestic business conduct, including domestic bribery and kickbacks. Since domestic procurement and purchasing officers are doubtless as corruptible or demanding as their foreign counterparts, there must be some deeper reason why this self-enforcement system has failed so conspicuously for a number of American firms abroad.

My experience in this area suggests one plausible explanation. The international operations of many large American firms have been run fairly autonomously, often by men who are veterans of the cold war or readers of cold war spy novels, and who operated this “covert” side of the business on a “need to know” basis. Most of them were totally loyal to the good of the company as they saw it. Some were just plain gullible, accepting at face value the middleman's puffery as to his arrangements with the decisive public official, and as to how much the official was demanding to close the deal. Some were more skeptical, but were willing to pay for added insurance. Some were so foolish that they tried to check out the middleman's claims, or suggested to him that additional “players” be dealt in to nail down the contract. Some ignored the first principle of covert operations, and tried to save the middleman's costs by dealing direct. They of course knew that the payments they were making were going to government officials or to middlemen who claimed this to be so, but by the standards of their cold war with their competitors, they saw nothing unusual or immoral in that.

In making such mistakes for the sake of their companies, most of these international managers were unaware that payoffs to public officials and middlemen and political contributions can create United States legal obligations of disclosure. Some who were aware were unwilling to risk the foreign consequences of making domestic disclosures. Regrettably, some of the lawyers and controllers working for international managers also became infected with the same virus of intrigue on the Orient Express. They helped to “paper over” the payments with innocent-looking documents or, at the very least, failed to raise as many questions as they should.

For one of these reasons or another, international busi-

ness managers kept such matters largely to themselves. They did not want to “involve” their superiors or risk their interference. There were of course some headquarters executives and even chief executives who knew generally what was going on, but by and large they were the exception rather than the rule. In any event, it is plain that some serious failures of internal management control occurred, and that the self-enforcement teams of outside directors, auditors and counsel did not find out about them.

For those who believe that accident and ineptitude are greater forces of destiny than planning and conspiracy, it may be worth a brief diversion to describe how the self-enforcers and the rest of us did find out. We found out as a byproduct of Watergate, and the greed of the Nixon fundraising organization, the Committee to Re-elect the President, that went by the deliciously self-descriptive acronym of CREEP.

Under instructions from the White House to raise \$60 million — far more than had been spent by any prior candidate — Maurice Stans and Herbert Kalmbach went to many of the nation's chief executives and asked them for \$100,000 per company. Few chief executives can give that much from personal funds, and corporate contributions are illegal. But Stans and Kalmbach represented that payments received before April 1, 1972 (the effective date of the Campaign Financing Act of 1971) would not have to be reported. A number of chief executives decided to take a chance, and instructed their subordinates to find that much in cash. In some of these companies, it had been a long time practice to maintain a cash or “black” fund for minor political payments such as small political contributions or testimonial dinners, but few had as much as \$100,000 lying around. Several therefore decided to generate the cash by asking a legitimate foreign agent or consultant, who had performed similar favors in the past, to submit an additional invoice for \$100,000 and, when it was paid, to return the payment in cash. The cash was then delivered to CREEP before April 1, and CREEP recorded it in the name of the executive Stans or Kalmbach had solicited. All of this was done without the knowledge of outside directors, auditors or counsel.

The legal advice Kalmbach and Stans were offering turned out to be wrong. Common Cause brought a lawsuit against CREEP and won a court order requiring CREEP to disclose the pre-April contributors by name and amount. The chief executives in whose names the contributions were recorded then had to disclose the corporate origin of the funds — some voluntarily, some only after being charged by the Watergate Special Prosecutor.

At that point, the self-enforcement teams took over, under the watchful and, where necessary, the compulsory guidance of the SEC. Since several of the illegal corporate payments had been generated through foreign agents and consultants, the SEC required the self-enforcement teams

of the campaign offenders and many other large companies to review all payments to foreign agents and consultants over a five-year period. The main purpose was to learn whether any other funds had been returned to the United States. But in an inspired moment, Stanley Sporkin, the SEC's enforcement chief and the Martin Luther of American corporate morality, imposed an additional objective — to learn whether payments to foreign agents had been made for any *other* illegal or improper purpose. That is when and how the dam broke.

Now that awareness exists, the self-enforcers, for better or worse, can be counted on to do their job from here on out. For publicly-held American firms, there is no legal or practical alternative. But because of this fact, there is now a new and equally serious concern — the concern that, unlike the domestic market place, foreign competitors will not be playing by the same rules, any more than the KGB, or MI-5 or 6 for that matter, are about to play by the new rules imposed on the CIA.

In some of the more conspicuous cases, such as orders for sophisticated military hardware, this may be a limited risk. The American equipment has performance and price advantages that European and Japanese competitors do not now match, and the most serious contenders for the order are other American firms. But in other fields — machinery, construction, pharmaceuticals, commercial transport and communications — the danger of losing the order to a foreign competitor who pays off directly or through a middleman is very real.

This is why some American business leaders are now urging Mr. Elliot Richardson and his Cabinet-Level Committee on foreign payments to take a further initiative. As they see it, the government has two related roles to play, first in formulating a more effective standard that will deter the solicitation of payoffs from any international firm wherever its home base may be and second in urging all the industrial democracies to join us in adopting that standard.

Some are urging a possible third role, to persuade all countries in all stages of development to enforce their own laws against bribe-giving and bribe-taking. But despite the recent spate of UN codes on the subject, this still seems to be an impossible dream. It was only three centuries ago that being a king or a duke in Western Europe was a private business all its own, in which it was the expected thing to make money on the job. Within the last century, elected governments in the United States, federal, state and local, have passed through similar periods of cupidity. The newer governments of the Third World, with the customs of centuries to contend with, have not yet emerged from a comparable phase of their own.

It does not now violate American law to make a payment abroad in violation of foreign law. Some have therefore urged that this is a gap we ought to close, and bills now pending in Congress would do so. But in view of the many variations in foreign laws and enforcement

standards, any such statute would be impossible to apply. Moreover, now that awareness exists, our securities and tax laws and our present procedures for financing foreign transactions already do a good deal to deter improper payments by American firms through the disclosure obligations they lay upon those responsible for self-enforcement in all publicly-held companies.

Disclosure to our government of who paid how much to whom is already required today if the transaction is financed by a U.S. Government procurement or lending agency, or if the payment was expensed for U.S. tax purposes. The SEC requires that a more generalized disclosure, *not necessarily including names, amounts or places*, must be made to shareholders, if top corporate officers have participated in approving the payments or if the amounts are material in relation to the size of the business. Some lawyers believe these SEC rules exceed their statutory powers, especially since disclosure of the information may well be more harmful to shareholders than its suppression. But as Lockheed has learned, it is foolhardy to resist. The SEC has investigative and enforcement powers that enable it to get everything in the company's files. Once that happens, it is only a matter of time until the press and the Congress will publish whatever the SEC does not itself expose in court.

The present disclosure rules, however, leave wide room for judgment as to what is an improper payment, and this is their most serious flaw. Direct bribes and kick-backs to officials of public and private customers are obvious. So are large percentage commissions to middlemen who represent that the payments will be used for such a purpose. But beyond that, there is an enormous gray area, which the SEC has deliberately decided not to clear up. Perhaps we have to fall back on Justice Potter Stewart's pithy description of pornography: "I cannot define it but I know it when I see it." One chief executive I know has a similar and equally subjective test: "If you read it in the newspaper next morning, would you feel embarrassed?" But that is hardly a legal standard, and we still need a more precise definition of improper payments, if impropriety is what must be disclosed.

As George Ball has also suggested, it might be more effective simply to require disclosure of *all* large payments in the gray area, whether improper or not. The Eximbank already has such a rule for projects and exports it finances. It requires disclosure of any payment except a normal commission to the exporting firm's regular agent in the country of destination. It may or may not forbid the payment, but it does require its disclosure. On foreign military sales made through the Department of Defense, DoD also requires disclosure of all commissions, and reimburses only for "bona fide" payments in reasonable amounts.

If we really want to stop improper foreign payments by international firms, the key is not to make them illegal or to read morality lectures to one another, but to work

out an effective system of current disclosure of who pays what to whom, properly or improperly. If all proper and improper foreign payments except normal commissions to regular agents have to be disclosed whenever they are paid, the improper ones will attract so much attention that they may be too foolhardy for the giver to offer or the taker to solicit. Payoffs in public are a contradiction in terms: they can only exist in the dark. Sunlight, as Mr. Justice Brandeis has said, is still the best of disinfectants. With sunlight, self-enforcement will be relatively simple to achieve.

For example, our government could require periodic reporting to the Department of State or Commerce of the amount and recipient of *all* future payments by American firms and their subsidiaries to foreign officials, of all contributions to foreign political parties, and of all fees and commissions to middlemen residing abroad, except for normal commissions to regular selling agents. To simplify the reporting burden, there would be a dollar floor at some five figure level that would exclude reports of routine payments for minor services, and "pourboire," "mordita" or "grease" payments to minor officials. All such reports would be open to other government agencies and to periodic public inspection. False statements to U.S. government agencies are, of course, subject to severe sanctions and, if enacted, such laws would be obeyed. While I would normally be the last to urge that the Government should be asking business firms for one more report, the need to file this report would strengthen their capacity to resist pressures for improper payments, and would do business itself more good than harm.

But how can we persuade the industrial democracies to impose similar standards on their own firms which compete with ours? In Germany, while bribes paid to German officials are of course *verboten*, bribes paid to foreign officials for business purposes have been deductible as a business expense for tax purposes. There are no foreign SECs, and except for the non-governmental standards of the City of London, the self-enforcement systems of foreign firms are much less developed than our own. The OECD is now in the process of adopting a uniform standard of conduct (rather than disclosure) which each member government will be urged to adopt for its own firms. But it would merely proscribe improper payments without defining them, and we cannot have great faith in the enforcement of such a standard.

But almost all European and Japanese export sales of the type that generate corrupt payments are arranged with government financing from the exporting nation, or other types of explicit Government approval or support. The governments of all the industrialized democracies have the *power* to impose on their own firms either the same disclosure standards outlined above or whatever disclosure standards can be mutually agreed. Even intergovernmental complaint processing and information exchanges at the OECD level would not be unprecedented. True, such a

disclosure standard would enormously complicate the efforts of those agents who receive proper as well as improper payments to avoid national income tax or exchange control. But no OECD Government or international firm making the payment need weep over this side effect.

If all else fails, our own SEC has another unused weapon in its closet. Chairman Hills has called attention to the large number of foreign-based multinational firms whose securities are first issued or later traded in the United States. The SEC could require all such firms to meet the same disclosure standards on improper payments and other matters that it now imposes on U.S. firms.

But unilateral American actions are a poor way to approach what are truly international problems. If the SEC thought in advance of the damage done to so many OECD governments and government officials by the unilateral disclosures it has required over the past year, that aspect of the matter was not assigned a very high priority. No one troubled to inform those governments in advance, or to point out that much of the information, however badly it reflected on the American firm, was mere hearsay as far as the foreign government or its officials were concerned. For the SEC to impose its will on the non-American activities of foreign-based multinationals would undoubtedly lead to similar misunderstandings.

It would be much better if we could forge a consensus that went beyond lip service on a common standard of disclosure, and if each Government enforced its own rules against its own firms. It would be better still if all multinational firms, wherever their home base, urged their Governments to agree on the same rules and then observed them as a matter of self-enforcement alone. It is a hopeful sign that a Special Committee of the International Chamber of Commerce, with Lord Shawcross as Chairman and including former EEC Commission President Jean Rey and two distinguished American members, is also seeking a solution.

Whatever our friends in the other OECD Governments and their firms may think about our current orgy of breast-baring, and whatever the short term competitive benefits to them may be, their long-term risks are the same as ours. For them as for us, the free market under democratic government is in a weakened state of health, at home as well as abroad. For them as for us, business payoffs are a cancer that accelerates the process.

Since we unwittingly and unilaterally started the catharsis of correction at home, and did so much damage to ourselves and to our friends abroad in the process, one may hope that Secretary Richardson's Committee will take the lead in seeking a consensus among the industrial democracies and international firms. Competition in bribery is not going to help any of us. Without moralizing or excessive piety, but as a matter of business and political common sense, it is an unmitigated and self-defeating evil, one we should all be able to unite against. ■

## Washington Consultations

On May 12, following their meetings in Ottawa, members of the Trilateral Commission met in Washington with Secretary of State Henry Kissinger, Secretary of Commerce Elliot Richardson, Secretary of Transportation William Coleman, and a number of members of Congress. They also met with World Bank President Robert McNamara.

The session with Secretary Kissinger covered a wide range of foreign policy topics. The session with Secretary Richardson concentrated on the problem of improper payments by corporations, which had been a subject of discussion in Ottawa and on which Secretary Richardson now heads a Cabinet-level task force. American receptivity to foreign technology, particularly in the transportation field, was the primary concern of the session with Secretary Coleman. Bank President McNamara pointed to the continuing poor aid performance of most industrialized countries, and expressed his belief that a more informed public would support a greater effort. At the luncheon with Senators and Representatives particular mention was made of the serious domestic impact in Japan and some Western European countries of revelations concerning improper payments by some American corporations, Lockheed in particular.

Secretary Coleman and Secretary Richardson are both Commission members on inactive status given their current governmental positions.

(Continued from page 4)

difficulties is the growing power of these corporations, and increased tension between them and governments can be expected. Whatever our particular subject of discussion, we need to recognize that economic systems have political implications.

The International Chamber of Commerce has established a Special Committee under the chairmanship of Lord Shawcross to examine where the international community is headed on standards of business conduct. Mr. Jean Rey, a Commissioner who is a member of the Shawcross group, reported on its beginning steps. The group, which hopes to have something specific in hand in about six months, has decided that standards cannot distinguish among countries. While situations are not the same in all countries, any categories or hierarchy would not be suitable. Also, the problem is not just one of multinational corporations, but is a general problem in the ethics of private business and government. The Shawcross group plans an inventory of situations, to assist it in answering three main questions. First of all, are national laws being enforced? What is the incidence of non-enforcement? Some poor habits have obviously become widespread. Secondly, where laws do not exist or are too "theoretical," what steps can governments or others best take. Third,

what can the private sector do? Is it helpless? Can it organize a sort of self-enforcement? Mr. Rey was struck by Mr. Cutler's remarks about self-enforcement teams in U.S. corporations and wondered if there were practices here which could be generalized. It is apt to describe improper business payoffs as a "cancer" in the whole system of market economies under democratic government.

## Reform of International Institutions

A draft report from the task force on international institutions was one of two reports to the Commission discussed in Ottawa. The rapporteurs of the task force were C. Fred Bergsten, Georges Berthoin and Kinhide Mushakoji. John Pinder served as a special consultant.\*

The world has entered the third postwar wave of institution-building, according to the report. The first came at the conclusion of World War II. The second came around 1960 — with, for instance, the EEC, OECD, IDA, OPEC, and regional development banks. The third wave began around 1973 and is still under way. The report makes a number of specific suggestions for this third wave, and also tackles several underlying issues of a more general nature.

Considerable discussion was aroused by the proposal for a new institution to deal with issues of foreign direct investment and multinational enterprises, an area where "there are no rules or institutions whatsoever." International action is needed to provide "effective countervailing power against possible corporate abuses," and also "to check the efforts of national governments to seize for their own countries a disproportionate share of the benefits generated by foreign direct investment."

Doubts about the need for a new institution in this area were expressed in discussion. Could we not handle the matter in a less political, less passionate framework like the GATT? The issues are such inflammatory ones; and all countries would want into the new organization, creating quite an unmanageable operation. Opposition also came on grounds that the proposals were out of date (because, as so many state enterprises enter the fray, the multinational enterprise is becoming a "different sort of animal") and overly ambitious (because governments will not accept anything more than a very general understanding). OECD is the best framework in which to make whatever progress is possible. Bergsten replied for the task force with the point stated in the report: "No existing institution could handle the whole subject, yet its various

\*C. Fred Bergsten, who served as principal drafter, is Senior Fellow at the Brookings Institution. Georges Berthoin was Chief Representative in London of the Commission of the European Communities. Kinhide Mushakoji is Vice-Rector for Programs at the United Nations University in Tokyo. John Pinder is Director of Political and Economic Planning (PEP) in London. Their draft report, entitled "The Reform of International Institutions," is being revised for publication this summer.

components are too closely interrelated to permit treatment in separate forums." Some promising steps are being taken in the OECD, but much more needs to be done in what Bergsten saw as perhaps a ten-year effort in institution-building. As for the increasing importance of state intervention and state corporations, Bergsten concluded this could be handled within the arrangements noted or proposed in the report. Indeed, consideration of some such issues can already be seen, for instance, in the discussion of non-tariff barriers in the current GATT round of trade negotiations.

The draft report proposed that Brazil and Iran be invited to join the OECD, and that Saudi Arabia be invited to join the Group of Ten, an informal grouping of key states concerned with international monetary developments. Commission members were unwilling to endorse these suggestions. One issue was the nature of the domestic regimes in Iran and Brazil relative to other OECD members. Also, other countries have just as strong claims — like Mexico or Venezuela. Doubts were also raised about the report's emphasis on re-integrating key Communist states into the international institutional system. Is it really true these states will be more and more linked into the international system whether they like it or not? Is there really any hope of constructive Soviet re-integration into organizations based on the principles of a liberal world economy? Would we not be opening the doors for the Soviets to gain opportunities for eventual establishment of a sort of economic "Pax Sovietica"? Bergsten agreed it would be very difficult to integrate these states constructively, but supported an effort to do so in particular issue areas. He considered it extremely unlikely that the Soviets could bring down the Western economies through increased participation. The large Communist states have done little more than "cheerleading" from the sidelines in developing-country advocacy of a New International Economic Order.

These specific issues were part of the general emphasis in the report on the need to integrate "newcomers" (e.g., key developing countries) and "dropouts" (e.g., key Communist countries) into important roles in the international institutional system.

The report argues that a form of "collective leadership" is indispensable at this stage in history to manage the changing international system successfully. For any system of collective leadership to have widespread legitimacy, the views of all countries must be taken into account. Yet for any system to be effective, participation in the inner councils must be limited. This legitimacy-effectiveness dilemma received much attention from the task force, which envisaged a series of "concentric circles of decision-making." In the words of the report, "a small number of key countries, perhaps as few as two or three on some issues, could decide to pursue a common course of action through completely informal discussions. Next, each could

### *Carter and Ford Statements*

On the occasion of their consultations in Washington on May 12, members of the Trilateral Commission received statements from President Gerald Ford and Governor Jimmy Carter.

President Ford wrote that "since its inception in 1973, the Commission has performed a valuable service in providing a highly useful forum for the views of key opinion-makers of Europe, North America and Japan on critical international issues. The exchanges it has encouraged between leaders of the private sector and highly respected academicians have significantly increased the level of understanding among industrialized nations and focused the attention of these nations on problems of worldwide concern. The Commission's forward-looking studies of emerging problems have been in keeping with the best spirit of cooperation and consultation among industrialized democracies. Its analyses of existing issues have also given useful insights to decision makers. The Commission has helped shape the agenda of international discussion in a highly constructive manner and, by so doing, served the well-being of the entire community of nations. I applaud the Commission's important work and wish it every success in its future endeavors.

Governor Carter, who is a member of the Commission, expressed his regrets he could not be with the group during the Washington sessions. "I remain deeply interested in your work," he wrote. "Please continue to make your ideas available to me as to how the trilateral countries can be strengthened and enabled to play a constructive role in the search for a just and peaceful world order."

seek to broaden the agreement through discussions with its own closest associates; for example, individual European countries would consult in the Common Market. Finally, implementation would come through the existing (and newly created) institutions where all relevant countries would become involved. This whole process would of course encompass prior consultations between members of each circle with members of the more outlying circles, as an input to their own thinking and sense of subsequent saleability. . . . Such a process would require some countries to accept the legitimacy of other countries representing them at some stages of consultation and even negotiation. This would of course require early, frequent and intensive consultations." The report points with approval to the current 27-nation Conference on International Economic Cooperation (CIEC), where such a system seems to be evolving. On the other hand, the report does not support trilateral countries striking out "ahead of the pack" in the proposed "GATT Plus." This would be viewed as confrontational by developing countries, and bridging the gap to developing countries is a very crucial

aspect of the current need for international institutional reform.

The notion of concentric circles and the questions of legitimacy and participation aroused many comments in discussion. The legitimacy question, it was emphasized, is especially important with regard to permanent institutions. If *ad hoc* arrangements are institutionalized, governments will put more emphasis on being included. It has been possible to limit the CIEC to 27 participants for a one-year *ad hoc* effort, but if these arrangements are institutionalized, those excluded will be more upset. Any institutionalization of the Rambouillet formula would find no sympathy in much of the European Community, which the Rambouillet formula undermines. The dangers in the notion of "concentric circles" are indicated by the strong negative reactions to the idea of "two tiers" of members in the European Community. Nevertheless, there is a real dilemma for the Community as its membership is enlarged and becomes more diverse. There is a danger that those who move most slowly toward integration will determine the speed of all others as well. It could help the dynamics of integration to let those who can go forward do so, while keeping consultative arrangements with all the others in continuing good order.

The questions of participation and legitimacy inspired some much broader comments. One Commissioner expressed doubts about the whole trend toward greater internationalization of decision-making and the penetration of such decision-making into areas of fairly direct relevance to individual citizens. First of all, with the proliferation of international institutions only the big and rich countries can handle participation adequately. Only they have a large enough pool of good people to staff delegations and take up key secretariat positions. Second, there is a growing sense of alienation of the citizen from the decision-making process, exacerbated by its internationalization. This is eroding traditional support for international institutions, and the concentric circles idea would exacerbate the problem for those not in the inner core. The citizen is not convinced that a strengthened international order is in his interest. The demand is for smaller political units more than for larger ones.

Alienation and participation problems might be lessened if we laid more stress on "rules" than on "systems of management." Rules are for all, while "management systems" always exclude. Rules are less likely to be construed as arbitrary control by others.

We should see international institutions as instruments to help governments govern, to help them be themselves, not to take their power away. A clear realization of this would help solve the legitimacy problem. We should completely separate the power of proposal and the power of decision. The power of proposal of international institutions should be emphasized, with the power of decision resting firmly with governments. If an international in-

stitution is perceived by governments as fair, credible and unbiassed, it is not necessary always to include everyone to gain legitimacy.

The "third wave" of postwar institution-building might be better handled by stressing a "process technique" rather than traditional institutional models. Perhaps the "third wave" should be a wave of conferences at the highest levels. The Law of the Sea Conference might usefully become a continuous conference, legitimating agreements as they are made. The same technique might also be effectively used for problems of multinational corporations. The task force report mentions adding a secretariat to the CIEC. The CIEC provides a good example of the process technique, and the absence of a secretariat may actually be one of its strengths.

### *Improved Consultative Procedures*

Three distinguished former ambassadors prepared the second draft task force report considered in Ottawa, the report of the trilateral task force on improved consultative procedures, a subject with many connections to the report on institutional reform. The three rapporteurs were Egidio Ortona, J. Robert Schaetzel and Nobuhiko Ushiba.\* Their report made several general points about the benefits of consultations, obstacles to be overcome for effective consultation, and the nature of current arrangements. It closed with specific recommendations for improved trilateral consultations. The principal recommendations were for a Trilateral Staff Group of senior governmental advisers to oversee the whole range of trilateral consultation and cooperation; and for a Trilateral Political Committee, modelled on the European consultative machinery (the "Davignon Committee"), which would discuss and where possible coordinate foreign political activities of trilateral governments, by means of regular meetings of the Political Directors of Ministries of Foreign Affairs.

Much of the discussion of this report was focussed on the proposed "Trilateral Political Committee." The rapporteurs emphasized that they were not proposing an enlargement of the European political consultation machinery, which has been "a kind of beacon" for Europe and would continue as at present, but rather a separate larger group. The balance of opinion in discussion, however, was that a trilateral committee on which the Nine were all represented would hurt the European political cooperation effort and its contribution to European integration. The rapporteurs argued that their suggestion would help force the pace of European integration. Integration in the Community has traditionally been forced by having to deal with the outside world. Others were

\*Egidio Ortona served as Ambassador of Italy to the United States in 1966-75. J. Robert Schaetzel was U.S. Ambassador to the European Community in 1966-72 and served as principal drafter for the task force. Nobuhiko Ushiba was Japanese Ambassador to the United States in 1970-73 and to Canada in 1961-64. Entitled "The Problem of International Consultations," their report is being revised for publication this summer.

convinced the procedure would divide the Nine. It would "blur political distinctions" in a damaging way. With important divisions among the Nine which had not been cleared up, it would be "very dangerous" for them all to meet regularly with the other trilateral governments. It is important that Europe speak with a single voice whenever possible, as had been recommended in the Tindemans report. In this view, any new trilateral consultative mechanism should have only one European representative. The Ottawa Joint Statement, which urged that a new trilateral consultative mechanism be considered, reflected the general consensus that Europe should work through a single representative on such a body.

Some "restiveness" was expressed about the stated aim that a Trilateral Political Committee might "coordinate . . . foreign political activities" of the trilateral countries. This is "unrealistic." There are too many differences of concern and interest. The necessary "agreed political objectives," the necessary "wish for common policy" is not there.\*

Should trilateral consultations also cover military issues and delicate matters of technology, which would mean the trilateral involvement of defense officials? The task force had not given attention to inclusion of military matters in trilateral consultations. Although times are changing somewhat, Japan in particular is sensitive in this area. The Atlantic Alliance and the bilateral U.S.-Japan link seem to be working well enough on their own. One argument against the political coordination function of the proposed Trilateral Political Committee was that it could have the undesirable effect of encouraging talk of overall security arrangements.

Emphasis was put on the value of consultations for "fundamental education," for removing "unintended misunderstanding," for bridging a "communications gap" like that revealed between Japan and the U.S. in the lack of understanding of the reactions of the other to the Lockheed scandal. Most wrong moves, it was stated, are made more out of ignorance than ill will.

Informal consultations are particularly useful. The glare of publicity does not help. Also consultations should not be "too tightly held" by the top levels. It is important they take place "up and down the bureaucracy." There should be a "multi-layer structure" with informal contact that is not spasmodic. One of the purposes of international consultations is to assist international viewpoints in internal bureaucratic struggles. There must be an intra-government mechanism to ensure that consultation has broad governmental impact.

\*As an example of quite successful consultation, one Commissioner spoke of his past experience in consultations (involving about 20 persons) among the countries in the European currency "snake," occurring just before EC finance ministers' meetings. Developments were frankly discussed and no unilateral actions taken. Where there is a common interest, we may conclude, a real understanding can develop through consultation.

### ***Nobuhiko Ushiba Named Japanese Deputy Chairman, Commission Structure Changes***

The Japanese Group in the Trilateral Commission has chosen Nobuhiko Ushiba as its Deputy Chairman. Mr. Ushiba was Ambassador of Japan to the United States in 1970-73, after serving as Deputy Vice Minister and then Vice Minister of Foreign Affairs. In 1961-64 he was Ambassador to Canada. Mr. Ushiba continues as an advisor to the Minister of Foreign Affairs.

The Japanese and European leadership and office are both being strengthened in line with the somewhat more decentralized structure of the Commission to take effect on July 1. Zbigniew Brzezinski will then step down from his position as Commission Director, though he continues as the North American member of a newly formed three-man Program Advisory Council, which will advise the Commission Chairmen on programs. The other two members of this panel are Kinhide Mushakoji, now Vice Rector for Programs at the United Nations University in Tokyo, and Francois Duchene, Director of the Centre for Contemporary European Studies at the University of Sussex, who has been serving as Deputy Chairman of the Commission in Europe. Christopher Makins will step down as Deputy Director of the Commission. There will be no Director or Deputy Director in the new structure although coordinating functions will continue to be performed from the North American office in New York.

### ***Brzezinski Address***

Zbigniew Brzezinski, Director of the Trilateral Commission, addressed the final session of the Ottawa meeting on the changing international context of the Commission's work.

### ***East-West Relations***

At the time of the Commission's establishment in the summer of 1973, East-West relations were in "a phase of hopeful uncertainty." Detente was in full swing. SALT I had marked a major milestone, and a dramatic opening had occurred in American relations with China.

"The East-West relationship today stands in rather sharp contrast. There is growing uneasiness in the West about the nature of detente, about its significance, about its prospects, indeed even about its desirability. On the Soviet side we have seen more and more emphasis being placed on the notion that the West is in the midst of the general crisis of capitalism and that this crisis, unlike some of its predecessors, is deeper, more grave and pregnant with more significant political implications. . . . The West lately has been passing through a phase of political weakness . . . but it is important to stress that the principal beneficiaries of Western weakness have not been the major Communist powers but rather the more or less independent Communist forces. It has been polycentric

Communism on the march, rather than the Communist superpowers.

"Detente's ebbs and flows are affected by subjective matters, such as the relative feeling of confidence on one side or on the other. Underneath it is very much determined, as the Soviets say, by the correlation of forces. And this correlation of forces is not unpositive for the West. The Soviet Union, to be sure, has emerged as a military superpower. But it is not the predominant superpower by any measure. Its political, social and economic system is infinitely inferior to that of the United States; as are those of the Soviet bloc more generally compared to those of the West. It is a system which is unchanging, which is confronting increasing strains and which is led by a gerontocratic bureaucratic leadership which finds it very difficult to make adjustments to needed changes."

#### *Relations Among Trilateral Countries*

At the time of the Commission's formation, trilateral relations "were in a state of tension and in some respects even of crisis." There has been considerable improvement in the intervening time. "The uncertainty lingers on the domestic front, but with certain qualifications here as well. To be sure, in some of our trilateral countries there are the makings of significant political change, particularly given the more assertive and the more successful policies pursued by some Communist parties. But even the entrance of a Communist party into a major Western government as a coalition partner does not dictate a fundamental change either in Western relationships or in the internal character of the West. It is unwise on our side to engage in apocalyptic predictions which could become self-fulfilling. The democratic systems in the West are quite viable, they have surmounted a major social-economic recession, and they are overcoming, in my judgment, their cultural crisis. Thus they are in a position to go through a transitional phase which in some cases might involve the assimilation of Communist parties into their political process."

"More generally, I find the waning in the West of the crisis of confidence, this cultural pessimism, which has

lately been so dominant. There is a discernible movement away from the limits of growth theory. There is increasing confidence about the essential viability of the democratic system. This is felt most strongly of all in the United States. As an observer of the American scene, I am quite confident when I say that we are now in the process of terminating the political-cultural crisis which has so much affected and so much dominated our internal life in the course of the last fifteen years."

#### *North-South Relations*

We were witnessing "gradual deterioration" of North-South relations at the time of the Commission's formation. "But the dramatic eruption, with all of its shock waves and all of its historical discontinuities, was yet to come. It came shortly thereafter in the wake of the October 1973 war and oil-exporter embargo and price hike, which so dramatically altered the nature of the North-South relationship."

The situation is different now. "We have witnessed an abatement in tensions. We have witnessed a beginning of a new dialogue. But I think there is a danger that this may only be a temporary phenomenon. For in effect what it has involved is a series of massive, far-reaching and ultimately structural commitments by the West to a process of reform and accommodation which, if not carried out, is likely to precipitate reactions, instability and growing turbulence. Whether our bodies politic will have the will to carry these commitments out is far from certain. Whether our leaderships will have the vision to insist on their fulfillment is far from certain. There is thus a real danger of North-South turbulence, that will begin to crisscross and to merge with continuing East-West competition. The intersection of the two will make a number of political as well as social-economic problems extraordinarily difficult to handle. I have in mind such issues as the Middle East and, of course, Southern Africa. This makes it all the more urgent that we not only fulfill the obligations that we have undertaken but that we also begin the process of engaging the more responsible of the developing states in common endeavors." ■

*The Trilateral Commission was formed in 1973 by private citizens of Western Europe, Japan, and North America to foster closer cooperation among these three regions on common problems. It seeks to improve public understanding of such problems, to support proposals for handling them jointly, and to nurture habits and practices of working together among these regions.*

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