Just Prices in World Markets: Proposals De Lege Ferenda

A conspicuous feature of current demands for a more equitable economic order is the idea of "just prices" or more broadly a just relationship of prices.[1] Although the conception of a just price goes back to medieval philosophy, it has not acquired a generally accepted meaning in either economic or juridical thought and it certainly cannot be regarded as a technical term of art in international economic relations. Yet there is no doubt that the concept of the just price (as well as the closely related notion of a just relationship of prices) expresses political demands that are of considerable importance in the development of new international legal and institutional arrangements. It is particularly interesting to note that the concept which has long played a leading role in the grievances of the poor countries has recently received emphasis in the statements of spokesmen for the industrialized countries faced with the soaring prices of oil and minerals.[2] The idea of linking justice to prices may seem to some to be a vain effort to mingle ethical and economic factors (possibly with overtones of medieval metaphysics) but the political realities cannot be wished away and the demands for fairness and equity in international pricing will have to be faced.

This is not to say that pricing patterns will be determined by abstract considerations of justice or that economic strength will become a minor factor in fixing prices. Obviously governments and companies will continue to seek to maximize their benefits by taking advantage of strong positions and yielding when their positions are weak. Important as this is, it does not exclude the role of noneconomic factors particularly as they affect the attitudes and positions of governments in undertaking collaboration and collective action. For one thing their perceptions of injustice as to economic returns generate tensions and demands which lead to political intervention on both a national and international level. On the international level, the necessity to win acceptance of states with diverse interests tends to increase the importance of noneconomic factors and particularly in recent times the demand for more equitable distribution of goods in world trade.

[1] *See* UN Gen. Ass. Res. 3201 (S-VI) para. 4j and Res. 3202 (S-VI) para. 1d (May 1974); 68 AJIL 798 (1974); 13 ILM 715 (1974). Numerous references to the problem of just prices and equitable price relationships were made at the 6th Special Session of the UN General Assembly on Raw Materials and Development. *See,* for example, statements of President Boumediene of Algeria, UN Doc. A/PV 2208, at 31–32, 37, J. Amouzegar of Iran, UN Doc. A/PV 2209, at 103–10, M. Jobert of France, *ibid.,* 36–42; M. Perez-Guerrero of Venezuela A/PV 2213, at 80 *et seq.;* M. Stevens of Sierra-Leone, A/PV 2212, at 6.

[2] Statements at 6th Special Session UN General Assembly of Secretary Kissinger, UN Doc. A/PV 2214, at 22–26; Mr. Scheel, Federal Republic of Germany, A/PV 2209, at 56–57; Ennals, United Kingdom A/PV 2209, at 117.

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It does not seem idle therefore to seek to clarify the conceptions of just prices which appear to be held by government spokesmen in international bodies. I shall attempt to do this largely on the basis of the debates in United Nations bodies which have focussed mainly on the demands of developing countries for a larger share in world trade and on the consequences of rapidly rising prices of raw materials in world trade. In the light of these debates (principally in 1974), we can perceive some of the principal ideas underlying the conception of just prices and their practical implications.

In this analysis, it will be apparent that ideas of a fair price are largely addressed to specific and well-known grievances and that little effort is made in the political debates to formulate definitions of a theoretical kind. However, definitions are implicit in the arguments and it may help to clarify the issues by distinguishing the various senses in which the conception of just price is employed.

One such sense of the term is, of course, the classic economist's notion of the market price based on free trade and comparative advantage. (This, interestingly, is similar to the dominant medieval notion of the just price as one reached through free bargaining and full knowledge).[3] Within international bodies this conception receives implicit support in the attack made on restrictive practices and monopolistic or oligopolistic conditions. A widely held thesis is that the international pricing of industrial products involves collusive practices, based on cartel arrangements and multinational company practices in restraint of free competition.[4] In contrast, it is maintained that agricultural products and raw materials are marketed under conditions of nearly perfect competition and often face discrimination in the markets of the industrialized world.[5] As we shall see below, recent developments in respect of petroleum and minerals have altered this thesis in some respects and have raised the issue of restraints on trade in an entirely different political context. However, the principal thrust against "monopolistic" and collusive arrangements is directed toward industrial goods rather than primary products and against the private sector rather than governments. The pricing and restrictive agreements made by the governments of countries producing raw materials have been justified by most of the developing countries as necessary defensive measures which help to achieve a more equitable balance in the terms of trade.[6]

[3] Albertus Magnus and Thomas Aquinas were the leading proponents of this position. *See* R. de Roover, *Ancient and Medieval Economic Thought,* 4 INT. ENCYC. SOCIAL SCIENCES 433 (1968). For detailed study *see* J. W. BALDWIN, THE MEDIEVAL THEORIES OF THE JUST PRICE (1959).

[4] *See,* for example, statements at the 6th Special Session of UN General Assembly by representatives of Liberia, A/PV 2209, at 13–15; Sierra Leone, A/PV 2212, at 6; Peru, A/PV 2213; Saudi Arabia, A/PV 2217, at 31.

[5] *See,* Economides, *Should the rich countries help the poor?* in G. RANIS (ed) THE GAP BETWEEN RICH AND POOR NATIONS 183–200 (Int. Economic Association, 1972).

[6] For statements at UN General Assembly 6th Special Session, *see* Algeria, A/PV 2208, at 18–20; Iraq, A/PV 2217, at 16; Zambia, A/PV 2211, at 101–02. In UNCTAD, *see* note by Secretary-General, Mr. Corea, to Board of Trade and Development, August 1974 TD/B(XIV)/Misc. 3.

A somewhat related but more complex proposition asserts that the structural features of the world economy tend toward a deterioration of the terms of trade against primary producers. (The terms of trade can be summarized as the index of the average price of a country's exports in terms of the average price of its imports). The gist of this analysis is that capital and technology are relatively scarce and therefore command an increasing economic rent which redounds to the benefit of the industrialized countries whereas the producers of agricultural goods and raw materials face competitive conditions and inelastic demand.[7] Whether there has been a long-run downward trend in terms of trade of primary product is a matter of controversy among economists. United Nations bodies have continued to treat the proposition as amply confirmed, though some historical studies and the rise in commodity prices in the past decade tend to throw doubt on its validity.[8] Even so, it seems clear that at least in recent years many of the less developed countries have been adversely affected by high costs in food, fertilizers, and manufactures which they import from the developed countries.[9] This is especially evident for the large group of countries with insufficient resources or with highly unfavorable demographic conditions (as in the Indian subcontinent) who have been severely prejudiced by such rising prices of imports without any equivalent rise in their export prices.[10] These current trends in price relationship, which are particularly injurious to many poor countries though not all, have an important bearing on the complex idea of a just relationship between prices of goods bought and those sold.

They support the conclusion that just prices cannot be equated with market prices and that in many situations the desirable objective of an equitable relationship between prices of goods sold and bought can only be achieved by manipulating prices for the benefit of the less developed countries or providing for other compensatory arrangements. This seems quite clearly to be the position adopted by the United Nations, as indicated in recent resolutions.[11] It is not, of course, inconsistent with the view that monopolistic restraints and restrictive business practices should be eliminated but it clearly implies a conception of the just price that is different from the ideal market price. It might be defined as the price necessary to cover the costs of production, including social costs of minimum

[7] *See* G. Haberler, A Survey of International Trade Theory, ch. 4 (1961); *Ibid.*, Terms of Trade and Economic Development in Economic Development for Latin America 275–97 (Ellis and Wallich, ed. 1961).

[8] Many economists doubt that there has in fact been a downward trend in the terms on which primary products exchange with manufactures. For example, *see* M. K. Atallah, The Long-Term Movement of the Terms of Trade between Agricultural and Industrial Products (1958: Rotterdam, Netherlands Economics Institute).

[9] Reports of the UN Secretary-General on evolution of basic commodity prices since 1950 UN Doc. A/9544, April 2, 1974 and Doc. A/9544, Add. 1, April 4, 1974.

[10] UN Gen. Ass. Res. 3202 (S-VI) notes that the countries which are most seriously affected by high prices are the least developed, the land-locked, and those with low per capita income. A list of criteria of needs is set forth in Part X of the resolution.

[11] *See* Programme of Action in Gen. Ass. Res. 3202 (S-VI), Part I on raw materials and primary commodities.

welfare and development. The practical implication of this position in the present international situation is that concessionary arrangements, through prices or otherwise, are necessary to bring about equitable price relationships for the poorer countries. In effect this means a one way transfer of resources to the poor countries and therefore subsumes the case for just prices under the general principle of responsibility to assist the more needy countries. Under that principle, the requirement of concessionary arrangements or direct aid should be applicable not only to industrialized countries but to some nonindustrialized resource-rich countries which sell vital resources to the poor countries at relatively high prices.[12]

This last observation leads us to the highly controversial problem of just and fair prices for natural resource products, notably petroleum, natural gas, and minerals, which enjoy a strong market position and have had spectacular price increases in the last few years. Not all raw materials are in this category and the weaker primary products present different problems of international pricing. However, as we shall suggest below, international solutions may require action on a range of commodities to obtain general acceptance and to achieve the objective of a just relationship between prices. Before discussing such solutions, I shall briefly summarize the issues of equity and justice that have been raised by the price rises of the strong commodities in the field of natural resources. My present concern with equity and justice does not, of course, imply that I consider the market and other economic factors (and in some respects political power) as of lesser importance. On the contrary, the issues of equity are raised in an economic and political context that sets the critical limits for choices. But it is also true that ethical and social values are involved and that attitudes as to what is fair and just create tensions and may influence choices.

As seen by the producing countries, the equitable justification for the price increases of their natural resource products rests on several grounds, ranging from the moral "debt" for past exploitation to the obligation to meet the needs of future generations. What might be called the historical argument maintains that for several decades the importing countries through coercion had set prices at so low a figure that they usurped the lion's share of the economic rent of the natural resource.[13] With the recent change in relative strength, arising from a combination of political, economic, and technological factors, the producing countries have been able to reverse the situation and obtain redress for past exploitation. To have refrained from the exercise of their economic power would, in their view, have been to perpetuate the unjust relationship of the past. An answer to this line of argument (particularly as expressed by the companies and consumers of the purchasing countries) is that the technology and capital brought in by the importing countries made exploration and production

[12] *See*, for example, statements at UN General Assembly 6th Special Session by representatives of Kenya A/PV 2224, at 8–10 and Thailand A/PV 2220, at 47–50.

[13] *See* statements cited *supra* n. 6 by representatives of Algeria, Iraq, and Zambia.

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possible and therefore were entitled to a commensurate share of the economic rent.[14] The issue thus joined has generated considerable emotion and rhetoric though it does not lead to any new solutions. As we shall see, the other equitable issues appear to be more suggestive of constructive action.

A second equitable justification advanced by the producers is that they have been faced with rapidly rising costs of imported goods and therefore that they were entitled on the basis of increased demand to raise their prices to keep pace with inflationary trends in industrial countries.[15] Although this line of reasoning has not been entirely persuasive to the consumers who compared the soaring prices of oil with lesser price increases of other goods, it has had an appeal to many of the poorer countries which have been especially hard hit by increases in their imports of manufactures, fertilizers, grains, and other commodities. The argument has served to underline the importance of a balanced movement in price relationships and the linkages between various commodities. These factors have emerged as significant elements in the efforts for new international measures.

A third line of justification by the producers of petroleum and some other minerals is that the high prices operate to bring about a more rational use and allocation of relatively scarce energy resources, both for the present and future generations.[16] The thesis has cogency, particularly in the light of rapidly growing demands for energy and the consequential need to expand existing resources and to create feasible new sources. Without entering into the statistical data, there is good reason to believe that a relatively high plateau of prices will further more rational and less wasteful consumption and that it will almost certainly result in an appreciable acceleration of research, exploration, and development of conventional and novel sources of energy.[17] While this may be regarded as an economic justification, it also has an important element of equity, since the welfare of disadvantaged peoples (as well as the unborn) requires the growth of productive capacity on a massive scale and this need may be accorded a higher priority in terms of justice than the losses involved in short term dislocations and higher prices of consumers in affluent countries.

There are, of course, arguments of an equitable character against the price increases. As we have already noted, those increases have caused severe deprivations for many disadvantaged countries, most seriously in affecting fertilizer production and, in consequence, food supply.[18] This has been a widely recognized inequity of the sudden increase in oil prices, and remedial measures have been undertaken but remain inadequate. A

[14] For a sophisticated discussion of this issue, *see* RAYMOND F. MIKESELL, FOREIGN INVESTMENT IN PETROLEUM AND MINERAL INDUSTRIES 435–36 (1971).

[15] *See* statements by Algeria, Iran, and Venezuela, *supra* n. 1.

[16] *Ibid.* Also Indonesia A/PV 2214, at 49–50.

[17] *See* statement of J. Amouzegar of Iran, *supra* n. 1. *See also* report of OECD's Long-Term Energy Assessment summarized in OECD 70 OBSERVER 7 and 8 (1974).

[18] UN Doc. UNCTAD/OSG/52/Add.1 April 4, 1974 entitled "The Impact of Recent and Prospective Price Changes on the Trade of Developing Countries."

two-tier pricing system (with lower prices for the most disadvantaged countries) has not been acceptable to producers (nor commended by economists) and it seems clear that the relief must be sought through direct assistance and investments rather than through discriminatory pricing.[19]

It has also been argued by industrialized countries that the scale of oil price rises has produced a substantial risk of precipitating a worldwide depression which could have devastating consequences for nearly all countries including the producing countries.[20] Both the inflationary effect (adding to other forces) and the adverse consequences on balance of payments of importing countries create expectations of defensive measures that threaten reduced world trade, massive unemployment, and lower production. Although this, too, is an economic argument, it presents questions as to the equities in bearing the costs and sacrifices that are involved in meeting the problems. The petroleum producing countries have acknowledged their self-interest in avoiding a depression and have stressed the potential benefits of recycling their enlarged funds to productive use in their own and other countries.[21] International emergency programs for the poor countries and for the especially disadvantaged industrialized countries have been proposed and undertaken but thus far on a relatively modest scale and are less than adequate to meet the requirements. Some hope for more positive action may be found in the increased awareness in both rich and poor countries that inflation and recession endanger their social order and that the network of interdependencies demands international solutions. There is also a greater recognition of the need to meet considerations of justice and equity as well as economic requirements if international solutions are to be generally acceptable.

Some such international measures have already been alluded to in the previous comments but it may be appropriate to indicate briefly the principal lines of approach which seem feasible for international action in the near future. It will be seen that the measures suggested all involve the application or development of legal concepts and principles and the creation of new international procedures for their implementation.

One line of action would be concerted measures to eliminate or reduce restrictive practices by companies and cartels, whether private or public. It will be recalled that an effort of that kind aborted in the stillborn Havana Charter of 1948.[22] In recent years however renewed attempts have been made under the United Nations to identify undesirable prac-

[19] *See* statements by representatives of New Zealand A/PV 2211, at 56, Kenya A/PV 2224, at 8–10.

[20] *See* President Gerald Ford's address to the UN General Assembly, Sept. 18, 1974 in A/PV 2234. *See also* statements at UN General Assembly 6th Special Session by Secretary H. Kissinger, *supra* n. 2., Representatives of Hungary, A/PV 2213, at 27, Italy A/PV 2218, United Kingdom A/PV 2209, at 117.

[21] *See* statement of J. Amouzegar of Iran, *supra* n. 1. *See also* Walter J. Levy, *World Oil Cooperation or International Chaos*, 52 FOREIGN AFFAIRS 690 (1974).

[22] Charter for an International Trade Organization, signed at Havana on 24 March 1948: United Nations Conference on Trade and Employment, Final Act and Related Documents (E/Conf. 2/78).

tices (such as territorial allocations, restrictive licensing provisions, transfer pricing policies, cartel arrangements) which have significantly adverse effects for developing countries and these efforts suggest the need for international guidelines and possibly eventually a code of impermissible practices.[23] Presumably implementation would have to be left largely to national legislation and enforcement but that might be supplemented by international inquiry and consultation procedures. The concern over multinational companies and the recent developments in regional groups (such as the European Economic Community and the Andean group) tend to encourage the emergence of a new political consensus in favor of a continued international effort against restrictive practices. Although the producer associations in the developing countries fall into a special category and are strongly supported within the international bodies, suggestions have been made by various countries in both the developed and developing world that these associations should also conform to international standards directed against restraints on supply and trade of a discriminatory character.[24] There is reason to believe that this could more readily be achieved through separate arrangements on a commodity basis than through general rules but the acceptability of particular arrangements would be influenced not only by the specific quid pro quos by both sides but also in some degree by the general climate of opinion manifested in principles relating to restrictive and oligopolistic practices. The subject calls for extensive international study and consultation.

A second category of measures would be multilateral commodity arrangements which are aimed at achieving stability for a particular commodity or perhaps a class of related commodities. Such commodity arrangements have traditionally been addressed to situations of price instability which were particularly hard on the producers of primary commodities.[25] No doubt it is still easier to begin with these weak commodities. However, even for the strong commodities high prices and interruptions in supply tend to make it economically feasible for buyers to exploit alternative sources and also for producers to expand the scale of production of the commodity in question or substitutes for it. As a consequence, producing countries of some strong commodities might gain from international arrangements which would be directed toward slowing the upward trend of the development of new sources and the downward trend in the need for old sources. Apart from this factor, both sides have an interest in smoothing out the heights and depths in commodity prices and

[23] Report of UNCTAD Committee of Experts on Restrictive Business Practices in Relation to the Trade and Development of Developing Countries (UN Doc. TD/B/C. 2/119, April 26, 1973).

[24] *See* R. N. Gardner, *The Hard Road to World Order*, 52 FOREIGN AFFAIRS 566 (1974). *See also* statements at 6th Special Session UN General Assembly by Philippines, A/PV 2221, at 66 and by Italy, A/PV 2218, at 23–26.

[25] *See* 2 PROCEEDINGS OF UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) (1973), The Development of International Commodity Policy, UN Doc. TD/113, March 3, 1972.

production which affect all producers and consumers and in an arrangement which would achieve a flexible adaptation to supply and demand.[26] International market regulation for these purposes requires a set of procedures for exchange of information and consultation on conditions which determine the price of the commodity in question (as, for example, supply and demand, stocks and reserves, replacement costs and feasibility of replacement). It would also require agreement on procedures for negotiations based, to the extent possible, on agreed criteria for assuring a flow of supply and a reasonable return to producers. In some cases, buffer stocks may be a critical feature of the arrangement. Under commodity agreements with adequate information on market conditions and costs available to both sides a negotiated price might be as close to a "just" price as one could expect in international trade.

The impact of inflation on the poorer countries has given impetus to proposals for an international price indexing system under which increases in price of the imported goods into the poor countries would be matched by increases in their export price.[27] In effect, this would constitute an extension to the international level of such national techniques as parity pricing schemes in agriculture and cost of living clauses in wage contracts. Ideally a general system of price indexation should be attractive to both developed and developing countries particularly in the light of the widespread inflation, but its practical implementation on a world scale is a formidable undertaking under present political and economic conditions. Indexation may however prove viable for a limited number of commodities in world trade. They would probably have to be commodities whose supply could be controlled as for example by buffer stocks, production regulation, or export controls depending on the particular commodity. Such supply control can be more easily achieved for commodities with relatively price inelastic demand. International commodity agreements would be the preferred instruments for indexation arrangements but long term contracts and producers associations may also be used in some cases. Proponents of indexing claim that by reducing short term instability of prices, it could bring about an improved international allocation of resources and might lead to a more economical use of nonrenewable resources. It has also been noted that indexation of primary commodity prices may provide a stimulus to the developed market countries to reduce their rates of domestic inflation since the prices of their commodity imports would decline as a result of reductions in the prices of their export goods. However there may also be rigidities of the price structure caused by indexation which need to be counteracted, but these are not

[26] *See* report by Secretary-General of UNCTAD to the 6th Special Session of the General Assembly, UN Doc. TD/B/488.

[27] *See* UNCTAD studies on the indexation of prices in TD/B/503, Aug. 6, 1974; TD/B/503/Suppl. 1, July 30, 1974; TD/B/503/Suppl. 1/Add. 1, July 5, 1974. The comments made in the text on indexation are based principally on these studies. *See also* M. Perez-Guerrero (Venezuela) *supra* n. 1.

believed to create serious difficulties provided the price structure is kept under review.

The term "indirect" or "passive" indexation has also been devised to refer to arrangements for financial transfers from developed importing countries to developing exporting countries designed to compensate them for adverse movements in the flow of trade. As proposed such compensatory transfers would be made on a country basis; they would be automatic, on shortfalls from agreed export norms and on satisfaction of other agreed criteria.[28] It is maintained that this type of indirect indexation would be a necessary supplement to direct indexation since the latter could, as we indicated, only be used for a limited number of commodities.

A much more modest step would be the establishment of a world economic monitoring center under the aegis of the United Nations which would make world markets more "transparent." Such transparency could be attained by recording prices and publishing "a weighted mean price as a reference known and agreed by all," for every commodity in world trade.[29] It is hoped by its sponsors that international action of this kind leading to a comprehensive global economic intelligence system on commodity prices would in itself help to bring about a balance between prices of raw materials and industrial products and facilitate international regulatory machinery for a range of commodities.[30] The fact that various proposals for market regulation including indexation were made by governments of developed and developing countries in the United Nations suggests that new types of price control arrangements will be explored. Whether they can be achieved probably depends on the threat, or the actuality, of world depression and severe inflation.[31] At any rate, it seems almost certain that the demand for a just relationship of prices will remain in the forefront of international concern and that the search for solutions will extend to the development of new legal concepts and mechanisms on the lines indicated above.

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[28] A somewhat related scheme of the International Monetary Fund provides for compensatory financing for short falls in exports but this is in the form of short term repayable loans.

[29] A proposal to this effect was made by the Foreign Minister of France, M. Jobert *supra* n. 1.

[30] *Ibid.*

[31] The threat of inflation and particularly high oil prices and the danger of world depression were strongly stressed by President Ford in his address to the World Energy Conference in which he called for a "global strategy" of international cooperation in regard to energy and resources. N.Y. Times, Sept. 24, 1974, at 12.