The International Energy Program: An Assessment

John F. Murphy

Follow this and additional works at: https://via.library.depaul.edu/law-review

Recommended Citation
Available at: https://via.library.depaul.edu/law-review/vol26/iss3/7

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.
THE INTERNATIONAL ENERGY PROGRAM: 
AN ASSESSMENT*

JOHN F. MURPHY**

The OPEC oil embargo of 1973-74 produced disastrous economic repercussions throughout the world. In response, a number of oil consuming countries created the International Energy Program in order to achieve cooperative, world-wide control of energy. In this Article, Dean Murphy analyzes the IEP and its implementation, particularly in the United States. The author concludes that because the number of countries participating in the program is small and most refuse to alter energy consumption at the domestic level, no global system of international cooperation on energy is in sight.

Although oil has been an object of international trade since the latter part of the 19th century, until very recently it has not been subject to international regulation. Indeed, the traditional pattern was that of laissez-faire; even at the domestic level, governmental regulation of oil companies was minimal.

However, following World War II, the governments of oil exporting countries substantially increased their involvement in the petroleum industry. Increased involvement led these countries to conclude that they had a common interest in maintaining the price of oil at a high level. To achieve this goal, they formed the Organization of Petroleum Exporting Countries (OPEC). Despite this ominous development, the oil importing countries failed to take meaningful steps toward a counterpoise until OPEC imposed the oil embargo of 1973-74. In the wake of the oil embargo, the industrial countries established a framework for international cooperation regarding energy, namely, the International Energy Program (IEP).

* This article is an expanded version of remarks delivered by the author to a symposium on "Energy, International Resources and Controls." The remarks were delivered at a regional meeting of the American Society of International Law held on December 4, 1975, at the DePaul University College of Law.

** Associate Dean and Professor of Law, University of Kansas; B.A., LL.B., Cornell University. Member of the Kansas and Washington, D.C. Bars. The author would like to express his appreciation for the able research assistance of Janet E. Roberts, a third-year student at the University of Kansas Law School.
International concern over energy focused almost exclusively on the petroleum market and on the international oil companies involved in its operations. Because of the view of most experts that the world community will be heavily dependent upon petroleum over the next decade or so for its energy needs, current attention has been focused on possible steps for ensuring an adequate supply of this vital resource. At the same time, extensive, less publicized, efforts toward international cooperation with respect to the development of alternative energy sources have been undertaken.¹ In this regard, substantially greater efforts are envisioned by the IEP for the future.

The IEP is only one facet of the immensely complicated subject of energy resources, which is itself but one issue in the world community's current debate on a "new international economic order."² There are those who question whether there should be any international cooperation regarding energy resources. There are also those who advocate that the problems should be left to the free market's law of supply and demand or to national controls by governments exercising their "permanent sovereignty over natural resources." However, as will be developed in this Article, because IEP membership is limited only to the major industrialized countries, global influence in affecting the utilization of energy resources has been minimal.

In addition to energy questions, the world community is struggling with such issues as the removal of tariff and other barriers to international trade, monetary problems, the indexation of raw materials prices, the stabilization of production and prices of raw materials, the transfer of technology, and the proper role of transnational corporations. Meaningful international cooperation with respect to energy resources may depend upon the world community's success in coping with these other issues. Moreover, international cooperation concerning energy or other natural resources is inextricably intertwined with measures adopted at the domestic level. Failure to take effective measures at the domestic level may destroy international cooperation in these matters.


². For a description of this debate, see Haight, The New International Economic Order and the Charter of Economic Rights and Duties of States, 9 INT'L LAW. 591 (1975).
Except for a consideration of domestic actions taken by the United States to fulfill its obligations under the IEP, this Article will refer only parenthetically to these larger issues. The primary purpose will be to examine the IEP from a critical perspective in order to describe and assess the operation of the program. Also, this Article analyzes the IEP from the perspective of United States interests. This is not to say that no reference will be made to the interests of other countries. On the contrary, an understanding of the interests of other members of the world community in energy resources is indispensable to a determination of United States interests. As an aid to understanding, the major historical developments prior to the adoption of the International Energy Program must be reviewed.

I. THE INTERNATIONAL ENERGY PROGRAM: A BRIEF BACKGROUND

At the turn of the century, the United States and Russia dominated the world petroleum market, together producing more than ninety percent of the world's oil. Prior to 1900, however, no United States oil companies were involved in the foreign production of oil, and by 1914, United States companies had acquired producing properties only in Mexico and Romania, which accounted for only fifteen percent of the total crude oil output outside the United States.

Prior to World War I, entry by United States firms into the foreign oil market was hampered severely by British, Dutch, and French domination of the Middle East and other areas. World War I highlighted the undesirability of this situation. The war and the advent of the gasoline-powered automobile created a substantial drain on United States oil resources and precipitated fears about the adequacy of domestic reserves. As a result, the United States government encouraged intensified efforts by American companies to develop foreign sources.

The breakthrough came in 1929 when, in spite of strong British opposition, an agreement was made admitting Exxon, Mobil, Gulf, Atlantic, and Standard Oil of Indiana as participants in the

Iraqi concession held by the Turkish Petroleum Company, known after 1929 as Iraq Petroleum Company. Further inroads were made by United States companies into the Middle East as well as into other areas of the world up to the advent of World War II.\(^5\)

These inroads lead to significantly increased oil production in such areas as Venezuela, Iran, Iraq, and the Orient. Additionally, major increases in oil production in the United States helped dispel the fears of an oil shortage that arose after World War I and created, instead, concern regarding overproduction of petroleum. By way of response to this concern, in December 1924, President Coolidge created the Federal Oil Conservation Board, whose mandate was to investigate and recommend various methods of petroleum conservation. Simultaneously, the domestic oil industry began to prorate production on a voluntary basis.\(^6\)

In spite of these developments, by 1929 problems of overproduction had become so acute that a committee of the American Petroleum Institute recommended that average production should be held to 1928 levels. The Institute also decided to study the problem of overproduction in depth, not only in the United States but throughout the world. However, because of antitrust laws, inter-company agreements on production levels could not be used to solve the problem. Consequently, the oil companies sought authorization to do so from the Federal Oil Conservation Board. The Board refused to grant authorization on the ground that such authority is reserved solely to the states.\(^7\)

Rebuffed at the federal level, the oil companies pleaded their case to the states. These efforts resulted in the Interstate Oil Compact, a cooperative agreement among the oil producing states. The Compact established a commission whose function was to estimate the demand for domestic production and to determine whether the demand could be met without physical waste. Actual authority to prorate production was left to individual state agencies. With the enactment of state prorating laws, a comprehensive system for conserving oil, preventing wasteful practices,

\(^5\) Id. at 28-37.
\(^6\) R. Krueger, supra note 3, at 46.
\(^7\) Id. at 44-45.
and maintaining petroleum prices through the prevention of production surpluses was created.8

In addition to these efforts at the domestic level, the major oil companies with world markets sought to maintain world petroleum prices and established market shares. For example, in 1928 they negotiated the so-called “As Is Agreement” which committed the companies to avoid overproduction and “destructive competition” in established markets. Although the antitrust laws made such an agreement among domestic producers illegal, U.S. companies conducted their international activities largely unimpeded by antitrust considerations.9 However, none of these measures was entirely successful. New discoveries of oil, both within the United States and in foreign countries, continued to create surpluses and to weaken market prices.

World War II significantly affected the oil industry. Foreign oil companies came under the control of governments, the industry’s structure was frozen, and there were no important new entrants. At the end of the war, the oil export potential of the United States had passed its peak, and the most important foreign sources of oil were the Carribean and the Middle East. The war also brought to an end British and French domination of the Middle East.

At the end of World War II, the world oil market was dominated almost exclusively by the so-called “Seven Sisters,” the seven largest oil companies in the world, which together accounted for approximately ninety-two percent of the ownership of world crude oil reserves and eighty-eight percent of the world production of crude oil.10 Five of the seven—Exxon, Gulf, Mobil, Standard Oil of California, and Texaco—were American owned. The remaining two, Royal/Shell and British Petroleum, had a predominantly non-American ownership. Each of these companies, with a myriad of branches and subsidiaries around the world, was integrated in its operations. They engaged in exploring, producing, transporting, and marketing refined petroleum products. Governmental control over the operations of these companies, prior to the end of World War II, was minimal. Although

8. Id. at 45.
9. Id.
10. N. Jacoby, supra note 3, at 289.
most countries retained title to underground petroleum resources, such ownership was of little practical significance. Through their domination of host country governments, the oil companies obtained concessions that covered large areas, were of long duration, and vested the development of a country's oil resources in one or a few oil companies with established marketing organizations. Under the concession agreements, the companies were given wide authority to explore, develop, produce, and market petroleum. In return, the companies made relatively modest royalty and tax payments to the host governments.

However, World War II was the watershed. When it ended, the non-communist world, with the exception of the United States, moved rapidly from a laissez-faire era to one characterized by active government participation in or control of the world oil market. National governments increasingly concluded that national policies concerning petroleum were too important to be left to the international oil companies. A primary factor in this change in attitude was the breakup of the British, Dutch, and French empires, with the consequent creation of dozens of new nations. Dramatic advances in education, communications, and travel precipitated an awareness on the part of these nations of the importance of petroleum in economic growth and security and of a need to take an active involvement in the establishment of national oil policies.

National regulation of oil production proliferated, encouraging competition among oil companies. Under newly enacted general petroleum laws concerning concessions, the area conceded to any one firm was sharply limited, the duration of concessions was shortened, and the taking on of local partners was often required. Increasingly, governments declined to grant concessions and instead engaged foreign firms to explore for and develop oil production as government contractors. The net result of these policies was to increase competition among would-be concessionaires or government contractors in nearly every oil producing country.

Another development after World War II favorable to the growth of competition in the petroleum industry was a progressive relaxation, with some notable exceptions, of government controls on international trade. Included were the reduction or elimination of currency controls, tariff barriers, and such quantitative restrictions on trade as import quotas. The most important and
conspicuous exception to this development was the quota system on oil imports imposed by the United States government, first in 1957, on a "voluntary" basis and later, in 1959, on a mandatory basis. This highly controversial program was adopted in response to increasing imports of lower priced foreign crude oils which had threatened to nullify the operation of the prorationing laws under which American states attempted to sustain high domestic petroleum prices. At the domestic level, the program had been criticized by economists for its anticompetitive effects in nullifying the supply/demand relationship to price and preventing surpluses from driving prices lower. Paradoxically, the program had the opposite effect in the foreign oil market. By limiting the growth of imports, the effect of the quotas was to separate the United States oil market from the rest of the world and increase significantly the amount of crude oil available to the rest of the non-communist world. This further intensified competition in foreign markets and depressed foreign oil prices. The United States oil import quota program continued in effect through the 1960's, although quotas were gradually relaxed to permit rising imports. The level of imports rose rapidly after United States oil production peaked out in 1970 and resulted in the removal of oil import quotas altogether in 1973.

In situations not involving expropriation or nationalization, the incomes of private oil companies were subjected to increased foreign government levies after World War II. Saudi Arabia, Kuwait, Iraq, Qatar, Bahrain, and Iran all introduced taxation formulas with 50 percent rates in the 1950's. These rates were coupled with rapidly escalating royalty payments as well. During this period, oil generally moved at posted prices, on which the profit margin was calculated for tax purposes, and these prices rose along with rising crude prices in the United States. Consequently, the government's per barrel share of revenue rose as well. This process continued until the United States mandatory Oil Import Quota Program and other factors led to an oversupply situation, a reduction in posted prices by the oil companies in

11. Id. at 105.
1959 and 1960, and a consequent reduction in government royalty and tax payments. In response to this reduction in their per-barrel share of revenue, the producing countries banded together to form the Organization of Petroleum Exporting Countries (OPEC), with the express purpose to “restore crude oil prices to the level which prevailed prior to August 9, 1960. . . .” 13 Although OPEC was unable to restore posted prices by 1970, it was able to restore most of the 1959 and 1960 reductions in revenue per barrel takes through measures which had the net effect of increasing the tax rate to a split of close to 75/25. 14

With the increase in the number of private oil enterprises that followed World War II, and the consequent invigoration of competition, the price of oil was low. This low price allowed petroleum to enlarge its role as a source of energy at the expense of coal. Between 1949 and 1972, oil usage rose from fifteen to fifty-seven percent of total energy consumption in Western Europe, and from thirty-nine to sixty-two percent in the rest of the foreign non-communist world. 15 With this switch to oil, United States dependence on imported energy rose to fourteen percent of energy consumption in 1972. 16 Western Europe’s dependence on the import of oil grew from the thirty-three percent in 1960 to sixty-five percent in 1972. Japan’s dependence rose from forty-three to ninety percent during the same period. 17 The year 1973 revealed the full power of OPEC to turn this increased dependence to its advantage. At that time, the members of OPEC agreed to a quadrupling in the price of oil, as well as to cutbacks in oil production. The Arab oil-producing states also instituted an embargo on oil shipments to the United States and the Netherlands because of United States support of Israel in the Middle East crisis.

The impact of these OPEC actions on the world community was traumatic. On the average, member countries in the Organization for Economic Cooperation and Development (OECD) experienced a fourteen percent inflation rate in 1974, about a

14. Id.
15. N. Jacoby, supra note 3, at 290.
17. Id.
quarter of which was attributable to the quadrupling of oil prices. The 1973-74 oil embargo also precipitated industrial dislocation, balance of payments problems, and unemployment, thus contributing to a major recession in the OECD countries.

While the quadrupling of oil prices created substantial hardship for OECD countries, the impact on developing countries of the so-called Third or Fourth Worlds was catastrophic. The increase in oil prices added about $8.5 billion to the cost of imports of the developing countries in 1974, with paralyzing effect on many economies. In many instances the higher prices meant less fuel to run irrigation pumps supplying water to fields. Higher prices also caused shortages of fertilizer for crops, resulting in a decrease in food production in countries where severe malnutrition was already rampant. Some Third World balance of payments problems became so severe as to raise the risk of default on their international debts.

During the crisis, the OECD countries largely reacted on an individual basis and failed to maintain a united front. Although the OECD had agreed earlier on a rudimentary scheme for the sharing of oil among members in the event of a crisis, activation of the plan depended upon unanimity among members. Such unanimity was not forthcoming. On the contrary, several members sought preferential treatment from the oil producing countries. By contrast, OPEC members maintained tight control over prices and relatively tight control over production levels.

In an effort to develop a comprehensive framework for cooperation among the industrialized countries, the United States convened a conference on energy matters. Thirteen industrialized countries attended the conference in Washington, D.C. This led to the establishment of the International Energy Agency (IEA) and to the signing by sixteen (now nineteen) countries of the

18. Id.
22. These 16 states included: Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Since the time of the
Agreement on an International Energy Program. The Agreement sets forth the details of the Program and the institutional structure of IEA, through which the Program is to be implemented.

In a separate agreement, but as an integral part of the International Energy Program, the OECD also established a Financial Support Fund designed "to serve for a limited period, in view of current economic conditions, to supplement, in exceptional cases, other sources of credit to which members encountering serious economic difficulties have had recourse."

II. THE INTERNATIONAL ENERGY PROGRAM AND UNITED STATES LAW: A CONSPIECTUS

The IEP contains many detailed provisions that ultimately might form the basis for a cooperative, global system for energy control. The Program provides for participating countries to have emergency oil reserves and a commitment to limited oil use in time of emergency. The Program also provides for financial support and a free exchange of information. Examination of how participating countries, particularly the United States, are implementing the IEP provisions casts doubt on whether the IEP can achieve a global system of energy control.

Emergency Oil Reserves, Demand Restraint, and Oil-Sharing Arrangements

Not surprisingly, a "first objective" of the industrialized countries in creating the International Energy Program was "the development of a capability to deal with future supply interruptions in a cooperative framework." To this end the Program focuses on ensuring an emergency self-sufficiency in oil supplies. Each
participating country\textsuperscript{26} is to have an "emergency reserve commitment," an obligation to maintain oil reserves sufficient to sustain consumption\textsuperscript{27} for ninety days,\textsuperscript{28} without net imports.\textsuperscript{29} However, the President and the Congress have been slow in implementing the Strategic Petroleum Reserve program. As of the date of this writing, the United States is the only major industrialized nation that does not have strategic oil storage.\textsuperscript{30}

Under the International Energy Program, either a general supply emergency affecting the group as a whole or an individual supply shortage would activate provisions for the allocation of oil among participating countries. In a general crisis, when the group

\textsuperscript{26} This term is used throughout the Agreement to denote both states to which the Agreement applies provisionally and states for which it has entered into force. The IEP is to be applied provisionally from November 18, 1971 by all signatory states to the extent not inconsistent with their legislation. IEP §68. Provisional application of the IEP by a signatory state may terminate in one of three ways: by entry into force for a signatory state which has notified the depository (Belgium) of its consent to be bound; after notification by a signatory state that it does not consent to be bound; or if the time limit for notification (May 1, 1975) has expired (unless the time limit has been extended by decision of the Governing Board). IEP art. 68, §(2). The IEP entered into force definitively for the United States on January 19, 1976. As of December 9, 1976, the Agreement is still provisionally in force for Italy, Turkey, Greece and New Zealand.

\textsuperscript{27} As measured by the average daily level of the previous year.

\textsuperscript{28} IEP art. 2, para. 2.

\textsuperscript{29} This reserve commitment can be satisfied by emergency stocks of oil, standby oil production facilities, or by the capacity to switch in an emergency from oil to other sources of energy, as defined in articles 1, 2, and 4 of the Annex to the IEP. Under this approach, it has been estimated that stocks of oil available to the 19 member countries of the Agency range from 70 days' worth of imports to 160 days' worth for the United States. N.Y. Times, Oct. 8, 1976, at D3, col. 1. At the same time, the International Energy Agency has under review the OECD definition of stocks, to determine whether it offers adequate criteria for measuring absolutely unavailable stocks. Enders, \textit{supra} note 25, at 308.

\textsuperscript{30} N.Y. Times, Oct. 18, 1976, at 1, col. 5. In a related matter, if the participating countries sustain, or can reasonably be expected to sustain, a reduction in the daily rate of oil supplies at least equal to 7 percent of the average daily rate of the group's final consumption during the previous year, each participant must implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 7 percent. IEP art. 13.

If the rate in reduction of supplies rises to 12 percent, then the corresponding cut in demand must be 10 percent. IEP art. 14. In the event that an individual participating country (or several but less than the group as a whole) sustains or can reasonably be expected to sustain a reduction in its oil supply equal to or exceeding 7 percent, the country affected must reduce its own consumption by 7 percent. IEP art. 8. In the case of a very severe or protracted crisis which consumes half the emergency reserves of the participating countries, the IEA can decide upon further emergency steps, including additional demand restraint measures. IEP art. 20, paras. 1 & 3.
as a whole loses between seven and twelve percent of its normal consumption, the system operates as follows. First, each country restrains demand seven percent. Second, the remaining shortfall is shared among all participating countries on the basis of a mutual system of oil-sharing. Each participant is granted a "supply right" which is determined by that country's average daily rate of consumption. This rate will reflect both the appropriate demand restraint measure and a deduction of that country's emergency reserve drawdown obligation. If the supply right, so calculated, exceeds the sum of the country's normal domestic oil production and actual oil imports available during an emergency, then that country is entitled to additional net imports equal to the excess. A corresponding "allocation obligation" binds any participant whose "supply right" is exceeded by domestic production and imports. The obligation is to supply, directly or indirectly, its excess supply of oil to other participating countries.

When the reduction in supplies affects an individual participating country, it is granted an "oil allocation right." As indicated above, in this situation, the country concerned must absorb a part of the reduction in supplies up to a level equal to seven percent of its total consumption for the previous year. The allocation right is designed to satisfy any shortfall in supplies over and above that level. The corresponding allocation obligation to supply oil is shared by the other participating countries.

The Program envisages that the allocation arrangements will be implemented largely by the international oil companies and that, insofar as possible, oil will be distributed through normal channels at market prices. Each participating country is under an obligation to ensure the cooperation of the companies, willing or otherwise, in implementing the allocation scheme.

31. IEP art. 7. The term "emergency reserve drawdown obligation" means the emergency reserve commitment of the group multiplied by the group supply shortfall. Id. at para. 5.
32. Id. at para. 3.
33. Id. at art. 8.
34. Whenever an allocation of oil takes place a number of criteria must be met. These include: the principle of fair treatment for all participants; the use of comparable commercial transactions as the yardstick for determining the price of the oil allocated; and the preservation of historical trade patterns as far as is reasonable taking into account in particular the position of non-participating countries. Id. at art. 11.
35. Id. at art. 6, para. 1.
It is noteworthy that these mechanisms for dealing with a shortfall are automatically activated under the Program and can be reversed only by a substantial majority vote of the participating countries. According to newspaper reports, the International Energy Agency is simulating an oil embargo much like the one that occurred in 1973 in order to test the readiness of the oil-sharing arrangements.

The United States response to the IEP has been the passage of the Energy Policy and Conservation Act. Under this Act, the United States will create a Strategic Petroleum Reserve for the storage of up to one billion barrels of petroleum products, including an Early Storage Reserve for the storage of not less than 150 million barrels of such products. The Energy Policy and Conservation Act also provides for the creation of a Strategic Petroleum Reserve Office in the Federal Energy Administration (FEA), which obligates the Administrator of that Office to submit a Strategic Reserve Plan to Congress. This plan "details the Administrator's proposals for designing, constructing, and filling the storage and related facilities of the Reserve," and is to contain a great variety of information specified by the Act.

Under the Energy Policy and Conservation Act, the President is directed, within 180 days of the date of enactment of the Act, to transmit to Congress one or more energy conservation contingency plans and a rationing contingency plan. No contingency plan may become effective unless four conditions are met: (1) the President previously has transmitted the plan to Congress; (2)
the plan has been approved by resolution by each House of Congress within sixty calendar days after transmittal; (3) the President has found that putting such contingency plan into effect is required by a severe energy supply interruption or in order to fulfill United States obligations under the IEP; and (4) the President has communicated such a finding to Congress. In addition, a rationing contingency plan may not become effective unless the President has sent to Congress a request to put such a plan into effect, and neither House of Congress has disapproved, or both Houses have approved, such a request within fifteen calendar days of transmittal.

As specified by the Act a "rationing contingency plan" is to be implemented in accordance with the petroleum allocation system of the Emergency Petroleum Allocation Act of 1973. No rationing contingency plan may impose any tax or user fee, except to the extent a user fee is necessary to defray the cost of administering the plan. All authority to carry out any rationing contingency plan is to expire on the same date as authority to issue and

44. Id. at §6261(b).
45. Id. at §6261(c). The Act provides for two exceptions to these limitations upon presidential action. First, in order to permit the President to carry out United States obligations under the IEP, he is permitted, without going through the second step of congressional review, to put into effect a contingency plan that has been approved by the 60-day congressional approval procedure, if he determines that there is a 7 percent shortfall in petroleum supplies to the IEP countries as a group. This authority could be exercised only to the extent determined necessary by the President to comply with U.S. obligations under the IEP. Id. Second, as a transitional measure, the President, beginning within 90 days after the date of enactment of the Act, is permitted to put the contingency plan into effect for a period of no longer than 60 days. The President may do this only if he finds that putting such a contingency plan into effect is required by a severe energy supply interruption or by the IEP; if he has transmitted to Congress a plan to put such action into effect; and if neither House of Congress has disapproved (or both Houses of Congress have approved) such request in accordance with the 15-day congressional review procedure. Id. at §6261(e).

The Act further defines an "energy conservation contingency plan" as one "which imposes reasonable restrictions on the public or private use of energy necessary to reduce energy consumption." Id. at §6262(a)(1). The Act further provides, however, that such a plan may not "impose rationing of any tax, tariff, or user fee" or "contain any provisions respecting the price of petroleum products." Id. at §6262(a)(2).
46. Id. at §6263(a)(1).
enforce rules and orders under the Emergency Petroleum Allocation Act.\footnote{Id. at §6263(f).}

The Energy Policy and Conservation Act also authorizes the President to prescribe rules requiring "persons engaged in producing, transporting, refining, distributing, or storing petroleum products" and subject to the jurisdiction of the United States to engage in such action as the President determines is necessary for the United States to fulfill its obligations under the IEP relating to the international allocation of oil products.\footnote{42 U.S.C. §6271(a) (1970 & Supp. V 1975).} The rules provide that the President may specify the amounts and the prices of the oil to be allocated.\footnote{Id. at §6271(b)(1).} However, no such rule may come into effect unless the President transmits the rule to Congress, and neither House of Congress has disapproved (or both Houses have approved) the rule in accordance with the fifteen day Congressional review procedure.\footnote{Id. at §6271(b)(2).} Moreover, the rule has to be resubmitted every eighteen months to Congress for its review.\footnote{Id. at §6272(d)(1).}

The Energy Policy and Conservation Act also requires the FEA Administrator, with the approval of the Attorney General, to prescribe which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and carry out voluntary agreements to implement the allocation provisions of the IEP.\footnote{Id. at §6272(f)(1).} Any such voluntary agreement must be submitted in writing to the Attorney General and to the Federal Trade Commission twenty days before being implemented.\footnote{Id. at §6272(d)(2).} A voluntary agreement may not be carried out unless approved by the Attorney General.\footnote{Id. at §6272(d)(1).} The Attorney General may review, amend, modify, disapprove, or revoke a voluntary agreement at any time.\footnote{Id. Actions taken in good faith to develop or carry out a voluntary agreement for the international allocation of oil are immune to any civil or criminal action brought under federal or state antitrust laws. Id. at §6272(f)(1). The Attorney General and the Federal Trade Commission are required to report, at least every 6 months, to Congress and the President on the impact on competition and on small business of actions taken pursuant to voluntary agreements. Id. at §6272(d)(2).}
The Financial Support Fund

Strictly speaking, the plan for a Financial Support Fund is not a part of the International Energy Program, since it is set forth in a separate agreement signed by all OECD members except Turkey. However, the Financial Support Fund is related intimately to and supportive of the goals of the IEP, since it would establish a $25 billion fund to provide short to medium-term financing to participating members that may be faced with extraordinary financing needs precipitated by severe increases in oil prices. Under this arrangement all participants agree to join in assisting one of their members if an extreme need develops. The Fund would constitute an insurance mechanism or financial "safety net," supporting and strengthening but not supplanting other sources of financing. Loans would be made to a borrower by the Fund only on condition that specific policy guidelines in the energy and general economic areas were met, with a view to correction of the borrower's external financial difficulties.

At this writing fifteen members of the OECD have become full members of the Support Fund, and an additional five members have almost completed the process. However, congressional opposition to the plan appears likely to block United States participation, and the Federal Republic of Germany, which, along with the United States would have to provide most of the money for any borrowings under the plan, has made its participation dependent on the United States joining.

Information Systems on the International Oil Market and Consultations with Oil Companies

Because of the inability of the industrialized countries to obtain sufficient information during the oil embargo, a primary objective of the International Energy Program has been the estab-
lishment of a mechanism to assure that participating countries are informed sufficiently regarding the operation of the international oil market and the activities of the international oil companies. To this end the Program provides for a two-part information system operated by the IEA Secretariat:

1. a general section including data on the international oil market and the operations of oil companies during noncrisis periods;
2. a special section to provide the additional information required for efficient operation of the emergency program in a period of crisis.

Each participating country is obligated to ensure that the oil companies make the information available.

Section 214 of the Energy Policy and Conservation Act authorizes the FEA Administrator to provide the Secretary of State with data related to the energy industry. The information is then transmitted to the International Energy Agency. The President is permitted to withhold information from transmittal to the IEA if competition would be prejudiced. Also, if the information to

61. IEP art. 25.
62. Id. at art. 27. The information which each Participating Country is obligated to make available to the IEA Secretariat includes data on:
(a) Corporate structure; (b) Financial structure, including balance sheets, profit and loss accounts, and taxes paid; (c) Capital investments realized; (d) Terms of arrangements for access to major sources of crude oil; (e) Current rates of production and anticipated changes therein; (f) Allocations of available crude supplies to affiliates and other customers (criteria and realizations); (g) Stocks; (h) Cost of crude oil and oil products; (i) Prices, including transfer prices to affiliates; and (j) Other subjects, as decided by the Governing Board, acting by unanimity.
63. Id. at arts. 32 & 33. Under Article 33, participating countries are obligated to provide the Secretariat with data concerning:
(a) Oil consumption and supply; (b) Demand restraint measures; (c) Levels of emergency reserves; (d) Availability and utilization of transportation facilities; (e) Current and projected levels of international supply and demand; and (f) Other subjects, as decided by the Governing Board, acting by unanimity.
64. Id. at art. 27, para. 2. This information is given on a "non-proprietary basis," i.e., it excludes information relating to patents, trademarks, individual sales, tax returns, customer lists and geological matters. Id. at art. 28. Any data supplied must not prejudice competition nor conflict with the competition law of any participating country. Id. at art. 27, para. 3. The Program also envisages the establishment, within the IEA, of consultation procedures between Participating Countries and individual oil companies with respect to all important aspects of the oil industry. In their discretion, participating countries "may share among themselves on a cooperative basis the results of such consultations." Id. at art. 37(1).
66. Id. at §6274(b).
be transmitted is a trade secret or is commercial or financial information protected by the “trade secret” exemption of the Freedom of Information Act, prior to transmittal, it must be aggregated, accumulated, or otherwise reported in such a manner as to avoid identifying the person who submitted the information.\(^6^7\) However, in the event of an international energy supply emergency, this information could be transmitted without regard to such safeguards.\(^6^8\) The Act further provides companies participating in the IEA's information exchange program with immunity from antitrust laws.\(^6^9\) The Attorney General and the Federal Trade Commission have reportedly authorized such participation by seventeen United States oil companies.\(^7^0\)

**Long-Term Cooperation on Energy**

In order to reduce their dependence on imported oil, the participating countries have agreed to undertake national programs for the development of energy resources. Included are cooperative programs that provide for the exchange of information and the concerting of national policies.\(^7^1\) These cooperative programs will concentrate in four main areas: conservation of energy, development of alternative sources of energy, energy research and development, and uranium enrichment.

With respect to energy conservation, IEA members agreed to reduce oil imports for the group as a whole by two million barrels per day by the end of 1975.\(^7^2\) The United States share of this reduction was one million barrels per day in proportion to its share of total IEA consumption.\(^7^3\) In addition, the IEA Secretariat

\(^{67}\) Id. at §6274(a)(2)(A).

\(^{68}\) Id. at §6274(a)(2)(B)(i).

\(^{69}\) Id. at §6272(a)&(f)(1).

\(^{70}\) OIL AND GAS J., April 19, 1976, at 43.

\(^{71}\) IEP arts. 41 & 42.


\(^{73}\) Although both the IEA as a whole, and the U.S. in particular, were able to meet these targets, this success was due largely to the reduction in consumption caused by the recession and may have "led to complacency about the need for a strong conservation
is to formally review individual, national conservation programs and assess their effectiveness. Under the surveys conducted to date, the IEA consistently has found that conservation efforts by the United States are the worst among member countries.

On January 30, 1976, the Governing Board of IEA adopted a program of long-term cooperation in the field of energy. This program consists of four primary elements: (1) the establishment of a common minimum price of $7.00 per barrel below which IEA members will not allow imported oil to be sold within their domestic economies; (2) the fixing of joint conservation targets and the intensive review of national conservation programs; (3) provision for investment incentives in high cost energy projects; and

policy. See Statement of Secretary Kissinger before the Ministerial Meeting of the IEA in Paris (May 27, 1975).

74. Statement of Thomas O. Enders, supra note 72, at 8.
75. N.Y. Times, Oct. 18, 1976, at 11, col. 5.
76. For the text of the Program, see 15 INT'L LEGAL MATERIALS 249 (March 1976). For a summary of some of the Program's highlights, see 73 DEP'T STATE BULL. 261 (March 1, 1976).
77. For a recent report on an IEA review of national conservation programs, see N.Y. Times, Nov. 2, 1976, at 39, col. 4.
78. Under the long-term cooperation program, the governments of the parties participating in a cooperative project agree to facilitate investment (including investment in exploration for and exploitation of energy sources) by endeavoring to:

Accord national treatment and most favoured nation treatment to such enterprises, or parties;

Avoid the introduction of new limitations upon the extent to which such enterprises are accorded national treatment and most favoured nation treatment with respect to such co-operative energy projects;

Use good offices where requested and where appropriate;

Avoid the introduction of limitations on the exchange of skilled manpower, and materials and equipment, taking into account the needs and the possibilities of the countries concerned, which may be required for successful completion of such projects as well as on associated transactions in financial assets, including the repatriation of profits of such enterprises;

Take account in considering alterations of taxation and production policy as they relate to those projects of the effect of such alterations on the economics of such projects including projects already under way;

Avoid introducing, once such a project is established, new measures which would make mandatory a change in the degree of participation by enterprises from other Participating Countries.

15 INT'L LEGAL MATERIALS 255-56 (March 1976).
(4) cooperation in energy research and development, including the pooling of national programs in related projects.  

The first element of this program, agreement on a minimum price for imported oil, has been the most controversial. Alternative sources of energy, such as coal, nuclear and solar power, and Outer Continental Shelf oil, are expensive to develop, and their development will require enormous capital investments. In order to encourage such investment, protection must be given to domestic investors against cut-throat price competition from low cost imported oil. Establishing a minimum price below which imported oil may not be sold in domestic markets will afford such protection.  

A primary argument against the minimum import price plan in the United States, however, has been that it would have inflationary effects on the economy and impose too great a financial burden on the consumer. As an alternative, some have proposed that the government should become the risk-bearer on particular capital investments in high cost energy projects. However, the subsidization of domestic investment in alternative energy sources would constitute an enormous drain on the United States Treasury. In addition, this proposed alternative ignores the beneficial effect of the minimum import price plan, which is the restriction placed on importation of cheap oil that would increase domestic consumption and dependence on unreliable foreign sources. Moreover, despite the higher cost to the consumer, the total cost of this cheap oil would be great because large imports of oil induced by the cheap price would have adverse affects on the United States balance of trade.

Although agreement on a common minimum price for imported

79. This element of the program may be difficult to implement. According to newspaper reports, Canada has resisted allowing other countries to exploit Canadian oil on the ground that Canada's oil producing provinces rather than the federal government in Ottawa have control over their resources. Wall St. J., Feb. 2, 1976, at 17, col. 5.
81. See questions asked and comments made by Congressman Fraser, Legislation on the International Energy Agency, Hearings on Implementing Agreements with the IEA Before the Subcomm. on International Resources, Food and Energy and Subcomm. on International Organizations of the House Comm. on International Relations, 94th Cong., 1st Sess. 7, 17 (1975) (questions by Mr. Fraser).
82. See Statement of Thomas O. Enders, supra note 72 at 17-19.
oil was reached in principle in preliminary IEA negotiations, there was disagreement among member countries as to the level of the price. Those countries with substantial domestic production of their own not surprisingly favored a relatively high floor. Conversely, those countries with little or no domestic oil production favored a relatively low floor. The $7.00 per barrel figure represents a compromise between these two positions.

Should there be an attempt by oil-exporting countries to engage in predatory pricing in United States domestic markets, the executive branch expects to be able to maintain the minimum price of $7.00 a barrel by the imposition of import fees. In FEA v. Algonquin SNG, Inc., the Supreme Court recently upheld the President's authority to impose fees on imported oil for national security reasons. The Court rejected the plaintiffs' contention that this section authorized only the use of quotas for this purpose.

Member countries of IEA are attempting to reach agreement on the details of long range joint conservation targets, joint energy development projects, and joint energy research projects. The ultimate form these targets and projects take will determine in part whether it will be necessary for the executive branch to seek

83. In hearings on legislation to implement the IEP, the executive branch was asked why the President should be given blanket authority to establish a floor price for petroleum when the current price of $11 to $12 per barrel was at least 50% above the compromise figure of $7 to $8 per barrel likely to be reached by IEA. The answer was that, in view of the low cost of production of oil in the Middle East, the ability of the oil producers to engage in predatory price cutting was substantial and the mere threat of such action was a serious deterrent to domestic energy investment. Further, because of the long lead times, (usually several years duration) involved in energy investments, the decisions in favor of such investments had to be made now. See Appendix to Legislation on the International Energy Agency, Hearings on Implementing Agreements with the IEA Before the Subcomm. on International Resources, Food and Energy and Subcomm. on International Organizations of the House Comm. on International Relations, 94th Cong., 1st Sess. 49 (1975).


86. In so holding, the Court first rejected respondents' contention that Section 232(b) must be construed narrowly in order to avoid "a serious question of unconstitutional delegation of legislative power." 426 U.S. at 558-59. The Court concluded that on the basis both of the language of the statute and of its legislative history, Congress intended to grant the President a measure of discretion in determining the method to be used to adjust imports. Id. at 561-71.
further legislative authorization to enable the United States to participate fully in the IEA's program of long-term cooperation.  

Relations with Oil Producing and Other Oil Consuming Countries

The part of the Program addressing the relations with oil-producing and other oil-consuming countries is the most ambitious and arguably the most important in economic and political terms, but is also the least clearly defined. Most of the Program's provisions relating to it speak in generalities. For example, the Program expresses the hope that participating countries "will endeavor to promote cooperative relations with oil producing countries," by "identifying opportunities for a purposeful dialogue." The one objective that is clearly specified is "promoting secure oil supplies on reasonable and equitable terms for each Participating Country."  

In seeking to achieve these objectives, the participating countries are to give full consideration to the needs and interests of other oil-consuming countries, particularly those of the developing countries. Also, participating countries are to exchange views on their relations with oil-producing countries and are to inform each other of cooperative action on their part with producer countries which is relevant to the objectives of the program.

Currently, there has been little progress toward achievement of these goals. A meeting in Paris, in April 1974, between oil-producing and oil-consuming countries broke up in acrimony because of inability to agree on an agenda. The United States wanted to limit discussion to energy and the developing countries demanded the inclusion of a host of other international economic issues. Further preliminary negotiations in October 1975 were successful in reaching agreement on a wide-ranging agenda for a Conference on International Economic Cooperation. In preparation for this conference, commissions, including one on energy, were set up to consider the various subjects. The energy commis-

87. See 73 DEP'T STATE BULL. 262 (March 1, 1976).
88. IEP art. 44.
89. Id. at art. 47, para. 1.
90. Id. at art. 45.
91. Id. at art. 46.
93. These four commissions include: the Commission on Energy, the Commission on
tion, co-chaired by Saudi Arabia and the United States, has made little progress toward reaching agreement. According to informed sources in the Department of State, member countries of IEA have reached agreement on a common negotiating position. Reportedly, the negotiations in Paris do not include attempts to reach agreement on oil prices or on security of supply. Rather, they are being undertaken with the following three primary goals in mind: (1) to reach agreement on what supplies of energy, including oil and alternative sources, are currently available and on what may be available over the next decade or two; (2) to engage in cooperative projects, such as the creation of an international energy institute for the benefit of the non-oil producing developing countries; and (3) to establish formal institutional arrangements for a continuing dialogue between the oil producing and the oil consuming countries.

Institutional Structure of IEA

The International Energy Agency was established as a permanent, autonomous body "within the framework of the Organization for Economic Cooperation and Development (OECD)." It includes a Governing Board, four Standing Groups on Emergency Questions, the Oil Market, Long Term Cooperation Relations with Producer and Other Consumer Countries, and a Secretariat, headed by an Executive Director appointed by the Governing Board which services the various organs of the Agency.

---

Raw Materials, the Commission on Development, and the Commission on Financial Affairs.

94. The resolution adopted on September 16, 1975, by the Seventh Special Session of the U.N. General Assembly, invites the Secretary-General to carry out a preliminary study and to report to the Assembly at its thirty-first session on the possibility of establishing, within the framework of the United Nations system, an international energy institute to assist all developing countries in energy resources research and development. The text of the resolution may be most conveniently found in 14 INT'L LEGAL MATERIALS 1524 (Nov. 1975).

95. See the eighth preambulatory paragraph of the IEP Agreement.

96. IEP art. 50. The Governing Board, composed of Ministers or their delegates from each participating country, is the supreme decision-making organ of the Agency. It has the authority either to adopt binding decisions or to make non-binding recommendations. Id. at art. 51. Voting involves a complex set of procedures, and may, depending on the circumstances, require unanimity (art. 61(1)(b)), a weighted majority (art. 83(3)), or a
It should be emphasized that where the necessary conditions are present, the activation of emergency measures regarding demand restraint and oil-sharing is automatic and does not require a decision of the Governing Board. Rather, a special majority of the Governing Board is required for a decision not to activate emergency measures as well as to deactivate emergency measures currently in effect.97

III. THE INTERNATIONAL ENERGY PROGRAM: PRESENT PROBLEMS AND FUTURE PROSPECTS

Predicting the Actions of Oil Consuming and Oil Producing Nations

The problem of international control of energy resources is inextricably intertwined with other issues in the world community’s debate on a “new international economic order.” Despite the initial opposition of the United States, this interdependence has been recognized formally by the recent decision of the Conference on International Economic Cooperation to include a wide variety of issues besides energy. However, so far there has been only limited cooperation on energy or on other issues in the international economic area.

This lack of agreement and cooperation is not limited to relations between oil producing and oil consuming countries or to relations between developed and developing countries. Assuming, for the moment, that the International Energy Program represents a major step toward cooperative efforts on energy resources by the industrialized countries, its success is by no means assured. France has refused to join IEA, terming it an “energy NATO,” because of its integrated staff and alleged dominance by the United States. Norway, which is soon to become an exporter of oil as a result of its North Sea deposits, has opted for an

---

97. IEP arts. 19, 23 & 24.
"associate status." Further, from the outset there have been ten-
sions between those members of the IEA which, like the United
States, have substantial domestic oil producing capacity and
those which, like Japan, have little or no independent source of
supply. Whether the industrialized countries would maintain
unity in the face of a new oil embargo or some other crisis in the
supply of oil is therefore still an open question.

Certainly, the provisions of the International Energy Program
demand restraint. Oil-sharing arrangements appear to provide a
mechanism by which the industrialized countries might be able
to deal more adequately with possible future interruptions of the
supply of oil than they did with the oil embargo of 1973. However,
the effectiveness of these arrangements in the face of an actual
embargo remains problematical. As noted earlier, because of the
diverse and often conflicting interests of IEA members, the risk
is considerable that one or more members will pursue individual
goals to the detriment of other members in the event of an oil
shortage. The testing of the oil-sharing arrangements currently
being conducted by the IEA is a useful exercise, but it will not
answer several crucial questions. It does not answer whether, in
a real political crisis, governments and the oil companies would
be willing to risk the wrath of oil producing states that have cut
off exports or whether governments would be able to divert oil to
short markets without incurring steep price mark-ups. Further,
IEA member countries, especially the United States, have been
slow to establish the strategic reserves of oil required for waiting
out an oil supply shortage of substantial duration. Also, the
United States has not yet adopted fully developed contingency
plans for demand restraint and rationing to be employed in the
event of a shortage.

Some might contend that, in focusing its primary attention on
measures to cope with an oil shortage, the IEA has been busy
planning for the last war, since current indications are that the
chances of a new oil embargo are extremely remote. However, one
cannot rule out this possibility in light of the volatile nature of
the Middle East situation. Moreover, Walter J. Levy, a promi-
nent oil economist, recently suggested that, until oil from major

98. See N.Y. Times, Sept. 17, 1976, at D1, col. 4.
non-OPEC sources such as the North Sea and Alaska's North Slope begin to have an impact in 1978, the world may experience a short term oil supply shortage. According to Levy's analysis, such a shortage is likely to develop unless Saudi Arabia, the only OPEC member with meaningful surplus capacity, is willing to raise its level of production to meet increased demand by the industrialized countries. Levy contends that if Saudi Arabia decides to maintain its present level of production, the market would be inadequate by about one million barrels a day or more. Prices therefore would be pushed up by market forces.

There are two other possible scenarios. Under the first, Saudi Arabia would lift its production level without simultaneously raising prices on the ground that the mid-1977 surge in demand was exceptional and will be eliminated as a problem once the new capacity for oil production comes into operation. Under the second, Saudi Arabia would lift its production level, but use it as the occasion and the excuse for raising oil prices as well.

It is speculation at this point which path Saudi Arabia is likely to follow. However, in the view of this observer, Saudi Arabia is unlikely to decide to limit production and let the resulting shortages push up oil prices. Such a course of action appears to be contrary to Saudi Arabia's interests in several respects. First, it would seriously undermine Saudi Arabia's relations with the new United States administration. Second, the destabilizing effects of an oil shortage and a consequent increase in oil prices on the economies of the oil consuming countries might be severe, especially when they are just beginning, at least according to some indications, to recover from a recession. Third, the reaction of the industrialized countries probably would be, at a minimum, to intensify their conservation efforts and their programs to develop alternative sources of energy, thus accelerating the demise of OPEC's control over energy sources and prices.

Accordingly, this writer believes that Saudi Arabia probably will increase production and agree to a corresponding price rise. The likelihood of this possibility is enhanced by the interest of other OPEC members, such as Iran, in maximizing current revenues in order to fulfill ambitious internal development plans and

offset the rising costs of imports from the industrialized countries.\textsuperscript{100} If this analysis is correct, the greatest danger appears to be not that OPEC will cut off supplies of oil, but rather that the price of this oil will be so prohibitively high as to inflict severe damage on the economies of the oil importing countries through the creation of inflationary pressures along the lines experienced during 1973 to 1974. The magnitude of this damage will depend upon the level of the price.

\textit{Economic Effects of Oil Price Rise}

At the time of writing, OPEC members have disagreed among themselves on prices for the next six months. Saudi Arabia and the United Arab Emirates will increase their prices by five percent, and the other eleven members of OPEC will raise their prices by ten percent on January 1, 1977, and by another five percent on July 1.\textsuperscript{101} The effects of this two-tier pricing system are uncertain because it is unclear whether OPEC will be able to maintain the two sets of prices. Saudi Arabia has indicated its willingness to go to full production capacity in order to meet increased demand for its lower priced oil, and overall demand may be at least temporarily diminished because of the oil companies’ stockpiling of oil in anticipation of a price increase.\textsuperscript{102} The result may be a sharp decrease in demand for the higher priced oil of the other eleven OPEC members, with corresponding pressure on its price.\textsuperscript{103} Some doubt exists, however, whether Saudi Arabia will be able to produce enough crude petroleum to force the other eleven countries to lower their prices.\textsuperscript{104}

Assuming that the two-tier system survives, oil consuming countries are expected to pay approximately $10 billion more for their oil, and to experience slower economic growth, higher unemployment, and higher inflation.\textsuperscript{105} The Organization for Economic

\textsuperscript{100} For a description of the different perspectives of Saudi Arabia and Iran on the level of oil production and prices, see E. FRIED & C. SCHULTZE, HIGHER OIL PRICES AND THE WORLD ECONOMY 264-67 (1975).

\textsuperscript{101} N.Y. Times, Dec. 17, 1976, at 1, col. 6.

\textsuperscript{102} N.Y. Times, Dec. 18, 1976, at 1, col. 5.

\textsuperscript{103} Id.

\textsuperscript{104} Id.

\textsuperscript{105} Id.
Cooperation and Development has projected that the full ten percent increase could cut world economic growth by one-half percentage point and raise the cost of living by up to one percent. Economists point out, however, that the impact of these new prices will vary widely. In the United States, for example, which imports much of its oil from Saudi Arabia, the effect should be modest. Gasoline prices should rise by between seven-tenths and 1.4 cents a gallon; the consumer price index should increase 0.1 to 0.2 percent; and growth of the gross national product in the United States should decline by three-tenths of one percent by the end of 1977.

These estimated costs in terms of GNP and consumer spending have been calculated on the assumption that current restrictive monetary and fiscal policies would continue in effect. However, liberal economists argue that such policies exacerbate the costs to GNP and consumer spending and should be replaced by more stimulative policies. In their view, the apparent inflationary aspects of the oil price increases mask the contractionist and recessionary effects of wealth draining away to the OPEC countries. To combat such recessionary effects, these economists recommend that the governments of the industrialized countries, particularly the United States, the Federal Republic of Germany and Japan, increase government spending in order to compensate for the new income the OPEC countries would not be pumping back into the world economy. Conservative economists, on the other hand, strongly criticize this view, contending that the adoption of stimulative monetary and fiscal policies in the face of

106. Id. Reportedly, one U.S. Government analysis estimated that even a 5% increase will reduce the overall rate of real growth for seven major nations: the United States, Japan, the Federal Republic of Germany, France, Britain, Italy and Canada, by three-tenths of a point in 1977. Consumer prices will rise by roughly the same amount, while unemployment will increase about 0.2%. Newsweek, Dec. 27, 1976, at 29.

107. N.Y. Times, Dec. 18, 1976, at 33, col. 1. Despite growing dependence on foreign oil, the United States still imports proportionally less than Japan or European countries, and 23% of the imports come from Saudi Arabia and thus reflect the minimum price rise. Similarly, the Federal Republic of Germany should be able to cope with the price increase with comparative ease because the value of the Deutschemark increased 9.4% against the dollar (the currency of oil transactions) and that will more than offset the higher prices. Newsweek, Dec. 27, 1976, at 29.

108. See Higher Oil Prices and the World Economy, supra note 100, at 57-63.

109. Id.
higher OPEC oil prices would result in inflationary pressures that ultimately could bring about a complete break-down in the world economy.110

There seems to be a consensus among economists that the economies of the stronger industrialized countries should be able to adapt to and live with the increase in OPEC oil prices. However, there is great concern as to the industrialized countries with weaker economies, such as the United Kingdom and Italy, and the non-oil developing countries of the Third and Fourth Worlds. In part because of balance of payment difficulties exacerbated by current OPEC oil prices, the United Kingdom and Italy are expected to seek extremely large loans from the International Monetary Fund (IMF) in 1977, with the United Kingdom alone seeking to borrow $3.9 billion. At the 1976 annual meeting of the IMF in Manila, then United States Secretary of the Treasury William E. Simon told the finance ministers of more than 100 oil-importing countries that they faced a balance of payments deficit of about $50 billion in 1977 as the counterpart of an increase in the surplus of the oil-producing countries.111 Mr. Simon estimated that the industrialized countries’ share of this deficit would be $35 billion, with the rest incurred by the non-oil developing countries.112 Moreover, Mr. Simon suggested that the oil-importing countries would find it more difficult to finance their payment deficits in 1977 because many countries are reaching the limits of their ability to take on more debt. Mr. Simon’s estimates of the deficits of the oil-consuming countries were made on the basis of the 1976 price of OPEC oil, and he noted that, “if the oil-producing nations take, as is now rumored, the dangerous step of

110. Italy and the United Kingdom, having balance of payment difficulties caused in part by current OPEC oil prices, are expected to seek extremely large loans from the International Monetary Fund (IMF) in 1977 to help alleviate this problem. The United Kingdom alone is seeking to borrow $3.9 billion. See N.Y. Times, Oct. 26, 1976, at 51, col. 6.

111. Id. Mr. Simon estimated that the industrialized countries’ share of this deficit would be $35 billion, with the remainder incurred by the non-oil producing countries, based on the 1976 OPEC price of oil. N.Y. Times, Oct. 6, 1976, at 65, col. 5.

112. Mr. Simon also noted that “[further] raising the price of oil . . . would seriously aggravate an already troublesome economic and financial situation.” N.Y. Times, Oct. 6, 1976, at 65, col. 5.

113. Id.
again raising the price of oil, it would seriously aggravate an already troublesome economic and financial situation.”

Mr. Simon's grim projections are supported by IMF reports. The IMF estimated that the collective deficit of the oil-importing countries will be $40 billion in 1976, as world oil demand has begun to increase with recovery from the recession and as the rapid increase in the imports of machinery and other goods by the oil-exporting countries has begun to level off. The heavy borrowing incurred over the last two years to support these deficits reduced the IMF's stock of lendable funds—currencies from strong economy countries that others want to borrow—from about $11.5 billion in April 1975, to some $6.3 billion in late 1976. By the end of 1976, the IMF estimated, the figure could fall further to about $4.6 billion, as compared with the $7.4 billion the IMF lent in the year ending in April, 1976, and the $5.8 billion lent in the previous year.

IMF officials maintain that they should be able to avoid a liquidity crisis for the next year or so, as improvement in the world economy reduces demand for credit and new sources of lendable funds become available. However, they concede that their optimistic view could be altered radically by a prolonged recession or a substantial increase in oil prices. Also, some conservative countries, the United States in particular, have expressed opposition to solutions such as debt forgiveness.

Energy Conservation and Developing Alternative Sources

With regard to energy conservation, the IEA recently reported that, in terms of the ratio of total primary energy use to GNP,
the United States, as well as several other major industrial countries, failed to cut its consumption of energy over the 1973 to 1975 period.\textsuperscript{119} Indications are that only the effects of the economic slowdown prevented an increase in total consumption of energy during that period. In the view of the IEA Secretariat, the United States and some other IEA member countries need to adopt energy saving measures that would price energy at world market levels, introduce effective automobile and other transportation standards, monitor energy conservation in industry more closely, and apply insulation standards and energy saving building codes more effectively.\textsuperscript{120}

Because of the considerable lead time involved in developing alternative sources of energy, it seems especially important for the IEA to move ahead with a sense of urgency on joint energy development and research projects. However, the specifics of any such projects are still under negotiation and discussion in IEA, and IEA member countries generally seem to be adopting a cautious approach in this area. In the United States most of the major oil companies reportedly have invested in alternative sources of energy such as coal, uranium, and geothermal and solar energy.\textsuperscript{121} However, to some members of Congress, this information supports the contention that these oil companies already are too big and should be divested of retail gasoline outlets and any energy activities not dealing with oil. The oil companies' argument against such forced divestiture to date have been successful in blocking legislation requiring divestiture, but the mere presence of such proposals may have served to limit investments in alternative energy sources.

A major reason for the failure of the IEA to fulfill its goals of energy conservation and the development of alternative sources

\textsuperscript{119} The IEA recently reported that in terms of the ratio of total primary energy use to gross national product (GNP), the United States and other major industrial countries failed to cut their consumption of energy over the 1973 to 1975 period. N.Y. Times, Nov. 2, 1976, at 38, col. 4.

\textsuperscript{120} The United States and some other IEA member countries need to adopt energy saving measures that price energy at world market levels, introduce effective automobile and other transportation standards, monitor energy conservation in industry more closely, and apply insulation standards and energy-saving building codes more effectively. N.Y. Times, Nov. 2, 1976, at 38, col. 4.

\textsuperscript{121} N.Y. Times, Oct. 27, 1976, at 51, col. 2.
of energy is that contending factions in the United States have not agreed yet upon a national energy policy. Indeed, the one thing that the disputants seem to agree on is that the United States' actions on energy matters have been "disastrous." This conclusion is strongly supported by a few salient statistics. For example, as of December 5, 1976, in the three post-embargo years, United States domestic crude oil production had fallen off 8.8 percent. Oil imports over the last three years had increased thirty-five percent, and had reached the point where they met forty-three percent of domestic demand, as compared with thirty-eight percent in late 1973. The annual cost of these imports had risen to $25 billion a year.

It is beyond the scope of this article to explore in any detail the various issues that have arisen in the domestic debate over energy. Although most experts call for a sharp increase in the price of gasoline to induce conservation and investment in alternative sources of energy, others argue that prices already are high enough. Still others, although a distinct minority, suggest that the United States and the other industrialized countries simply learn to live with imported oil. They argue that energy independence is unattainable, that for the next two to three decades the industrialized countries will be dependent upon OPEC for their energy needs, and that talk of energy independence is counterproductive to the establishment of a mutually satisfactory interdependence between the industrialized countries and OPEC.

The last position is, of course, inconsistent with the goals of the IEA's Long-Term Cooperation on Energy Program, since these goals are based on the premise that the industrialized countries

122. N.Y. Times, Oct. 18, 1976, at 1, col. 5.
124. See generally N.Y. Times, Oct. 18, 1976, at 1, col. 5.
125. MALLAKH, The Energy Relationship Between the Arab World and the United States: Conflict or Cooperation?, reprinted in M. BASSIOUNI, ISSUES IN THE MEDITERRANEAN 61 (1975). Accepting energy dependence and learning to live with imported oil is inconsistent with the goals of the IEA's Long-Term Cooperation on Energy Program, which is based on the premise that the industrialized countries need to lessen their dependence on OPEC oil in order to eliminate OPEC's oligopolistic control over energy prices. Moreover, it generally is agreed that in the early part of the next century, the world production of oil will begin to decline and conflict between nations competing for natural resources will result if alternative sources of energy are not available. Thus, the need for industrialized countries to conserve energy and develop alternative sources of energy is substantial.
need to decrease their dependence on OPEC oil in order to eliminate OPEC’s oligopolistic control over energy prices. Moreover, it is generally agreed that by early next century, the world production of oil will begin to decline; if alternative sources of energy are not available, there may be sharp and perhaps violent competition among nations for natural resources. Thus, even if OPEC did not exist, there seems to be a substantial need for the industrialized countries to conserve energy and to develop alternative sources of energy.

The success of the IEA’s programs on energy conservation and the development of alternative sources of energy depends on implementation by member countries. The record to date, at both the national and international levels, has been disappointing. Vigorous steps, especially by the United States which consumes approximately thirty-five percent of the world’s oil energy, are required if the goals of the International Energy Program are to be realized. In the absence of effective energy conservation and alternative sources of energy, the cost to IEA member countries of the high price of oil is especially severe in terms of balance of payment difficulties. Here, too, there has been a failure to implement a program designed to deal with the problem. Congress’ refusal to adopt implementing legislation appears to have blocked the establishment of the Financial Support Fund envisaged by the OECD agreement. It is unclear whether alternative sources of financing, such as the private international banks or the International Monetary Fund, will be able to carry the burden.

Beyond the IEP: Toward a World Wide Approach to International Cooperation on Energy

Even assuming full implementation of the International Energy Program by IEA member countries, the question remains as to what steps, if any, might be taken at the Conference on International Cooperation or at other forums to achieve world-wide control of energy. The International Energy Program, after all, is a limited endeavor involving a small, although economically significant, percentage of the world community. No global system of international cooperation on energy matters yet is in sight.

The issues which must be resolved before such a global system
can become a reality are manifold and multifaceted. They include access to supply, indexation, recycling of petrodollars, sanctity of contract, and security of supply and prices. The magnitude and complexity of these issues militates against haste in adopting simplistic solutions.

Some elements of the International Energy Program, however, could serve as a model for a cooperative, world-wide program of energy management, with adjustments made in individual situations. For example, the IEA system for emergency reserve commitments, demand restraints, and oil-sharing arrangements might be adaptable in part on a global basis. Of course, much would depend on whether the emergency reserve and demand restraint commitments were either waived for the developing countries or coupled with economic assistance to enable the developing countries to fulfill them. Oil-sharing arrangements, in particular, might serve to mitigate the adverse effects of energy shortages or supply bottlenecks.

Similarly, there appears to be a large degree of mutual interest in a program of long-term energy cooperation along the lines of the IEA model. Conservation of energy, development of alternative energy sources, and research and development on energy matters might be pursued on a world-wide cooperative basis. Clearly, a global exchange of information and technical assistance on energy seems desirable. The development of a global program also might be in the larger interest of OPEC members, especially if they were actively involved in both the formulation and implementation of the program and could be assured of an equitable return on their investment.

With the OECD's Financial Support Fund inoperative, it seems especially important that consultations be held between IEA member countries and the OPEC surplus countries regarding additional contributions to the IMF's General Agreement to Borrow. From all indications, there is an immediate need to make additional funds available to countries in danger of defaulting on their debts. Consultation also might be held among IEA members, the oil producing countries, and the Third World oil importing countries with a view to developing instrumentalities for postponing and refinancing debt. Such steps, of course, should be contingent upon agreement by the deficit countries to make the adjustments necessary in their economies to correct their external
financial difficulties.

Finally, the research program of the IEA concerning energy sources might serve to stimulate the world community to conduct a deeper inquiry into the possibility of a major restructuring of domestic economies so as to make them less energy intensive. The world community should inquire into the feasibility of moving toward new kinds of production based on greater decentralization, smaller production units, and low-energy technologies. In a world characterized by scarcity, not only in energy but also in many other basic resources, such an inquiry is long overdue.

**Conclusion**

The International Energy Program provides a framework within which participating countries may, through conservation measures and the development of alternative sources of energy, protect themselves against an oil shortage and predatory price fixing by OPEC countries. However, the provisions of the IEP are not self-executing. Further, the record of the participating countries, especially that of the United States, in carrying out these steps, has been disappointing. Unless the participating countries are willing to make the often politically difficult decisions to implement the IEP at the domestic level, the promise of the Program will remain unfilled.

Moreover, the International Energy Program basically is a mechanism for international cooperation among the industrialized countries. Its provisions on relations with the oil producing countries and the developing oil importing countries are largely hortatory. Little or no progress on energy issues was made at the Conference on International Economic Cooperation. This is unfortunate because the so-called energy crisis is global in dimension and will be alleviated only through cooperative efforts on a global level. Accordingly, future progress at the Conference on International Economic Cooperation will determine whether the International Energy Program proves to be a catalyst for true "international" cooperation on energy issues or merely a source of further tension among members of the world community.
Published quarterly under the editorial direction of De Paul law students. Views expressed in this periodical are to be attributed to the authors, and not to the periodical, its editors or De Paul University.