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# CIPEC – The Copper Exporting Countries

by Professor Wolf Radmann, Houston \*

**The situation in the world copper markets has been of worldwide interest, not only due to nationalization efforts in several producing countries but also because of the growing desire of less developed countries (LDCs) to establish international commodity agreements similar to the CIPEC model.**

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In recent years, the international copper industry has been in the news for several reasons. Nationalizations of a part or of the whole of mining interests of Anglo American Corporation and Roan Selection Trust in Zambia, of Union Minière in the Congo (Zaire Republic) and of Anaconda, Braden Kennecott and CERRO Corporations in Chile account for some of this publicity<sup>1</sup>. Kennecott's pursuit of remedies against the Chilean take-over of their El Teniente mine by filing court actions in five European countries in order to prevent delivery of, and payment to the Chilean government-owned copper marketing organization (CODELCO) for, shipments of copper originating from El Teniente account for some more recent publicity. Finally, reports of impressive efforts of the international copper mining concerns to explore and exploit new deposits of copper ore in areas which are as yet untouched by the nationalistic economic independence trends in many developing countries further complement the list of news items on the copper industry.

As a sideline with reference to the particular situation in Chile one may add the various efforts undertaken in 1964 and 1970 by the CIA and the US State Department to prevent Salvador Allende from becoming president of Chile which did not exactly help to ease the already difficult situation of the US copper interests in that country. The considerable news coverage given these events first by the Washington Post in late March 1972 and recently during the hearings before the US senate foreign relations subcommittee on multinational corporations constitute valuable background information to any review of the present-day situation of the copper industry in the Western world.

Within the scope of this article it is not intended, however, to give a general review of the various

problems and conflicts presently existing in the international copper industry. Rather, attention is invited to the Intergovernmental Conference of Copper Exporting Countries (CIPEC), the history of its foundation, its purpose and some of its efforts to cope with specific problems of its member countries.

## Background of the CIPEC Foundation

In Chile, Eduardo Frei was elected President in September 1964. In a nation-wide telecast on December 21, he announced a series of agreements with the major foreign copper interests operating in Chile. According to these agreements the Chilean Government would enter into several lesser joint ventures with the CERRO Corporation<sup>2</sup> and with Anaconda<sup>3</sup> while the Chilean Government would take over a substantial participation of 51 p.c. in Braden Copper Company's El Teniente Mine, the Chilean company of Kennecott Copper Corporation. Kennecott's 53rd annual report stated accordingly that the company voluntarily and enthusiastically went into this agreement which was designed to "meet the aspirations of the Chilean people to participate directly in developing their country's most important natural resource"<sup>4</sup>.

In Zambia, independence was obtained on October 23, 1964, and Kenneth Kaunda was inaugurated President of Zambia the following year. There, the situation differed greatly from the situation in Chile. Chileanization was from the outset directed towards governmental participation in the copper operations in Chile. Zambianization, on the other hand, started out primarily as an effort to build a truly Zambian public administration and political system and to place Zam-

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<sup>2</sup> CERRO Report on the Rio Blanco Copper Mine Project, Feb. 28, 1967. The decree of investment was signed by President Frei on Dec. 9, 1966.

<sup>3</sup> Anaconda annual report, 1964, p. 3.

<sup>4</sup> Kennecott annual report, 1967, p. 9; see also: Mikesell, Foreign Investment in the Petroleum and Mineral Industries, Johns Hopkins Press, 1971, p. 375-8; Michaelson, D. C. Jackling Award Lecture on "Joint Mining Ventures Abroad: New Concepts for a New Era", quoted in Friedmann/Beguin, Joint International Business Ventures in Developing Countries, Columbia Univ. Press, 1971, p. 26; *ibid.* p. 82-97 for detailed report on El Teniente joint venture agreement.

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<sup>1</sup> See Radmann, Staatliche Beteiligungs- und Verstaatlichungsvereinbarungen mit den ausländischen Kupferbergbau-gesellschaften in Chile und Sambia (State Participation and Nationalization Agreements with Foreign Copper Producing Companies in Chile and Zambia), 3 Verfassung und Recht in Über-see 1971, p. 301-317.

bians in better paid and more responsible positions in administration and economy<sup>5</sup>. President Kaunda was not yet in a position to bargain with the large foreign copper corporations operating in Zambia.

Dependency of the Zambian and the Chilean economy upon the export of copper which in both countries was controlled by foreign owned companies, constituted, however, a solid foundation for cooperation. Obviously, both countries would benefit from their respective experience with copper operations and foreign investments. In November 1966, President Kaunda met President Frei in Santiago. It was his first official visit abroad in his capacity as President of Zambia. The two statesmen agreed on that occasion to strengthen the economic position of their countries through cooperation on copper policies. In this context, an official of CODELCO stayed some time with the Zambian Department of Mines<sup>6</sup> and early in 1968, Zambian and Chilean government officials met for consultations including the Chilean experience in negotiations with the American copper companies<sup>7</sup>.

After a series of further meetings, the first "Intergovernmental Conference of Copper Exporting Countries" took place in Lusaka during the first week of June, 1967. It was attended by representatives of Zambia, Chile, Peru, The Zaire Republic and by observers from Uganda and Botswana. The intention was from the very beginning to exclude from this conference those countries which were producers as well as important consumers of copper. The kind of cooperation envisaged should be restricted to those countries whose export economies were based primarily on this one basic product<sup>8</sup>. The participating countries agreed to establish the "Intergovernmental Council of Copper Exporting Countries - CIPEC" similar to the "Organization of Petroleum Exporting Countries - OPEC" which was formed in Bagdad in September, 1960, by Iran, Iraq, Kuwait, Saudi Arabia and Venezuela<sup>9</sup>.

The CIPEC agreement was written at a subsequent meeting in Paris at the end of 1967 and signed by the member countries in May, 1968,

at another meeting there. The Secretariat of the organization was established in Paris. The Headquarters Agreement between the French Government and the four founding member countries was signed in May, 1970, and was promptly ratified by the French National Assembly during the same year. CIPEC was granted consultative status by UNCTAD and UNIDO and contacts were established with the International Bank for Reconstruction and Development, the International Monetary Fund, ECA, ECLA and with the International Labor Office<sup>10</sup>.

The preamble stresses the need to prevent excessive fluctuations in the price of copper and to maintain a fair price of copper for both producers and consumers in time of war and peace. It mentions a tendency towards persistent price fluctuations which can be harmful both to producers and consumers. The objectives of CIPEC are defined in Article 2:

- ☐ to coordinate measures designed to foster, through the expansion of the industry, dynamic and continuous growth of real earnings from copper exports, and to ensure a real forecast of such earnings;
- ☐ to promote the harmonization of the decisions and policies of the member countries on problems relating to the production and marketing of copper;
- ☐ to obtain better and more complete information and appropriate advice on the production and marketing of copper for member countries;
- ☐ to increase resources for the economic and social development of producer countries bearing in mind the interests of consumers.

### The Organization

The Conference of Ministers is the supreme organ of CIPEC. It consists of one minister from each member country and meets in regular session every two years and in extraordinary session whenever circumstances so require and at least two member countries request it. Decisions on subjects of major importance require unanimous vote. Classification as major subject requires also an unanimous vote. The first ordinary meeting of the Conference of Ministers took place in Lima in November, 1969, the second ordinary meeting in Kinshasa from May 27 to 29, 1971. The second meeting was also attended by the Minister of Mines of Mauritania and observers from Canada, Iran and the Philippines as well as by representatives of UNCTAD and UNIDO. An extraordinary Conference of Ministers was held in Santiago in November, 1972, for the purpose of discussing the problems arising from the action taken by

<sup>5</sup> Rothchild, Intersectional Conflicts and Resource Allocation in Zambia, paper delivered at 14th Annual Meeting, African Studies Association, Denver, Colorado, Nov. 1971; Ethe-radge, Zambianization in the Copper Belt, Optima, Johannesburg, Dec. 1969, p. 183 ff; Villakazi, Non-Governmental Agencies and their Role in the Development of Africa, African Studies Review, Vol. XIII, Nr. 2, Sep. 1970, p. 169 ff; Zambia, Six Years After, Zambia Information Services, 1970, p. 31; Standard Bank Review, London, March 1969, p. 21.

<sup>6</sup> Standard Bank Review, London, June 1967, p. 10.

<sup>7</sup> Standard Bank Review, London, March 1968, p. 11.

<sup>8</sup> Gueronik, The Intergovernmental Council of Copper Exporting Countries, a short history, 1970, available at CIPEC, Paris.

<sup>9</sup> The initiative came from a dispute with large multinational oil companies over reduction in posted prices. Art. 7 C OPEC Statute provides that members must have a substantial net export of crude petroleum and fundamentally similar interests to the founding members.

<sup>10</sup> Report of the Executive Director, CIPEC, Paris, 1970, p. 43/44. UN ECLA 180-183, May 5, 1971, Santiago de Chile.

Kennecott to intervene in the export of copper from El Teniente mine.

A Governing Board of two representatives from each member country is responsible to, and works under the general direction of the Conference of Ministers. It coordinates and proposes measures relating to marketing, production processes, expansion of consumption and other relevant areas. It supervises the functions of a Copper Information Bureau. The Board meets twice a year in ordinary session and upon request from at least two member countries in extraordinary session whenever required. The chairman of the Board is elected in rotation from the member countries. The voting procedure corresponds to the one of the Conference of Ministers. Each delegation has one vote.

The Copper Information Bureau provides information, interpretation of data and an assessment of copper production and consumption. It comprises an Executive Committee which elects a chairman from its members for a term of six months on a rotation basis. It meets at least once a month. The Executive Director is appointed by the Governing Board on a fulltime basis. He acts simultaneously as Secretary of the Conference

of Ministers, the Governing Board and the Executive Committee. He has no vote.

The official languages of CIPEC are English, French and Spanish. Expenses are partly met by each member country according to its own account and partly are they shared on an equal basis. The Agreement does not contain any express criteria nor does it imply any qualifications which non-member countries would have to meet in order to be eligible for membership. Article 33 merely states that "any State may with the consent of, and upon conditions to be determined by, the Conference of Ministers, accede to this Agreement". In order to withdraw from membership written notification to the Executive Director is sufficient (Art. 28). Some amendments to this Agreement were adopted at the Kinshasa meeting.

#### **Reactions to CIPEC**

The reactions of the major multinational copper mining companies to CIPEC may best be summarized by referring to an address by Mr. Parkinson in London in October 1970<sup>11</sup>. He said that

<sup>11</sup> Copper: Vital Metal in an Era of Change, keynote address by C. Jay Parkinson, given at the American Metal Markets Second Annual London Forum, London, Oct. 26, 1970, published by Anaconda Company. Mr. Parkinson was Chairman of the Board of Anaconda until Oct. 28, 1971.

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**Hermann Clement**

## **DIE ORGANISATIONSSTRUKTUR DER SOWJETISCHEN AUSSENWIRTSCHAFT**

**(The Organisational Structure of Soviet Foreign Trade and Payments)**

The present study offers a comprehensive survey of the structure and efficacy of the Soviet external trade monopoly. Last but not least due to its extensive basic material mainly derived from Soviet original sources that are difficult of access, this analysis contributes to supplying a long-felt want of information on the technical and organisational shape of Soviet foreign trade.

Large octavo, 362 pages, 1973, paperbound DM 19.50

**V E R L A G   W E L T A R C H I V   G M B H   -   H A M B U R G**

CIPEC would be a dominant factor in the copper scene in the years ahead. Various efforts by CIPEC members had caused and would continue to cause accelerated development of mineral deposits in many other areas of the world considered more stable and dependable. They would at the same time tend to discourage the investment of capital and the indispensable technology which goes along with capital in less inviting areas. Political and social forces, he said, had played a more influential role in the sharp movements of copper prices over the past several years than had simple competitive economics. In the long run, CIPEC countries might lack the necessary cohesive discipline and the financial resources to adhere to, and to enforce, a policy upon the copper industry. Member countries might look for customers outside of established trade channels and thereby easily bring about new and diverse trade pacts with individual nations and trade blocks throughout the Free World, the Communist World and with countries of the Third World. The more developed countries of the Free World could not afford to sit idly by while some less developed or developing countries control markets, prices and use of raw materials to the detriment of the consuming public.

Surely, since the nationalizations in Chile, the Zaire Republic and in Zambia, a definite trend has been noticeable to develop new copper deposits in other areas. An example is the Selebi-Pikwe project in Botswana, where Bamangwato Concessions Ltd. will start mining this year<sup>12</sup>.

Another example is the grand scale venture of Bougainville Copper on the island of Bougainville which is part of the Territory of Papua New Guinea, a United Nations Trust administered by Australia<sup>13</sup>. Quite a number of other new mining ventures are either in the planning stage or have already started operations during the last two or three years<sup>14</sup>.

The bargaining position of the copper exporting countries of CIPEC is simply not comparable to the rather strong position of the OPEC countries in the oil market. This follows partly from the tremendous increase in energy demands in the industrialized world, partly from the particular political situation in the Middle East and transport

problems as well as from some other factors. Nonetheless, it is generally understood that ways must be found to avoid an instability of the international markets for raw materials which today still constitute the major part of exports from developing countries. In order that some stability in the price of raw materials can be guaranteed, international agreements by product between producers and consumers are recommended. Efforts to form a united front of producers versus consumers seem, however, to face many obstacles when the product is supplied in competition with industrialized countries and is vulnerable by the use of substitutes as is the case with copper. The Pearson Report states in this respect, too, that in the long run, the only effective solutions to these difficulties were diversification, greater flexibility, and overall development of the economy. In the meantime, the report states, the process of adjustment and diversification would be smoother and less painful if the international community would help<sup>15</sup>.

### Kennecott versus CODELCO

In view of a series of relatively "uneventful" nationalization cases elsewhere one may remain doubtful if the conflict between Kennecott and CODELCO was really unavoidable or if a different negotiating procedure would have resulted in a smoother solution. After all, it was Kennecott agreeing to the first substantial participation terms for the Chilean Government under the administration of President Frei. In any event, in the fall of 1972, Kennecott decided on court actions in France, West Germany, Sweden, the Netherlands and Italy involving shipments of Chilean copper originating from the El Teniente mine to which Kennecott still claims ownership<sup>16</sup>. This

<sup>15</sup> Partners in Development, Report of the Commission on International Development, established by the World Bank on August 19, 1968, published by Praeger, New York, 1969, p. 81.

<sup>16</sup> Sep. 30, 1972, Kennecott files petition to Court of Extended Jurisdiction, Paris, for Third Party Attachment of copper shipment; Oct. 2, the Court orders the attachment (Le Tribunal de Grande Instance de Paris); November 29, 1972, the same court orders the cancellation of the garnishment under certain conditions; Oct. 19, 1972, Rotterdam District Court orders seizure of West-German freighter on account of cargo of Chilean copper; this request was withdrawn by Kennecott the following day; October 27, 1972, Kennecott applies to District Court, Vasteras, Sweden, to enjoin Swedish buyer from paying for an El Teniente copper shipment; November 29, 1972, Kennecott appeals to Court of Appeals, Svea, Sweden; December 12, 1972, Vormundschaftsgericht in Hamburg establishes a curator for El Teniente to collect its assets in Germany; January 5, 1973, Kennecott applies to Landgericht Hamburg for attachment of copper shipment which is ordered by that court the same day; January 16, 1973, Kennecott files suit in Landgericht Hamburg against a German refinery to turn over to Kennecott that copper shipment or pay the value thereof; January 22, 1973, Landgericht lifts attachment against German refinery; February 20, 1973, Kennecott brings suit in the Superior Courts of Milan, Rome and Brescia against the Italian purchasers of copper ingot bars. For a detailed report see "Confiscation of El Teniente" Kennecott Copper Corporation "White Paper", Supplement No. 3, December 1972 & Supplement No. 4, May, 1973; English translations of the decisions of the French and German tribunals in 12 International Legal Materials 182 (1973) and 12 I.L.M. 251 (1973) respectively (Bimonthly Publication of The American Society of International Law, Washington, D.C.).

<sup>12</sup> 15 p.c. Botswana Government, 85 p.c. Botswana RST which is owned to 34 p.c. by public shareholding, 30 p.c. American Metal Climax/RST Groups of Companies, 30 p.c. Anglo American Corporation / Charter Consolidated Groups of Companies, 6 p.c. Fosco Mineral Separations, Optima, Johannesburg, June 1972, p. 62.

<sup>13</sup> 20 p.c. held by the Trust Administration, 80 p.c. Bougainville Mining Ltd. which is in turn held 2/3 by Conzinc Riotinto of Australia, Ltd., 1/3 by New Broken Hill Consolidated, Ltd. — see Engineering and Mining Journal (E/MJ) McGraw Hill, New York, Feb. 1973, p. 63.

<sup>14</sup> See Copper Expansion Table, EMJ, Feb. 1970, p. 70.

is not the occasion to go into the legal aspects of nationalization in Chile or in other countries. Many volumes of learned legal writing are already available and more appears to come off the press daily — without seeming to help much to solve the many pending issues in this field today. The issues are not of legal nature. Court action will further confuse rather than clear up the conflict. Instead, Kennecott's court actions in the various European countries who are traditionally buyers of Chilean copper had a consolidating effect on the member countries of CIPEC. Moreover, it constitutes an attempt on the part of the American corporation to involve European countries in their conflict with Allende which is in its origin and its course of happenings truly American.

Following a judgement of the Court of Extended Jurisdiction of Paris of September 30, 1972, CIPEC members met in Paris in October behind closed doors in order to discuss the consequences of Kennecott's action. From November 30, to December 1, 1972, the Conference of Ministers held an extraordinary meeting in Santiago for the same purpose. It received an unusual attention from non-member countries. Representatives from Algeria, Botswana, Bulgaria, Ecuador, Panama, The Philippines, Poland, The People's Republic of China, Roumania and Yugoslavia attended the session as observers. The Latin American Free Trade Association (LAFTA) ECLA, the Cartagena Agreement Organization, UNIDO and UNCTAD were also represented<sup>17</sup>.

### Closer Cooperation

In Santiago, several resolutions were unanimously adopted all of which reflect the firm intention of the members to a more determined and closer cooperation. One resolution contains "Measures of Defense and Solidarity" and states that "any act which impedes or hinders the exercise of the sovereign right of countries to dispose freely of their national resources in order to further their development constitutes economic aggression." It recommends that the member countries suspend all economic and commercial relations with Kennecott; that they communicate directly with those countries where court actions are brought by Kennecott; that the CIPEC countries agree not to take advantage of the situation created by actions against Chilean copper by taking over those markets which are affected by the dispute; that raw material producing developing countries should cooperate to set up a mechanism for the defense of their national resources, that a meeting with OPEC should be held in order to establish this permanent mechanism. A second resolution

decided in fact to set up a permanent mechanism for protection and solidarity in face of any economic aggression of which members may become victims. A further resolution concerned itself with the admission of new members as an attempt to strengthen the Organization.

The "Special Committee on a Permanent Mechanism of Protection and Solidarity Against Economic Aggression", which was formed in Santiago, held its first meeting in Paris from January 29 to 31, 1973. During this meeting, detailed measures against economic aggression were agreed upon for recommendation to the Conference of Ministers which will hold its next meeting in Lusaka beginning on the 10th of September, 1973. The Special Committee also discussed Zimbabwe's decision to close its frontier with Zambia which occurred while the meeting was in progress. That decision was termed a specific economic aggression and denounced immediately by the Committee<sup>18</sup>.

### United Front In Future

Concluding it is appropriate once more to quote a statement from the Pearson Report<sup>19</sup>: "Interventions by large industrial powers on behalf of their investors have a long history, the memory of which looms large in hostility toward private investment. Respect for the sovereignty of the host country is indispensable to the creation of mutual confidence." "It is of course unrealistic to expect governments of capital-exporting countries to remain passive when property of their citizens is subject to discriminatory or confiscatory treatment by other countries but intervention should take a form, whenever possible, which will not jeopardize long-term relations."

Thus, the keynote is moderation and patience regardless whether action originates with governments or private investors. It is unfortunate that confrontation is here between governments and private corporations. It almost calls for intervention by investors' governments. Concerted action from OPEC and CIPEC countries may be difficult to achieve. Yet, it appears that increased pressure will drive the CIPEC members towards that united front which Mr. Parkinson deemed doubtful. If accomplished, it might provide that position of security to the copper exporting countries which would make it possible to enter into the producer-consumer agreement of which the Pearson Report speaks.

<sup>18</sup> CIPEC Press Release PR/20 dated 1 Feb. 1973; on Zambia's complicated foreign relations situation with Zimbabwe (Rhodesia) see R a d m a n n, Pan African Journal, Vol. V, No. 2, Spring 1972, pp. 208, 209.

<sup>19</sup> Ibid, p. 107.

<sup>17</sup> CIPEC Final Communiqué, PR/ 18 A.