A/AC.97/5/Rev.2
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I. THE STATUS OF PERMANENT SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES

II. REPORT OF THE COMMISSION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

UNITED NATIONS

I. THE STATUS OF PERMANENT SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES

Study by the Secretariat

II. REPORT OF THE COMMISSION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

UNITED NATIONS

New York, 1962

Explanatory note

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.

The territorial nomenclature used in this publication is that in current use at the time of the preparation of the manuscript of this publication and does not imply any expression of opinion on the part of the Secretariat of the United Nations on the legal status of the countries or territories concerned.

With respect to newly-independent countries, the present publication covers, in that category, formerly dependent territories that had attained independent status on or before 30 April 1962.

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Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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II. Report of the Commission on Permanent Sovereignty over Natural Resources

LIST OF ABREVIATIONS

AJIL	American Journal of International Law
Annual Digest	Lauterpacht, *Annual Digest and Report of Public International Law Cases*
Br. and For. St. Papers	British and Foreign State Papers
D.F.L.	Decreto con fuerza de ley
D.L.	Decreto-Ley; décret-loi
ECA	Economic Commission for Africa
ECAFE	Economic Commission for Asia and the Far East
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
ECSC	European Coal and Steel Community
EEC	European Economic Community
ESC	Economic and Social Council
ETS	European Treaty Series
Euratom	European Atomic Energy Community
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
ICJ	International Court of Justice
ILO	International Labour Office/Organisation
IMF	International Monetary Fund
ILC *Yearbook*	Yearbook of the International Law Commission
L.D.	Legislative Decree
LNTS	League of Nations Treaty Series
NRGT	G. Martens, *Nouveau Recueil Général de Traités*
OEEC	Organisation for European Economic Co-operation
OR	Official Records
PCIJ	Permanent Court of International Justice
Recueil TAM	Recueil des Tribunaux Arbitraux Mixtes institués par les Traités de Paix
TC	Trusteeship Council
UKTS	United Kingdom Treaty Series
UNRIAA	United Nations Reports of International Arbitral Awards
UNTS	United Nations Treaty Series
USTIAS	United States Treaty and International Agreements Series
WTIS	World Trade Information Service, United States Department of Commerce

I. THE STATUS OF PERMANENT SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES

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INTRODUCTION

1. The present revision of the Secretariat study on permanent sovereignty over natural wealth and resources is submitted to the General Assembly in accordance with the terms of its resolution 1720 (XVI) of 19 December 1961, by which the General Assembly,

"*Recalling* its resolution 1314 (XIII) of 12 December 1958,

"*Desiring* to promote the strengthening of permanent sovereignty of peoples and nations over their natural wealth and resources,

"1. *Expresses its thanks* for the revised study on the status of permanent sovereignty over natural wealth and resources, prepared by the United Nations Secretariat;[1]

"2. *Requests* that arrangements be made speedily for the printing of that study, together with the report of the Commission on Permanent Sovereignty over Natural Resources,[2] so that these documents may be available to all who wish to consult the useful information they contain;

"3. *Decides* that the United Nations work on permanent sovereignty over natural wealth and resources shall be continued and recommends that priority be given for discussion of this matter in the Second Committee at the seventeenth session of the General Assembly."

2. While the history of the discussions relating to the question of permanent sovereignty over natural wealth and resources in the General Assembly and its organs has been dealt with in a document[3] submitted to the Commission at its first session, it is pertinent to recall here the terms of General Assembly resolution 1314 (XIII) of 12 December 1958, entitled "Recommendations concerning international respect for the right of peoples and nations to self-determination", by which the Commission was established.[4]

3. The operative part of the resolution in question reads, in part, as follows:

"*The General Assembly,*

"...

"1. *Decides* to establish a Commission composed of Afghanistan, Chile, Guatemala, the Netherlands, the Philippines, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic and the United States of America to conduct a full survey of the status of this basic constituent [the right of peoples and nations to permanent sovereignty over their natural wealth and resources] of the right to self-determination, with recommendations, where necessary, for its strengthening, and further decides that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard shall be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries;".

4. At its second session, held from 16 February to 17 March 1960, the Commission had before it the Secretariat's *Preliminary Study on Permanent Sovereignty over Natural Wealth and Resources* (A/AC.97/5). After considering that document, it adopted a resolution[5] the operative part of which reads, in part, as follows:

"*The Commission on Permanent Sovereignty over Natural Resources,*

"...

"2. *Requests* the Secretary-General, taking into account the views expressed by the members of the Commission at this session, to:

"(*a*) Invite Member States and specialized agencies to verify the material in the preliminary study, and to submit additional pertinent information, with regard to matters within their respective jurisdictions;

"(*b*) Prepare, not later than 15 March 1961, in the light of such submissions, a revision of the study for consideration by the Commission at its next session;

"(*c*) Include in the revised study appropriate references to United Nations decisions, reports and studies relating to rights and duties of States under international law and to international co-operation in the economic development of under-developed countries;

"3. *Expresses the hope* that Member States which have not yet already done so would as soon as possible submit the necessary information on the status of permanent sovereignty over natural wealth and resources within their respective jurisdictions."

5. In preparing the first revised study (A/AC.97/5/Rev.1), the Secretariat was guided by the views expressed by members of the Commission at its second session and, in particular, by the summary of these views set forth in the progress report submitted by the Commission to the Economic and Social Council at its twenty-ninth session (E/3334), of which the Council took note by resolution 754 (XXIX). Special consideration was given to the wishes of some members of the Commission that the revised study include more factual information on sovereignty over natural resources in the less developed countries and in Non-Self-Governing Territories.

6. At its third session, held from 3 to 25 May 1961, the Commission had before it the above-mentioned revised study of the Secretariat. After consideration of that study, the Commission adopted the following resolution:[6]

[1] A/AC.97/5/Rev.1 and Corr.1-2 and Add.1.

[2] E/3511.

[3] A/AC.97/1.

[4] It may also be noted that the General Assembly, by resolution 1515 (XV) of 15 Dec. 1960 on the item "Concerted action for economic development of economically less developed countries", recommended, *inter alia*,

"...that the sovereign right of every State to dispose of its wealth and its natural resources should be respected in conformity with the rights and duties of States under international law;" (see also sect. E of chap. V).

[5] A/AC.97/7.

[6] A/AC.97/10, resolution I.

"A

"The Commission on Permanent Sovereignty over Natural Resources,

"Bearing in mind the task entrusted to it by the General Assembly in its resolution 1314 (XIII),

"Convinced of the need for recommendations to strengthen the right of peoples and nations to permanent sovereignty over their natural wealth and resources,

"Requests the Economic and Social Council to recommend that the General Assembly should adopt the following draft resolution:

" '*The General Assembly,*

" '*Bearing in mind* resolution 1314 (XIII) adopted by the General Assembly on 12 December 1958, which established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries,

" '*Bearing in mind* resolution 1515 (XV) adopted by the General Assembly on 15 December 1960, which recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

" '*Considering* that any measure in this respect must be based on recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

" '*Considering* that in order to promote international co-operation for the economic development of under-developed countries, based on respect for the principles of equal rights and the right of peoples and nations to self-determination, it is desirable to establish in advance economic and financial agreements,

" '*Considering* that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

" '*Considering* the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connexion.

" '*Attaching particular importance* to the question of promoting the economic development of under-developed countries and securing their economic independence,

" '*Declares that*

" '1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of the well-being of the people of the State concerned;

" '2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities;

" '3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources;

" '4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security, or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases, the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, national jurisdiction should be resorted to. Upon agreement by the parties concerned settlement of the dispute may be made through arbitration or international adjudication;

" '5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality;

" '6. International co-operation for the economic development of under-developed countries, whether in the form of public or private capital investments, technical assistance, or exchange of scientific information, shall be so encouraged as to contribute in every possible way to the exercise of sovereignty as described in paragraph 5 above;

" '7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the United Nations Charter and hinders the development of international co-operation and the maintenance of peace;

" '8. States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the United Nations Charter and the provisions of this resolution';

"Requests the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly.

"B

"The Commission on Permanent Sovereignty over Natural Resources,

"Having examined the revised study on the 'Status of Permanent Sovereignty over Natural Wealth and

Resources' prepared by the United Nations Secretariat (A/AC.97/5/Rev.1 and Add.1),

"1. *Thanks* the Secretariat for the study it has prepared;

"2. *Requests* the Economic and Social Council to arrange for its publication, together with the Commission's report, so that the document may be available to all who wish to consult the useful information which it contains."

7. The Economic and Social Council at its thirty-second session had before it the report (E/3511) of the Commission to which the above-quoted resolutions were annexed.[7] In its resolution 847 (XXXII) the Council, considering that there was insufficient opportunity at its thirty-second session to consider the Commission's report adequately, decided to transmit the report, together with the summary records of its discussions thereon, including the proposals for the amendment of resolution I A contained in the annex to the report, to the General Assembly at its sixteenth session.[8]

8. At the General Assembly's sixteenth session, the item was referred to the second committee which adopted, without debate, a draft resolution subsequently adopted in plenary session (for text, see para. 1 above).

9. The scope and content of the present study are determined by the various resolutions of the General Assembly and of the United Nations Commission on Permanent Sovereignty over Natural Resources mentioned in the preceding paragraphs.

10. In response to the terms of reference established by the Commission at its second session, considerable emphasis has been placed upon the chapters on Non-Self-Governing Territories and territories under International Trusteeship (chapter IV) and on economic data and related factual material (chapter V). Under the terms of paragraph 2 (*c*) of the resolution in question, the revised study was to include "appropriate references to United Nations decisions, reports and studies". It will be noted that the United Nations reports and studies in question, and especially those dealing with economic matters, draw to an appreciable degree upon unofficial material, and in that respect the revised study, while keeping within the terms of the resolution, complies with the wish expressed by some members of the Commission that such material be included.

11. Every effort was made to include in this revision information on pertinent legislative changes in newly-independent States. Since available material on this topic did not approach the scope of the information generally given in chapter I, and bearing in mind that the States in question have typically retained, for the time being, the legislation in force prior to their attainment of independence, the scope of chapter IV was expanded to cover States which have attained their independence in the most recent past. The great majority of States in this category became Members of the United Nations at the outset of the General Assembly's fifteenth session, and by the time the present study had to enter the publication process only a very limited number of responses to the Secretariat's request for pertinent information from the Governments concerned had been received in time for inclusion in this study.

12. It has, however, been possible to review, in brief and on a limited scale, the modifications which certain concession agreements have undergone as a result of changes in national status and the attainment of independence.

13. The treatment accorded to the various new topics included in the revised study necessarily varies from region to region, due largely to the differences in emphasis placed upon these topics by the regional economic commissions. Such differences, of course, tend to reflect the relative importance of the topics in question in the region concerned.

14. While the present study incorporates information received from Governments in response to the request sent out in connexion with the earlier preliminary and revised studies but received too late for inclusion in the latter study,[9] only sixteen Governments responded to the renewed request for information sent out in pursuance of the resolution adopted by the Commission at its second session. Additional pertinent information as well as corrections resulting from the verfication of the earlier study received are incorporated in the present text. Material assistance was received from the specialized agencies, notably the International Atomic Energy Agency and the International Labour Office.

15. The organization of the study described below is not indicative of the importance of the various chapters and sections but is, rather, designed to provide a convenient arrangement of the wide scope of the material included. In terms of general content, the greater part of the study centres on measures of control (as expressed in laws, decrees, treaties and agreements), though a substantial amount of factual material has also been included. A separate chapter (chapter V), is devoted to economic data and related factual material. The chapters on Non-Self-Governing and Trust Territories and on national measures contain factual as well as legal information.

16. In accordance with the intent of the General Assembly and the views of the Commission members, the study has focused on the problem of control by States over natural wealth and resources in relation to foreign individuals or corporate enterprises. In some instances, the relevant governmental measures refer expressly to foreign nationals; in many other instances, foreign enterprises are covered by measures of general application. This is generally the case in regard to exploitation of mineral resources and expropriation. Consequently, in order to cover pertinent material applicable to foreign enterprise, it was necessary to include provisions which apply generally to both nationals and non-nationals. However, in dealing with factual data, the material in the study has been limited to data relating to foreign enterprises or individuals.

17. The expression "natural wealth and resources", as used in General Assembly resolution 1314 (XIII), has been construed on the basis of the views expressed by the members of the Commission and by Governments responding to the inquiry of the Secretariat. Thus, measures and factual data relating specifically to land, subsoil and water resources have been included wherever relevant. In addition, more general provisions which pertain to foreign capital and are applicable to

[7] *General Assembly, Official Records, Sixteenth Session, Supplement No. 3*, para. 431.

[8] *Ibid.*, para. 432.

[9] A/AC.97/5/Rev.1/Add.1.

natural wealth and resources have been dealt with in so far as they are pertinent to the question of the status of sovereignty. In this respect, we were guided by the wishes of several members of the Commission that previous studies of the United Nations concerning foreign capital should be utilized; at the same time, it was considered necessary to avoid duplicating other studies of an economic character concerned with foreign investment. It should be mentioned that, except for certain treaties, the study does not include material on regulations of the resources of the territorial sea, as this subject was dealt with by the Secretariat in a separate study.[10]

18. The chapter on international agreements (chapter II) covers both bilateral and multilateral agreements which deal, either expressly or by implication, with the rights of foreign nationals and States in regard to natural wealth and resources. As requested by several members of the Commission, the study includes certain regional treaties which govern in some respects the exercise of sovereignty over particular natural resources; the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community were specifically mentioned in this connexion and are therefore dealt with in some detail. A brief section in this chapter covers treaty arrangements under which rights have been accorded to states in foreign territory relating to natural resources as, for example, in respect of water resources and transit rights.

19. The terms of reference of the Commission provide that, in the survey to be made, "due regard shall be paid to the rights and duties of states under international law". Certain members of the Commission specifically requested that the Secretariat study deal with this subject particularly with reference to the responsibility of States in regard to the property and contractual rights of non-nationals. This subject is, in part, covered by chapter II, relating to bilateral and multilateral treaties under which States have assumed international obligations with respect to the rights of foreign nationals to own or exploit natural resources. The matter is also treated in chapter III, which attempts to summarize international judicial and arbitral decisions pertaining to the international responsibility of States regarding the property and contractual rights of foreign nationals. It is, however, not suggested that the decisions dealt with in section A of that chapter give a complete indication of the various propositions and views to date accepted by jurists or by State practices; the cases are presented for information, without evaluation of their merits or value as precedents. A few recent judicial decisions of national courts of particular relevance to the subject are also included. No attempt is made to summarize the rules of international responsibility in general terms or to characterize any of the decisions as binding precedents. The task of codifying or analysing the law in this field has been undertaken by the International Law Commission and it would not seem appropriate for this study to attempt a formulation or systematization of customary international law. However, it has been thought useful to include relevant material from previous official efforts at codification, as well as summaries of the relevant studies of the International Law Commission, the Inter-American Conference, the Asian-African Legal Consultative Committee and the Inter-Disciplinary Conference on International Understanding and Peaceful Co-operation, convened by UNESCO at Prague in 1958.

20. Reference is also made in the Commission's terms of reference to the "importance of encouraging international co-operation in the economic development of under-developed countries". It was recognized in the discussions of the Commission that this topic had been the subject of a great number of resolutions of the General Assembly and the Economic and Social Council, and consequently, that the Secretariat study need not deal with it in detail. With this in mind, the study contains a fairly brief section summarizing those resolutions which relate closely to the subject of sovereignty and provides references to other resolutions on international co-operation in economic development.

21. In preparing both the preliminary and revised studies, the Secretariat, as requested by the Commission, asked all Member Governments for information to be included in the survey. Replies were received from forty-one Governments.

1. *Governments which responded to the request for information in connexion with the preliminary study:*

Australia
Belgium
Bulgaria
Cambodia
Canada
Ceylon
Cuba
Denmark
Federation of Malaya
Finland
France
Iran
Japan
Jordan
Laos
Mexico
Netherlands
Norway
Pakistan
Philippines
Peru
Sudan
Sweden
Thailand
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
Union of South Africa
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
United States of America
Yugoslavia

2. *Governments which responded to the request for verification and information in connexion with the revised study:*

Afghanistan
Austria
Canada
Chile
China
Cyprus
Czechoslovakia
Hungary
India
Iran
Laos
Netherlands
Nigeria
Norway
Sweden
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Yugoslavia

The information thus procured has been included or referred to in the study. Similar inquiries were addressed to the regional economic commissions of the United Nations and to the specialized agencies, from which sources pertinent material has been received and inserted in the report.

[10] *Laws and Regulations of the Régime of the Territorial Sea.* United Nations publication, Sales No.: 57.V.2.

Chapter I

NATIONAL MEASURES AFFECTING THE OWNERSHIP OR USE OF NATURAL RESOURCES BY FOREIGN NATIONALS OR ENTERPRISES

1. This chapter essentially deals with the variety of measures by which States exercise sovereignty over their natural resources. The measures through which sovereignty is exercised may depend upon a number of variables: the availability of actual or potential natural wealth in terms of resources, the basic economic structure as initially determined by the availability of given resources, the factors determining domestic capital formation in relation to capital needs and other, largely pragmatic, considerations of a similar kind. The exercise of sovereignty will also be substantially determined by political and economic policy considerations, as well as by the juridical system and governmental structure existing in the country.

2. The following sections are concerned with the ways and means by which States, in the exercise of their sovereignty, control an exchange of, on the one hand, raw materials, energy and so forth, and, on the other hand, capital—whether in the form of funds or equipment, or in "invisible" forms, such as technological or managerial skills and methods. States will, in this exchange, wish to achieve a balance that is most favourable to their national interest by means of measures of control, having due regard to the need for suitable inducement to the other partner or partners in this exchange.

3. This chapter is intended to illustrate the range of regulatory measures adopted by States with respect to foreign enterprise—whether individual or corporate. Beginning with ownership status of natural resources and discretionary measures of control over entry, the discussion will include controls at the operational level, measures of taking, and, finally, measures of exclusion.

A. Control over entry

4. There is a variety of systems through which Governments exercise discretion on an *ad hoc* basis with respect to permitting foreign enterprise in natural resources development and exploitation operations. These systems also provide a framework for the imposition of obligations and national control over operations, management and financing of such enterprise. This section will, however, be concerned primarily with measures affording government control over entry, leaving the various conditions and requirements imposed through these systems to be dealt with under section B below.

5. The present section also covers, wherever possible, the question of the ownership of the resources concerned. In some cases, the information set forth is limited to constitutional provisions regarding ownership status, without reference to any legislative measures dealing with conditions or exclusions which might relate to grants of rights to foreign enterprises.

6. Natural resources development operations are often subject to acquisition of rights from government authorities, usually in the form of concessions or leases, preceded, in some instances, by licences or permits. Although in many instances required for operations by nationals to the same extent as for operations by foreigners, governmental grants of permits, licences, leases and concessions are an important means of controlling the acquisition and the extent of rights of foreigners in a country's natural resources. Such systems will be considered hereunder in sub-section 1.

7. The initiation of foreign business activities or investments is, in many countries, subject to control by means of requirements for prior governmental authorization or approval either for entry or for special advantages; through such requirements, governmental policy on economic development can be implemented. Relevant measures will be discussed in sub-section 2 below, in so far as they may constitute measures for exercising control over the entry of foreign business interests into the development and exploitation of natural resources.

1. Discretionary grants of rights by Governments: systems of concessions, leases and licences

8. There is a growing body of constitutional and legislative provisions governing conditions for the acquisition by private enterprises of rights to natural resources of particular national economic significance, although there are countries where such legislation is lacking and where each concession agreement sets forth conditions and obligations, all of which are negotiated on an *ad hoc* basis. These laws which, in effect, limit rights and prescribe conditions which may be negotiated with private persons by the appropriate governmental authority, sometimes also requiring legislative approval for particular grants, indicate ways in which legislatures of various countries consider that sovereign rights and national interest in natural resources may best be protected and served. Typically, legislation limits the governmental authorities' discretion only with respect to maximum rights and minimum obligations and allows wide latitude for terms more favourable to the nation.

9. The following paragraphs and selected examples will deal with (*a*) rights with respect to natural resources which are subject to the discretionary grant; (*b*) limits on area, duration and resources covered in such grants; and (*c*) provisions specially applicable

to foreigners in this connexion. Conditions imposed through systems of government grants of concessions will be dealt with in other parts.

a. Rights subject to the discretionary grant

Subsoil rights

10. Mineral and petroleum exploration and exploitation by nationals or foreigners is, in most countries, subject to the grant, by the State, of rights embodied in a permit, licence, lease or concession. Usually, subsoil rights, deemed separate from rights to surface, are declared either to be owned by the State or to be subject to governmental authorization, regardless of ownership. In certain countries, mineral lands already in private ownership prior to the establishment of a comprehensive régime remain outside the governmentally administered system by which mineral rights are acquired; however, in most such countries, these areas are rapidly being eliminated. The United States of America is one of the few countries in which private ownership of minerals in the subsoil prevails, although there are extensive areas remaining within the national domain to which mineral and oil rights may be acquired only by government grants or leases.

11. Separate grants of rights are often required for different stages of operations. In the case of petroleum, a reconnaissance permit typically authorizes preliminary exploration work—often on a non-exclusive basis; an exploration licence or lease affords the holder exclusive exploration rights and usually entitles him to acquire a lease or concession to exploit the area explored (e.g., Morocco) or a prescribed percentage of the area originally covered by the exploration licence (e.g., France, Guatemala, Pakistan, Turkey). In some countries (e.g., the Canadian provinces of Alberta, British Columbia and Saskatchewan, the Northwest Territories and Italy), the area to which the explorer is entitled to acquire exploitation rights is "checker boarded" so that the State retains blocks within the valuable area explored.

12. The exclusive exploration right and exploitation rights are sometimes linked in a single concession (e.g., Iran, Libya, Venezuela). With respect to mineral rights other than petroleum, exclusive rights are, under many laws, subject to grant by government authorities and the discoverer of workable mineral deposits is usually recognized as having the right to an exploitation lease or concession (e.g., France, United Arab Republic), or, in some instances at least to compensation in lieu of mining rights (e.g., Turkey).

13. To the extent that the holder of an exploration right is recognized as being entitled—on past fulfilment of exploration conditions in the case of petroleum, or on discovery in the case of mines—to exploitation rights, the discretion of governmental authorities to grant or to refuse such rights is, of course, more limited once the initial rights have been granted. When the right to exploit is to be given directly to a person other than the explorer—which is the case with respect to areas which have been explored and have reverted to the State because of compulsory area reduction, or surrender, or other reasons—then, under some legislation, the discretion of governmental authority is the same as that exercised for an exploration right (e.g., India). In some other instances, special procedures, such as competitive bidding and special preferences, are provided (e.g., Venezuela).

14. Legislative provisions with respect to rights subject to discretionary grant are illustrated by the examples set forth below.

*Austria** The Mining Law (BGBL No. 7354) distinguishes between three principal categories of minerals, both with respect to exploration and to exploitation. (1) Specific minerals are reserved to the Federal Government in terms of both ownership and exploitation. These cover, principally, rock salt and allied saline minerals. In addition, under the Bituminous Substances Law (GBIOE No. 375/1938), the State has the exclusive right to search for and exploit all forms of bituminous substances. (2) Other minerals are either the property of the owner of the surface land, but may be searched for and mined with the permission and under the supervision of the State mining authorities only; or (3) are so-called "free minerals" which may be searched for with the permission of the mining authorities, title to the deposits being acquired by mining them.

*Belgium** Underground mineral deposits may be exploited only under a concession granted by the Government. This provision also applies to the owner of the surface land. Special authorization is required for the search for and exploitation of deposits of bituminous rock, petroleum and combustible gases.

*Bulgaria** Under the Constitution, all mineral and other natural resources, forests, waters,...are State, i.e., national property (Article 7). National property is the main basis of the country's economic development and enjoys special protection. The State can itself manage or concede to another the management of the means of production at its disposal (Article 8). Private monopoly agreements and associations such as cartels and trusts are prohibited (Article 10).

*Canada*** Under Canadian mining legislation, the grant of rights is quite specific and leaves comparatively little to the discretion of authorities.

The various provinces administer the public mineral resources except for lands vested in the Federal Government. Private ownership of subsoil rights exists in the case of surface lands which have been alienated without reservation of minerals and of mines which have been granted under title of sale. Most subsoil resources are, however, publicly owned.

With respect to Federal lands, the present law provides that, when grants are made, the mines and minerals, including petroleum and natural gas, are reserved to the Crown. This is also the case in most of the provinces, although in some a deed includes subsoil rights unless they are expressly reserved. Laws on licensing, leasing and grants of mineral rights apply either to publicly owned lands or to subsoil of lands which have been alienated with reservation of minerals.

The Quebec Mining Act provides for a prospecting licence, called a miner's certificate, which expires on the first day of January following its issuance and which is renewable. This is granted to any person over 18 years of age and entitles the licensee to prospect on all public lands and on private lands with the consent of the proprietor, or, if that is refused, with the authorization of the Mining Commissioner. The licensee is entitled to stake claims for himself or for others. The claim holder is entitled, for one year after giving notice of his claim, to secure a development licence, which is valid for one year and renewable if adequate work is shown.

Mining operations may not be undertaken until a mining concession is granted. A mining concession in Quebec is a grant under title of sale. The sale is not confirmed until two years have elapsed during which obligatory work has been completed.

Generally, similar systems operate in other provinces and in the Federal territories, except that mining leases rather than grants under title of sale are given.

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* Information provided by the Government.

** Information supplied by the Government supplemented by *Digest of the Mining Laws of Canada,* Department of Mines and Technical Surveys.

The Canada Oil and Gas Regulations, applicable in the Yukon and Northwest Territories and in those lands underlying the territorial waters of Canada, wherever those are within federal jurisdiction, provide for a non-exclusive exploration licence which is renewable annually. This licence accords no right to further grants. The Regulations also provide for an exclusive exploration permit granted, in that area of the Northwest Territories which is south of the 70th parallel of latitude, for an initial period of three years. This permit is renewable for two additional three year periods, as of right, if sufficient development work is carried out. In the area north of this parallel, the exploration permit is granted for an initial six year period and is renewable for two additional three year periods if sufficient development work is accomplished. These permits are granted in the discretion of the Minister of Northern Affairs and National Resources. In both these areas a permittee in good standing is entitled to secure a lease under which exploitation work is permitted covering up to 50 per cent of the permit area. No lease is granted to an individual unless the Minister of Northern Affairs is satisfied the lessee is a Canadian citizen and will be the beneficial owner of the interest that will be granted. As far as companies are concerned, the Regulations require that, in order to obtain a lease, interested oil companies must be incorporated in Canada and must make their shares available to Canadians by listing them on recognized Canadian stock exchanges or show that Canadian citizens are the beneficial owners of at least half the issued equity stock.

Provincial legislation on acquisition of petroleum rights follows much the same pattern as that outlined above, except that, with respect to area reduction, some provinces provide for "corridors" between blocks under lease which revert to the Government upon expiry of an exploration permit. Federal Regulations now coincide with those of some of the provinces, notably Alberta, with respect to area reduction.

*China (Taiwan)** The Mining Law of 26 May 1930, as amended to 30 July 1959, provides that all mineral deposits within the country's territory are owned by the State and shall not be prospected or operated unless a mining right has been acquired (Article 1). The right of prospecting or operating a mineral deposit is a mining right (Article 4). The holder of a prospecting right is given priority in respect of an exploitation right up to 30 days after the expiration of the former right (Article 32). When an area for which an application for a prospecting right has been made is deemed suitable for exploitation, the applicant may be ordered to submit, within a given time, an application for mining right, failing which the original prospecting right may be cancelled (Article 24).

Prospecting for and exploitation of petroleum, natural gas, uranium, thorium and coking coal is reserved to the State which may, however, lease such operations to private individuals (Article 8).[1]

*Czechoslovakia** Under the Constitution of the Czechoslovak Socialist Republic adopted on 11 June 1960, national property under collective socialist ownership is declared to include, in particular, natural wealth and basic sources of energy; forests, waterways and natural spas;... (Article 8, paragraph 2).

*Denmark*** The Act on the Exploration and Exploitation of Raw Materials in the Subsoil (No. 181 of 8 May 1950) provides that minerals, excluding peat, lignite, chalk and other substances subject to private economic exploitation before 1932, belong to the State. Licence for exclusive exploitation may be granted by the Government after consideration by a Committee appointed by Parliament. Exclusive right may not be granted until complete plans have been submitted to, and approved by, the Ministry of Public Works, which must, *inter alia*, be satisfied with the sufficiency of capital.

France Under the *Code Minier* (Decree No. 56-838, 16 August 1956), exclusive mining or petroleum exploration rights are granted by *decret en Conseil d'Etat* on the report of the Ministry of Mines after an inquiry and advisory report by the *Conseil général des mines* (Articles 9 and 12). An exploration permit holder has, during the validity of the permit, exclusive right to apply for exploitation concessions. Mineral or petroleum exploitation may be carried on even by the surface owner only under an exploitation concession which is granted by *decret en Conseil d'Etat* and to which is attached a book of conditions *(cahier des charges)*, comprising conditions generally applicable to concessions for the mineral conceded, and also obligations specially applicable to the particular concession (Article 25). (For petroleum, a short-term exploitation permit, valid only until production totals 300,000 tons, may be obtained.)

Greece The Petroleum Law (No. 3948 of 1959) declares the exclusive right of the State to explore and exploit petroleum and provides that the State may exercise this right either by granting concessions to third parties or by contracting directly for exploration and exploitation work (Articles 1 and 2). Non-exclusive reconnaissance is authorized by permit; a holder of exclusive exploration rights has the right, upon reporting a discovery of an exploitable quantity of oil, to an exploitation concession over the productive areas covered and may be permitted to continue exploration on the remaining area. The area of the original exploration right is reduced by one half within two years.

Guatemala The Petroleum Code (Decree No. 345, 7 July 1955) declares that all deposits or occurrence of petroleum belong to the nation; that everything connected with petroleum operation is of public utility and is governed by the Code; and that no person may undertake petroleum operations except by virtue of the exercise of a petroleum right related to surface reconnaissance, exploration, exploitation, refining or transport of petroleum (Articles 1 to 4).

The Code provides for rights covering non-exclusive surface, reconnaissance, exclusive exploration and exclusive exploitation. A holder of an exclusive exploration right is recognized as being entitled to convert this to an exploitation right covering not more than one half of the exploration area. Exploitation rights acquired as a consequence of the exercise of an exploration right are governed by the laws and regulations in effect at the time the exploration right was granted (Articles 35, 36, 43). In national reserve zones, defined as those which had formed part of an exploration or exploitation right and which, for any reason, had reverted to the State, exploration and exploitation rights are granted after public bidding without any obligation of the State to accept any offer (Articles 21 and 22).

Hungary Under the Constitution, all natural resources, forests, waters, basic sources of energy, as all people's property, are State property.

*India** Under the Mines and Minerals (Regulation and Development) Act (No. 67 of 1957), no person may undertake any prospecting or mining operations in any area, except under either a prospecting licence or a mining lease.

A certificate of approval good for one year is a prerequisite to the acquisition of a prospecting licence or mining lease. A prospecting licence accords its holder a preferential right over other applicants for obtaining a mining lease in respect of the land covered in his licence. The State authority has discretion to ignore priority of application, but must record its reasons for doing so, and secure the approval of the Central Government (Section 11).

Iran The Mining Law (18 May 1957) declares the State to be the sole owner of petroleum, natural gas and radioactive elements. Other minerals, including metals, nitrates, solid fuels and precious stones in or under privately owned surface are not declared publicly owned, but may be prospected and exploited only under licence granted by the Ministry of Industries and Mines. The certified discoverer of a mineral

* Information provided by the Government.
** Summary provided by the Government.
[1] For restrictions as to nationality, see Section E below.

deposit who holds a prospecting licence may apply for an exploitation licence. The terms of the exploitation licence are fixed by the High Council of Mines. If the discoverer is refused an exploitation licence, he is reimbursed for such expenses of discovery as were noted in his discovery certificate, and receives a royalty of 1 per cent (Articles 19 and 20).

The Petroleum Act (31 July 1957) authorizes the National Iranian Oil Company (NIOC) to negotiate any agreement it deems appropriate on the basis of terms provided in the law.[2] Such agreements must be confirmed by the Council of Ministers and approved by the legislature (Article 2). At least one third of the total exploitable areas must be conserved as national reserves (Article 5). Offers in response to NIOC invitations for bids with respect to any district must indicate, *inter alia*, the amount of cash bonus offered and the extent of NIOC participation to be accepted. The Company is, at all times, free to accept or reject any or all proposals (Article 9E). A single agreement may envisage reconnaissance exploration and extraction operations or any one of these operations (Article 11).

Italy Under the Petroleum Law (No. 6 of 11 January 1957), exploration or exploitation, except by the National Hydrocarbons Agency (Ente Nazionale Idrocarburi—ENI) may be carried on only by virtue of permits or concessions. Exploration permits are granted by decree by the Minister of Industry and Trade after consideration of the applicant's work programme and his technical and financial capacity.

An exploration permittee who discovers oil is entitled to one or more concessions, each comprising 3,000 hectares within his permit area, but between each such concession, a corridor is reserved to the State. Such reserved areas, if not exploited by ENI, are awarded after competitive bidding (Articles 1, 2, 13, 14, 29).

*Laos** Law No. 42 of 26 January 1959, provides that all mineral deposits are the property of the nation and exploration and exploitation may be undertaken only with authorization and under control of the Government (Articles 1 and 2).

Libya The Petroleum Law (No. 25 of 1955) declares all petroleum in its natural state in strata to be the property of the State and provides that no person may explore or mine or produce petroleum without a permit or concession (Article 1). A reconnaissance permit does not entitle the holder to any concession. Exclusive exploration and exploitation rights are the subject of a single concession, but the area covered by the concession is reduced to 50 per cent after 8 years and 25 per cent or 33⅓ per cent, depending on the zone, after 18 years. The form of the concession is set forth in detail in the Second Schedule of the Law and only minor "non-discriminatory" variations are permitted (Article 9). In the case of several applications, preference is given to the first one received.

Mexico The Constitution declares that all minerals and petroleum are directly owned by the nation and are inalienable. Private individuals and corporations may acquire rights with respect to minerals only by virtue of concessions granted by the Federal Government; petroleum concessions are expressly prohibited (Article 27).*

The Mining Law of 1930, as amended, provides for a two-year, non-renewable, exclusive prospecting concession, which, during its validity, accords the concessionaire the exclusive right to petition for an exploitation concession.

Special provisions apply to zones or particular minerals constituted as national reserves.*

Morocco The Petroleum Law (Dahir No. 1-58-277 of 21 July 1958) provides for a non-exclusive reconnaissance permit, the possession of which does not accord the holder any right to a further licence. Exploration may be carried on only under an exploration permit which accords the holder the right to obtain an exploitation concession if a commercial discovery is made; no compulsory area reduction is prescribed. The exploration permit is issued after competitive bidding, particular consideration being given to the extent of State participation to be accepted and, in cases of parity of such offers, to the extent to which the State is to be relieved of any risk burden with respect to exploration expenses (Article 13).

*Netherlands** No licence is required for mineral or petroleum exploration; governmental authorization to enter land, if entry is refused by the surface owner, may be obtained. Exploitation may take place only under a concession which is granted by Royal Decree after the presence of such deposits in exploitable quantities has been demonstrated. The governing legislation are the Mining Acts of 21 April 1810 and 27 April 1904.

*Norway** Under the General Concessions Act (14 December 1917), foreign nationals and limited companies and other juridical persons having a board of directors that is not wholly Norwegian with seat in Norway may not, without a concession, exercise the right to prospect, notify or file claim, or otherwise acquire title or usufruct in respect of deposits of metals and ores.

A concession in this respect may only be granted if the foreign national or limited company in question has, prior to the entry into force of the Act, acquired mining rights or has later acquired such rights by concession. The concession shall, in such a case, be limited to a definite period of time and to a defined area. This provision is designed to enable existing mining enterprises to secure further mining rights which may be necessary for continued working.

According to the Act, it should as a rule be made a condition that the board of the company, corporation or foundation shall have its seat in Norway and shall consist wholly or in part of Norwegian nationals. It may further be made a condition that Norwegian capital be given an opportunity to share in the enterprise. If the applicant is a company, conditions may be set forth aimed at preventing a majority of the shares from becoming the property of aliens, foreign companies, etc.**

*Pakistan** The Government enjoys sovereignty over all mines and minerals, including oil and natural gas in almost all areas of the country. The grant of mining concessions to nationals as well as to foreigners is governed by the Regulation of Mines and Oilfields and Mineral Development Act, 1948, pursuant to which were framed the Petroleum (Production) Rules, 1949, and the Pakistan Mining Concession Rules. Authority over prospecting and exploitation of some minerals is to be controlled by the provincial governments, and the government of West Pakistan has promulgated the Mining Concession Rules, 1958, which are, with some exceptions, modelled substantially on those of the Central Government.

The Mining Concession Rules provide for a certificate of approval necessary to the obtaining of licences or leases. A prospecting licence is required for exploration activities and the licence holder has the right to obtain a mining lease within his prospecting area in the case of minerals other than precious stones. With respect to precious stones, the Government has discretion in the granting of a lease, but the prospector has the right to the first offer (Rule 49).

The Pakistan Petroleum (Production) Rules, 1949, provide for pre-exploration survey permits, exploration licences (corresponding to exclusive reconnaissance rights), prospecting licences (exclusive exploration rights) and mining leases. The pre-exploration survey permits are granted, in the discretion of the Government, for surveys over areas of more than 5,000 square miles, but such permits carry no right to further exploration or exploitation work (Article 14A). The prospecting and exploration licences each entitle their holders to acquire the further right with respect to part of the area covered (Rules 15, 20 and 29). The Government is awarded

* Information provided by the Government.

[2] For notes an agreements negotiated under this provision, see chapter V below.

** For a summary statement on the position of aliens under Norwegian law with respect to the title to and exploitation of natural resources, see document A/AC.95/5/Rev.1/Add.1.

broad discretion in the initial grant with respect to the terms on which the grant is conditioned; annexed to the Rules are forms for prospecting and exploration licences and oil mining leases, but the Government may modify or include additional clauses as it sees fit (Rule 13).

Peru The Constitution provides that mines, waters and natural resources generally belong to the State, except for legally acquired rights, and that conditions for State utilization or grant of either ownership or usufruct should be prescribed by law (Article 37). Concessions for exploitation, but not ownership rights, are granted with respect to subsoil resources.

The Mining Code (Decree-Law 11357, 12 May 1950) declares that mineral substances of all kinds are the property of the State—saving legally acquired rights—and anything pertaining to the exploitation is of public utility and governed by the Code. Free exploration in uncultivated, unfenced land is permitted (Article 2). Exclusive exploration and exploitation is granted by concessions. The holder of an exploration concession has the right to apply for its demarcation and conversion to an exploitation concession (Article 140).

Under the Petroleum Law (No. 11780, 12 March 1952), reconnaissance rights are subject to a non-exclusive permit granted to persons or companies which are, in the judgement of the National Executive, technically and financially competent. Exclusive exploration rights are acquired by virtue of a concession which accords its holder the right to select areas for exploitation up to 50 per cent of the exploration area and to convert the concession of exploration to one of exploitation. Direct exploitation concessions may be granted pursuant to the same application procedure as for exploration concessions, except if granted for areas within national reserves. Such areas may be the subject of concession only after competitive bidding and only if not exploited directly by the State or by the State in association with private Peruvian capital (Articles 26, 45, 49, 62).

Philippines The Constitution provides that all waters, minerals, coal and petroleum, all forces of potential energy and other natural resources of the Philippines belong to the State; and no natural resource, save public agricultural lands, may be alienated, but may only be subject to private exploitation development or utilization under a licence, lease or concession (Article XIII).[3]

Under the Mining Act (No. 137 of 7 November 1936, as amended), prospecting is free. A prospector who has made a discovery and located a claim is entitled to a lease covering the class of minerals in which his discovery falls (Articles 29, 33, 62).

The Petroleum Act (Republic Act No. 387, 1949) states that the grant of concessions is wholly discretionary with the Government except in so far as the holder of an exclusive exploration right has the inherent right to a concession covering up to one half of his exploration block (Articles 6, 31, 35). Non-exclusive preliminary exploration permits accord no rights to acquire exploitation concessions. Additional benefits to the State, beyond those required in the Act itself, including cash bonuses, higher working obligations etc., may be required of concession applicants (Article 19).

Poland The Constitution declares that the natural resources of the land, waters, State forests, mines, are all people's property and are under the special protection of the State.

*Republic of South Africa** Under the Precious Stones Act No. 44 of 1927, the right of mining for and disposing of all precious stones is vested in the Government. Prospecting in unoccupied, unalienated Crown land requires a prospecting permit, though at present all prospecting in such land is prohibited. Prospecting in land held with a reservation of precious stones rights in favour of the Government may be conducted by the owner of the land provided a prospecting permit is obtained; in the case of private land, prospecting may be undertaken by the owner with notice to the Mining Commission. On discovery of stones on a payable basis in unalienated Crown land, on land held with a reservation in favour of the Government and on private land, provision is made for the proclamation of land either as an alluvial digging for precious stones or as a mine. Where land is proclaimed an alluvial digging, the Act allows for the disposal of the residual area remaining after the owners' and discoverers' claims have been settled. Where land is proclaimed a mine, the discoverer, in the case of unalienated Crown land, and the owner of land in the case of private land, or land held with a reservation in favour of the Government, is entitled to work the mine; the profits derived are divisible between the Government and the discoverer or owner of the land as the case may be. In cases of unalienated Crown land, Government receipts amount to 70 per cent of the realized profit and in the case of private land or land held with a reservation in the Government's favour a ½ and a 7/10th share respectively of the realized profit is payable to the Government. The Act empowers the Governor-General[4] to proclaim State mines or State alluvial diggings subject to the rights of the discoverer and owner.

The Natural Oil Act No. 46 of 1942 vests in the State the right to prospect and mine for natural oil. Prospecting by private persons may be conducted under a prospecting lease which is granted only on the recommendation of the Mining Leases Board and on the Minister for Mines being satisfied as to the nature of the proposed operation and as to the applicant's financial resources. Of the rental, determined by the Minister for Mines on the recommendation of the Mining Leases Board, one quarter is to be paid by the State to the holder of the right to natural oil in the land. The prospector is entitled to obtain a mining lease over such area of land as may be determined by the Mining Leases Board on the Minister being satisfied as to the existence of natural oil in workable quantities, as to the scheme proposed for mining operations and as to the prospector's financial resources. The consideration for such mining lease is such share of profits, royalty and other consideration, subject to such annual minimum payment, as the Minister, after consultation with the Mining Leases Board, may determine. One quarter of such consideration is to be paid over by the State to the holder of the right to natural oil. If the Minister of Mines is satisfied, otherwise than as a result of prospecting under a prospecting lease, as to the existence of natural oil in any land, he may with the previous sanction of Parliament establish a State mine in respect thereof. Provision is made for the payment, on the establishment of a State mine, to the holder of the right to natural oil of such royalty, subject to such annual minimum payment as the Minister may, on the recommendation of the Mining Leases Board, determine.

In terms of the Native Trust and Land Act No. 18, of 1936, the consent of the Minister of Native Affairs is necessary to enable prospecting on land belonging to the South African Native Trust. The Trust, in respect of such land, is in the same position as a private owner and the minerals laws are applicable to such land.

Provincial laws: The Provincial laws are administered by the Department of Mines. Prospecting and mining for precious and base metals in the provinces of *Transvaal* and *Orange Free State* are regulated by the Precious and Base Metals Act No. 35 of 1908 of the Transvaal as amended, made applicable also to the Orange Free State in 1936.

In terms of the Act, a permit is required for the prospecting of precious and base metals on Crown land open under the Act to public prospecting. Where Crown land is not open to public prospecting, the Minister of Mines may dispose of the right of prospecting on such lands by way of lease. An

* Information provided by the Government.

[3] For constitutional limitation of percentage of foreign capital in corporations eligible for concessions for use or exploitation of natural resources see table I-2 under para. 87 below.

[4] With the establishment of the Republic of South Africa, the former functions of the Governor-General have been taken over by the State President.

owner of private land is entitled to prospect for precious metals on such lands with notice to the Commissioner. If a third party wishes to prospect on private land for precious metals, he must obtain a prospecting permit.

On the discovery on private land of precious metals in payable quantities, the holder of mineral rights is entitled to receive a mining area (*mynpacht*) equal in extent to a quarter of the mineralized area of the land as determined by Government mining engineers. Should the area be considered insufficient by the Minister of Mines on the recommendation of the Mining Leases Board to constitute a workable mining proposition, a lease covering both the *mynpacht* area as well as additional area may be granted. On the discovery of precious or base metals on Crown land, the prospector is entitled to a mining lease of his prospecting area. Should the area be insufficient to constitute a workable mining proposition, an additional area may similarly be granted.

The residual area, remaining in the case of private land after a *mynpacht* or a mining lease in lieu of a *mynpacht* has been granted or in the case of Crown land after the prospector has received a mining lease, is subject to the disposal of State in accordance with the provisions of law: (1) the leasing, without or after proclamation of the land; and (2) the declaration, after the proclamation of the land, that the whole or any portion of such land is open to the pegging of claims under the authority of claim licences.

The Governor-General may proclaim that a land constitutes a public digging whenever he is satisfied that precious metals exist in payable quantities on private or Crown land or base metals on Crown land.

In the Province of the *Cape of Good Hope,* an owner of private land is free to exploit precious and base minerals without substantial legislative control. In the case of land sold with a reservation of precious mineral rights in favour of the Government and in the case of Crown land the Precious Minerals Act No. 31 of 1898, as amended, sets up a licensing system for the control of the prospecting and mining of precious minerals. The Mineral Law Amendment Act No. 16 of 1907 governs the exploitation of base minerals on Crown land.

In the Province of *Natal,* the Natal Mines Act No. 43 of 1899, having declared that the right of mining for and disposing of all minerals in Natal is vested in the Government, provides for control through a system of licensing.

Romania Under the Constitution, all natural resources, factories, plants and mines, forests, waters, natural sources of energy,...are State property, that is, the people's property (Article 7).

*Thailand** The Mining Law (B.E. 2461, 1919, as amended to 1950) provides that all minerals, including mineral oil and coal, are Crown property, and no person may prospect or mine unless the right to do so has been expressly granted. The law provides for general prospecting licences, exclusive exploration licences and mining concessions. Mining concessions are granted only to holders of a prospecting or exploration licence, but the Government retains discretion to refuse any application for an exploitation concession.

Turkey The Mining Law (No. 6309, 3 March 1954) declares minerals to be under the ownership of the State and provides that acquisition of exploration and operation rights to be subject to the provisions of the Mining Law (Articles 3, 4).

Exploration may not be carried on except under an exploration permit. A discovered mineral deposit may be the subject either of an operating permit or an operating concession granted for a longer term and only to a limited liability company. Whether an operating permit or concession is appropriate is a matter of ministerial discretion, the decision depending on economic and technical conditions, relative importance of the mineral in the country's economy and the time in which reserves might be depleted. The holder of an exploration permit who has made a discovery is entitled to the first offer of an operating contract and if he is unable or unwilling to meet the condition, and the exploitation rights are not given to him, he is entitled to specified compensation (Article 136).

The Petroleum Law (No. 6326, 10 March 1954, as amended by Law No. 6558, 13 May 1955) declares that the petroleum resources of Turkey are in the possession and under the rule of the State (Article 1), and provides that no petroleum operation may be conducted except under a permit, licence, lease or certificate granted under the Law (Article 5). The grant or requisition of an application for a petroleum right shall take into consideration, among other things, the application's furtherance of the national interest and objective of the Law (Article 4). The grant of a non-exclusive permit for geological investigation may be granted or refused by the Petroleum Administration (Article 46). An exclusive exploration licence to a person holding a permit may be granted or refused according to whether the application complies with the Law and regulations. On the other hand, an exploration licence may be refused to a person not a permittee in the discretion of the Petroleum Administration, regardless of whether the application complies with the Law and regulations or not (Article 51). An exploration licensee who has made a discovery in his licence area is entitled, on terms prevailing when the licence was granted, to a lease covering an area no greater than one half of the licence area (Article 63). An area not subject to any licence or lease may, by decision of the Council of Ministers, be declared to be subject to lease by competitive bidding; the offer of an area for competitive bidding does not involve an obligation to accept the highest bid (Article 64).

Union of Soviet Socialist Republics Under the Constitution, the land, its mineral wealth, waters, forests, mills, factories, mines,...are State property, that is, belong to the whole people (Article 6).*

Under note 1 of Article 8 of the Introductory Law to the Civil Code of the *Russian Soviet Federated Socialist Republic,* foreign enterprises may receive the rights of a juridical person only with the special permission of the Government. Essentially similar provisions are contained in the legislation of the other Soviet Socialist Republics.

*United Arab Republic** Law No. 66 of 1953 on Mines and Quarries is the governing legislation with respect to petroleum prospecting and exploitation; it was superseded in its former applicability to all quarrying and mining activities by Law No. 86 of 1956. Law No. 66 provides that all petroleum resources, including those found in territorial waters, are considered State property and forbids exploration, reconnaissance, prospecting or exploitation except by virtue of licence. A short-term (three months) preliminary exploration licence is obtained by virtue of an *arrêté* from the Minister of Commerce and Industry and the Licensee has, for that period, the exclusive right to apply for a prospecting licence (Article 8). The prospecting licence is granted by law and accords the holder exclusive right to obtain a lease upon showing of the existence of a workable deposit. The lease, if issued to the prospecting licence holder, is issued by *arrêté.* A mining lease may be issued without being preceded by a prospecting licence if the Department of Mines and Quarries finds exploitable deposits, and, in that case, the lease is issued by law after the area containing the petroleum is put up for public auction (Article 15 to 17).

*United Kingdom** According to the common law, the owner of land is, *prima facie,* entitled to everything in or beneath the land *usque ad infernos,* i.e., down to the centre of the earth, and this rule of law includes minerals of all sorts in their original untouched state.

The owner of land containing minerals can normally either exploit them himself, or can lease or sell to someone else the right to develop and exploit the mineral resources under his land. There are now, however, numerous exceptions to

* Information provided by the Government.

this basic rule of law. Even under common law, mines of gold and silver have always been deemed to belong to the Crown. Under the provisions of the Petroleum (Production) Act, 1934, the property in petroleum existing in its natural condition in strata in Great Britain is vested in the Crown together with the exclusive right of searching and boring for and getting such petroleum, which, for the purposes of the Act, includes any mineral oil or relative hydro-carbon together with natural gas existing in its natural condition. Power was, however, given to the President of the Board of Trade, and later transferred to the Minister of Power, acting on behalf of the Crown, to grant licences to search and bore for and get petroleum to such persons as he thinks fit, and in actual fact this is the normal method of conducting such searches for petroleum as have hitherto taken place in Great Britain. Since the coming into force of the Coal Industry Nationalisation Act, 1946, all coal, together with certain associated minerals (e.g., anthracite), have been statutorily vested in the National Coal Board, upon which the Act conferred the duty to the exclusion of other persons of working and getting coal in Great Britain. Here again, however, by section 36 of the Act, a power to grant licences in certain limited cases, mostly of very small mines, has been bestowed and a certain amount of coal mining is, in fact, conducted under licences of this sort. A small mine is defined as one where the number of persons to be employed below ground is at no time likely to exceed or greatly exceed thirty.

Venezuela Under the Constitution, the right to exploit natural resources, mines, and petroleum, may be acquired only by concession granted by the National Executive Power (Article 60). The Mining Law (29 December 1944, as amended) declares all mines, seams, beds or mineral deposits to be of public utility. Under the normal procedure prescribed by the Mining Law, no permit is required for mineral exploration; however, exclusive exploration rights may be granted which entitle the holder to the exclusive right to file claims (*denuncio*) within the area. A claim is a necessary prerequisite to the grant of a mining concession. In addition, the law authorizes the National Executive to exclude, by decree, from the normal claims procedure any mineral substances in the country as a whole or in particular zones. Concessions for such minerals are subject to a special system which envisages exploration-exploitation concessions and direct exploitation concessions granted in the discretion of the National Executive.[5]

The Law of Hydrocarbons (13 October 1955) declares everything relative to hydrocarbon exploration and exploitation to be of public utility and governed by the Law's provisions (Article 1). Non-exclusive preliminary reconnaissance may be conducted freely without a permit. The exclusive exploration and exploitation rights are obtainable by concessions granted in the discretion of the Federal Executive. In exercising this discretion, the Executive power is explicitly authorized to stipulate special advantages for the nation with any applicant including increases in tax contributions, refining obligations etc., and applicants for concessions must state whether they are applying for a concession subject to the ordinary procedures or whether special advantages are being offered (Article 5).

A single concession encompassing exclusive exploration-exploitation rights is provided for. A concessionnaire has the inherent right to exploit such parcels up to 500 hectares each and totalling not more than one-half of the original concession area applied for. Direct exploitation concessions to national reserves, constituted by areas previously subject to concessions which have reverted to the State, are granted after public invitation for offers. The offer which is, in the judgement of the Federal Executive, most favourable to the interests of the nation is accepted. Preferential consideration is given to concessionaires within whose concession area the particular excess area was demarcated. There is no resource from the decision to accept or reject an offer, except if the preference for previous concessionaires was not considered (Articles 24 and 25).

[5] Summary of Venezuelan Mining Laws, *Venezuela Up-to-Date*, November 1954, Embassy of Venezuela, Washington, D.C.

b. Limitations on the extent of rights granted by concession

i. *Duration*

15. Limits on the duration of a concession serve to facilitate renegotiation of terms, preserve the possibility of the entry of other companies, and afford the State an opportunity consistent with its agreements, to implement changes in policy affecting natural resources development. The constitutions of some countries link declarations of State ownership and inalienability of certain natural resources with requirements that concessions be limited in terms of time; for example, the constitutions of Burma and the Philippines set 25 years with one renewal for the same period, as the maximum permissible time for which the Government may grant exploitation rights for natural resources,[6] and the constitution of Venezuela, without setting a maximum, requires that concessions be for fixed periods. In practically all cases, termination before the expiry of a licence or concession, whether or not a fixed term is prescribed, may result from failure to fulfil obligations.[7]

16. Petroleum legislation usually provides for specific periods of time for which rights may be granted initially, as well as maximum permissible duration inclusive of renewal periods. Renewals at the expiry of the initial grant are, in some instances, granted on the same terms (e.g., Australia), but more usually on terms consistent with legislation, or in some instances, other concessions in force at the time of renewal (e.g., Iran, Peru, United Arab Republic).

17. Mining rights are, in some legislation, subject to maximum duration (e.g., India, Iran, Norway, Venezuela) and in others are granted for an indefinite period (Mexico, Peru). Rights with respect to other resources are granted for definite periods, and in some instances the maximum is similarly set by law (Denmark, Norway).

18. Table I-1 below, based on texts available to the Secretariat, indicates duration of exploitation rights granted by various Governments. Time-limits on exploration rights, generally shorter than exploitation rights, relate essentially to encouragement of prompt development activities; exploration periods are not tabulated.

[6] For constitutional exclusion of foreigners and foreign-controlled corporations from exploitation of resources in Burma and the Philippines see para. 259 below.

[7] See paras. 98-102 below.

Table I-1

Limits on duration of exploitation rights

Country	Initial term (years)	Renewals: Number	Renewals: Duration (years)	Renewals: Conditions	Total duration (years)
			(*a*) MINERALS		
Canada (Federal lands) ..	21	1	21	As of right; further renewals on conditions prescribed by Government	
Alberta	21	1	21	As of right; further renewals discretionary on conditions prescribed by Government	
British Columbia	20		20	As of right on original terms	Time necessary for full recovery (coal)
Manitoba	21		21	As of right so long as productive; otherwise discretionary renewal at higher rental	
New Brunswick	20	4	20	As of right	80 (further extensions discretionary)
Newfoundland	50				50
Ontario	Purchase or 10 year lease				In perpetuity
China (Taiwan)	20		20	In discretion of Government	
Denmark	50				
France	Not limited				
India	30 (coal, iron bauxite)	2	30	As of right	90
	20	1	20		40
Iran	30				
Jordan	30			Preferential right on fair and proper terms	So long as minerals are produced in payable quantities
Korea, Republic of	25				
Mexico	Not limited				
Norway	50				50
Pakistan	30	1	30	At discretion of Government at higher rental	60
Peru	In perpetuity (subject to fulfilment of obligations)				
Philippines	25	1	25	As of right	50
Thailand	25				25
Turkey	99				99
United Arab Republic	30	1	15	In discretion of Government in accordance with legislation then in force	45 (additional renewals by law)
Venezuela	50 (veins and strata) 25 (alluvial)				
	40 (reserved minerals)	1	40		80
			(*b*) PETROLEUM		
Austria	Not limited				
Australia	20 or 21 (depending on state)	1	20-21	As of right on original terms	40-42
Belgium	Not limited				
Bolivia	40			If Government grants concession again, former concessionaire has preferential right over others under equal conditions	For duration of commercial production

Table I-1 (continued)

Country	Initial term (years)	Renewals			Total duration (years)
		Number	Duration (years)	Conditions	
Canada	21 (some provinces, less)		21	As of right if producing; discretionary if not; renewal subject to change of original terms in Northwest Territories	
Denmark	50				50
France	50				50
Guatemala	40	1	20	As of right on terms in force at time of renewal	60
Iran	25	3	5	In case of less than 50 per cent Government participation, renewal as of right either on terms then in effect or on original terms, but subject to area reduction of 20 per cent. In case of 50 per cent or more Government participation first renewal as of right on original terms and next two as of right on conditions then in effect	40
Iraq (no legislative provisions)					
Iraq Petroleum Co. Ltd. Convention (14 March 1925)	75				75
Israel	30	1	20	In discretion of Government on terms fixed by it	50
Italy	20	1	10	As of right	30
Jordan	30			Preferential right on fair and proper terms	So long as oil may be produced in payable quantities
Libya	50	1	10	As of right	60
Morocco	50				50
Netherlands	Not limited				
New Zealand	42			As of right	63
Pakistan	30	1	30	In discretion of Government	60
Peru	40 (Coastal) 45 (Sierra) 50 (Eastern) 50 (Montana)	1 1 1	20 25 25	In discretion of Government on terms then in force	60-75 (depending on zone)
Philippines	25	1	25	As of right	50
Saudi Aradia (no legislative provision) Concession Agreement with Arabian American Oil Co. (29 May 1933)	60				
Spain	50		10	As of right	60
Turkey	40	1	20	In discretion of Government on terms fixed by it	60
United Kingdom	50	1	25	In discretion of Government	75
Venezuela	40			Renewal by agreement with Government or by application for new concession, prior concessionaire having a preference over others offering same terms	
(c) Water power					
Norway	50 or with Parliamentary approval, 60			May be annulled after 35 years with compensation for plant	50 or 60
Peru					50
Philippines	25	1	25		50

ii. *Limits on holdings*

19. Some legislation provides against concentration of control over any particular resource by limiting permissible holdings of one person or company.

20. Many modern petroleum and mineral laws prescribe area maxima for holdings either within a particular zone of within the country as a whole. Occasionally, laws specifically seek to guard against indirect as well as direct holdings in excess of the prescribed maximum (e.g., Italy, Turkey). Some laws provide for larger permissible holdings in case of Government capital participation (e.g., Iran, Morocco). In water power, the maximum may be set in terms of yield capacity (e.g., Norway).

*China (Taiwan)** The maximum mining area is limited to 500 hectares for coal and petroleum, and to 250 hectares for other minerals. Special permission may be given for an extension up to double the areas stated where special circumstances prevail (Mining Law of 26 May 1930, as amended to 30 July 1959, Article 7).

*India** The Mines and Minerals (Regulation and Development) Act (No. 67 of 1957) prohibits any one person from acquiring in any one state in respect of any mineral or prescribed group of associated minerals (*a*) prospecting licences covering a total area of more than 50 square miles; or (*b*) mining leases covering a total area of more than 10 square miles (Article 6).

Iran Under the Petroleum Act (31 July 1957), a company or organization of which the National Iranian Oil Company (NIOC) owns more than 50 per cent may hold up to 16,000 square kilometres in any one district; and the net area interest of any party to any such agreements with the NIOC may not be greater than 8,000 square kilometres (Article 7 A).

A company or organization in which the NIOC participation is less than 50 per cent may hold up to 9,000 square kilometres; the net area interest of any party to an agreement with the NIOC or of any operator in non-participation cases is 6,500 square kilometres (Article 8 B).

No agreement may be negotiated whereby a person would engage in petroleum operations in more than five districts at one time. Any two or more persons whose principal business activity would engage in petroleum operations and who are connected through stock ownership of 60 per cent or more of one in another or through a common parent are deemed to be a single person (Article 9 G).

Italy The Petroleum Law (No. 6, 1957) prohibits the granting of exploration permits to the same person beyond an aggregate area of 300,000 hectares, and the grant of exploitation rights beyond an aggregate of 80,000 hectares. Taken into account for this purpose is the area of permits already granted to other individuals or corporations connected directly or through a common parent corporation with the applicant by a majority or controlling interest in shares or by contractual ties (Article 3, 15).

Libya Under the Petroleum Law (No. 25, 1955), no one concessionnaire may hold at any time more than either 3,000 or 4,000 square kilometres (depending on the zone) in any one zone (Article 9).

Morocco Under the Petroleum Law (Dahir No. 1-58-227, 21 July 1958), the maximum area held by any one concessionnaire, either directly or indirectly, is 3,000 square kilometres in each of two zones, and 5,000 square kilometres in the third zone (Article 26).

Maximum permissible areas may be increased by the Minister of Mines for concessions held by companies in which capital participation by the Moroccan State is 50 per cent or more.

Peru Under the Petroleum Law (No. 11780, 12 March 1955, as supplemented by Law No. 12376, 8 July 1955), the maximum area for any one concession for exploitation is 10,000 hectares, and any one concessionnaire may hold 20 concessions in each zone. Direct exploitation concessions not preceded by exploration concessions are limited to 10,000 or 25,000 hectares, depending on the zone; any one concessionnaire may hold no more than ten such concessions in one zone. A single concessionnaire may obtain areas in excess of this maximum only after competitive bidding (Articles 27, 28, 53, 54). For mineral exploitation, the Mining Law sets no maximum on concession areas.

Turkey The Petroleum Law (No. 6326, 10 March 1954, as amended), sets 25,000 hectares as a maximum area for any one lease, and a total of 150,000 hectares as the maximum in any one district. Agreements to avoid this limitation directly or indirectly are prohibited, and applications must list the name of any person conducting petroleum operations in Turkey with whom the applicant firm is connected through stock ownership of 90 per cent or more (Article 61).

United Arab Republic The Egyptian Law (No. 66 of 1953) governing petroleum prospecting and exploitation restricts the total area over which any person may hold preliminary exploration licences for any one mineral in a single zone to 100 square kilometres (Article 9). For prospecting licences, there is no maximum prescribed; the Minister of Commerce and Industry determines the number of prospecting licences to be granted to any applicant. The petroleum mining lease is restricted to not more than one half of the prospecting area (Articles 26 and 31).

iii. *Resources covered in one grant*

21. Legislation governing grant of rights over resources usually ensures that only a particular type of resource is acquired through a single grant and that the State maintains discretion to make other dispositions of other resources in the same area. Petroleum concessions thus do not include the right commercially to exploit other minerals discovered in the area. Concessions for mining are usually granted with respect to one mineral or a single class of minerals; under some laws, a holder of a mining right may exploit any mineral within his area except for petroleum or other substances subject to a special régime (e.g., Canada, Federation of Malaya).

Canada Some provincial laws accord a mining lessee the exclusive right to extract all minerals in the subsoil of the area leased, but others accord only the right to exploit a specific mineral or other minerals associated with it.

Federation of Malaya The Mining Enactment (No. 19 of 1928, as amended to 1953) accords a mining lessee the right to obtain all minerals other than mineral oil found upon or beneath the land, but the lessee is not permitted to remove timber, gravel, clay, guano or shells from the area (Article 14).

Peru Under the Mining Code, a concession covers a specified class of minerals, either metallic minerals, carbonic substances and non-metallic substances. The concessionnaire of metallic minerals acquires, however, the right to exploit all mineral and fossil substances within his area which are not covered by other concessions (Articles 27 to 32).

Philippines Under the Mining Act (No. 137 of 7 November 1936, as amended), the locator of a claim is entitled to a lease which grants exploitation rights for all minerals in the same group as that discovered. There are five groups, comprising (*a*) metals; (*b*) precious stones; (*c*) fuels; (*d*) salines and mineral waters; and (*e*) building stone, clays, and other non-metals (Section 15).

*Thailand** Under the Mining Law (B.E. 2461, 1919, as amended to 1950), mining concessionnaires are entitled to

* Information provided by the Government.

exploit only the mineral specified in the concession and other mineral exploitation rights within the area must be applied for separately (Article 51).

Turkey Under the Mining Law (No. 6309, 3 March 1954), an exploration permit is issued for no more than one mineral and covers other minerals only if, because of geological factors shown in the course of exploration, such other minerals must be exploited at the same time (Article 12). Similarly, an operating right covers only one mineral, and other minerals discovered within the same area which are not found in a mixed state may be exploited only under additional leases (Article 13). The holder of an operating right is, however, entitled to priority in requesting another operating right for a new mine in this area even if the discovery has been made by someone else; the right of the discoverer to compensation and royalty is recognized (Article 13).

c. Provisions especially applicable to grants of rights to foreigners[8]

22. In some instances, governmental permission for acquisition of rights to resources is required only for foreigners and not for nationals. This is sometimes the case with respect to land (e.g., Burma, Finland, Indonesia, Laos, Liberia, Norway, Thailand, United Kingdom).

23. With respect to subsoil resources and water power for which concessions and permits are generally required for both nationals and foreigners, special provisions are sometimes made subjecting foreign acquisition of rights either to a preference in favour of nationals (e.g., Guatemala, Peru, United Arab Republic) or to additional requirements for legislative or governmental approval (e.g., China, India, Iran, Norway).

*Belgium** Under the Act of 21 April 1810, a foreign applicant for a mining concession must elect domicile in Belgium in his application.

Burma Under the Constitution, Parliament may, exceptionally, grant exemption from the constitutional prohibition against exploitation, development or utilization grants for agricultural land to foreign nationals (Article 220). It may, similarly, grant exemption from the requirement limiting exploitation and development grants with respect to timber lands and forest to nationals and corporations at least 60 per cent of whose capital is held by nationals (Section 219).

*China (Taiwan)** Under the Mining Law of 26 May 1930, as amended to 30 July 1959, the acquisition of mining rights is restricted to nationals of China; aliens may, however, acquire up to 51 per cent of the shares of a mining company, provided that permission of the Executive Yuan has been obtained (Article 5). In the case of minerals reserved to the State (petroleum, natural gas, uranium, thorium and coking coal), which may be leased to individuals, such leases are restricted to Chinese nationals.

Under the Revised Statute for Investment by Foreign Nationals (14 December 1959), exemption from the above-mentioned restrictions may be granted by the Executive Yuan (Article 18).

*Denmark** Although the laws governing licences for hydraulic power exploitation contain no provision specifically applicable to foreigners, the licences actually issued thus far have required the licensee, his employees and members of the board to be Danish citizens.

*Finland** The right of foreign nationals to own and exploit natural resources is subject to Government permission. A trading company is considered foreign for this purpose if a partner is a foreign national, if the rules of the association permit foreigners to become members or if, in the case of a joint stock company, the charter does not preclude foreign nationals from acquiring over one fifth of the shares or one fifth of the voting rights.

Land acquisition by such persons or companies, or possession of lands for more than five years requires permission by the Government pursuant to the Act on the Right of Foreign Nationals and Foreign Corporations to Own and Possess Immovable Property and Shares, 28 July 1939.

Foreign nationals and corporations require special permission beyond the generally applicable normal procedure for acquisition of mining rights under the Mining Act of 24 March 1943.

Guatemala The Petroleum Code (Decree No. 345 of 7 July 1955) provides that only Guatemalan persons, natural or juridical, whose capital is exclusively national, may participate in the first bidding for concessions in national reserve zones (Article 86). Minimum area requirements are less for Guatemalans than for foreigners, although the maximum is the same in both cases; the minimum area a Guatemalan person may elect to acquire for exploration is 1,000 hectares as compared with the otherwise applicable minimum of 5,000 hectares, and for exploitation 500 hectares as compared with the otherwise applicable minimum of 1,000 hectares (Articles 30, 41, 85).

*India** Under the Mines and Minerals (Regulation and Development) Act No. 67 of 1957 and the Mineral Concession Rules, 1960, the state governments have the authority to grant certificates of approval, prospecting licences and mining leases generally, but the approval of the Central Government is required before a certificate, licence or lease may be granted to any person not an Indian national. A public company is an Indian national if a majority of the directors are Indian citizens, and if at least 51 per cent of the share capital is held by persons who are citizens of India or companies as defined in the Companies Act, 1956. A private company is an Indian national if all the members are citizens; and, similarly, a firm or association is an Indian national if all the partners or members are citizens (Section 5).

*Indonesia*** Under Act No. 78 of 27 October 1958 Concerning Foreign Capital Investment, foreign enterprises may obtain governmental approval to acquire rights in land within specified categories and time limits. Thus, building rights may be granted to industrial enterprises considered to be vital to the State for periods of 20, 30, or 40 years, while operating rights may be granted to large agricultural enterprises for similar periods, both subject to extension "in consideration of the state of the enterprise". Non-renewable lease rights may be granted to other enterprises for 10 years.

Iran The Regulations Governing the Exploitation of Mines (1957) provide that the issuance of a prospecting licence to a foreigner is specially subject to the approval of the Lower House of Parliament (Article 8). A company incorporated and registered in Iran is, however, entitled to apply for licences as an Iranian national, notwithstanding foreign shareholders.

*Laos** Under Law-Ordinance No. 197 of 20 June 1959, persons of foreign nationality, as well as nationals married to foreigners, may not acquire ownership or interests in real estate except by authorization by the Minister of Finance. Requests for authorization may be refused without any explanation of reasons (Articles 1 to 3).

Liberia Under the Public Land Law [Code of Laws (1956), Title 32] the President may, with legislative approval, lease public lands to foreign nationals or corporations for agricultural, mercantile or mining operations for a term of 50 years, subject to renewal (Section 70).

[8] For exclusions of corporations more than half owned by foreigners, see para. 259 below and for domestic participation requirements see paras. 76-87 and table I-2 below.

* Information provided by the Government.

** Information provided by the Government in connexion with the United Nations study on the international flow of private capital.

*Norway** Under the General Concessions Act (14 December 1917), foreigners may not own real property without the King's permission. A corporation or company is considered Norwegian if wholly managed by Norwegians, if domiciled in Norway and if its capital is at least 80 per cent Norwegian, and if Norwegian shareholders can exercise 80 per cent of all votes at corporation shareholders' meetings. Permission is granted if it is considered to be in the public interest (Articles 19, 20).

Concessions for exploitation of a waterfall by any person other than the State or a Norwegian commune may, as a general rule, be granted only to Norwegian nationals, or to corporations and companies with wholly Norwegian capital and management; and concessions covering a potential energy yield of more than 10,000 h.p. must be submitted for parliamentary approval (Article 2). Foreign nationals and corporations with foreign capital may, however, "under special circumstances" acquire a waterfall concession, in which case parliamentary approval is required if the concession covers a potential energy yield of over 5,000 h.p. (Article 4).

*Peru** The Petroleum Law (No. 11780, 12 March 1952) provides that exploitation rights to areas within national reserves may be offered for competitive bidding only after first having been offered to Peruvian persons or companies, the latter being defined as companies constituted in conformity with the dispositions of the Commercial Code 60 per cent of whose capital is owned by Peruvians and with at least two thirds of the members of the board of directors being Peruvian nationals (Articles 6, 62).

*Thailand** Under the Land Code of 30 November 1954 (B.E. 2497), governmental authorization is required for the acquisition of land by foreign enterprises. Such authorization is granted only under conditions of reciprocity and within specified area limits, varying with the purpose of the land (Sections 86 and 87).

United Arab Republic Under Law No. 66 of 1953 governing petroleum exploitation and the Law (No. 86 of 1956) on Mines and Quarries, Egyptians have priority over non-Egyptians if priority of application for prospecting licences is not determinable and, with respect to public auctions, in case of parity of offers.

*United Kingdom** Companies incorporated outside Great Britain, other than those which have a place of business therein and have complied with the Companies Act, 1948, require a licence to hold land in England, Wales and Northern Ireland. Foreign nationals can hold land in Scotland as they can in England, but there is no system of licences in mortmain. In Guernsey (Channel Islands), a foreign national may not directly or indirectly own or occupy real property except by leave of the court and after an application to the Lieutenant Governor acting as representative of the Queen. Such permission is normally granted. If a foreign national obtains leave to own or occupy land, his rights to exploit it are the same as those enjoyed by British nationals.

d. Control over the exploitation of radio-active resources**

24. The exploitation of radio-active mineral resources is, by virtue of their special significance, subject to special régimes and is, in most States, placed under some degree of Government control.

25. The need for such control is based on such factors as the great value of these materials to the State, whether as a source of energy or as a commodity marketed abroad, the danger to the health and safety of persons exposed to radiation, and the possibility that the materials might be put to weapons use.

* Information provided by the Government.

** Information provided by the International Atomic Energy Agency (IAEA).

26. States have, through special legislation,[9] declared that all radio-active material produced within their territories is under State ownership,[10] sometimes reserving to the State the exclusive right to prospect for or exploit these resources.[11] Others permit private enterprise to play a part in the development of the industry and allow individuals to prospect for, and even to exploit, these materials commercially, while acting as sole buyer of the products.[12] Yet other States allow individuals to trade in radio-active materials commercially.[13]

27. In almost all jurisdictions, however, a licence is required for the mining, commercial exploitation, use of storage of radio-active minerals, while States which count radio-active minerals among their natural resources have enacted laws prohibiting the export of such materials save under Government authority and subject to prescribed conditions.

28. In order better to co-ordinate and develop national activity in the field of nuclear energy, many States have set up atomic energy commissions or other official bodies through which the Government exercises control. These bodies are frequently independent of the ordinary organs of government and may sometimes be given very wide powers under which they may enter and inspect premises and require information of certain prescribed substances, plant or processes. They may also be empowered to acquire compulsorily rights to work radio-active minerals, and stocks of radio-active materials.[14]

29. A review of the relevant legislative provisions is contained in the brief country studies set forth below, while a listing of the principal pertinent national legislation is contained in the annex to this section.

Canada[15] The production, use, sale and export of radio-active materials are subject to regulations and permission of the Atomic Energy Control Board.

*Finland** The production of, trade in, possession and use of atomic energy must be authorized by the Ministry of Commerce and Industry. Such authorization may only be granted to a Finnish national, company of institution (Act on Atomic Energy, 25 November 1957).

*Republic of South Africa** The Atomic Energy Act No. 35, 1948, provides that the sole right of prospecting, acquiring and processing prescribed materials and the production of atomic energy is vested in the State. No one may prospect or mine for prescribed materials except on behalf of the Minister and under his written authority. The act establishes an Atomic Energy Board with power to prospect, extract and otherwise deal with prescribed materials. Representation is given on the Board to persons engaged in mining operations in areas where prescribed materials occur or are likely to occur.

*United Kingdom** Under the Atomic Energy Acts, 1946, and 1954, as modified by the Transfer of Functions (Atomic Energy and Radio-active Substances) Order, 1957, the Prime Minister has the general duty to promote and control the

[9] Reference to laws of certain countries which normally vest ownership of all mineral resources in the State, e.g. Article 6 of the Constitution of the USSR, has been omitted.

[10] E.g., United States of America.

[11] E.g., Mexico.

[12] E.g., Argentina.

[13] E.g., Switzerland.

[14] E.g., United Kingdom and British Commonwealth countries; United States.

[15] *Digest of the Mining Laws of Canada*, Department of Mines and Technical Surveys, Ottawa, 1957.

development of atomic energy. The Acts give the Prime Minister power to make orders compulsorily vesting in him, or in the United Kingdom Atomic Energy Authority, the exclusive right to work minerals from which "prescribed substances" can be obtained ("Prescribed substances" means uranium, thorium, etc.). The Minister may also, by order, provide for prohibiting, except under licence, the working of any such minerals.

*United States of America** Licences relating to operations in the field of atomic energy may not be granted to foreigners or to entities known, or reasonably believed to be owned or controlled by foreigners or a foreign Government [42 USC, sec. 2133 (*d*)].

ANNEX

National legislation for control over the Exploitation of radio-active substances**

ARGENTINA

Decree Prohibiting the Exportation of Uranium Materials (Presidential Decree No. 22,855 of 26 September 1945).

Presidential Decree No. 22,477/56 of 18 September 1956, Sections II, III, IV and V.

Presidential Decree No. 22,498/56 of 19 December 1956, Articles 9, 10.

AUSTRALIA

Atomic Energy Act, No. 31 of 1953 Section 17, Sections 35, 41, 42.

BELGIUM

(*Belgian Congo*)

Decree Prohibiting Prospecting for Uranium, Thorium and any Substance Containing Radio-active Minerals in the Belgian Congo and Ruanda-Urundi, 18 July 1955, Section 1.

BRAZIL

Law Establishing the National Research Council Controlling the Utilization of Atomic Energy, Law No. 1310 of 15 January 1951, Articles 4, 5.

Decree Approving Regulation Concerning Permits for Working Atomic Energy Materials, Decree 30,230 of 1 December 1951.

Decree Establishing a Strategic Materials Export Committee, Decree 30,583 of 21 February 1952.

CANADA

Atomic Energy Control Act, 1946 (amended by Revised Statutes 1950 Chapter 51, R.S.1952 Chapter 11, R.S.1954, Chapter 47) Sections 8, 9, 10.

Atomic Energy Regulations of Canada Order-in-Council 5513, effective 3 November 1949, Parts II, IV and VI.

Prospecting, Exploration and Mining of Radioactive Materials, Order of the Atomic Energy Control Board of Canada, 5 April 1948.

Radioactive substances which require an Export Permit, Order-in-Council P.O. 3595, effective 20 July 1949.

Procedure for Requesting Radioactive Isotopes for International Distribution, prescribed by the Atomic Energy Control Board of Canada 9 December 1949.

CHILE

Decree Nationalizing Radioactive Minerals—Decree 379 of 22 February 1952.

Decree Regulating Import, Sale and Distribution of Radioactive Minerals—Decree No. 430 of 5 March 1952.

CHINA

Regulations for the Control of Mines and Ores of Uranium and Thorium, adopted by Executive Yuan 20 March 1948.

COLOMBIA

Law reserving to the Nation all Radioactive Minerals, Article 45 of Law No. 120, 30 December 1919.

Decree No. 2638 of 6 October 1955 as amended.

COSTA RICA

Decree Prohibiting Exportation of Certain Strategic Materials, Decree of 23 January 1952.

FINLAND

Act on Atomic Energy of 25 November 1957.

FRANCE

Ordinance Establishing an Atomic Energy Commissariat, No. 45-2563 of 30 October 1945 (as modified 1947, 1951), Article 1.

Decree Concerning Atomic Energy Materials in Overseas France, Decree No. 46-614 of 5 April 1946 (as amended, 1950).

Decree Reforming the Laws governing Mineral Substances in Overseas Territories, Decree 54-1110 of 13 November 1954 (as amended).

Decree concerning Control of Mineral Substances in Overseas Territories, Decree 57-242.

HONDURAS

Decree Nationalizing Sources of Radioactive Minerals, Decree No. 119 of 13 March 1950.

INDIA

Atomic Energy Act, No. XXIX of 1948 (enacted by Dominion Legislature).

Mines and Minerals (Regulation and Development) Act of 8 September 1948.

Ilmenite (Control of Export) Order of 14 August 1953.

Mines and Minerals (Regulation and Development) Act No. 67 of 1957.

IRAN

Mining Law of 18 May 1957.

JAPAN

Atomic Energy Basic Law, No. 186 of 19 December 1955, Articles 4 and 5.

Nuclear Fuel Corporation Law, No. 94 of 4 May 1956, Chapter III.

Law concerning Temporary Measures for Expediting Development of Nuclear Source Materials, No. 93 of 4 May 1956.

Law for Regulation of Nuclear Source Materials, Nuclear Fuel Material and Atomic Reactors, No. 166 of 10 June 1957.

LAOS

Law 42 of 1959.

MEXICO

Incorporation of Radioactive Elements into the National Mining Reserves, (Declaration of the Secretary of National Economy 22 August 1945).

Law Declaring Deposits of Uranium, Thorium, and Other Substances from which fissionable Isotopes can be obtained to produce Nuclear Energy to be National Mineral Reserves. Decree No. 22 of 31 December 1949.

NEW ZEALAND

Atomic Energy Act, 1945, Sections 4-12.

Radioactive Substances Act, 1949, Sections 9, 10.

Atomic Energy (Amendment) Act, 1957, Sections 3-10.

NORWAY

Act concerning Exploitation of Metals Designated as being of Particular National Significance, 15 February 1946.

Royal Resolution designating the Metal Uranium as being of Particular National Significance, 7 December 1945.

Royal Resolution designating the Elements Uranium and Thorium as being of Particular National Significance, 29 March 1946.

PERU

Decree excluding Radioactive Minerals from Private Concession, Decree-Law No. 11357 of 12 May 1950.

PHILIPPINES

Nuclear Energy Act, No. 1815 of 1957, Section 1 (7), 5, 8.

* Information provided by the Government.

** Information provided by the International Atomic Energy Agency and by Governments.

SPAIN
Reservation of Uranium Ore in Spanish Provinces, Order of the Ministry of Industry and Commerce of 4 October 1945.
Statutory Decree of 22 October 1951 establishing the Atomic Energy Association, Articles 3-8.

REPUBLIC OF SOUTH AFRICA
Atomic Energy Act, No. 35 of 1948, Sections 1-10;
Atomic Energy (Amendment) Act 18 of 1952;
Order Prohibiting Export of Beryllium Ores, No. 19, of 1950;
Atomic Energy (Amendment) Act, 1956.

SWEDEN
Atomic Energy Act No. 306 of 1956, Sections 1-4. Royal Order No. 308 of 1 July 1956.
Regulations on Prospecting, Exploration, and Mining of Uranium 45: 811—812.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
Atomic Energy Acts, 1946, (Sections 6, 7, 8, 10) and 1954.
Radioactive Substances Act, 1948;
Atomic Energy Authority Act, 1948, Section 2.
Transfer of Functions (Atomic Energy and Radioactive Substances) Order, 1957.

UNITED STATES OF AMERICA
Atomic Energy Act of 1954, Chapters 6 and 7.
42 USC, Sec. 2133 (*d*).

VENEZUELA
Decree Reserving Radio-active Materials, Presidential Decree of 11 October 1945.

2. Entry of foreign capital: systems of encouragement and control

30. The present sub-section deals with systems of governmental authorization for the entry and/or the granting of special advantages to enterprises financed by foreign capital. The discussion will, in general, cover the licensing of new industries, requirements for approval for special advantages (such as tax abatements, accelerated depreciation allowances, special freight rates, plant facilities, etc.) or guarantees, and measures for the encouragement of investments in particular regions, economic sectors and so forth. The discussion will initially deal with measures for the encouragement of investment, special attention being given to measures designed specifically to attract foreign investment. In addition, attention will also be given to general regulatory measures affecting new investment, that is to say, the screening controls imposed by Governments in this connexion.

a. MEASURES FOR THE ENCOURAGEMENT OF INVESTMENT[16]

31. In the context of the present study, measures for the encouragement of investment fall into two basic categories: (1) relevant measures applying to both domestic and foreign investments; and, (2) measures designed specifically to attract foreign investment.

32. In general, the scope of the measures discussed here varies in many respects, including such factors as the economic sector to which capital is to be attracted, as well as time-limits and geographical delimitations relating to the special advantages which are normally involved. Where the procedure involved is of particular interest, mention is also made of the special institutions which have been established in many cases to facilitate the attraction of new investments.

33. As regards the guarantee aspect—that is to say, the variety of formal assurances offered by Governments (whether under treaty or other arrangements) relating to such matters as compensation in the event of expropriation of nationalization, convertibility of profits, and so forth, these are dealt with in detail in a number of other sections in the present report.

i. MEASURES AFFECTING BOTH DOMESTIC AND FOREIGN INVESTMENTS

(1) *Encouragement of investment in specific economic sectors*

34. In a number of instances, legislation for the encouragement of investment is used as a mechanism for securing the development of selected industries or economic sectors.

*Chile** Under the Foreign Investment Statute (Decree Law 258 of 30 March 1960), certain guarantees envisaged under the Statute may be granted only to enterprises engaged exclusively in the production of goods for export, or to foreign capital earmarked for the establishment of industries of a fundamental nature which do not exist in Chile (Article 8). The guarantees in question may also be extended to new enterprises established under Law 11828 (Copper Law) (Article 14).

*Ghana*** The Minister of Finance is authorized to determine whether a proposed investment by a company incorporated and resident in Ghana which is desirous of establishing a "pioneer" industry is in the public interest. On his being so satisfied, he is required to certify the company as being a "pioneer" company and one which is thereby eligible for the special advantages under the law.

Jordan Under the Law No. 27, 2 April 1955, on the encouragement and guidance of industry, establishments engaged in certain specified industries are granted special privileges and exemptions provided that they satisfy certain conditions. The industries specified include sugar-cane refining and the extraction of potash and other chemical substances from the Dead Sea.

Provision is also made for the Council of Ministers, on the advice of the Economic Development Committee, to extend the privileges of the Law to "important economic development projects" and to industries which differ from industries existing at the time of the publication of the Law.

Morocco. The Basic Investment Law (Dahir No. 1-58-263 of September 1958) and implementing regulations contained in the relevant *arrêté* of the Minister of National Economy, provide for special benefits to certain basic industries, determined by the Investment Commission. These industries include, *inter alia*, the production of mineral fuels, inorganic substances (large-scale only) and related raw materials, and raw materials for the development of the iron, steel and steel-alloy industry.

The *arrête* of the Minister of National Economy also defines the sectors in which the enterprises other than basic industries may also benefit under the provisions of the above-mentioned Law.

Under the Basic Investment Law, the Minister of National Economy may, upon recommendation of the investment Council, modify his determination of basic industries.

[16] For a detailed review of the problems involved in the promotion of the international flow of capital and of measures related thereto, see *The Promotion of the International Flow of Private Capital, Progress Report by the Secretary-General*, E/3325, 26 Feb. 1960, and *The Promotion of the International Flow of Private Capital, Further Report by the Secretary-General*, E/3492, 18 May 1961.

* Information provided by the Government.

** Information provided by the Government in connexion with the United Nations study on the international flow of private capital.

*Netherlands** Under the Investment Ordinance (National Ordinance of 26 February 1960, G.P. 1960, No. 17) of *Surinam*, certain tax concessions are available for approved investments of at least $25,000 if, among others, the project will provide an important contribution towards the strengthening of the national economy in the sense of an enlargement of the economic basis of the country, increase local production—especially production based on the use of local raw materials—and/or increase employment opportunities.

Panama Under the Production Development Law (No. 25 of 7 February 1957) the protection and economic assistance which the State may authorize under the Law shall be applied to the fields of agriculture, animal husbandry, fisheries, the extraction of raw materials from forests and mines, and to all classes of manufacturing industries.

*Thailand*** Under the Promotion of Industrial Investment Act of 17 October 1960 (B.E. 2503), the individual industrial enterprises to be promoted in terms of the Act are to be determined, in each case, by the Board of Investment. The term "industrial activity" is defined broadly to cover every kind of production, whether employing machinery or manpower, and is to include agriculture as well as any other activities which may be designated by ministerial regulation.[17]

(2) *Encouragement of investment in certain geographical regions*

35. In certain instances, States exercise discretionary rights with respect to the specific geographical area of the country to which investments are to be attracted. The motivation in such instances is, as a rule, predicated on a desire to achieve a more equitable geographical distribution of economic development in areas where special problems have hampered or even militated against development. In such instances, where climatic conditions or great distances from markets have resulted in a disproportionately slow economic development compared to the rest of the country, legislative measures have been taken to attract industries by means of special tax abatements, accelerated depreciation allowances and, especially where railways are State-owned, preferential freight rates. Examples of such measures are found in the case of northern Norway and southern Italy. Similarly, where major economic shifts have resulted in a geographically fairly clearly defined area of labour surplus, measures have been taken to attract new industries by means of, for instance, government subsidies for the preparation of industrial sites and the construction of actual plant facilities, as is the case in a number of development areas in, for instance, the Netherlands.

Italy A number of special measures have been taken to encourage and assist the economic development of the southern part of the country. These measures comprise a legislative syndrome, including the following laws: Law No. 1598, 14 December 1947 (Regulations for the industrialization of southern and insular Italy); Law No. 1482, 29 December 1948 (Additional regulations); Law No. 646, 10 August 1950 (Establishment of the fund for special works of public interest in southern Italy); Law No. 298, 11 April 1953 (Development of credit activities in the industrial sector in southern and insular Italy); Law No. 634, 29 July 1957 (Provision for the South); and Law No. 555, 18 July 1959 (supplementing and amending provisions).

The geographical area to which the above-mentioned legislation applies covers the following regions: Abruzzi e Molise, Campania, Puglia, Basilicata, Calabria, Sicily and Sardinia, as well as sections of Marche, Lazio and Tuscany.

The measures in question include the establishment of special financial institutions which extend credit for the establishment of plant facilities and the purchase of machinery on favourable terms and at low interest rates, tax and import duty reductions or exemptions, including a 50 per cent reduction in taxes on profits which are reinvested in the area, reductions in freight rates on machinery brought into the region, special rates for electric energy and, in certain special cases, grants to meet marketing costs.

Netherlands[18] A number of areas having a structural shortage of employment have been designated as "development areas", where special conditions have been created to foster industrialization. These areas offer special inducements for the establishment or extension of industrial plants in the places designated as industrialization centres. These include: (1) cheap industrial sites as a result of Government subsidies amounting to one half of their cost; and (2) a Government construction subsidy to new establishments.

In order to qualify for the subsidy under these regulations, the entrepreneur shall, in principle, undertake to employ male labour in his factory at the rate of one man per 100 square metres of floor area in the case of new establishments and of one man per 50 square metres of new floor area over and above the normal staffing in the case of extensions.

In the *Netherlands Antilles* and in *Surinam*, various tax concessions are granted to new industrial enterprises, regardless of nationality, established since 1948. Certain tax concessions also apply to holding and investment companies, companies for the exploitation of patents, and trusts, if they deal exclusively with non-residents of the area concerned.*

Norway The Northern Norway Development Fund (Storting Enactment of 18 March 1952) finances new industries and provides technical assistance in the Nordland, Troms and Finnmark regions of the country, with special emphasis on the establishment of industries which are basic to further economic development and the provision of training facilities for the creation of a pool of skilled workers.

In addition, the law of 28 June 1952 provides special tax inducements and abatements in connexion with investments (and reinvestments of profits) in northern Norway, as well as accelerated depreciation allowances for new industries. Additional exemptions are granted to producers of electric energy.

Peru Under the Industrial Promotion Law (Decree No. 13270) of 30 November 1959, tax concessions to new investors are graduated according to the proposed location of the new enterprise, with maximum benefits offered for establishment in the country's less developed areas.

(3) *Selection criteria and obligations devolving upon the investor*

36. In addition to considerations relating to the economic sector concerned and to actual plant location, measures for the encouragement of investment are typically contingent upon conforming with certain established criteria and objectives, and upon the fulfilment of obligations in terms of time-limits for investment and the beginning of production, employment and training of nationals, the supply of the national market at agreed prices, as well as such procedural obligations as the submission of annual reports and the like.

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* Information provided by the Government of the Netherlands.

** Information provided by the Government in connexion with the Secretariat's studies on the promotion of the international flow of private capital.

[17] This Act supercedes the Act for the Promotion of Industries, 4 Oct. 1954 (B.E.2497).

[18] Netherlands Ministry of Economic Affairs, *Guide to the Establishing of Industrial Operations in the Netherlands*, The Hague, Feb. 1959.

*Chile** Under the Foreign Investment Statute (Decree Law No. 258, 30 March 1960), applications for new capital investments are screened by the Foreign Investment Committee with respect to the origin of the capital, the reputation and responsibility of the applicants, and factors which in the light of national interest may justify the approval of the investment (Article 19). Approval of individual investments is given by Presidential Decree designating the name of the applicant, the purpose and amount of the investment authorized, the manner and conditions in which the new capital will be brought into Chile, the date on which the industry, operation or business should start, the concessions granted thereto, their terms and conditions, procedure for exercising them, period of validity, and the type of industry, operation or business so favoured (Article 24).

Israel Under the Law for the Encouragement of Capital Investments, No. 5719 of 6 August 1959, the Investment Centre is required to examine proposals for capital investment from the point of view of their conformity with certain objectives. These objectives are: (1) the development of the productive capacity of the State and the efficient exploitation of its economic resources and possibilities; (2) the absorption of immigrants and the planned distribution of the population over the area of the State; and (3) the improvement of the balance of payments through the reduction of imports and increase of exports.

Jordan Under the Law for Promotion and Encouragement of Industries (No. 27 of 1955), the Economic Development Committee established by the Minister of Economy is required to study the applications for investment in terms of the Law and to ascertain whether they comply with the following conditions: (1) that the essential manufacturing work in the proposed industrial establishment must be conducted by machines other than those operated by hand power; (2) that the cost of the machinery and equipment in the industrial establishment—other than those of the power plant—must not be less than 2,000 dinars. The Council of Ministers may, however, extend the exemptions available under the Law to establishments whose machinery and equipment are less than 2,000 dinars in value. The Committee is required to recommend to the Council of Ministers whether the establishment concerned should enjoy the exemptions available under the Law.

The owners of approved establishments must fulfil certain obligations and must, *inter alia,* give an undertaking to sell the output destined for local consumption at prices to be determined by the Economic Development Committee; and submit an annual report giving detailed information on costs, production, exports, imports, labour and such other operational information as may be required by the Committee.

Panama Under the Production Development Law (No. 25 of 7 February 1957), the National Economic Council and the other authorities established by law for the purpose must report to the cabinet on every application for the special advantages available under the Law, in the light of, *inter alia,* the following criteria: (1) the importance of the proposed investment in relation to the development of the national economy as a whole and the impact of the investment on the various segments of the economy; (2) the contribution which the investment might make to the national income; (3) the amount of investment necessary for the establishment and operation of the particular enterprise under conditions conducive to success; and (4) the quality and cost of raw and manufactured materials of foreign origin to be utilized, the possibility of obtaining them on the domestic market and of developing and producing them in the country.

Under the Law protection and exemptions are available to productive activities or enterprises which undertake the following obligations: (1) to initiate capital investment within the period specified in the contract between the investor and the State; (2) to begin production within the period fixed in the contract which shall not exceed two years, except where the nature of the productive activity requires more time; (3) to give job preference to nationals; and (4) to sell its products in the national market at wholesale prices not higher than those agreed on with the competent official agencies.

Sudan A recent statement of Government policy on the encouragement of the investment of capital in the field of industry notes the proposed establishment of an Advisory Committee to consider all applications for Government assistance to private enterprise.

The Committee will assess whether an application merits classification as an "approved" or "pioneer" enterprise. In making its assessments, the Committee will be guided by such criteria as: (1) that the enterprise must be beneficial to the public interest, for example, by increasing the national income, by saving foreign exchange or for strategic reasons; (2) that it must have a favourable prospect of successful development; (3) that its functions must not already be adequately performed by some other enterprise within the country; (4) that initial assistance is shown to be necessary; and (5) that adequate capital and efficient management will be available.

Enterprises wishing to enjoy the status of "approved" or "pioneer" enterprises must, among others, undertake to provide reasonable facilities for the training of Sudanese personnel and for the progressive participation of such personnel in their establishment. In addition, reference is made to the fact that, although not a matter of compulsion, the question of the association of domestic capital will be one which may be negotiated at the outset of the enterprise's operations.

*Thailand*** Under the Promotion of Industrial Investment Act of 17 October 1960 (B.E. 2503), the Board of Investment is empowered, in issuing a promotion certificate, to lay down any conditions it thinks fit concerning the exercise of any rights and benefits conferred upon the promoted enterprise.

ii. MEASURES SPECIFICALLY AFFECTING FOREIGN INVESTMENTS

37. Under this heading are discussed measures designed specifically to attract foreign investments. While the inducements offered under such measures do not differ materially from those offered to domestic investors, the entry requirements, obligations and applicable criteria, as well as the authorization procedures relating to foreign investment are of special relevance to the present study.

38. The discussion covers (1) procedural organization; (2) applicable criteria and obligations; and (3) formal requirements.

(1) *Procedural organization*

39. The examples set forth below illustrate the various authorization procedures employed in the countries concerned, and note the authority or authorities responsible for issuing the authorizations in question. It may be observed that, typically, the level of responsibility at which such authorizations are issued is rather higher in the case of foreign investments than in the case of domestic investments, where these are covered by separate legislation.

*Afghanistan**** Under Article 9 of the Law Encouraging the Investment of Private Foreign Capital of 13 May 1959, an Investment Committee is to be established by the Ministry of Commerce to be composed of the Ministers of Commerce

* Information provided by the Government.

** Information provided by the Government in connexion with the Secretariat's studies on the promotion of the international flow of private capital.

*** Information provided by the Government to the 11th session of the ECAFE Committee on Industrial and Natural Resources (I&NR/24, 11 Feb. 1959).

and of Mines and Industries, the Presidents of the Afghanistan Bank and of the Chamber of Commerce, and one representative each from the following Ministries: Foreign Affairs, Finance and Planning. Authorization is given to the Committee to invite experts and representatives of other agencies, whenever it may be necessary to its deliberations.

All decisions by the Investment Committee approving applications for investment must be submitted to the Cabinet for final approval.

Cambodia Under the Foreign Investment Law of May 1956, a preliminary authorization for the investment of foreign capital will be granted by the Minister of Finance on the advice of the authority concerned with national development and planning. The instrument of authorization will specify the conditions under which the operation is to be conducted, the obligations imposed on each investor and the treatment to be accorded to the capital invested.

Ceylon The Government's Statement of Policy in Respect of Private Foreign Investment (White Paper of 15 July 1955) noted that all foreign investment would require governmental approval, with proposals for investment being considered individually. The statement declared governmental policy to be flexible and broadly defined the procedure which would be adopted by the Government in sanctioning foreign investments. The authority ultimately responsible for permitting or disallowing investments is the Prime Minister. All foreign investment would initially be examined and sanctioned on the basis of a formal application to the Prime Minister, to enable him to consider the matter with the assistance of an Advisory Board, to be established.

*Chile** Under the Foreign Investment Statute (Decree Law 258 of 30 March 1960), a Foreign Investments Committee is established to study applications submitted under the Decree Law in question and to report thereon to the President of the Republic through the Ministry of Economy. The committee is to be composed of the Minister of Economy, the Minister of Finance, the Chairman of the Central Bank of Chile, the Chairman of the State Bank of Chile, the Chairman of the International Exchange Commission and the Vice President of the *Corporacion de Fomento de la Produccion*, as well as ministers of the departments under whose jurisdiction the proposed investment would fall.

Approval of individual investments is given in the form of Presidential Decree.

*China (Taiwan)** Under the Revised Statute for Investments by Foreign Nationals (14 December 1959), the Ministry of Economic Affairs is required to approve investments referred to in the Statute. The approval of the Executive Yuan is required for investments which would be subject to restrictions under other laws, in order that such restrictions may be waived.

Greece Legislative Decree No. 2687 of 31 October 1953, regarding the investment and protection of foreign capital (long-term investments) provides for the constitution by the Minister of Co-ordination of a committee to be composed of one representative each of the Ministries of Co-ordination, Commerce, Industry and Finance, of the Bank of Greece and of two persons of higher scientific training and experience, especially in industrial matters, as permanent members. The membership of the committee is to be supplemented, when necessary, by other appropriate persons.

*Iran** The Law Concerning the Attraction and Protection of Foreign Capital Investments (29 November 1955) requires that applications accepted by the Supervisory Board be given final approval by the Council of Ministers.

Libya Under the Law on Investment of Foreign Capital of 30 January 1958, investment proposals are to be submitted to a committee to be established by the Minister of National Economy and composed of representatives of the Ministry of Finance, the National Bank, the Agriculture Bank, the Development Bank, and of the province concerned. Representatives of the office of the United Nations Representative in Libya, the Libyan-American Reconstruction Commission, the Libyan Public Development and Stabilization Agency, the Libyan Finance Corporation, and of other organs invited by the Committee may attend, without having the right to vote.

The Committee's recommendation must, if favourable, stipulate any conditions that should attach to the proposed investment.

The Minister of National Economy, after considering the Committee's recommendations and after consultations with the officials of the province concerned, may issue a decree to the effect that the proposed investment is a project which contributes to Libya's economic development. As such, the project will be entitled to certain special advantages.

Turkey The Law for the Encouragement of Foreign Investment (No. 6224 of 18 January 1954) provides that a committee is to be formed under the chairmanship of the General Manager of the Central Bank of the Turkish Republic and with the following membership: The Director-General of the Treasury, the Director-General of Domestic Trade, the Director-General of Industrial Affairs, the Chairman of the Board of Research and Planning in the Ministry of State Enterprises and the General Secretary of the Union of Chambers of Commerce and Industry and Commodity Exchanges. The committee is authorized further to consult with other ministries and institutions (Article 8).

(2) *Applicable criteria and obligations*

40. The applicable criteria dealt with under this heading cover both specific requirements which proposed investments are expected to meet, as well as broader requirements in terms of economic sectors or activities to which preferential treatment may be given. In addition, any obligations which applicants must fulfil in the event of approval of the proposal are also dealt with here.

*Afghanistan*** Benefits provided for under the Law Encouraging the *Investment of Private Foreign Capital* (13 May 1959), are limited to investments in, among others, industry, mining, agriculture, power development and other productive projects.

Cambodia The authorization of the Minister of Finance required under the Foreign Investment Law of May 1956 will only be given to investments in activities deemed useful for the economic development of the country and which do not involve a monopoly or special privileges.

Authorization depends on a minimum participation of domestic capital and upon a minimum employment of domestic personnel. The percentages in each case are to be determined by the Minister of Finance, after a consideration of the circumstances and of economic requirements.

Ceylon According to the Government's Statement of Policy in Respect of Private Foreign Investment (White Paper of 15 July 1955), foreign investment would be particularly welcome into fields where there is a general programme of production, where local capital or technical knowledge are inadequate, and where the country's balance of payments position would be strengthened through a reduction in imports or an expansion of exports. The mere existence of some measure of local investment in any particular field, would not, in itself, exclude foreign investments from that field.

*China (Taiwan)** The types of investments covered by the Revised Statute for Investment of Foreign Nationals (14 December 1959) are: (1) investments in domestically-needed production or manufacturing enterprises; (2) investments in enterprises which have an export market; (3) investments

* Information provided by the Government.

** Information provided by the Government to the 11th session of the ECAFE Committee on Industrial and Natural resources (I&NR/24, 11 Feb. 1959).

which are conducive to development or communications enterprises; and (4) investments in other enterprises which are conducive to the country's economic and social development (Article 5).[19]

*Iran** The Law Concerning the Attraction and Protection of Foreign Capital Investments (29 November 1955), provides that investments for development, rehabilitation and productive activities in industry, mining, agriculture and transport are entitled to the special facilities granted.

The regulations issued under that Law stipulate that "developmental" and "productive" activities are all those efforts which are made to raise the general production level and national income of the country and to increase the foreign exchange revenues directly or indirectly, or to effect an economy in their consumption. In addition, investments, in order to be eligible for available advantages or incentives, must fulfil the following requirements: (*a*) they must enter into such investment fields that are open and authorized to local investors; (*b*) they must not involve any monopoly rights or special privileges; and (*c*) the capital must be privately owned, without any foreign Government participation.

Italy Under the Regulations Concerning Foreign Capital Investments (Law No. 43, 7 February 1956) and the regulations issued thereunder (Presidential Decree No. 758 of 6 July 1956), foreign capital invested in new productive enterprises or in the enlargement of such existing enterprises is entitled to preferential treatment. Productive enterprises are those engaged in the production of goods and services, such as enterprises engaged in land reclamation and improvement projects, power production and distribution, and mining.

The determination whether an enterprise is to be classed as productive is to be made by the Ministry of the Treasury, after consultation, where necessary, with other ministries, on application by the prospective investor.

Libya Under the Law on the Investment of Foreign Capital of 30 January 1958, the projects in which foreign capital is to be invested must contribute to the country's economic development.

Turkey Under the Law for the Encouragement of Foreign Investment (No. 6224 of 18 January 1954), the respective discretions of the Investment Committee and of the Council of Ministers are not expressly limited, nor are such discretions restricted to determinations whether a particular investment satisfies certain specific statutory criteria. The Law, on the other hand, is to apply to foreign investments that (*a*) will tend to promote the economic development of the country; (*b*) are in a field open to Turkish private investors, and (*c*) will entail no monopoly or special privileges; and in addition, obtain the approval of both the Investment Committee and the Council of Ministers.

(3) *Formal requirements*

41. The examples set forth below illustrate the variety of formal requirements in connexion with the entry of foreign capital. The examples are selective and only cover points of immediate interest in the context of the present study, that is to say, requirements relating to form, amount, origin, etc., of the capital concerned, as well as to the scope of the term "foreign capital" as defined for the purposes of the legislation concerned.

*Afghanistan*** The Law Encouraging the Investment of Private Foreign Capital (13 May 1959) defines private foreign capital as: (*a*) foreign exchange transferred to Afghanistan through an authorized bank; (*b*) necessary machinery, equipment, means of transport and raw materials imported for the establishment or the expansion of industry or other development projects permitted under this Law; (*c*) licences, patents, trade marks, inventions and other similar rights, if these are owned by foreigners living outside Afghanistan. The following, however, are not to be considered private foreign capital for the purposes of this Law; (*a*) capital imported under legal commitment requiring the repatriation of this capital; and (*b*) capital imported to meet the living expenses of non-residents.

The scope of the Law is defined as relating to "all foreign individuals and legal entities, duly authorized under this law".

*Chile** Under the implementing regulations of the Foreign Investment Statute (Decree Law No. 258 of 30 March 1960), applicants must submit information as to the purpose and amount of the proposed investment, the form in which the entry of capital will be effected, proof of the existence and origin of the capital, (in some cases) the possibilities of placing the products on the domestic or foreign market under comparative conditions, supporting evidence of the importance of the proposed industry and its influence on the economy and the production of foreign exchange.

*China (Taiwan)** The Revised Statute for Investment by Foreign Nationals (14 December 1959) applies to: (1) capital investments undertaken alone or jointly by foreign nationals or juridical persons and the Government of the Republic of China, Chinese nationals or juridical persons, to establish new, or to expand existing, enterprises; (2) to purchase stocks or debentures of existing enterprises, or to extend loans in cash, machinery, equipment or raw materials thereto; and (3) to furnish technical expertise or patent rights as capital stock (Article 4).

Capital for investment under the Statute must be in the form of (1) imported cash (foreign currencies or foreign exchange); (2) imported machinery or other supplies required domestically; (3) techniques or patent rights; and (4) those portions of principal, net profit, interest or any other income from investment which have been approved for settlement of foreign exchange (Article 3).

*Iran** The Regulations implementing the Law Concerning the Attraction and Protection of Foreign Capital Investments (29 November 1955) define "foreign capital" as: (*a*) foreign exchange transferred to the country through an authorized bank; (*b*) machinery, machine-tools, spare parts and raw materials plus other necessities, provided that they could be currently used and the Supervisory Board recognizes their suitability as such; (*c*) patents on inventions, provided that they relate to the productive purposes for which an application for capital investment has been submitted; (*d*) all or part of the net profit acquired in Iran which have been added to the original capital or which have been invested in some other enterprise to which the provisions of the law are applicable; (*e*) means of transport to be employed in the execution of the project for which the investment is made; and (*f*) technical staff salaries paid in foreign currencies for the creation of the productive enterprises prior to the commencement of actual exploitation. (For exclusions provided for under this Law, see paragraphs 260 and 263 below.)

Japan The incentives offered by the Law Concerning Foreign Investment of May 1950, as amended, are available only to the following forms of foreign investment: (1) technological assistance contracts; (2) acquisitions of stocks, bonds and investment trust certificates; and (3) debentures or claimable assets arising from loans.

Libya For the purposes of the Law on the Investment of Foreign Capital of 30 January 1958, "foreign capital" is defined to include: (*a*) capital sent in the form of foreign currency or cheques; (*b*) machinery, equipment and spare

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* Information provided by the Government.

** ECAFE, Committee on Industry and Natural Resources, 11th Sess., I&NR/24, 11 Feb. 1959.

[19] A more specific listing of industries to be encouraged is to be found in Article 3 of the Statute for Encouragement of Investment (10 Sept. 1960). (Information provided by the Government in connexion with the Secretariat's studies on the promotion of the international flow of private capital).

parts therefor; primary products and other imports; (*c*) rights in patents, trade marks and licences connected with the project; and (*d*) profits accruing from the above-mentioned capital which are proved to have been reinvested in the project.

It would appear that only projects in which foreign capital participation is not less than 51 per cent of the total are eligible for the special advantages or incentives provided for under the Law.

Turkey The benefits under the Law for the Encouragement of Foreign Investment (No. 6224 of 18 January 1954) are made available to owners of approved foreign capital.

b. Other discretionary measures

42. Under this heading are noted a few examples of discretionary measures relating to the investment which are not in effect measures of encouragement and do not relate to licensing systems for the development of particular resources but which are deemed to be of particular interest within the context of this study. In some cases, investment control functions, as such, are exercised at the point of the inward transfer of capital by offices administering exchange control.

France Under Regulation 669 (*Journal Officiel* of 21 January 1959) of the *Office des Changes,* the authorization of the Office is made a requirement for certain specified forms of investment.[20] While decisions are not based on fixed criteria, investments involving the outright transfer of foreign currency or tending to result in a decrease in imports or an increase in exports are favoured while investments in kind attract close scrutiny.

Greece Under the Emergency Law of 5 May 1935, a licence from the Ministry of Industry, granted on the advice of a Committee of Experts is required for the creation of a new industry or for the expansion of an existing industry.

India Under the Industries (Development and Regulation Act, No. 65 of 1951, as amended, and the rules issued thereunder, new and substantial expansions of existing undertakings in the industries listed in the Schedule to the Act must be licensed. Undertakings in existence at the time the Act came into force are to be registered. A Licensing Committee is to advise the appropriate authority (the Ministry of Commerce and Industry) on individual applications for registration or licensing. A Central Advisory Council, which would include members of private industry, is to be established to advise the Government on the development and regulation of the scheduled industries. A sub-committee of this Council is to review governmental action in connexion with such licensing and registration with a view to advising on future policy.

Morocco Foreign investments are subject to the advance approval of the Exchange Office, which is an agency of the Ministry of Finance.

Norway Inward transfers of capital and investments in Norway by non-residents are subject to the approval of the Bank of Norway.

Pakistan The Development of Industries (Federal Control) Act of 1949, as amended, and the rules framed thereunder, require that the authorization of the Central Government be obtained for new undertakings or for the expansion of existing undertakings (which are to be registered) in industries specified in its schedule. Provision is made for constitution by the Central Government of Advisory Committees and a Council of Industries to advise generally on matters concerning the development and regulation of the specified industries.

Spain All incoming capital representing foreign investment in Spanish enterprises requires the approval of the Spanish Foreign Exchange Institute.

Tunisia Foreign investments require prior authorization which may be given by the Central Bank with the agreement of the Government. Securities may be imported freely through the authorized banks.

[20] As of 1 January 1960, the functions of the *Office des Changes,* in so far as foreign investment is concerned, were taken over by the Ministry of Finance and Economic Affairs. (Information provided by the International Monetary Fund.)

B. Measures relating to operations by foreign enterprises

1. The formal aspects of jurisdiction over foreign enterprises

43. The way in which States, by their laws and by the administrative procedures which these establish, control the entry of foreign enterprises into the field of natural resources exploitation has been examined in the preceding section. The manner in which they control the operations of those enterprises which are permitted to enter will be considered here.

44. Before going on to consider the working obligations actually imposed by law on foreign enterprises, there is a further opportunity for control which should be mentioned: that is the control inherent in the use of legal techniques. Legal precepts apply to persons, who may be natural or juridical (such as partnerships, limited partnerships, limited liability companies, joint stock companies, co-operatives, etc.). In the field of natural resources exploitation, one-man enterprises are unlikely to affect the sovereignty of the country in which they operate; of far greater importance are enterprises created under the business organization laws of the country concerned. The laws in terms of which they are created give the enterprise legal personality and, probably, nationality relevant to claims for diplomatic protection. They control, *inter alia,* the manner in which directors are to be selected, the rights of shareholders, the persons who may be authorized to act in the name of the enterprise and the extent to which the enterprise may be responsible for the acts of persons using its name. Furthermore, the State which initially gave the enterprise legal form may vary that form later by changing its laws or by inserting restrictive provisions in the charter it has granted, so that, for instance, the enterprise may not be allowed to issue bearer shares or to transfer more than a certain percentage of its registered shares to foreigners.

45. Looking to the form in which the foreign enterprise is allowed to operate, then, rules requiring enterprises expoiting particular resources to be established under the laws of the host State, or to be domiciled there, may be of importance in determining the measures of control which the host State will have over the organizational aspects of the enterprise's operations.

46. It is not possible, in a study of relatively wide scope, to examine in great detail the different forms of business organization recognized in each country, nor the extent to which particular forms are actually used by foreign enterprises active in the exploitation of natural resources. It is here intended only to give

a general picture of legislation requiring foreign enterprises to incorporate in the host State or to establish a legal domicile there and legislation prescribing the formalities which enterprises organized abroad must complete before they may exploit natural resources.

47. In a sense, these laws may be considered as exclusions, excluding foreign enterprises not incorporated locally or which have not complied with the necessary formalities. This view might be strengthened by consideration of the cases where the State retains a measure of discretion not to allow incorporation or registration even of otherwise qualified organizations. In view, however, of the fact that the States which have such laws also have other laws relating specifically to the screening of applicants for rights to exploit natural resources, it is unlikely that the more formal rules would operate to bar particular foreign enterprises not excluded by the measures which will be considered in section E below.

a. Formal requirements

i. *Organization of the foreign enterprise (incorporation)*

48. Whenever the activities of an enterprise cross national borders, its directors may have a choice of laws under which it may be formed. The choice they make will depend upon a variety of factors, including the suitability of the forms of organization available, the psychological and legal pros and cons of a particular corporate nationality and the tax burden consequent upon the adoption of a particular choice.[21] Some States have, however, taken this choice out of the hands of the foreign enterprise by allowing access to their natural resources only to nationals or to enterprises organized in the country.

49. Thus the Constitution of *Brazil* provides that

> "The employment of mineral resources, and those of hydraulic energy, depend upon federal authorization or concession, as provided by law.
>
> "Authorizations or concessions shall be granted exclusively to Brazilians or to concerns organized in the country..." (Article 153).

A similar provision is to be found in the Constitution of *Honduras* (1957), according to which concessions may only be granted to "individuals or commercial companies organized or incorporated under Honduran law" (Article 6).

50. This requirement of a national organization even for foreign enterprises has been applied in *Indonesia* to foreign mining companies by a Cabinet decision of 24 October 1956 and is included in Act No. 78 of 27 October 1958 Concerning Foreign Capital Investment as a general requirement for "undertakings operated wholly or for the greater part in Indonesia as a separate unit of enterprise."[22]

In *Mexico,* mining, forestry and fishing rights are reserved to Mexican nationals and companies formed under Mexican law[23]. This limitation is applied in *Portugal* to companies active in public services or activities of fundamental importance to the national defence or national economy.[24] It is to be found, too, in the mining laws of *Iran,*[25] *Laos,*[26] *Syria*[27] and *Turkey,*[28] the mining and petroleum laws of *Pakistan,*[29] and the *Sudan,*[30] and the petroleum laws of *Paraguay,*[31] *Spain*[32] and the *United Kindgom.*[33, 34]

51. The foreign exchange guarantees available to foreign investments under the foreign investment law of *Japan* are applicable only to investment in Japanese companies and not to foreign branch operations.[35]

52. This requirement of incorporation is more often found in cases where foreign enterprises as defined[36] are not permitted, and then it is used to strengthen the prohibition on the holding of shares by foreigners, or the limitation of foreign shareholding or voting rights to a specified minority. In *Sweden,* for instance, a foreign corporation cannot register a mineral deposit, nor, without special authorization, acquire real property or a registered mineral deposit. A Swedish partnership in which there is a foreign partner, or a company issuing bearer shares is, in general, considered to be on the same footing as a foreign corporation. The same applies to a Swedish joint stock company which does not have a reservation in its articles of association prohibiting the transfer of more than one fifth of its shares to foreign nationals or Swedish interests not fulfilling the above conditions.[37] These provisions may be, and have been, waived. The status seems to be

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[21] It may be noted that, at the Symposium on the Development of Petroleum Resources of Asia and the Far East (New Delhi, December 1958), the representative of the United States of America commented that "American oil companies lose certain tax benefits under the law of the United States if they form subsidiary companies under the laws of foreign countries in order to conduct operations there. He observed that the requirement of domestic incorporation did not seem to be necessary in order to subject the companies to the petroleum laws or other applicable laws of the country in which their operations were conducted, and he therefore suggested that it might be advisable to eliminate the requirement of domestic incorporation" (Report of the Working Group on Regulations Governing Petroleum Resources Development in *Proceedings of the Symposium on the Development of Petroleum Resources of Asia and the Far East,* Mineral Resources Development Series No. 10, E/CN.11/507, p. 242).

[22] Act No. 78, 27 Oct. 1958, Article 5 (translated in U.S. Dept. of Commerce, World Trade Information Service, Part I, No. 58-86); the Cabinet decision of 24 Oct. 1956 is recorded in *Report on Indonesia,* vol. 8, No. 2 (1956), p. 3.

[23] Information provided by the Government of Mexico; see also Constitution Article 27.1.

[24] Law No. 1944, 13 April 1943.

[25] Regulations Governing the Exploitation of Mines (1957), Article 3 (exceptions require the approval of Parliament).

[26] Foreign Investment Laws and Regulations of the Countries of Asia and the Far East, ECAFE/L.122, p. 114.

[27] Under the Mining Law, No. 7, 21 Dec. 1953, permits of concessions may be granted to Syrian nationals or to commercial companies founded and domiciled in Syria, taking into account, during the validity of the permit or concession, considerations relating to defence.

[28] Law No. 6309, 3 Mar. 1954, Sections 13 and 62.

[29] Pakistan Petroleum (Production) Rules, 1949, Rule 10. Rule 4 obliges an alien applicant or a company incorporated outside Pakistan to supply with its application "full particulars of the company to be incorporated in accordance with Rule 10 in Pakistan for the purpose of receiving the grant of and working any licence or lease which may be granted...." Articles 9 (5) and 16 of the Pakistan Mining Concession Rules, 1949, have exactly similar provisions, as does Rule 14 of the West Fakistan Mining Concession Rules 1958.

[30] Information provided by the Government of the Sudan.

[31] Law No. 1755, 8 June 1940, Article 5.

[32] Law of 29 Dec. 1958, Article 8.

[33] Information provided by the Government of the United Kingdom of Great Britain and Northern Ireland.

[34] Provision for exploitation through a domestically incorporated company is also to be found in the United Kingdom Model Colonial (Oil Mining) Regulations, Section 10 (Misc. No. 484a of Nov. 1938).

[35] ECAFE/L.122, *op cit.,* pp. 95-96.

[36] That is, enterprises with majority ownership or control in the hands of foreigners.

[37] Information provided by the Government of Sweden; Act of 30 May 1916, as amended.

similar in *Norway,* although the law speaks of "domicile" rather than incorporation in Norway[38] and in *Finland,* where the same one-fifth limitation must be inserted in the corporate charter of a Finnish joint stock company which is to own immovable property.[39]

ii. *Domicile*

53. Although the concept of the domicile of a commercial company is not understood in the same sense in the legal systems of all States, it does seem that the requirement that a foreign enterprise be domiciled in the country permitting its operations is generally a requirement that it establish its head office there, or at least the office from which operations in the host State will be conducted.[40] This may represent a desire to have the foreign enterprise's policy makers and their records physically within the jurisdiction, or it may be another step in a nationalizing process aimed at separating the foreign enterprise from its country of origin.

54. A number of countries which have been mentioned already as requiring foreign enterprises to be organized under their laws also require domicile within the territory. This is the case for *Indonesia,*[41] *Portugal,*[42] and *Syria.*[43] Then there are States which do grant concessions to foreign juridical persons, but require that they establish a domicile. This is required for mining in *El Salvador*[44] and *Uruguay,*[45] for petroleum exploitation in *Ecuador,*[46] *Italy,*[47] *Peru*[48] and *Venezuela,*[49] and for the supply of electricity in *Peru.*[50] Legal domicile may also be required of national companies in order to back up a total or partial exclusion of foreign capital, as is done in *Norway.*[51]

[38] General Concessions Act (14 Dec. 1917), Articles 11, 13 (mining), 19, 20 (real property). For requirement of domicile, see paras. 53 and 54 below.

[39] Information provided by the Government of Finland; Act of 28 July 1939 on the Right of Foreign Nationals and Foreign Corporations to Own and Possess Immovable Property and Shares.

[40] This seems to be essentially similar to the civil law concept of "siège social" (required by Article 9 of the Syrian Mining Law No. 7, 21 Dec. 1953, for instance).

[41] See note 22 above.

[42] The principal office must be in Portugal, see note 24 above.

[43] See notes 27 and 40 above.

[44] US Dept. of Commerce, *Investment in Central America,* p. 131.

[45] *Foreign Capital in Latin America,* United Nations publication, Sales No.: 1954.II.G.4., p. 141.

[46] *Ibid.,* pp. 90-91. ("Foreign companies engaged in mining need not acquire legal domicile in the country unless Ecuadorian investors hold at least 10 per cent of their capital.")

[47] Law No. 6 of 11 Jan. 1957, Articles 2, 29 (head office).

[48] Petroleum Law No. 11780 of 12 Mar. 1952, "Foreign companies, in order to apply for concessions, must be registered in the Public Registers of Peru, have their legal domicile in the capital of the Republic, and appoint a representative of Peruvian nationality" (Article 7).

[49] The Law of Hydrocarbons, 13 Oct. 1955, Article 6, reflects a general provision in the Constitution of Venezuela to the effect that "No contract of national, state or municipal public interest may be entered into with foreign governments or assigned to them. Neither may such contracts be entered into with natural or juridical persons not *domiciled* in Venezuela, nor assigned to them if signed with third parties." (Constitution of Venezuela, 11 Apr. 1953, Article 48).

[50] Law No. 12378 of 14 July 1955, Article 30.

[51] General Concessions Act (14 Dec. 1917) Article 2 (waterfalls), "companies with wholly Norwegian management and domiciled in Norway and with solely Norwegian capital." Article 11 (mining without a concession), Article 19 (real property).

iii. *Registration and other formalities*[52]

55. Practically all States provide for the registration of enterprises, domestic or foreign, doing business within their territories.[53] The test of "doing business" applied by Anglo-American and related legal systems, or its equivalent in other countries, has been known to cause difficulties of interpretation, but we may assume that all enterprises actively exploiting natural resources in a country will be obliged to register there.

56. Registration may involve a measure of discretion on the part of the administration, or it may be the right of any enterprise which fulfils certain prescribed formalities. In *Brazil,* foreign corporations need to be authorized by Presidential decree, and in *Burma* they must have a permit from the President before they may register. Some form of governmental consent is needed for the establishment of a foreign enterprise in *China (Taiwan), Colombia, Finland, Nepal,*[54] *Sweden*[55] and *Turkey,* together with the more specific consents that a foreign enterprise will need in order to exploit natural resources. In *Israel,* the Minister of Justice is empowered to refuse registration at his discretion but has never done so.[56] In *Austria,* foreign limited and joint stock companies require a permit from the Minister of the Interior, but not if they are registered in the Trade Register of Foreign Persons.[57]

57. The formalities required before a firm can be registered vary from country to country, but, as a rule, any enterprise will have to submit certified documents testifying to its legal formation, the powers granted to its officers and the purposes for which it was formed. It will be required also to give the address of its registered office for the purpose of receiving legal notices, and, probably, to name an agent authorized to receive such notices. The names and addresses and sometimes, the nationalities of its directors may also be required. Registration is then customarily followed by publication of certain details of notices in an official gazette, and perhaps also in one or two newspapers of large circulation.

58. While these minimum formalities are of general application to enterprises, both domestic and foreign, some countries require additional formalities for foreign enterprises and, in particular, for the establishment of branches of foreign enterprises formed abroad. A number of countries, including *China (Taiwan), Costa Rica, Cuba, Libya, Mexico, Philippines, Peru, Turkey* and *Venezuela,* require that the constituent documents of the enterprise be certified by their consul in the State where it was formed. Foreign branches are often required to submit a balance-sheet on registering and may be required to continue to do so at regular intervals while they continue operations. In *Greece, New Zealand* and *Nicaragua,* for instance, they must register or publish a balance-sheet once a year. Then it is usual to require that the local agent file the power of attorney authorizing him to represent

[52] The information in this section, unless otherwise noted, is derived from the US Dept. of Commerce World Trade Information Service *Establishing a Business in ...* series, from successive United Nations reports on the International Flow of Private Capital (E/2901, E/3021, E/3128, E/3249) and from the replies of Governments.

[53] Laos seems to be an exception (ECAFE/L.122, *op. cit.,* p. 113).

[54] ECAFE/L.122, *op. cit.,* p. 132.

[55] Act of 3 June 1955.

[56] Companies Ordinance, 1929.

[57] Austrian Trade Regulations, Article 8.2.

the enterprise. In *Lebanon* and *Syria*,[58] the local agent must be a national as well as a resident. One or two countries have nationality requirements relative to accounting personnel: only an accountant registered in *Brazil* may authenticate accounts of foreign enterprises active there, and the *United Arab Republic* requires a firm to have at least one Egyptian auditor.[59] A foreign corporation active in *Honduras*[60] or *Turkey* must set aside capital especially for its operations there.

59. Some countries have registers for special purposes, instead of a general commercial register, and these may be particularly applicable to foreign enterprises. Thus, *Turkey* maintains a Petroleum Register[61] in which petroleum applications, licences, leases, rights, transfers and other matters are recorded. *Austria*, as already mentioned, keeps a Trade Register of Foreign Persons.

60. A considerable number of countries also make provision for incoming capital to be registered with the exchange control authorities.[62] Among them are *Argentina*,[63] *Bolivia*, *Brazil*, *Cambodia*, *Costa Rica*, *Ecuador*, *Iran*,[64] *Israel*, *Japan*, *Jordan*,[65] *Nicaragua*, *Paraguay* and the *United Arab Republic*.

b. Requirement of submission to local law and courts

61. Whatever may have been the position in the past, it is nowadays taken for granted that persons and enterprises within the territory of a sovereign State are subject to its courts and to such laws as that State imposes, within the limits set by international law.[66] Foreign enterprises may, and do, secure special treatment by agreement with the State in which they are operating, or through the provisions of a treaty from which they are entitled to benefit.[67]

i. *Exclusion of monopoly or special privilege*

62. Some States have wished to make it quite clear through their constitutions and laws that it is not their policy to grant exemption to foreign enterprises from the ordinary courts or from the ordinary law. Thus the foreign investment laws of *Cambodia*,[68] *Iran*[69] and *Turkey*[70] all stipulate that they apply only to investments which "will entail no monopoly or special privileges," and the Government of *Pakistan* has said that "Pakistan would welcome foreign capital seeking investment from a purely industrial and economic objective, and not claiming any special privileges."[71]

63. The Constitutions of a number of the Latin American Republics contain provisions expressly subjecting foreigners within the territory to the national laws. Thus the 1957 Constitution of *Honduras* declares that "From the time they enter the territory of the Republic foreigners are bound to respect the authority and obey the laws" (Article 25).[72]

ii. *The "Calvo clause"*

64. The provision mentioned in the preceding paragraph may be accompanied by a clause equating the legal position of foreigners to that of nationals in some respects, and some constitutions, while affording the foreigner the same protection as is available to nationals, seek to limit the rights of the foreigner to local remedies only. By article 32 of the Constitution of *Peru*,

> "Foreigners, as regards property, are in the same condition as Peruvians, without being able in any case to invoke an exceptional position in this respect or have recourse to diplomatic claims" (Article 32).

This is supported by a general provision requiring what is known as the Calvo clause:

> "In every state contract with foreigners, or in the concessions which grant them in the latter's favour, it must be expressly stated that they will submit to the laws and tribunals of the Republic and renounce all diplomatic claims" (Article 17).[73]

65. This approach to the institution of diplomatic protection is to be seen in a number of differing forms in the constitutions, laws and state contracts of countries in the region. Sometimes resort to the diplomatic protection of the State of which the foreign enterprise or entrepreneur is a national is to be penalized by law with the expulsion of the alien or the forfeiture of his rights.[74] A good example of the elements which may be included in a constitutional provision of this type is provided by Article 27 of the Constitution of Mexico, which reads (in part):

> "... legal capacity to acquire ownership of lands and waters of the nation shall be governed by the following provisions: (1) Only Mexicans by birth or naturalization and Mexican corporations have the right to acquire ownership of lands, waters and their appurtenances, or to obtain concessions for working mines or for the utilization of waters or mineral fuel in the Republic of Mexico. The nation may

[58] Unless a special dispensation is obtained from the Minister of National Economy, with the approval of the Council of Ministers (Article 1 of L.D.151 of 2 March 1952).

[59] Stock Company Law No. 26, 16 Jan. 1954, Article 91 (ii).

[60] US Dept. of Commerce, *Investment in Central America*, p. 213.

[61] Petroleum Law No. 6326, 10 Mar. 1954 (as amended), Article 34. By Article 34 (3), "The provisions of other laws relating to a Register and to registration shall not apply to such transactions as must be registered in the Petroleum Register in conformity with this article."

[62] See also paragraph 42 above.

[63] Law No. 14780, 22 Dec. 1958, Article 4.

[64] Law Concerning the Attraction and Protection of Foreign Capital Investments, 29 Nov. 1955, Article 8.

[65] Law No. 28, 21 Apr. 1955, Article 4.2.

[66] A discussion of cases which have come before international tribunals will be found in chapter III below.

[67] See chapter II below.

[68] Kram No. 221-NS, 13 Sept. 1957.

[69] Regulations implementing Law Concerning the Attraction and Protection of Foreign Capital Investments, 29 Nov. 1955, Article 1 (*b*).

[70] Law for the Encouragement of Foreign Investment, No. 6224, 18 Jan. 1954, Article 1 (*c*).

[71] Policy Statement of 2 Apr. 1948, section 13 (U.S. Dept. of Commerce, *Investment in Pakistan*, p. 168).

[72] See also Constitution of *Bolivia* 1945, Article 111 ("All enterprises established for developments, profit or trade within the country shall be deemed to be national enterprises and shall be subject to the sovereignty, the laws and authorities of the Republic"). Constitution of *Cuba* 1940, Article 19 (*f*); Constitution of *Colombia* 1886, as amended, Article 10; Constitution of *El Salvador* 1950, Article 17; Constitution of *Guatemala* 1956, Article 14; Constitution of *Haiti* 1957, Article 13; Constitution of *Nicaragua* 1950, Article 24; and Constitution of *Peru*, Article 17.

[73] See also Constitution of *Bolivia*, 1945, Article 18; Constitution of *Costa Rica*, 1947 as amended, Article 19; Constitution of *Ecuador*, 1946, Article 177; Constitution of *El Salvador*, 1950, Article 19; Constitution of *Guatemala*, 1956, Article 59; Constitution of *Honduras*, 1957, Article 37; Constitution of *Mexico*, 1917, Article 27; Constitution of *Nicaragua*, 1950, Articles 26, 28; Constitution of *Venezuela*, 1953, Article 49.

[74] "Anyone who contravenes this provision shall lose the right to inhabit the country" (Constitution of *El Salvador*, 1950, Article 19).

grant the same right to aliens, provided they agree before the ministry of foreign relations to consider themselves as Mexicans in respect to such property, and bind themselves not to invoke the protection of their governments in matters relating thereto; under penalty in case of non-compliance of forfeiture to the nation of property so acquired."

66. Most of these provisions are concerned with contracts between the State and foreigners, but in *Ecuador,* the relevant clause includes contracts with "any Ecuadorean person or legal entity" (Article 17).

67. The relevant articles in the constitutions of *Bolivia, El Salvador, Guatemala, Honduras* and *Nicaragua* make an exception for cases of denial of justice, but the latter four add a proviso that an adverse judicial decision is not to be considered as denial of justice. *Costa Rica* would permit diplomatic protection only "as provided in international conventions."

68. Similar provisions relating to submission to law and non-recourse to diplomatic protection are to be found in Latin American laws relating to natural resources[75] and in the concession agreements entered into by other Latin American countries which do not have such provisions in their laws.

69. Outside Latin America, States do not seem to have given special attention in their laws to the possibility of diplomatic protection of foreign enterprises by the States of which they or their owners are nationals. In *Iran,* the prohibition on the transfer of investments under Article 3 (2) of the Iranian foreign investment law to foreign Governments is tempered by a clause which reads:

> "The foreign investor is entitled to insure the capital which he imports into Iran. Where the insurer happens to be an agency of the foreign Government, and if the said Government is, in the event, subrogated to the investor's rights and claims, then the provisions of Article 3 (2) of the Law Concerning Attraction and Protection of Foreign Capital shall not apply" (Article 6).

iii. *Special legal régimes*

70. Some States have included in their laws applicable to foreign enterprises, the possibility of including in concession agreements an agreement not to change the legal régime governing the concession, except with the consent of both parties. Thus, the Constitution of the *Dominican Republic* allows for the grant, by virtue of a general law or of a special contract approved by the National Congress, of "the irrevocable right to benefit" from agreed tax exemptions, reductions or limitations, incidental to specific works or enterprises of public benefit to which it is considered advisable to attract the investment of new capital for the development of the national economy or for any other subject of social interest.[76] Similar provisions are to be found in the foreign investment laws of *Chile*[77] and *Greece*[78] and the petroleum laws of *Bolivia, Iran, Libya* and *France* (Sahara).[79] The model petroleum concession agreement in the second schedule to the Libyan Petroleum Law is a typical example, stipulating that "The contractual rights expressly created by this concession shall not be altered except by mutual consent of the parties" (Clause 16).

iv. *Dispute settlement provisions in concession agreements*

71. In the absence of some special arrangement, the courts of the territorial sovereign are the forum to which disputes, arising from the operations there of a foreign enterprise, will be submitted. Special provisions on dispute settlement may be found in laws concerning natural resources, in concession agreements pursuant to a law authorizing arbitration clauses and in concession agreements in countries where no general natural resources law exists.

72. Many Latin American States, as was mentioned above, have constitutional provisions subjecting foreign persons and enterprises to their courts as well as to their laws. (The Constitution of *El Salvador* declares that "No contract may be concluded in which the decision, in the event of controversy, is to be rendered by the courts of a foreign country.") There may, however, be special provisions determining which national courts are to have jurisdiction. Thus the Petroleum Code of *Bolivia* lays down that:

> "All doubt or controversy regarding the fulfillment of the terms of the concessions and the interpretation of this law or its regulations shall be resolved by common accord between the Executive Power and the concessionaire. In the event of lack of agreement between the parties, the matter shall be submitted directly to the Supreme Court of Justice of Bolivia for final decision." (Article 19).

Technical or accounting matters are to be decided by experts named by the parties, and if they disagree and fail to name an umpire, a third arbitrator will be chosen by the President of the American Institute of Mining Engineers and Metallurgists (Article 19).

73. The petroleum law of *Spain*[80] provides for final decisions to be given by domestic tribunals. In *Italy,* provision is made in the Petroleum law[81] for settlement of disputes by arbitration in accordance with the relevant articles of the Italian Civil Procedure Code, and in *Pakistan,* if the arbitrators appointed by the parties disagree, a dispute is to be decided by a judge of the Federal Court of Pakistan.[82] The petroleum law of *Libya* authorizes the insertion of a detailed arbitration clause in concessions by the terms of which disputes are to be settled by an international arbitration. If the parties fail to agree on the appointment of a third arbitrator, he is to be appointed by the President, or in certain circumstances, the Vice President, of the International Court of Justice. The concessions are to be governed and interpreted "in accordance with the Laws of Libya and such principles and

[75] For example, *Panama,* Production Development Law, No. 25 of 7 February 1957, Article 7 (*k*); *Bolivia,* Petroleum Code, 26 Oct. 1955, Art. 11 ("Concessionnaires shall be subject to the laws and courts of the country, and it is understood that foreigners renounce any right of diplomatic recourse regarding any matter relating to the concession").

[76] Constitution of the Dominican Republic 1955, Article 94.

[77] Foreign Investment Statute, Decree Law No. 258, 30 March 1960, Article 8.

[78] Legislative Decree 2687 of 31 October 1953, Article III (3).

[79] Bolivian Petroleum Code, 26 Oct. 1955, Article 18; Iranian Petroleum Act, 31 July 1957, Article 11 (B); Libyan Petroleum Law No. 25 of 1955, Second Schedule, Clause 16; *Ordonnance* No. 58-111 [France (Sahara)], 22 Nov. 1958, Articles 25, 26 (2) and 35.

[80] "The holders of permits and concessions are subject, without limitations, to the Spanish laws and tribunals." Law of 29 Dec. 1958, Art. 57 (*Boletin Oficial* No. 311).

[81] Law No. 6, 11 Jan. 1957, Article 36.

[82] Pakistan Petroleum (Production) Rules 1949, Rule 40, and Pakistan Mining Concession Rules 1949, Rule 80.

rules of international law as may be relevant but only to the extent that such rules and principles are not inconsistent with and do not conflict with the laws of Libya."[83]

74. Apart from the detailed provisions contained in laws relating to natural resources, there are also laws which merely allow the possibility of special choice-of-law and choice-of-forum clauses to be inserted in the concession agreements made in terms of the law. The Petroleum Law of *Morocco* contains an interesting article, according to which the concession agreements may provide for recourse to arbitration, and these agreements may fix upon "a procedure inspired by international practice in the matter of petroleum arbitration, and may contain a compromissory clause."[84] The foreign investment law of *Greece* provides that disputes "shall be settled by arbitration as prescribed in the instrument of approval, it being understood that a foreign national, who may be a natural person or a legal entity in official capacity or a person of recognized reputation in legal matters, may also be selected as a third arbitrator."[85] The Petroleum Law of *Iran* lays down conciliation and arbitration as the applicable dispute settling mechanisms and leaves the details for insertion in particular concession agreements.[86] In two recent agreement under this law, there are detailed arbitration provisions, including the appointment, if the parties do not otherwise agree, of an umpire by the President of the Swiss Federal Tribunal.[87] A third agreement gives this power of appointment to the President of the Cantonal Tribunal at Geneva and provides that the arbitral tribunal shall sit at Geneva, In the case that the President of the Cantonal Tribunal should refuse, or be unable, to make the appointment, his function is to be transferred to the presidents of the Supreme Courts of *Denmark, Sweden* or *Brazil,* in that order.[88]

75. Finally, dispute settlement may be regulated entirely by the terms of a concession agreement, in the absence of a petroleum or mining law. Article 40 of the amended Convention between the Government of *Iraq* and the Turkish Petroleum Company provides for appointment of a referee by the President of the International Court of Justice if the parties or their arbitrators fail to agree upon one. The decision of the arbitrators, or of the referee if they disagree, is final.[89] The same provision is to be found in Article 33 of the Offshore Concession Agreement between the Sheikh of *Kuwait* and the Arabian Oil Company, Ltd., a subsidiary of Japan Petroleum Trading Company, Ltd.;[90] and the Offshore Concession Agreement between the Government of *Saudi Arabia* and Japan Petroleum Trading Company. Ltd.,[91] contains a similar arrangement, both concessions being over offshore areas of the Neutral Zone in the undivided sovereignty of Saudi Arabia and the Sheikh of Kuwait.

[83] Second schedule to the Libyan Petroleum Law, No. 25 of 1955, Clause 28, as amended by Royal Decree of 2 July 1961.

[84] Dahir No. 1-58-227, 21 July 1958 (*Bulletin Officiel,* 24 July 1958), Article 39.

[85] L.D. No. 2687, 31 Oct. 1953, Article XII.

[86] Petroleum Act, 31 July 1957, Article 14.

[87] Agreement between Pan American Petroleum Corporation and the National Iranian Oil Company, 24 Apr. 1958, Article 41; Agreement between Sapphire Petroleums, Ltd., and the National Iranian Oil Company, June 1958, Article 41. [Effective 19 Jan. 1962, the title of Sapphire Petroleums, Ltd., became Cabol Enterprises, Ltd.]

[88] Agreement between the National Iranian Oil Company and AGIP Mineraria, 3 Aug. 1957, Article 44.

[89] Convention dated 14 March 1925 between the Government of Iraq and the Turkish Petroleum Company, Limited. The identical arbitration clause is to be found in Article 41 of the Basrah Company's Convention of 29 July 1938, as amended, and in Article 39 of the Mosul Oil Company's Convention, dated 20 April 1932, as amended.

[90] Agreement entered into at Kuwait on 18 Dhulhijjah 1377 A.H. (5 July 1958).

2. The requirement to provide for domestic participation

a. Association of private or public domestic capital

76. The pragmatic approach to foreign investment now adopted by many States in varying stages of economic development is well illustrated by the attitude of States to direct foreign investment, as evidenced by their laws and policy statements requiring the association of domestic capital with foreign enterprises exploiting natural resources.[92]

77. In theory, participation of domestic capital in foreign enterprises may have positive advantages, not only in the possibility of a greater degree of national orientation in the policy decisions of the enterprise, but also in the over-all benefit derived by the territorial sovereign from the presence of the foreign enterprise. Where the profit-margin from the exploitation of a particular resource is very high, it may not, in the long run, be to a country's advantage to have that resource exploited if the net earnings and capital appreciation are ultimately to be taken out of the country.[93] Once a substantial amount of local participation is assured, however, then, the more profitable the operation, the more much-needed domestic capital will be obtained. At the same time, exchange controls imposed to ensure reinvestment of profits locally can be made less stringent, encouraging more productive foreign investment. The same result may be harder to achieve by other controls at the disposal of a Government, because high rates of taxation, onerous exchange controls and Government control over the selection of key personnel may result in a failure to attract the desired amount of foreign capital and technical and managerial skills.

78. Where, on the other hand, the profit-margin from natural resources exploitation is considered reasonable, an inflexible provision excluding more than a certain percentage of foreign capital in any enterprise may result in holding back development, owing to the well-known shortage of domestic capital in many countries with under-utilized natural resources.[94]

[91] Agreement entered into at Riyad on 18 Jumada 1, 1377 A.H. (10 Dec. 1957). The arbitration clause is contained in Article 55.

[92] In some countries, the association of domestic capital in specified minimum percentages is also required in laws dealing with enterprises in fields other than natural resources exploitation. Such provisions are to be found in connexion with, for instance, banking, insurance, aviation, coastal shipping and the manufacture of alcoholic beverages. They are not dealt with here.

[93] This point is well brought out in the introductory discussion of foreign investment controls in the ECAFE study *Foreign Investment Laws and Regulations of the Countries of Asia and the Far East,* ECAFE/L.122, p. 5 *et seq.*

[94] "It is frequently suggested that the amount of foreign capital coming into the country in industry should be limited, either by fixing a maximum percentage of the shares which may be held in any company by foreign capital, or in some

79. There may also be variations in the approach of different countries with similar economic problems due to a variation in the prevailing philosophy within these countries as to the role of Government with relation to business and private capital, or as to the effects of foreign investment on sovereignty.

80. In practice, of the countries willing to admit foreign investment capital, only the *Philippines* has a rigid limitation on direct investment, with a constitutional provision limiting foreign investment in the development of natural resources to a 40 per cent interest. The effect of this provision is modified by a constitutional amendment exempting United States citizens until 1974. *Burma,* with a similar constitutional provision, has been able to allow exceptions since the passage of the Union Mineral Resources (Grant of Right of Exploitation) Enabling Act, 1949.[95]

81. Apart from the constitutional provisions in force in the above-mentioned countries, a number of States have either general foreign investment laws, or specific natural resources laws, limiting foreign capital participation to a minority holding, though in many instances with the possibility of exceptions in favour of approved foreign enterprises. These countries are *China, Finland, Mexico,*[96] *Norway, Pakistan, Portugal, Saudi Arabia, Spain* and *Sweden.*

82. In Latin America, except in *Mexico* and formerly, in *Brazil* (both countries with a growing supply of domestic private capital), there has been no requirement of domestic capital participation with permitted foreign investment, but recent industrial development encouragement laws in *El Salvador, Guatemala* and *Nicaragua* have contained provisions limiting the application of these laws to enterprises associating a specified percentage of domestic capital, and the petroleum laws of *Guatemala* and *Peru* provide that 30 per cent of the stock of an enterprise formed to exploit a petroleum concession there should be offered to nationals for a period of 90 days.

83. The other countries surveyed, with one or two exceptions to be found in the country studies, either do not require domestic participation at all or treat it as a variable factor to be considered when approving the foreign investment concerned. *Afghanistan, Cambodia, Jordan* and *Libya* have laws to encourage foreign capital investment[97] which give the approving authority power to insist that opportunities be given to local capital to participate in the enterprise; and *Ceylon, India, Indonesia, Nepal* and *Pakistan* all include association of domestic capital as a factor in their case-by-case approval of foreign enterprises.

84. Of the considerable group of countries which do not ordinarily require foreign enterprises to associate local capital, a number, including *Ethiopia,* the *Federation of Malaya, Ghana* and the *Sudan* are on record as favouring the establishment of joint ventures. *Canada* is concerned about the growth of those foreign enterprises in which it is difficult for Canadians to invest; and *Ireland,* while welcoming foreign capital, prefers it to take the form of minority stockholdings or loans rather than direct investment with a controlling interest.

Government capital-joint ventures

85. There are few provisions referring especially to the association of Government capital. Joint ventures in natural resources development between private foreign investors and the Government are to be found in several countries, including *Burma, India, Pakistan* and *Thailand,* and are considered in the policy statements of *Ethiopia, Ghana, Indonesia* and the *Sudan* but are the results of special negotiation rather than of general law, as is to be expected in the case of a relatively novel form of economic co-operation.

86. In the case of *Nigeria,* certain Government agencies, such as the regional development corporations, participate in certain undertakings in order to assure foreign investors of the safety of their capital. This is mainly done by the regional governments and takes the form of acquiring a part of the shares of the new companies in question.*

87. Recent developments in the petroleum industry, where very large amounts of capital may be involved have also favoured the association of governmental capital, either from the Government directly, as foreseen in the new laws of *Morocco* and *Spain,* or by way of a public corporation, such as the National Iranian Oil Company (NIOC) in *Iran,* the Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) in *Bolivia,* and the Ente Nazionale Idrocarburi (ENI) in *Italy.* In *Sweden,* the Crown has the right to acquire half the shares of any mining enterprise within two years after the mining concession has been granted.[98] Table I-2 gives annotated data on the practice of States with respect to the association of domestic capital. As considerable information has been available on this point, an attempt has been made to cover all Member States which permit foreign investment. The completeness of the data given is, of course, subject to the same considerations of availability of documentation which apply elsewhere in this study.

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other way. In view of the extremely large amounts of capital which will be required if we are to beat the unemployment menace, this is a totally unrealistic approach to the problem. Limiting the amount of foreign capital in any enterprise is tantamount to linking the rate of industrial development in this country to the amount of capital which can be raised locally. There is no assurance that local capital will come forward into industry at any particular rate and any such limitation of foreign capital must therefore limit the rate of such development to an unknown extent, which is most undesirable at the present stage." Federation of Malaya, Information Services, *Help for New Industries,* pp. 3-4.

[95] No mention of this limitation is contained in the Union of Burma Investment Act, 1959, or in the Union of Burma Investment Rules, 1960, issued thereunder. In its *Statement on Government Assistance to Private Enterprise,* 15 Sept. 1961, the Government states under the heading "Definition of 'Burmese Company'": "Though the definition of a 'Burmese Company' in the Burma Companies Act excludes any company with a foreign share-holding however small it has been the practice of Government not to discriminate between Burmese Companies and Foreign Companies in matters pertaining to industry. This practice will continue." (Information provided by the Government in connexion with the Secretariat's studies on the promotion of the international flow of private capital.)

[96] Under legislation promulgated in 1961, only companies in which Mexican capital participation is at least 51% can obtain new mining concessions, while special tax advantages accrue to established companies in which Mexican capital participation is at least 51%. (Regulatory Law of Article 27 of the Mexican Constitution relating to the exploitation and utilization of mineral resources, 5 Feb. 1961, effective 20 Apr. 1961).

* Information provided by the Government.

[97] See also paras. 36 and 39 above.

[98] Mining Law of 3 June 1938, as amended by Law of 21 Mar. 1952, Articles 46 and 47.

Table I-2

Government practice with respect to domestic capital participation requirements

Country	*Type of investment*	*Percentage of domestic capital required*	*Government policy and other observations*
Afghanistan	All foreign investment		"The degree of Afghan participation (if any)" is among the data to be considered by the Committee set up by the Law for the Encouragement of Private Investment, 13 May 1959, Article 13 (b). In the past, majority Afghan ownership has generally been required.
Argentina		Nil	
Australia		Nil	The Government welcomes joint ventures but does not require local participation.[a]
Austria		Nil	
Belgium		Nil	
Bolivia	Petroleum in the YPFB zone	51	YPFB may form subsidiary companies with private capital in order to exploit the oil in its zone. The Government body must maintain a majority interest.[b]
	Other foreign investment	Nil	
Brazil	Natural resources within 150 km. along borders	51[c]	
	Other natural resources	Nil	The provisions of Decree Law No. 6230 of 1944, requiring 50 per cent of the shares in mining companies to be Brazilian owned, have been superseded by administrative action in accordance with Articles 141 and 153 of the 1946 Constitution. There is now no such limitation.[d]
Burma	All natural resources	60	This limitation is contained in Section 219 of the Constitution. Variations may be authorized by Act of Parliament, as was done in 1949 in the Union Mineral Resources (Grant of Right of Exploitation) Enabling Act. By this Act, the Government may vary the capital requirements if it has reason to believe that domestic capital is not forthcoming, and that it would be detrimental to the interests of the Union not to grant the concession (section 2).
Cambodia		—	Each investment must be authorized, and the authorization may reserve a minimum participation for private or public Cambodian capital. Article 5 (1) of Kram No. 221-NS, 13 Sept. 1957.
Canada		Nil	At present the only legal requirements are those pertaining to Canadian ownership in respect to the Northwest Territories as introduced in the Canada Mining and Canada Oil and Gas Regulations. However, a Royal Commission has suggested that Provincial Governments might well consider requiring foreign applicants for mining rights, oil leases, and timber rights to take in Canadian partners.*
Ceylon			All investments need authorization. An official publication has stated that the Government desires local capital to participate with foreign enterprises, but that "The Government does not consider it desirable to impose a uniform rule in this respect."[e]
Chile		—	"While Chilean legislation does not require the association of domestic with foreign capital, official encouragement has been given to the formation of enterprises involving joint participation by foreign and domestic investors." *Foreign Capital in Latin America,* United Nations publication, Sales No.: 1954.II.G.4, p. 65.
China (Taiwan)*	All companies	51	Foreign investment in mining operations may be exempted from this limitation by special approval of the Executive Yuan. Under the Revised Statute for Investment by Foreign Nationals, enterprises formed with 51 per cent or more of foreign capital are not to be subject to requisition or expropriation within twenty years after commencement of business (Articles 18 and 15).[f]
Colombia		Nil	
Costa Rica		Nil	
Cuba		Nil	
Denmark*		Nil	

Table I-2 (continued)

Country	*Type of investment*	*Percentage of domestic capital required*	*Government policy and other observations*
Dominican Republic ...		Nil	
Ecuador		Nil	
El Salvador		Nil	The Industrial Encouragement Law (D.L. No. 661, 22 May 1952) applies only to enterprises with at least 50 per cent Salvadorean capital, including capital of permanently resident foreigners (Article 7 a).
Ethiopia	"Suitable industries"	—	"The Government will not, as a general rule, impose participation of Ethiopian capital investment in new enterprises established with foreign capital according to the nature of the enterprise and the extent of the foreign capital. Nevertheless, it will be the policy of the Government to require the participation of Ethiopian capital in suitable industries with a view to suitably employing the capital of the country. However, such local capital shall in most instances represent a minority interest."[g]
Federation of Malaya ..		Nil	"Although no legislation was conceived of in respect of the association of domestic capital, he hoped that foreign enterprise would associate domestic capital whenever the latter was forthcoming." Report of a speech by the Minister of Commerce and Industry.[h]
Finland*	Immovable property Other	80 Nil	The Government may exempt foreign nationals and companies from the provisions of the Act of 28 July 1939 on the Right of Foreign Nationals and Foreign Corporations to Own and Possess Immovable Property and Shares.
France	Hydrocarbons	51	Government policy is to require a majority of French capital in the joint companies set up to explore for, and exploit, petroleum. In certain instances, foreign capital has been allowed an exact half interest.
Ghana		Nil	The Prime Minister of the then Gold Coast, in a policy statement on capital investment, discussed the possibility of requiring Government participation. He said, "It is not normally proposed to regard Government participation as mandatory, but rather to look upon such partnership as a natural means, in the absence of local private capital, of assisting investors to establish a new venture. There may, however, be cases in which Government participation would be calculated to serve the national interest, and the Government must reserve to itself the right to insist on partnership in such future enterprises."[i]
Greece		Nil	
Guatemala	Petroleum	30	The Petroleum Code of 1955 (Decree No. 345, 7 July 1955), requires 30 per cent of the initial capital of companies organized to undertake petroleum operations to be offered for Guatemalan participation during a period of at least 90 days (Article 18).
	Border zones	51	Constitution (1956), Article 127.
	Other	Nil	"The major contracts with foreign investors were effected at a time when foreigners were free to invest in any type of enterprise in Guatemala with no requirement of participation by national investors. While this continues to be the general rule, it has recently been subject to qualification."[j] Apart from the provisions of the Petroleum Code, the Industrial Development Law of 1947 (Decree No. 459, 3 Dec. 1947) contains incentives available only to enterprises which admit stated proportions of domestic capital participation (Article 12).
Haiti		Nil	
Honduras		Nil	
India		—	As a rule, the major interest in ownership and effective control of an undertaking should be in Indian hands. The Government will not, however, object to foreign capital having control of a concern for a limited period, if it is found to be in the national interest, and each individual case will be dealt with on its merits.[k]

Table I-2 (continued)

Country	*Type of investment*	*Percentage of domestic capital required*	*Government policy and other observations*
Indonesia	Basic industries	51	This was laid down in a policy statement of 28 Dec. 1955. Act No. 78, 27 Oct. 1958, Concerning Foreign Capital Investment provides only that priority will be given to applications for joint ventures with Indonesian private or Government capital.
Iran	Petroleum outside the Consortium area	30	In mixed organizations or joint ventures, not less than 30 per cent of the ownership must be held by NIOC (Petroleum Act, 31 July 1957; Article 6). However, the Act allows for the possibility that a wholly owned foreign enterprise might be permitted (Article 8).
	Other investments	Nil	
Iraq			Advantages under Law No. 72, 1955, for the Encouragement of Industrial Undertakings are confined to enterprises with 55 per cent or more Iraqi capital. Also, 20 per cent of the capital stock of new subsidiaries formed by petroleum concessionaires in Iraq must be offered to Iraqi nationals.
Ireland		—	There are substantial advantages in the development of industry under Irish ownership and control. While this development will be fostered in every way, the Government welcomes foreign participation in the drive for expansion in industry."[1]
Israel		Nil	
Italy		Nil	
Japan		Nil	
Jordan		Nil	Participation of domestic capital may be a factor in obtaining approval for an investment under Law No. 28, 21 Apr. 1955, on the encouragement of foreign capital investment, Article 4 (2) a.
Laos		Nil	
Lebanon	Public utilities	33[m]	
	Other	—	Not known.
Liberia	Diamonds	50[n]	
	Other	Nil	
Libya	Oil	Nil	
	Other	—	Participation of Libyan investors may be a condition for approval of an investment under the Law on the Investment of Foreign Capital, Royal Decree of 30 Jan. 1958, Article 7.
Luxembourg		Nil	
Mexico	All natural resources	51	The Secretariat of Foreign Affairs may waive this requirement in the case of enterprises organized for the purpose of establishing a new industrial activity in Mexico.[o]
Morocco		Nil[p]	
Nepal	All investment	51	This appears to be a flexible limitation on foreign ownership and control, subject to exemptions at the discretion of the Government.[q]
Netherlands		Nil	
New Zealand		Nil	
Nicaragua		—	In order to come within the terms of the Law for the encouragement and Protection of Industrial Development (Decree 317 of 20 Mar. 1958), new or existing enterprises established with foreign capital may be required to admit national capital participation (Article 25).
Norway	Mining rights and waterfalls	—	Conditions concerning provision for the participation of Norwegian capital may be laid down when a concession is to be granted to a foreign enterprise. General Concessions Act, (Law No. 16 of 1917), Article 13 (1) and Article 4.
Norway	Forest land	80	Norway has complicated provisions limiting the acquisition without the King's permission of real property or forests by persons other than citizens and companies which fulfil certain conditions, including the reservation of at least four-fifths of their shares or voting rights to Norwegian nationals (General Concessions

Table I-2 (continued)

Country	Type of investment	Percentage of domestic capital required	Government policy and other observations
			Act, Article 19; Forests Concessions Act, 1909). In practice, the amount of foreign ownership is relevant in negotiations with the Government, not only regarding real property, but also regarding other matters of interest to the investor, such as dividends and taxes. This does not preclude obtaining an agreement even if more than 50 per cent of the share capital of the corporation is foreign owned. A number of foreign corporations are currently doing business in Norway on this basis.[r]
Pakistan*	Petroleum	25	
	Mining concessions	51	
	Other natural resources	—	Foreign capital is admitted in public utilities development on a case-by-case basis. In a policy statement of November 1954, the Government announced its intention of requiring 40 per cent domestic participation in thirteen specified industries, including the production of coal, fish oil, heavy chemicals and sugar, and 30 per cent for other industries.[s]
Panama		Nil	
Paraguay		Nil	
Peru*	Petroleum	30	In companies organized subsequent to the passage of the Petroleum Law No. 11780 (12 Mar. 1955), 30 per cent of the capital stock must be offered to the State or to private Peruvian interests. If not taken up within ninety days, this may legally be held by foreigners (Article 17). Companies with 60 per cent Peruvian capital are considered to be national (Article 6).
	Others	Nil	
Philippines*	All natural resources	60	This provision for domestic control of all natural resources exploitation originates in Article XIII, section 1, of the Constitution and has been buttressed by a large number of provisions in laws dealing with particular natural resources.[t]
Portugal	Public services, exploitation of public property, and activities of fundamental interest to defence or to the national economy	60	The whole of metropolitan Portugal is subject to an oil concession agreement with a 51 per cent foreign-owned company.[u]
	All investment in Portuguese Overseas Territories	51	The Overseas Minister may exempt particular foreign enterprises from this provision in the Organic Overseas Law.[v]
Saudi Arabia	All investments	51	This requirement contained in the Regulations for the Investment of Foreign Capital can be waived for large industrial companies or if the Council of Ministers deems the investment vital for economic development.[w]
Republic of South Africa		Nil	
Spain	All industries except petroleum	50	The provision of the Law on the Regulation and Protection of Industry (1939), which limited foreign capital participation to 25 per cent, was changed in July 1959. Foreign participation greater than 50 per cent is dependent upon Cabinet approval.[x]
	Petroleum	Nil	In case of competing applications, consideration is to be given to the amount of participation offered to Spanish capital.
Sudan			"The question of association of local capital, whether Government or private, with foreign capital will be a matter for negotiation at the commencement, and not for compulsion."[y]
Sweden*	Real property and mineral deposits	80	The Government may waive the provisions of the Act of 30 May 1916 which limit foreign ownership to one-fifth of the shares of a company (or not more than two-fifths of the shares and one-fifth of the voting rights if shares of different voting power are issued). According to information transmitted by the Swedish Government, in the period between January 1955 and June 1959, there were 218 (waiver) applications from

Table I-2 (continued)

Country	Type of investment	Percentage of domestic capital required	Government policy and other observations
			foreign natural and juridical persons of which 210 were granted.
Syria	Mining	66[a]	
Thailand		Nil	There are no specific regulations on domestic capital participation, and even in joint ventures with the Government, Thai majority ownership has not been insisted upon.[aa]
Tunisia		Nil	
Turkey		Nil	
Republic of South Africa		Nil	
United Arab Republic ..	All investments		The Stock Company Law No. 26, 16 Jan. 1954, requires that 49 per cent of the capital of companies formed in Egypt be offered to nationals for one month after formation. This requirement may be waived for investments of special national interest approved under Law No. 156, 2 Apr. 1953, as amended.
United Kingdom*		Nil	
United States of America*		Nil	
Uruguay		Nil	
Venezuela		Nil	

* Information provided by the Government.

[a] Commonwealth of Australia, *Overseas Investment in Australia*, p. 4.

[b] Pan-American Union, *Mining and Petroleum Legislation in Latin America* (1958), vol. 1, p. 36.

[c] Constitution of Brazil, Article 180; Law No. 2597, 12 Sept. 1955.

[d] Pan-American Union, *Mining and Petroleum Legislation in Latin America* (1958), vol. 1, p. 39.

[e] *Statement of Policy in Respect of Private Foreign Investment in Ceylon*, White Paper of 15 July 1955, pp. 1-2.

[f] Revised Statute for Investment by Foreign Nationals, 14 Dec. 1959.

[g] Notice No. 10 of 1950, *Statement of Policy for Encouragement of Foreign Capital Investment in Ethiopia.*

[h] *The International Flow of Private Capital 1957*, E/3128, pp. 86-87.

[i] Statement in the Gold Coast Legislative Assembly, 1 Mar. 1954.

[j] *Foreign Capital in Latin America*, United Nations publication, Sales No.: 1954.II.G.4, p. 98.

[k] Government of India, Industrial Policy Statement, 6 April 1948. The Government has power to regulate capital participation under the Industries (Development and Regulation) Act No. 65, 1951 and under the Mines and Minerals (Regulation and Development) Act No. 53 of 1948.

[l] White Paper, Nov. 1958, *Programme for Economic Expansion*, para. 96. The Industrial Development (Encouragement of External Investment) Act 1958 allows foreign majority holdings in industry where the industry is mainly for the export trade, where it will produce a new product or one in short supply, or where a public company has made a *bona fide* offer of 50 per cent of its shares to Irish citizens.

[m] Commercial Code, Articles 80 and 144; L.D. 304, 1942.

[n] Liberian Code of Laws of 1956, Section 171.

[o] Pan-American Union, *A Statement of the Laws of Mexico in Matters Affecting Business* (1955), pp. 44-45 (explains the present scope of the Decree of 29 June 1944, which regulates this field). See also footnote 96 above.

[p] "Government authorities tend to encourage some form of limited local capital participation." United States Department of Commerce, *Establishing a Business in Morocco*, W.T.I.S., Part I, No. 58-56, p. 2. In awarding petroleum concessions, preference will be given to the bidder who offers the largest participation to the State. Petroleum Law (Dahir No. 1-58-227, Article 13).

[q] *Foreign Investment Laws and Regulations of the Countries of Asia and the Far East* (ECAFE/L.122), p. 133.

[r] Memorandum from the Government of Norway on the International Flow of Private Capital, transmitted 28 January 1959.

[s] See ECAFE/L.122, *op. cit.*, p. 156, and *The International Flow of Private Capital 1953-55* (E/2901), para. 47.

[t] United States citizens are exempted from this limitation in terms of the Parity Amendment approved by plebiscite on 11 March 1947, provided that they invest through corporations organized under the laws of the Philippines, and at least 60 per cent United States owned. Laurel/Langley Agreement of 15 Dec. 1954, Article VI. The Parity Amendment expires in 1974.

[u] Organization for European Economic Co-operation, *The Search For and Exploitation of Crude Oil and Natural Gas in the O.E.E.C. Area.* The 60 per cent domestic capital provision is contained in Law No. 1944, 13 Apr. 1943. The Government decides on a case-by-case basis which activities are of fundamental interest to the national economy.

[v] Law 2066 of 27 June 1953. Concessions granted by the State will always be subject to the State's right to nationalize them. Companies with rights of sovereignty are expressly prohibited.

[w] *The International Flow of Private Capital 1957*, E/3128, p. 78.

[x] *Boletin Oficial Del Estado*, 28 July 1959.

[y] *Government Policy Towards the Encouragement of Local and Foreign Capital and Its Attitude Towards Foreign Capital in General*, Sudan Government Publication.

[z] L.D. No. 151 of 2 Mar. 1952, Article 21, taken together with the Mining Law No. 7, 21 Dec. 1953, Article 9.

[aa] Information transmitted by the Government of Thailand on the international flow of private capital dated 30 Dec. 1958.

b. Domestic participation in the staffing of enterprises[99]

88. Requirements relating to the employment of nationals generally have two aspects: (1) employment opportunities for nationals are sought to be provided and safeguarded at the higher levels as well as in the less skilled positions; and (2) at the same time, the policy in many countries is to recognize and seek to alleviate the dependence on foreign technicians and managerial staff resulting from the lack of local personnel with the necessary qualifications.

89. All States have laws and administrative procedures restricting and controlling the entry of foreign personnel to some extent. Usually these laws and regulations are not limited to personnel active in the field of natural resource exploitation, but are special provisions to be found in some concession agreements[100] and in laws regulating particular natural resources.[101] In the industrially more developed States, where foreign investment within their borders is relatively less important, the controls over entry of foreign labour are likely to be less specific, but not necessarily less wide-spread.

90. A policy which is shared by many States is that of restricting the entry of foreign employees when qualified local personnel are available. At the unskilled and semi-skilled level this restriction is often extensive, but for the higher levels of staff there are further considerations. On the one hand, opportunities for nationals may be of importance as providing training for other activities in the host State. The success of Government control over a particular enterprise may depend upon the Government's having at its disposal individuals qualified and willing to regulate the enterprise's activities, and even where no conflict of policy between the Government and an enterprise is anticipated, management experience may be badly needed for the training of domestic entrepreneurs. On the other hand, the smooth running of an enterprise and its attractiveness to private capital may depend upon the freedom of the owners to select competent and permanent personnel.

91. In this context, the declared policy of *Ceylon* may be of interest:

> "The Government of Ceylon attaches much importance to the training and employment of Ceylonese nationals in foreign enterprises to as large an extent as possible. The Government, however, recognizes the right of individual concerns to select their own personnel in key posts and has not for this reason introduced any inflexible rules compelling the employment of Ceylonese nationals in all positions. The Government is confident that foreign investors would, wherever practicable, conform to Government policy on this issue and would be willing to employ Ceylonese in all capacities whenever qualified local personnel is available."[102]

This seems to be representative of the approach also in *Burma*,[103] *Ghana*,[104] *Greece*,[105] *Ireland*,[106] the *Philippines*[107] and the *Sudan*.[108]

92. Some States have special laws limiting the permissible proportion of foreign directors, the policy makers of a corporate organization.[109] This type of provision is rather more common in Europe than elsewhere, and, in the case of the *Scandinavian countries* and *Spain* and *Portugal*, it reinforces the requirements of domestic capital participation considered above.[110] Outside Europe, a majority requirement of local citizens on the board of directors is to be found in general legislation for investments in the *United Arab Republic*[111] and *Nepal*,[112] and in the mining laws of

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[99] This part deals with labour legislation only in so far as it relates to the nationality of personnel. General provisions regarding conditions of work and welfare have not been included. In addition to national measures relating to movement of personnel across national borders, an ILO Convention (No. 97) Concerning Migration for Employment (Revised 1949) has been adopted by *Belgium, Cuba, Federal Republic of Germany, France, Guatemala, Israel, Italy, Netherlands, New Zealand, Norway, United Kingdom of Great Britain and Northern Ireland* and *Uruguay*. ILO Recommendation No. 86 deals with the same subject.

[100] For instance, in Costa Rica, Guatemala, Haiti, Honduras, Iran and Jordan.

[101] E.g., Pakistan Mining Concession Rules, 1949, Rule 79(*c*); Pakistan Petroleum (Production) Rules, 1949, Rule 39(*c*); Philippine Petroleum Act (Republic Act No. 387, 1949).

[102] Government of Ceylon, *Government Policy in Respect of Private Foreign Investment* (White Paper of 15 July 1955).

[103] Under the Union of Burma Investment Act, 1959, investors are granted, *inter alia*, the right to bring into the Union of Burma under contract to be approved by the [Union of Burma Investment] Committee, managers, technicians and skilled workers who are foreigners: provided that such investors have an approved training and promotions programme for the advancement of Burmese nationals (Article 5(*b*)). (Information provided by the Government in connexion with the Secretariat's studies on the international flow of private capital.)

[104] "The degree of warmth with which any enterprise is welcomed will be conditioned by the arrangements proposed for the employment, training and promotion of Africans." Statement by the Prime Minister, Mr. Kwame Nkrumah, in the Gold Coast Legislative Assembly, 1 Mar. 1954.

[105] The generally restrictive attitude to foreign personnel adopted to benefit the unemployed has been tempered by Art. VII of L.D.2687 of 31 Oct. 1953 (Investment and Protection of Foreign Capital) which provides that "enterprises established or assisted financially with foreign capital shall be permitted to employ foreign nationals in higher positions of their technical and administrative staff ... as provided in the instrument of approval to be executed in each case". (Translation from US Dept. of Commerce, WTIS, Part I, No. 55-64.)

[106] "Permits are readily given for the employment of foreign experts and skilled technicians needed for the successful establishment of an industry." Information transmitted by the Government of Ireland on the international flow of private capital, dated 26 Feb. 1959. See also *Programme for Economic Expansion*, para. 97, White Paper laid by the Government before each House of the Oireachtas (Parliament) in November 1958.

[107] Immigration Act (Commonwealth Act No. 613), as amended by Republic Act No. 503.

[108] "Foreign industrialists must undertake to provide reasonable facilities for the training of Sudanese personnel and for the progressive participation of such personnel in their establishments." Sudan Government: *Government policy towards the encouragement of local and foreign capital in the field of industry, and its attitude towards foreign capital in general*, para. 9.

[109] Provisions in laws relating specifically to banking, insurance, aviation and other enterprises outside the concept of natural resources for the purposes of this study are not considered here.

[110] See the references to these countries in table 2 above. By Article 5 of the Spanish Law on the Regulation and Protection of Industry, 1939, three quarters of the directors of Spanish industrial enterprises, including the President of the Board, must be Spanish citizens. In large mining concessions authorized by the Portuguese Overseas Ministry, a majority of the directors must be Portuguese, Article 162 of the Constitution of Portugal, as amended by Law No. 2048, 11 June 1951.

[111] Decree of 12 Aug. 1958.

[112] *Foreign Investment Laws and Regulations of the Countries of Asia and the Far East, op. cit.*, p. 52. The Chairman of the Board must also be a Nepalese national.

Laos,[113] *Indonesia*[114] and *China (Taiwan)*.[115] One half of the directors of a company incorporated in *Lebanon*[116] or in *Syria*[117] must be nationals of those countries, and all the directors of an Iranian company must be domiciled in *Iran*, although not necesarily Iranian nationals. Apart from these countries, *Lybia*[118] and *Pakistan*[119] reserve the right to require nationals on the board of approved companies, and the *United Arab Republic* makes special provision for a Government nominee on the board of enterprises deemed of national interest.[120] This latter provision reappears in the terms of some recent oil concessions, under which the Government has the right to appoint one or more representatives on the board of directors, even though no Government capital may be involved.[121]

93. The directors of a corporation are responsible for its policy decisions, but they often fill the top managerial posts as well, or provide technical expertise. There is, therefore, an overlap from requirements relating to the nationality of the managerial and technical staff to those which specify directors only, and a similar overlap from laws regulating the whole field of foreign personnel.

94. The countries of Central and Latin America, with the exception of *Argentina* and *Uruguay*, all have provisions setting a minimum percentage for domestic participation in the labour force or on the staff of any enterprise. A survey of the general range of such provisions which is not, however, exhaustive, is set forth in tabular form below.*

Country	Minimum percentage of nationals: General labour	Skilled	Managerial, technical	Minimum percentage of total wages to be paid to nationals
Bolivia	—	85	— [a]	—
Brazil	—		—	66.6 [b] —
Chile	85		— [c]	—
Colombia	90		80	80 —
Ecuador	80		—	10 —
Mining	80			
Guatemala	—	90	—	[d] 85
Haiti			95 [e]	—
Honduras	90		—	— 85
Paraguay	90 [f]		—	95 (salaried) [f] —
Peru	80			80
Venezuela	75			100 (supervisory) —

[a] Bolivian nationals must hold the posts of director, administrator, adviser or representative in any State enterprise or in any private undertaking whose operations are directly connected, economically or financially, with the interests of the State.

[b] This percentage may be reduced by Executive decision in special cases.

[c] Alien skilled workers who cannot be replaced by nationals shall not be taken into account in calculating the percentage of national labour employed, but only if the firm employing them is less than ten years old and their contract is for a period not more than three years (Law No. 9705, 17 Oct. 1950).

[d] Managers, directors, administrators and supervisors are exempt to the extent of two persons for each enterprise. A 10 per cent reduction in the proportion of domestic personnel is permitted for up to five years, provided that the enterprise arranges for the training of nationals to replace the extra foreign personnel. The major concessionaires are not subject to these restrictions.

[e] Law of 19 Sept. 1952, Article 12.

[f] New firms entering under the industrial encouragement law may be exempted from these minima for a period up to five years [Law No. 246, 25 Feb. 1955, Article 5 (*f*)].

95. The legal minimum figures shown above cannot, however, be taken as necessarily representing the actual proportion of domestic to foreign labour even in foreign-owned enterprises. In many countries of the region, as has been mentioned, foreign technicians are exempted from the application of the law whenever qualified local personnel is not available, and concession contracts may contain special labour provisions.[122] On the other hand, the actual proportion of domestic personnel, even in foreign-owned enterprises, may be much higher than the law demands. This is stated to

* Based upon information provided by the International Labour Office, as well as upon *Foreign Capital in Latin America* (United Nations publications, Sales No.: 1954.II.G.4) and information provided by certain Governments in connexion with the Secretariat study on the international flow of private capital.

[113] *Ibid.*, p. 34. A majority of the directors, including the chairman and the managing directors must be Laotian nationals.

[114] Act of 23 May 1899, as amended, Section 4. The proposed new mining law is expected to retain the same provision.

[115] The requirement that the chairman of the board, managing director and a majority of all the directors of a Chinese company, or any mining company operating in China, be Chinese nationals may be waived on request by the Executive Yuan for enterprises entering under the terms of the Revised Statute for Investment by Foreign Nationals, Article 18.

[116] L.D. No. 304, 1942 (Commercial Code).

[117] L.D. No. 151, 2 Mar. 1952. Article 21. By the terms of the Mining Law, No. 7, 21 Dec. 1953, one third of the directors in *any* mining company must be Syrian nationals.

[118] Under the Law on the Investment of Foreign Capital, 30 Jan. 1958, the Minister may impose conditions to permit the participation of Libyan investors and their representation on the Board of directors.

[119] The Central Government may provide for domestic participation on the board of a foreign enterprise exploiting natural resources in Pakistan through the use of the discretionary powers contained in the Pakistan Capital Issues (Continuance of Control) Act, 1947, Article 3(4).

[120] In the United Arab Republic, Article 13 of Law No. 20, 13 Jan. 1957, as amended by Law No. 138, 29 June 1957, provides that the Economic Authority set up by these laws shall have a delegate on the board of directors of any company declared to be of national interest.

[121] E.g., Agreement between the Government of the Hashemite Kingdom of Jordan and George Izmiri, Article 23, *Jordanian Official Gazette*, 3 Mar. 1958; Offshore Concession Agreement between the Government of Saudi Arabia and Japan Petroleum Trading Co., 10 Dec. 1957, Article 28.

[122] Agreement between the Government of Guatemala and the Compañía Agricola de Guatemala, Article 17 (published in the Official Gazette No. 71 and approved 12 Sept. 1930). The agreement provides for the employment of at least 75 per cent Guatemalans, with exceptions for needed technicians and specialists. Agreement between the Government of Honduras and the Tela Railroad Co., Article 79, providing for the use of at least 75 per cent domestic employees and an annual training programme.

be the case in *Venezuela*, for instance.[123] The position in *Uruguay* and *Argentina* has already been remarked upon as differing from the general pattern in Latin America. Neither country defines in its legislation the required proportion of domestic staff for each enterprise, although in *Uruguay* such a provision may be inserted in the charter of incorporation of a big employer.[124]

96. Outside Latin America, State practice is less uniform. *Cambodia*,[125] *Nepal*,[126] and *Saudi Arabia*[127] have fixed a minimum domestic participation in the staff of any enterprise, and the *United Arab Republic* does so for foreign branch operations.[128] *Iran* and *Libya* insert a staff quota in petroleum concession agreements and require the domestic employment target to be achieved within ten years from the date on which oil exports commence (Iran) or ten years from the start of operations (Libya).[129] Another type of regulation is that provided in the Industrial Undertakings Encouragement Law of *Iraq* (No. 43 of 1950), under which financial advantages are offered to enterprises employing 90 per cent or more of local nationals in operations within their borders. Apart from these cases of fixed percentage regulation, domestic participation in the staff of particular enterprises exploiting natural resources is either secured or left to the market by flexible immigration and labour controls, which are available to all States.[130]

97. *Training:* Some provision for training the locally recruited staff of a foreign enterprise operating within its territory is to be found in the laws of policy statements of a number of countries, including *Afghanistan, Burma, Ceylon, Cuba, Ecuador, Ghana, Guatemala, India, Indonesia, Iran, Liberia, Libya, Pakistan, Panama, Philippines, Saudi Arabia, Sudan* and *Turkey*. A detailed obligation on foreign enterprises to provide training for nationals of the host State is to be found in a number of petroleum laws and concessions. The employment targets set under the Iranian and Libyan laws have already been mentioned; in addition, *Libya* imposes an obligation on the petroleum concessionaire to spend between L£2,500 to L£5,000 per annum on training from the date of commencement of regular exports of petroleum.[131] *Pakistan* has detailed provisions for employment and training in both mining and petroleum enterprises,[132] and these provisions are backed up by the obligation to train a number of Pakistani nationals to be chosen by the Director of Petroleum, or the Central Government in the case of mining concessions. In *Turkey*, the holder of a petroleum right is required to send abroad, for training and experience, Turkish nationals numbering up to 15 per cent of the number of foreign personnel employed.[133]

3. Obligations and restrictions imposed by Governments with regard to the development of resources and the disposition of production

98. The imposition of conditions to ensure that privately financed exploitation operations are consistent with the interests of the country concerned in the development and use of the resources themselves is an exercise of national sovereignty over natural resources. Conservation techniques, safety measures and other similar matters are, in most countries, governed by regulation to which operators must conform. Such regulation is often imposed regardless of whether the operating right has or has not been obtained from the State. For example, to the end of conserving forest resources, many laws impose obligations concerning felling and replanting on private forest owners as well as on licencees or lessees on public forest lands;[134] and in countries where private ownership of resources, including minerals, is usual, conservation measures subject to supervision of governmental authorities are taken (e.g., United States of America). The main concern here, however, will be with other obligations imposed essentially within systems of governmental grants of exploitation rights.

99. "Working obligations" designed to promote efficient and continuous operations carried on under a grant of rights from the State are generally imposed and, regardless of the period for which rights have been granted, failure to conform to such obligations may result in withdrawal of the right. Typically, these obligations are described in such terms as deadlines for completion of specified works, minimum expenditures required, number of labourers, prohibition of work stoppages.

100. Many countries go further in controlling and directing operations by requiring conformance to plans previously approved or originated by the Government.

[123] *Foreign Capital in Latin America, op. cit.*, p. 147.

[124] *Ibid.*, p. 141.

[125] Kram No. 212-NS, 23 July 1957 fixed a 30 per cent maximum of foreign labour, but for approved foreign investments this has been superseded by the provisions of Kram No. 221-NS, 13 Sept. 1957, which empowers the Minister of Finance to fix a minimum percentage of Cambodians for the staff of each approved enterprise.

[126] At least 50 per cent of the administrative and managerial posts in any foreign enterprise must be held by Nepalese, ECAFE/L.122, *op. cit.*, p. 52.

[127] Seventy-five per cent of all employees must be nationals of Saudi Arabia, and they must receive at least 45 per cent of the total wages paid (Regulations for the Investment of Foreign Capital, 23 May 1957).

[128] The Stock Company Law, No. 26, 16 Jan. 1954, has labour provisions applicable to branch operations of foreign companies. Ninety per cent of the workmen receiving 80 per cent of the pay must be Egyptian, as must 75 per cent of the specialist employees, who are to receive 65 per cent of the total pay (Articles 92-3). Exceptions may be granted for a limited period by the Minister of Commerce and Industry (Article 94).

[129] Under the terms of three recent concession agreements in Iran, the enterprises concerned are to provide training programmes to ensure that, within ten years, at least 51 per cent of the top executives and 98 per cent of the other personnel will be Iranian. Agreement between NIOC and AGIP Mineraria, 3 Aug. 1957, Article 33; Agreement between NIOC and Pan American Petroleum Co., 24 Apr. 1958, Article 13(5) and (6). For Libya, the Second Schedule to the Libyan Petroleum Law, No. 25, 1955, provides as a model for concession agreements that after ten years Libyan subjects shall constitute 75 per cent of the total staff, provided that suitable staff is available (Clause 18).

[130] Subject to the obligations which a State may have undertaken by treaty or agreement with concessionaires.

[131] Petroleum Law No. 25, 1955, Second Schedule, Clause 18(2).

[132] Pakistan Petroleum (Production) Rules, 1949, Rule 39(*c*) sets the target for employment of nationals "at various levels" at at least one eighth in the first five years, thereafter a quarter for the next five years and thereafter at least one half. The Mining Concession Rules, 1949, set four successive four-yearly steps, from one sixth, to one third to three quarters of the staff until after twelve years a mining enterprise is to employ Pakistan nationals only at all levels (Rule 79(*c*)).

[133] Petroleum Law No. 6326, 10 Mar. 1954, as amended, Article 120.

[134] See *Forest Policy, Law and Administration*, FAO, Forestry and Forest Products Studies, 1950, No. 2.

Production volume is subject to control in several countries where governmental authorities are broadly empowered to fix minimum rates of production on the basis of the efficient production capacity of the deposit or, under some laws, have the narrower power to require production at least up to that required to meet local consumption.

101. Modern mining and petroleum legislation usually requires detailed and extensive reports and information to be supplied on request, including technical and financial reports, plans and, in particular, samples and specimens. These requirements often serve not only as a means of Government surveillance and supervision of the particular concessionaire, but also afford governmental authorities full information on stages of development, new discoveries and the possibility of new operations.

102. With respect to the disposition of products of natural resources exploitation by private enterprise—foreign or domestic—there are a variety of measures taken by States with a view to serving national economic or political policies. Among such measures are export controls generally, and, with particular reference to subsoil and water power resources, requirements for satisfaction of local needs, refining within the country, specifications of industries to be supplied, and prohibitions against supplying designated persons or States. In the case of certain mineral products, particularly sources of atomic power, many Governments may require that some or all production be sold either to the State itself or to a purchaser designated by the State.

Australia Under the Petroleum Act (No. 4359) of 1935 of the State of Victoria, the holder of an exploration licence must commence drilling and within two years must drill test wells of a minimum aggregate depth of 2,000 feet (Article 18). He must use only such drilling operations as yield a core or other samples approved by the Minister and all cores and samples must be preserved for at least one year. Any discovery must immediately be reported and testing operations prescribed by the Ministry must be carried out. The consent of the Minister is required before any drilling operations (Articles 19, 20). Cancellation of the licence may follow on any violations of obligations under the licence or regulations (Article 22). Every petroleum lessee must, on penalty of forfeiting the lease, work in accordance with regulations and to the satisfaction of the Minister (Article 63). Drilling and operating of wells must continue so long as petroleum is obtainable; temporary suspensions may be consented to by the Minister (Article 35). A petroleum lease may contain a covenant—the breach of which results in forfeit of the lease—by the lessee to refine in the state or in some other part of Australia all crude petroleum obtained. Export of crude petroleum requires permission of the Minister (Article 28).

Under the Petroleum Act 1936/54 of the State of Western Australia, a petroleum lease shall contain a covenant by the lessee that, if so required by the Minister, the lessee shall at his option, refine or cause to be refined, or offer for sale for refining (i) in the State within a time to be mutually agreed, or (ii) elsewhere in Australia, such of the petroleum produced from the land held under the petroleum lease as is required for consumption in Australia; provided that such requirement shall not extend to any production of petroleum of a nature which would not normally be refined [Section 63(1)(*b*)].*

*Canada*** The provincial and Federal laws require "assessment" work by a claim holder before granting a lease or patent, which work is either specifically prescribed or prescribed in terms of minimum expenditures. In the case of most mineral leases or patents, no production controls are imposed except that the right to renewal of leases may be lost if a mine is not producing and, in Quebec, concessions for which letters patent were issued before 1911 may be revoked if work has been idle for 21 years subsequent to 1934. However, in the case of coal, production amounts are subject to control in some provinces. In Alberta, for example, a lessee of coal mining rights must begin active operations within one year from the date of notification by the Minister and this notification specifies the quantity of coal to be mined; this quantity may be increased from time to time, but a lessee may not be required to produce more then ten tons annually per acre.

With respect to disposition and sale of mineral products, federal and provincial legislation requires refining and treatment within Canada, except as otherwise provided by administrative authority.

The production, use, sale and export of radioactive materials are subject to regulations and permission of the Atomic Energy Control Board.

*China (Taiwan)**** Under the Mining Law of 26 May 1930, as amended to 30 July 1959, the Government has the right of preemption over the production of petroleum and of uranium and thorium. Export limitation may be imposed if deemed necessary (Article 8). If the national or provincial authorities consider a mining operation to be unsafe or detrimental to the public welfare, the holder of the mining right in question must take immediate remedial action or face cancellation of the right (Article 81). A mining right may also be cancelled if work has not started within two years after registration or is subsequently suspended for more than one year, or if the mining right has been transferred or mortgaged to an alien national (Article 43). The last-mentioned provision does not, however, apply if the alien national's acquisition is exempted by the Executive Yuan under the terms of Article 18 of the Revised Statute for Investment by Foreign Nationals (14 December 1959).

*Denmark**** Under the Act on the Exploration and Exploitation of Raw Materials in the Subsoil (No. 181, 8 May 1950), all findings must be reported to the Government and samples of earth and minerals must be submitted. Work must proceed with the plan approved by the Government and suspension of work for more than two years is penalized by withdrawal of the concession.

Greece Under the Petroleum Law (No. 3948, 1959), obligations during exploration include, in addition to drilling requirements, a minimum annual expenditure of work of 3,000 drachmas per square kilometre of concession area for the third through fifth years and 6,000 drachmas per square kilometre for the next three years. An exploitation concessionaire is required to follow good petroleum practices and to submit studies and reports on programmes semi-annually. The State may require production up to the maximum potential volume for the concession area; disagreement between the State and the concessionaire on the production increase is subject to arbitration (Articles 13, 28).

Guatemala Among the working obligations prescribed by the Petroleum Code (Decree No. 345, 7 July 1955) is the duty to produce petroleum in sufficient quantity to satisfy internal requirements of the country; the share of each petroleum producer is determined by the Executive Power. The Law states the general rule that holders of exploitation rights may not be obligated either to produce in greater quantities than the maximum efficient rate of production of the wells or to increase production in greater proportion than other producers in the same circumstances; but the Executive Power may make exceptions to these rules in order to prevent waste or for reasons of national security.

*India**** The Petroleum Concession Rules provide for the discretionary inclusion in concessions of a requirement that

* Information provided by the Government of Australia.

** Information provided by the Government of Canada supplemented by *Digest of the Mining Laws of Canada*, Department of Mines and Technical Surveys, 1957.

*** Information provided by the Government.

the lessee refine crude oil in India not to exceed the amount needed to supply India's local requirements (Rules 52, 54).

Iran The Petroleum Act (31 July 1957) provides that each petroleum operator be obliged to deliver to the National Iranian Oil Company a proper part of such petroleum as is required for internal consumption at cost price plus a reasonable operating fee, but no operator may be required either to produce at a rate higher than the maximum rate of efficient production or to supply quantities disproportionate to those required from other operators (Article 11).

Iraq The 1952 Agreement between Iraq and the Iraq Petroleum Co. Ltd., the Mosul Petroleum Co. Ltd. and the Basrah Petroleum Co. Ltd. provides for annual production and disposition of a minimum quantity of petroleum by each company exclusive of that supplied for Iraq's domestic requirements. Reasons of commercial expediency or convenience are not recognized as acceptable reasons for failure to conform with production requirements, but requirements may be reduced in any given year if the companies can show to the reasonable satisfaction of the Government that circumstances beyond their control prevent fulfilment of the obligation (Articles 5, 7).

Laos The law provides that all mineral exploration and exploitation authorizations carry with them the obligation, under penalty of cancellation, to carry on effective operations in exercise of the rights granted (Ordinance No. 42, 26 January 1959, Article 4).

Liberia The Law of Mines (Title 24 Code of Laws, 1956) provides that a mining concessionaire has the right freely to dispose of minerals within Liberia. Export in crude or refined states is subject to specific provisions of the concession (Section 165).

Libya The Petroleum Law (No. 25, 1955) requires concessionaires to begin operations within eight months and to expend a given sum per square kilometre per year, which sum increases during the period of the concession (Article 11).

*Mexico** The Constitution provides that concessions for mineral exploitation may only be granted on condition that regular works are established for the utilization of the resources and that all requests set forth by law are complied with (Article 27). The Mining Law requires proof of regular work based on expenditures on salaries. Minimum expenditures are prescribed by regulation varying with the area and class of mineral. Interruption of regular work results in loss of the concession except if authorized, and an authorized shutdown may in no case last for more than two years (Articles 28, 29, 116).

Morocco Under the Petroleum Law (Dahir No. 1-58-227, 21 July 1958), a holder of an exploration permit must begin work within six or nine months, depending on the zone; must perform the work programme agreed on; must inform the Government of discoveries within fifteen days; must give economic and technical information to the Ministry of Mines and must retain cores and samples. An exploitation concessionaire must exploit the oil deposit correctly, maintain continuous production up to capacity, submit reports, retain samples and provide any information requested. Permits and concessions may be cancelled at thirty days' notice for failure to observe these obligations [Articles 16, 22, 29, 35; *cahier des charges* (Decree No. 2-58-877) Article 3].

A concessionaire may not export petroleum except after Moroccan domestic needs have been met. Fifty per cent of the petroleum beyond that needed locally is exportable without licence; further exports are subject to export licence (Article 5 (2)).

*Norway** The General Concessions Act (14 December 1917) provides that concessions for waterfalls may include stipulations that the products which have been manufactured by means of water power and which are suitable for further processing be processed to the extent possible within Norway (Article 2, paragraph 11). Concessions may stipulate that energy produced from water may not be used for certain industries or that all or part of the energy should be used for specified industries (Article 2, paragraph 2). A concessionaire utilizing water power for manufacture of products important for agriculture or for food producers may be obligated to sell part of the production to Norwegian Agriculture at reduced prices (Article 2, paragraph 11).

Mining concessions similarly may require that refining be undertaken to the greatest extent possible within Norway (Article 13, paragraph 10).

Pakistan Petroleum exploration and development work must be carried out in accordance with plans approved by the Government. Petroleum lessees may be required to cooperate in unit development of an oil field if the Government considers such unitization desirable to secure maximum recovery of petroleum or to avoid unnecessary competitive drilling [Pakistan Petroleum (Production) Rules, 1949, as amended, Rules 19 and 20 and second schedule, clause 56].

The Government is empowered to require the lessee to meet the internal requirements of Pakistan before exporting crude oil or its products (Rule 39). Construction of a refinery is a standard requirement imposed on a lessee contingent on production reaching a stated tonnage per year (second schedule, clause 25).

Under the West Pakistan Mining Concession Rules, 1958, the complete plan for development of the mineral must be presented to the Government. Operations must be begun within 180 days and the lease is considered breached if the mine is not worked—so as to achieve the annual production which is fixed by the Licencing Authority. The Government, in addition to fixing production requirements, is also entitled to require lessees to engage in joint exploitation operations which in the Government's judgement is advisable (Rules 43, 53, 70 (*g*) (*h*)).

The Government is empowered to require that minerals be sold to designated parties at fixed price, and to require that minerals be refined to standards prescribed (Rule 70 (*a*) (*j*)).

*Peru** The Mining Code (D.L. No. 11357, 12 May 1950) provides for an additional surface tax of 20.00 sols per year per hectare chargeable to a mining exploitation concessionaire who does not show at the end of five years expenditures for water and materials amounting to 50.00 sols per hectare comprised in the concession. The amount of this additional tax is deductible from the concessionaire's first income tax and payment (Article 51). Concessionaires must submit all data requested "necessary for the control and supervision which the Executive Power is to exercise permanently over all types of concessions" (Article 63).

The Petroleum Law (No. 11780, 12 March 1955) obliges concessionaires to supply preferentially and *pro rata*, according to their production, the crude oil required for the country's internal consumption in the amount and at the prices determined by the Government (Article 117).

*Philippines** Under the Mining Act (No. 137, 2 November 1936, as amended), mining lessees must make a minimum expenditure annually for labour and improvements; failure to do so constitutes abandonment on the part of the lessee (Articles 82-84). Under the Petroleum Law, exploration concessionaires must present each year the programme of work to be undertaken and minimum annual expenditures which increase for each year of the concession must be shown (Article 47). An exploitation concessionaire must begin drilling operations within one year. Once production is established, no suspension is permissible except with governmental permission and in no case may operations be suspended for more than two years except in the event of *force majeure* (Articles 60-62).

The Petroleum Act of 1949 authorizes the Secretary of Agriculture and Natural Resources to require any exploitation concessionaire to refine in the Philippines part or all

* Information provided by the Government.

of the crude oil produced, but the quantity of such compulsory refining by any one concessionaire in relation to the total production from the concession should not exceed the proportion which the domestic requirements bear to the total national production (Article 71).

Saudi Arabia Under the Offshore Concession Agreement between the Government of Saudi Arabia and the Japan Petroleum Trading Co. Ltd., (10 December 1957), the company undertakes to furnish the Government with all data in order to have a complete knowledge of the development of the petroleum industry in the country. The company is required to take efficient measures after the discovery of oil in commercial quantities in any well to begin operation promptly and to produce at maximum efficient capacity, but only if a satisfactory market for the oil exists.

Within two years of production reaching 75,000 barrels per day for ninety days, the company is required to construct refineries having a capacity of 30 per cent of the company's production.

The company is obligated to afford priority to domestic purchasers and to purchasers within friendly Arab nations and to refrain from selling directly or indirectly to foreign Powers hostile or unfriendly to the Government.

Spain Under the Mining Law (19 July 1944), exploitation must proceed in accordance with plans approved by the Government. Operations must be continuous and suspension of operations results in forfeiture of the concession in the absence of circumstances considered by the Government as justification (Articles 32 and 33).

The State may regulate or prohibit exports and require minerals to be processed within the country (Article 34).

Syria The Syrian Law on Mining (No. 7, 21 December 1953) provided that a book of obligations (*cahier des charges*) be attached to each exploration permit covering, among other points, the obligations of the permit holder with respect to plans and reports to be submitted, material and machinery to be utilized, technical work to be accomplished, the methods of control, and the penalties for failure to fulfil the obligations (Article 15). Concessions were required to set forth rights and obligations and the conditions under which exploitation might be suspended or the concession revoked. All concessions were required to stipulate, among other things, that the Government might, by decree, require an increase in production (Article 16).

The book of obligations accompanying petroleum exploration licences granted the United Petroleum (Concordia) Limited (Decree No. 2819 dated 2 September 1956),[135] provides for completion of specified geophysical studies within the first year and for total annual drilling of at least 2,500 metres after the first year and 5,000 metres after the second year; failure to meet these obligations results in cancellation of the licences (Articles 5, 6, 14). Detailed semi-annual reports are required to include information on locations, drilling progress, specimen studies, drawings etc., and specimens of minerals struck and geological formations reached must be submitted; such information is kept secret by the Government for the duration of the licence (Article 8). Violations of such requirements are penalized by a fine of 400.00 Syrian pounds, and the accumulation of five such violations in one year subjects the company to cancellation of its licence (Article 15).

Thailand Under the Mining Law (B.E. 2461, 1919, as amended), mining operations must be actively carried on. Suspensions up to three continuous years may be authorized by the Department of Mines. The concession specifies the number of labourers required to be employed which can be no less than one to every two rais of land; for this purpose one horsepower is deemed to be equivalent to eight labourers. Discoveries of minerals not included in the concession must be promptly reported.

*United Kingdom** Under the Atomic Energy Acts of 1946 and 1954, as modified by the Transfer of Functions (Atomic Energy and Radioactive Substance) Order, 1957, the Prime Minister is empowered compulsorily to acquire radioactive minerals worked under licence.

Venezuela The Law of Hydrocarbons (13 October 1955) does not prescribe specific working obligations. Detailed reports must be submitted by concessionaires, who must furnish the Government with all data requested that are necessary for a complete knowledge of the development of the industry in the country (Articles 60, 61).

The Executive is explicitly authorized to stipulate in concession agreements the obligation to refine or manufacture in Venezuela all or part of the products of exploration (Article 5).

* Information provided by the Government.

[135] This is the only oil concession now in effect.

C. Measures affecting the capital and profits of foreign companies exploiting natural resources

103. The place of a consideration of certain fiscal measures in this study is a recognition of the fact that in modern economies, natural resources have little or no real or exchange value outside national or international monetary systems.

104. Not only have States been able to control the manner in which their natural resources are to be exploited and the people by whom it will be done, but they have also at their disposal the tools of exchange control and taxation, in one form or another, with which to regulate the share in the financial benefits of the enterprise which is to be retained by the territorial sovereign.

1. Exchange controls[136]

105. The States which are members of the International Monetary Fund may "exercise such controls as are necessary to regulate international capital movements", but members may not "exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay the transfers of funds in settlement of commitments . . .". The States which have accepted the obligations of the Fund Agreement are bound by its Articles not to "impose restrictions on the making of payments or transfers for current international transactions" without the prior approval of the Fund except under certain conditions governed by special or temporary authority contained in other provisions of the Articles.[137] [By Article XIX(i), "payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitations: 1. ... 2. Payments due as interest on loans and net income from other investments; 3. Payments of moderate amount for amortization of loans or for depreciation of direct investments; 4. Moderate remittances for family living expenses."]

[136] Exchange control provisions are both complex and subject to change. The information for this section, unless otherwise noted, is drawn from the communications of Governments in connexion with a recent study on the international flow of private capital and from the *Twelfth Annual Report on Exchange Restrictions* of the International Monetary Fund.

[137] Article VI, Section 3, Article VIII, Section 2(*a*), also Article VII, Section 3(*b*) and Article XIV, Section 2.

106. The actual practice of States is not uniform. An appreciable number of States do not, at the present time, restrict the export of investment capital or earnings by non-residents. Among these are *Argentina, Belgium, Bolivia, Canada,* the *Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Laos, Lebanon, Liberia, Luxembourg, Mexico, Nepal,*[138] *Norway, Panama, Paraguay, Peru, Saudi Arabia,* the *Republic of South Africa, Syria,* the *United States of America, Uruguay* and *Venezuela.* In certain instances, however, special rates of exchange apply. Most countries, with very few exceptions, allow the transfer of profits while controlling (but not necessarily restricting) capital exports. Examples are *Ceylon, Ethiopia,* the *Netherlands* and *New Zealand.*

a. Approved investments

107. Since the Second World War, a considerable number of States have taken steps to clarify the exchange standing of particular foreign enterprises, either by giving discretion to the exchange control authorities to approve enterprises case by case for exchange facilities or under a foreign investment encouragement law.[139] Most of these exchange control provisions do not deal specifically with natural resources enterprises but speak of "productive" investments, or investments "contributing to economic development". This gives the Government concerned an opportunity to define, for exchange purposes, the status of existing enterprises exploiting natural resources and to permit the entry of only such new capital as will benefit the economy or earn enough foreign exchange to service its own transfers.

108. The earnings and capital of approved investments may be remitted from *Afghanistan,*[140] *Austria, Burma,*[141] *Denmark,* the *Federation of Malaya, France, Ghana, India, Indonesia, Italy, Libya,* the *Netherlands, Nicaragua, Nigeria,** *Pakistan,* the *Sudan, Sweden, Thailand, Tunisia, Turkey,*[142] and the *United Kingdom.*

109. In addition, unrestricted transfer for the earnings, (but not the capital), of approved investments is allowed by *Iran, Israel,*[143] *Japan, Jordan,* the *United Arab Republic* and, with respect to profits earned from January 1960, the *Philippines.*[144]

110. Under the Foreign Investment Statute of Chile (Decree Law 258, 30 March 1960), approved investments may be granted (*a*) the right to withdraw capital in the manner, period and terms established by the approving Decree; (*b*) the right to transfer profits and interest earned; and (*c*) free access to foreign currency markets and the right to use foreign currency earned by exports for transfer purposes under (*a*) and (*b*) (Article 9).*

111. The foreign investment law of *Greece* specifies a maximum transferable return on capital, restricting the transfer of profits to 12 per cent of direct investment capital per annum. The Revised Statute for Investment by Foreign Nationals of *China (Taiwan)* provides for a maximum of 15 per cent annually after two years, though executive exemption from this provision may be given. Apart from these countries, *Costa Rica* allows earnings up to 10 per cent of registered foreign capital to be taken out at the official rate every year and the rest at the free market rate; *Chile* guarantees unrestricted transfer of profits for a ten- or twenty-year period, the foreign exchange position permitting.

112. The position with regard to the repatriation of the capital of approved investments, including appreciation, is somewhat the same as that for the transfer of earnings, except that fewer countries allow unrestricted transfer.

113. Some countries impose a waiting period ranging from one to five years after which approved capital may be repatriated in specified annual amounts. Thus *Greece* allows repatriation after one year at 10 per cent per annum; *Jordan,* after one year in four annual instalments; and *Israel* and the *United Arab Republic* permit repatriation of approved capital after five years at 20 per cent per annum. *Afghanistan,*[145] *China (Taiwan),*[146] *Japan* and *Saudi Arabia* have similar provisions; *Ethiopia* allows repatriation at any time, but not more than 10 per cent per annum, while *Iran* guarantees repatriation of not less than 30 per cent per annum. In the *Philippines* capital repatriations are handled case by case, and in *Sweden* approved capital is controlled but normally repatriation is permitted. *Morocco* does not, as a rule, permit repatriation, although guarantees may be given in certain cases.[147]

b. Non-"approved" investments

114. The capital and earnings of investments which have not received "approved" status in a country applying exchange controls will be retained in some variant of the "blocked account", to be dealt with usually on a case by case basis.[148]

115. A few countries do not distinguish in their exchange laws between transfers of earnings and repatriation of capital but allow a limited annual transfer which may originate either from capital or profits or both. Thus *Nicaragua* limits all transfers on account of non-registered capital to a maximum 10 per cent

* Information provided by the Government.

[138] *Foreign Investment Laws and Regulations of the Countries of Asia and the Far East,* ECAFE/L.122, p. 132.

[139] See especially paras. 33 and 35 above.

[140] The Law for the Encouragement of Private Investment in Afghanistan of 13 May 1959 guarantees the remittance of profits and dividends up to 15 per cent a year on registered capital. Beginning five years after the date of the investment, registered capital may be repatriated through the free market in annual instalments of one fifth of the amount invested; ten years after the date of the investment the entire registered capital may be repatriated at any time through the free market. (IMF, *Twelfth Annual Report on Exchange Restrictions,* 1961.)

[141] Union of Burma Investment Act, 1959, Article 5 (3).

[142] Law for the Encouragement of Foreign Investment in Turkey, No. 6224 of 18 Jan. 1954. (Information provided by the Government.)

[143] Law for the Encouragement of Capital Investments, No. 5719 of 1959.

[144] Profits and dividends earned before January 1960 may be remitted up to 50 per cent of the amount indicated by the firm's "social productivity rating" (IMF, *op. cit.*).

[145] See footnote 140 above.

[146] Legislation is being drafted to remove this limitation.

[147] Office des Changes Circular No. 886, 19 Sept. 1958.

[148] *Caveat:* This section has dealt with exchange control as a means by which States have limited the *extent* to which the proceeds of foreign investment, including foreign investment in natural resources, may be taken outside the jurisdiction of the host State. It has not been necessary to deal with the question of permissible currencies in which transfers may be made. It may be helpful, though, to mention the existence of currency zones, between the members of which there is usually freedom of movement for capital and earnings (the Sterling area and the French franc area). Most exchange regulations provide for transfers abroad to be made in the same currency as was used for the original investment.

annually. *Tunisia* allows an 8 per cent transfer of non-productive capital or profits two years after the making of the investment, and *Ecuador* guarantees a minimum 12 per cent transfer of the earnings or amortization of registered capital investments.

116. While the provisions above are of general application and do not refer specifically to natural resources, a number of countries make special provisions for enterprises concerned with the development of natural resources. In *Chile* large mining companies are free to the limits of their foreign exchange earnings to make remittances of capital or profits abroad. In *Colombia,* since June 1957, incoming capital for the petroleum and metal-extracting industries only may be registered. It must be surrendered at the fixed "Certificate" rate and is then entitled to repatriation and remittance of profits at the same rate. Capital registered before 17 June 1957 and profits on it may be remitted at the "Certificate" rate plus a 10 per cent Remittance Tax; transfers of interest and principal on all unregistered capital must be made through the free market. *Costa Rica* allows banana companies to retain their earnings of foreign exchange for the remittance of profits and amortized capital, and *Greece* allows special exemptions from the general control regulations for foreign capital imported to develop exports of agricultural and mining products. In *Indonesia,* "old, active companies" either registered abroad, or registered in Indonesia but owned by foreigners, receive a higher allotment of foreign exchange if the company's capital is invested in mining or estates.

2. Taxation

117. Exchange restrictions, as has been shown above, may limit the value of an enterprise's earnings geographically, by restricting them to the territory in which they were earned, without altering the ownership of the money. They may also, in the form of multiple exchange rates and exchange taxes, take their place among the measures used by the host State to obtain its share in the benefits of the enterprise. The major fiscal limitation on the net earning of a foreign enterprise within the host State is, however, the tax system of that State.

118. It is not here intended to do more than to mention the well-known possibilities available to the fiscal authorities in every State of limiting or increasing the effective return on capital of enterprises operating within their jurisdiction, and to give examples of particular taxes which may have special application to foreign enterprises.[149] In the context of the whole tax system of a State, the examples to be considered are not necessarily cases of discrimination against or in favour of foreign enterprises, but may reflect the efforts of the fiscal authorities to take into account and to counteract differences between foreign (non-resident) and domestic enterprises produced by the method of collection of other taxes.

a. Taxes on dividends to non-residents

119. A number of countries, including *Canada, Ecuador, El Salvador, Ghana, Pakistan, Peru,* the *Republic of South Africa* and *Sweden* impose a tax on dividends paid to non-residents. This tax applies to non-resident nationals as well as to foreigners, and its actual effect is not easy to ascertain without a detailed study of the tax system of each country, as the tax may be imposed in lieu of supertax or other taxes affecting dividends to residents. In *Canada,* the tax is reduced from 15 to 5 per cent when the dividend is paid by a Canadian subsidiary fully owned by a non-resident corporation.[150] (By tax agreements with other countries, this reduction has been applied to 51 per cent foreign-owned subsidiaries.) In *Guatemala,* a tax on dividends to foreigners was cancelled by Presidential Decree No. 202 of 12 January 1955.

b. Taxes on excess profits

120. In several countries, the prevailing understanding of a fair return on capital is reflected in the collection of an "excess profits" tax. In *Pakistan,* for instance, earnings in excess of 6 per cent of capital pay a business profits tax of 16 2/3 per cent[151] but this tax is not discriminatory and is paid by domestic corporations as well as foreign subsidiaries. The tax may, however, be collected on a differently calculated capital base in the case of branch operations of foreign enterprises, which are not separately incorporated, and therefore have no capital of their own. Thus, in *Mexico,* the excess profits tax applies to all enterprises with an annual income of 300,000 pesos or more, and "excess profits" are defined as those over 15 per cent of "invested capital". "Invested capital" for Mexican enterprises is defined as paid-in capital stock, capital reserves and undistributed profits; for branches or agencies of foreign enterprises, on the other hand, the definition is 40 per cent of their assets employed in Mexico.[152]

c. Taxes on the earnings of foreign branches

121. A number of countries tax the earnings of branch or agency operations of foreign enterprises, without imposing a similar tax burden on foreign subsidiaries (enterprises incorporated under the law of the host State). *Argentina*[153] imposes a 30 per cent tax surcharge on the earnings of share companies domiciled abroad, if they are engaged in farming, stockraising or real estate operations. In *Brazil,*[154] the income of foreign branch plants or individuals domiciled abroad is taxed at source at the rate of 20 per cent in addition to the normal tax on corporation profits. Profits of branches reinvested in the expansion of their enterprise in Brazil are exempt from this withholding tax. *Costa Rica*[155] has a one half of 1 per cent tax on profits earned by branches or agencies of foreign companies. *Ceylon* applies a 40 per cent tax to companies incorporated elsewhere, as opposed to 34 per cent on

[149] Attention may here be drawn to the following United Nations publications: *The Effects of Taxation on Foreign Trade and Investment,* Sales No.: 50.XVI.1; *United States Income Taxation of Private United States Investment in Latin America,* Sales No.: 53.XVI.1; *Taxes and Fiscal Policy in Under-developed Countries,* Sales No.: 55.II.H.1.; *La politica tributaria y el desarrollo económico en Centro-américa,* Sales No.: 57.II.G.9 (Spanish only); *Revenue Administration and Policy in Israel* (Third Report), Sales No.: 58.II.H.2.

[150] Canadian Income Tax Act, Section 106 (3).

[151] ECAFE/L.122, p. 146.

[152] *Foreign Capital in Latin America,* United Nations publication, Sales No.: 1954.II.G.4, p. 118, and see World Tax Series, *Taxation in Mexico,* pp. 243, 334.

[153] *Foreign Capital in Latin America, op. cit.,* p. 42.

[154] *Ibid.,* p. 59 and see World Tax Series, *Taxation in Brazil,* p. 213.

[155] *Ibid.,* p. 77.

domestic companies. This difference is stated to be in lieu of estate duty, from which foreign companies are exempt.[156] Certain "new" mines in *Ireland* get special tax treatment if they are operated by resident Irish companies.[157]

d. Other taxes

122. *Cambodia* levies a graduated Exceptional Equipment Tax on profits of foreign investments made before 31 May 1956. On profits relating to the year 1959, the tax rates are 30 per cent on profits of rubber plantations, 45 per cent on profits of companies whose activities are vital to the Cambodian economy and 50 per cent on profits of other companies recognized as useful for the economic development of Cambodia.[158]

123. The taxation of the profits of oil companies provides a rather special example of a limitation on the profits of a particularly significant industry, much of which has been developed by foreign enterprises. A large number of concessions and the petroleum laws of several countries, including *Bolivia, Guatemala, Libya, Morocco, Peru, Tunisia, Turkey* and *Venezuela,* provide for the application of the "50-50 principle" in the division of profits between the oil company and the territorial State.[159] This equal division of profits may be the minimum ordinarily receivable by the State, as in the case of *Venezuela,* or it may be a maximum mark as in the case of *Libya,* beyond which taxes are refunded to the company.[160] A different percentage limitation on profits is the result of recent agreements between the Japanese Petroleum Trading Company and the Governments of *Saudi Arabia* and *Kuwait* for the search for, and exploitation of, oil in the Neutral Zone.[161] These agreements provide for the Government to take at least a 56 per cent share in the profits and other financial benefits.

124. In the case of *Iran,* several recent agreements under the Iranian Petroleum Law of 31 July 1957 provide that the mixed companies to be set up will, if they find oil, assure the Government of a half share in all oil produced, and also 50 per cent of all profits derived from the respective foreign oil company's half share.[162]

125. The "Copper Law" of *Chile* (Law 11.828, May 1955) provides that larger copper-mining enterprises shall pay a single tax on profits, assessed on taxable income as follows: (*a*) A fixed tax of 50 per cent on profits from total production; and (*b*) a variable surtax of 25 per cent, to be applied to profits from basic production which shall be reduced proportionately to increases in production above the basic figure for each enterprise. This tax is payable in dollars. New enterprises to be established in the future and coming under the scope of this law will pay a single tax of 50 per cent. Under the terms of the Foreign Investment Statute (Decree-Law No. 258 of 30 March 1960), new investments made by copper-producing enterprises in connexion with the exploitation of new deposits are guaranteed the benefits of the Foreign Investment Statute and are guaranteed a stable tax rate of 50 per cent.*

e. Other limitations on earnings

126. The operation of industries which perform an essential service to the public is, as a rule, subject to governmental regulation, including administrative or legislative fixing of the percentage of profit which is considered a proper return on capital. This is done by fixing the permissible rates which may be charged. Thus many countries have statutory bodies regulating the rates chargeable by private companies active in the supply of water or electricity, and the operations of foreign enterprises are not exempt.

127. In *Peru,* for example, there is a National Rate Commission established by law,[163] "to fix, revise, change and interpret the rates for the sale of electrical energy". The annual commercial operating profit is set at 3 per cent of the true capital invested.

f. Tax concessions[164]

128. In a growing number of countries, taxation laws have been used to promote the establishment or expansion of particular enterprises of special importance in the economic development of the country. This is done by tax exemptions or concessions which make investment in the desired industry more profitable and may be accompanied by more liberal import duties or quotas for necessary equipment. As a rule, such laws do not discriminate directly in favour of the foreign investor, but, especially where imported techniques are required, or in countries where local development capital is very scarce, it may be the foreign enterprises which are able to make use of these concessions.

129. Among such enterprises, those active in exploiting natural resources take a leading place because of the relatively high dependence of the less developed countries on primary products for their earnings of foreign exchange.[165] The State, by deciding to admit a particular enterprise and to grant it tax benefits, exercises the same sovereign powers which are employed in other instances to limit the profitability of other enterprises for which inducements are not desired.

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[156] Government of Ceylon, *Statement of Policy in Respect of Private Foreign Investment* (White Paper of 15 July 1955).

[157] Memorandum from the Government of Ireland dated 26 Feb. 1959.

[158] IMF, *Twelfth Annual Report on Exchange Restrictions,* p. 384. The tax rates on profits of foreign companies with head offices in Cambodia are reduced by 10 per cent for companies whose capital is more than 40 per cent Cambodian and by 5 per cent for companies whose capital is between 30 and 40 per cent Cambodian.

[159] For a more detailed treatment of the way in which the division is made, see United Nations *Survey of Mining Legislation with Special Reference to Asia and the Far East,* 1957 II F.5, pp. 74-78. See the following:

Bolivia: Petroleum Code of 26 Oct. 1955, Articles 128-9;
Guatemala: Petroleum Code of 7 July 1955, Articles 146-50;
Libya: Petroleum Law No. 25 of 1955, Article 14;
Morocco: Dahir No. 1-58-227 of 21 July 1958, Article 31;
Peru: Petroleum Law No. 11780 of 29 Feb. 1951, Article 93;
Tunisia: Petroleum Law No. 58-36 of 15 March 1958;
Turkey: Petroleum Law No. 6326 of 10 March 1954 (as amended), Articles 109-110;
Venezuela: Income Tax Law of 21 July 1955, Article 42.

[160] For the purposes of this final division, royalties are counted as taxes.

[161] *Economic Developments in the Middle East 1957-1958,* United Nations publication, Sales No.: 59.II.C.2, p. 32.

[162] *Ibid.,* pp. 29 and 32; see also chapter V, section C below.

* Information provided by the Government of Chile.

[163] Law No. 12378, Establishing Standards for the Operation of the Electrical Industry, *El Peruano,* Diario Oficial, 14 July 1955.

[164] For a review of parallel tax concessions in capital-exporting countries... see *The Promotion of the International Flow of Private Capital, Further Report by the Secretary-General,* E/3492 (May 1961), paras. 209-218.

[165] For a discussion of the discretionary aspects of these laws, see paras. 8 to 29 above.

130. Tax concessions of one sort or another available on a case-by-case basis to foreign capital are to be found in the foreign investment laws of, among others, *Afghanistan, Argentina, Cambodia, Cameroun,*[166] *Chile, Greece, Indonesia, Ivory Coast,*[167] *Libya, Paraguay, Saudi Arabia, Somalia*[168] and *Thailand,* while foreign enterprises may take advantage of industrial encouragement laws in a large number of other countries obtaining fiscal benefits on the same basis as nationals.

131. A typical range of tax and related concessions is illustrated by the example of *Nigeria,** where such measures are considered the principal method by which the Government encourages the entry of foreign private capital.

132. These incentives take, in summary, the following form:

(1) *Initial and annual allowances:* By these measures, both public and private companies are allowed to write off from profits for the purpose of computing taxable income, a large proportion of their capital investment in fixed assets during the early years of trading. This enables them to amortize their capital quickly and to build up liquid reserves at an early date, thereby making further investment easier;

(2) The determination of certain industries as *Pioneer Industries,* under which status they enjoy a tax holiday ranging from two to five years;

(3) *Relief from import duties on materials used in industry:* This takes the form of (*a*) relief from customs duties on imported materials; and (*b*) the imposition of protective duties on equivalent finished goods manufactured abroad;

(4). *Repayment of* all or part of any *customs duty* paid on imported raw, semi-processed or processed materials, including components or reagents used in the manufacture or processing of goods or in the provision of services.

* Information provided by the Government.
[166] Investment Code, 11 June 1960.
[167] Private Investment Law (Law No. 59-134), 3 Sept. 1959.
[168] Foreign Investments Law (Law No. 10), 18 Feb. 1960.

D. Measures of expropriation and other forms of taking

133. The present section is concerned with various constitutional and legislative measures by which States reserve to themselves or exercise the sovereign right to bring natural resources and other property under their direct control, whether permanently or temporarily.

134. Such measures cover a variety of forms of taking to which there attaches a terminology which is far from being standardized, especially as between the various systems of law. In general terms, however, the discussion here will, in the first place, centre on the legal concept of taking or expropriation (which, in some countries, includes taking under eminent domain) and its application to the juridico-economic concept of nationalization. Secondly, some attention must also be given to more narrowly defined concepts: confiscation —unless accompanied by compensation guarantees— usually carries a punitive connotation, as evidenced by the various constitutional provisions prohibiting this form of taking or requiring that it be exercised only pursuant to legislative action or judicial decree; while requisitioning is, as a rule, taking under special circumstances, such as a national emergency.

135. As regards the intent of, or reason for, any of the above-mentioned forms of taking, this section will be concerned with a number of variants of the themes of "public (or "social") utility" or "the interest of the State", with or without further definition or specification; in addition, attention will be given to the reasons related to politico-economic systems based wholly upon State or public ownership and enterprise.

136. The exercise of the power to take private property is by no means limited to taking by the State for its own purposes and is sometimes applied in the interests of another private enterprise. The legislation of a large number of States provides for taking for the purpose of ensuring the essential needs of enterprises in existence or to be established. Thus States may exercise the right of eminent domain in order to make available land for the use of undertakings of public utility and related ancillary facilities, such as roads, pipelines, transmission lines, and so forth.[169]

137. Related to the power of taking in general are, on the one hand, formal guarantees or informal assurances that such power will not be exercised with respect to foreign enterprises in general or to a given concession (either for fixed number of years or, in the latter case, for the concession's period of validity) and, on the other hand, provisions relating to concession systems which foreshadow an eventual nationalization of enterprises exploiting specific natural resources.

138. The element of compensation is, where provided for, a variable of the measures of taking indicated above. Subsidiary, in turn, to the element of compensation as such are a number of other factors, among them the time when the compensation is to be paid, the method and date of valuation, and so forth.[170]

139. As regards constitutional provisions for taking, these may be either self-executive or require implementation by legislation. Where the provisions are self-executive, legal proof of necessity, justification or desirability is, in certain instances, called for.

140. While constitutions of comparatively recent date tend to be explicit in relating measures of taking to public, economic or social needs, the definition of the intent or reason for such acts is more often left to legislative measures[171] in countries with earlier basic laws.

[169] In such instances, the cost of compensating the original owner is usually borne by the beneficiary of the expropriation action.
[170] The practical problems which may arise in this connexion are not dealt with in this study except in so far as they have been the subject of adjudication by an international tribunal (see chapter III below).
[171] Increasing legislative concern with the subject of taking with a view to furthering projects of public utility is reflected in the following citation:

"To whatever extent the law recognizes an increasing social interest in the uses of land, whether it be concerning soil erosion, slum clearance, housing, city planning, river valley development or other utilizations not yet envisaged, the scope of the power to condemn, and the number of public utility corporations covered by [these] considerations... are certain to increase." Richard R. Powell, *The Law of Real Property,* New York, Matthew Bender and Co., 1949, vol. I, p. 551.

141. The present section will deal, first, with constitutional provisions for taking and, in its second part, with legislative measures. Special mention will be made of provisions or measures specifically affecting foreign nationals or enterprises; in the absence of such mention, the provisions and measures discussed here apply equally to both nationals and foreigners.

1. Constitutional provisions

a. Causes for expropriation

142. Almost all constitutions which contain expropriation provisions specify the intent of, or reason for, expropriation. Furthermore, certain constitutions stipulate that proof of the cause cited for expropriation shall be legally established (e.g., El Salvador, Chile, Costa Rica, Greece, Haiti, Turkey) or that the expropriation shall take place in accordance with established legal procedures (e.g. United States of America).

143. The wording of the relevant provisions typically refers to "reasons of public utility" (or "necessity", "interest", "benefit", or "exigency", or any combination thereof). In many of the more recent constitutions, there is also mention of the element of "social interest" (or "profit" or "purpose", to cite but a few variants).

144. In the *United States of America,* private property within the Federal jurisdiction is held subject to the sovereign right and power of "eminent domain" and can be taken by the Federal Government for public use at the discretion of the legislature. Similar powers are possessed by the State Governments with respect to property under their jurisdiction.*

145. A more explicit wording is to be found in a number of constitutions: for instance, the Constitution of *Bolivia* cites as a cause for expropriation "when property does not serve a social purpose" (Article 17); that of *Thailand* states "[if] necessary . . . for the exploitation of national resources or other State's interests" (Section 29).

146. The Constitution of the Republic of *Ghana* provides that the President shall, upon assuming office, make a declaration of his adherence to certain fundamental principles, among them "That no person should be deprived of his property save where the public interest so requires and the law so provides" (Article 13 (1)).

147. The element of social equalization is cited in the Constitution of *Brazil,* which states that the use of property shall be conditioned upon social welfare. The law may, with the observance of the provisions guaranteeing property rights and governing expropriation, "promote the fair distribution of property with equal opportunities for all" (Article 147).

148. Expropriation for purposes of land reform is provided for in the Constitution of the *Philippines,* which states that the Congress "may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals" (Article XIII, Section 4).*

149. The Constitution of *India,* in the chapter on Directive Principles of State Policy, calls for the distribution of ownership and control of the community's material resources in a manner designed "best to subserve the common good" and to avoid "the concentration of wealth and means of production to the common detriment".

150. Certain constitutions also provide the basis for further legislation specifically governing the exercise of the right of eminent domain in connexion with the provision of services of public utility, such as water and electricity supply, road, railway and airport construction, housing, and so forth (e.g., Ecuador, El Salvador).

b. Nationalization

151. Under this heading, the relevant constitutional provisions of States with economic systems based on private enterprise will be dealt with separately from those of countries with a mainly nationalized economy. As a matter of convenience in presentation, countries which reserve certain sectors of the economy exclusively to State enterprise will be included in the former group.

i. *States with a private-enterprise or mixed economy*

152. Express provisions for taking for the purpose of national ownership and operation are generaliy found only in the more recent constitutions (e.g., Argentina, 1949; Bolivia, 1945; Brazil, 1946; Burma, 1947; China (Taiwan), 1947; Colombia, 1945; France, 1958; India, 1949; Italy, 1947; Japan, 1946; Nicaragua, 1950; Peru, 1933; and Philippines, 1935), while nationalization in other States is largely founded, constitutionally, on expropriation clauses which do not, in themselves, deal with the disposition of the property expropriated.

153. As regards specific economic areas or sectors to which constitutional provisions for nationalization may refer, these cover public services or utilities (e.g., China, Italy, Nicaragua, Peru), land and natural resources (e.g., Burma), sources of energy (e.g., Burma, Italy); in other instances, the wording may be more general and refer to all means of production and/or resources. In certain instances, social goals are cited (e.g., Colombia).

154. While several constitutions speak of "transfer" as a means or "socialization" (as a variant of the term "nationalization") as an end, the Constitution of *Italy* is explicit in speaking of expropriation as a means for the purpose of bringing under public control, or, alternatively, under the control of groups of workers or consumers.

155. While the constitutional provisions for nationalization cited above do not distinguish between national and foreign individuals or enterprises, it may be noted that the Constitution of *Burma,* which provides for the nationalization of all timber and mineral lands, forests, water, fisheries, minerals, coal, petroleum and other mineral oils, all sources of potential energy and other natural resources, gives the State discretionary rights to grant exploitation, development or utilization concessions to Burmese nationals or to corporations with at least 60 per cent of their capital in Burmese hands.[172]

156. In certain instances, specific nationalization measures are foreshadowed in relevant constitutional provisions. Thus the Constitution of *Argentina* provides that the public services belong originally to the

* Information provided by the Government.

[172] Exemption from this rule is provided for under legislation noted in table 2, under paragraph 85 above.

State and may not, under any theory, be alienated or granted administration; those which may be in private possession are to be transferred to the State, by purchase or by expropriation after compensation, when a national law so determines (Article 40, paragraph 3).

ii. *States with a mainly nationalized economy*

157. The constitutions of countries with a mainly nationalized economy specify, typically, that all resources and means of production and communication are State (people's) property.

158. Thus, Article 6 of the Constitution of the *Union of Soviet Socialist Republics* states:

"The land, its mineral wealth, waters, forests, mills, factories, mines, rail, water and air transport, banks, communications . . . are State property, that is, belong to the whole people."*

159. Essentially similar wording also appears in Article 6 of the Constitution of the *Ukrainian Soviet Socialist Republic.**

160. The Constitution of *Bulgaria* provides that.*

"All mineral and other natural resources of the soil and the sub-soil, forests, waters, including mineral and curative springs, sources of natural power, railway and air communications, posts, telegraphs, telephones and radio broadcasting are State, i.e., national property. A special law shall regulate the utilization of forests by the population." [Article 7.]

"National property is the main basis of the country's economic development and enjoys special protection. The State can itself manage or concede to another the management of the means of production at its disposal." [Article 8.]

"The State can nationalize fully or in part certain branches or individual enterprises of industry, trade, transport and credit. The indemnity is determined by the Law for Nationalization." [Article 10.]

161. The Constitution of 9 May 1948 of *Czechoslovakia* stipulated in Article XII of the Fundamental Articles that

"the economic system of the Czechoslovak Republic shall rest, *inter alia,* on the nationalization of the mineral wealth, on the ownership of the land in accordance with the principle 'the land belongs to those who till it'."*

The new Constitution of the Czechoslovak Socialist Republic adopted on 11 June 1960, formulates the principles of the economic system of Czechoslovakia as a socialist State in Article 7 of Chapter 1, entitled "Socialist System", in the following terms:*

"The economic basis of the Czechoslovak Socialist Republic is the socialist economic system which eliminates exploitation of man by man in any form whatsoever. The socialist economic system in which the means of production are socialized and the entire national economy is steered under a system of planning, secures with the conscious co-operation of all citizens an over-all development of production and a steady rise of the living standard of the workers."

The following further definition of collective socialist ownership—including ownership of natural wealth and resources—is set forth in Article 8 of Chapter 1:

"1. Collective socialist ownership has two fundamental forms: ownership which is the ownership of all the people (national property) and co-operative ownership (property of popular co-operative societies).

"2. National property includes, in particular: natural wealth and basic sources of energy: forests, waterways and natural spas; means of industrial production, means of mass transport and communications; banking institutions and insurance companies; broadcasting, television and film and, further, main social institutions and facilities, such as health institutions, schools and scientific institutes.

"3. Land pooled for joint co-operative farming shall be in collective use by the Unified Agricultural Co-operatives."

162. The more recent constitutions of States with a mainly nationalized economy also provide for the expropriation, with a view to nationalization, if required, of those sectors of the economy not immediately affected by the initial nationalization measures prescribed (e.g. Bulgaria, Czechoslovakia [1948 Constitution], Poland, Romania, Yugoslavia).

c. CONFISCATION AND REQUISITIONING

163. A number of constitutions contain a mandatory prohibition of the punitive confiscation of property (e.g., Argentina, Belgium, Ecuador, El Salvador, Iraq, Libya, Luxembourg, Panama, Peru, Spain) or prohibit the confiscation of property except by law of judicial decree (often with the addition of mandatory compensation requirements) which tends to operate against *ad hoc* confiscatory measures (e.g., Cambodia, Chile, Costa Rica, Denmark, Greece, Haiti, Honduras, Iceland, India, Lebanon, Nicaragua, Turkey, United States of America Uruguay).

164. In some cases, punitive confiscation is limited to a specific type of property, such as land (e.g., Colombia), or to specific offences, such as treason or espionage in time of war (e.g., Dominican Republic), propaganda or intrigue against the Government by persons residing abroad (e.g., Afghanistan), or to specific groups of persons, such as enemy nationals (e.g., Nicaragua).

165. In many instances, constitutions also include provisions for the requisitioning of property under certain circumstances usually related to a state of emergency. This is typically defined in such terms as "war", "domestic commotion", or "for the restoration of public order". Confiscatory measures in the interests of public health and security are, however, as a rule sanctioned by constitutional or legislative provision.

d. COMPENSATION

166. Provisions for the payment of compensation or indemnity are included in most constitutions which provide for the taking of property. Typically, compensation in the case of expropriation is payable in advance of the act of taking, while, in the case of requisitioning, compensation need not be paid in advance or is actually payable at a later date. In certain cases, other time limits are laid down, for instance, in the case of *Costa Rica* and *Honduras,* compensation for requisitioning is payable not later than two years after the termination of the state of emergency; in the case of *El Salvador,* compensation for expropriation may be paid in instalments over a period not exceeding twenty years; under a separate provision, it need not be paid prior to expropriation if that is for the purpose

* Text communicated by the Government.

of supplying water or electric power or for the construction of housing or roads. In the case of *India* and *Indonesia,* all details pertaining to the determination of compensation and methods of payment are to be fixed by law.

167. As regards the amount of compensation payable, this is typically defined in such terms as "just", "due", "fair", "full", or "equitable". In certain instances, the amount is to be determined by law (e.g., Costa Rica, India, Indonesia, Paraguay). The means of payment are sometimes also defined in terms such as "in cash" (e.g., Brazil).

168. The greatest variation is to be found with respect to the provisions governing the method of determining the terms of compensation. Determination by the courts or the governing law is encountered most frequently (e.g., Burma, Haiti, India, Indonesia, Jordan); in some cases, this is coupled with the alternative of direct agreement (e.g., Chile).

169. In the *United States of America,* the power of eminent domain may not, under the Constitution, be exercised "without just compensation" (Fifth Amendment); in practice, this concept is interpreted by the courts in such a way as to guarantee payment of the fair market value of the property taken as of the date of taking.

170. A number of constitutions set forth more specific regulations regarding the determination of the terms of compensation. Thus, the Constitution of *Argentina* defines the amount of compensation applicable to public service concessions as the original cost minus amortization of any sums in excess of a reasonable profit, which is to be considered as recovery of the capital invested (Article 40). In the case of *Colombia,* a majority vote of both houses of the legislature may determine cases when no compensation shall be paid (Article 30); in the case of *Czechoslovakia,* such cases may be prescribed by law [Part I, Section 9 (2)]. *El Salvador* provides for nationalization without compensation of entities created from public funds (Article 138).

171. The Constitution of *Mexico* provides that the amount fixed as indemnity for the expropriated property shall be based on the value recorded in the cadastral or tax offices for purposes of taxation, that the only point which shall be subject to the decision of experts and judicial proceedings shall be the increased value of the private property due to improvements made since the last fiscal appraisal or its depreciation since that date, and that the same procedure shall be observed in the case of objects whose value is not recorded in the tax offices (Section VI).

172. Rights with respect to the payment of compensation are, in some cases, defined further. Thus, *Greece* provides that, prior to the payment of the final or provisional indemnification, all rights of the proprietor shall remain intact and dispossession shall be prohibited (Article 17). *Haiti* provides that, in the event of nationalization, owners of land containing springs, rivers, mines and quarries shall be entitled to indemnity for the land only (Article 15).

e. PROVISIONS SPECIFICALLY APPLICABLE TO FOREIGNERS

173. In the instances in which constitutional provisions bearing upon the general subject of taking specifically mention foreign nationals or corporations, they typically state in effect that foreigners may not claim any special rights or indemnification to which nationals of the State concerned might not be entitled. In the case of most Latin American countries, these provisions also include the so-called *"Calvo clause"* (see paragraphs 64 to 69 above), by which foreign nationals are barred from resorting to intervention through diplomatic channels.

174. In some instances, constitutional provisions may limit the period of non-residence after which the property rights of a foreign national or corporation may lapse, as in the case of *Haiti,* which prescribes a two-year limit.

2. Legislative measures

175. The preceding sub-section, dealing with constitutional provisions for the taking of property, was essentially concerned with the juridico-philosophical framework of State operation and permitted a fairly clear-cut division into separate categories. At the legislative level, the emphasis must be on the actual ends to which the State takes and, in particular, on the specific disposition provided for with respect to the property taken. At the legislative level, even a seemingly specific term, such as "nationalization", becomes a sweeping generalization, for the distinction among the various measures to be dealt with here lies primarily in the form in which the State wishes to exercise control over the property taken.[173]

176. The importance which attaches to the form of control makes it desirable to present the material set forth below as a series of brief country studies; in this way, excessive fragmentation of the material will be avoided and, at the same time, a comparative analysis will be facilitated. Separate attention will, however, be devoted to legislation in States with a private-enterprise economy, on the one hand, and States with a mainly nationalized economy, on the other hand.

177. Basically we may distinguish between measures by which the States take to the end of acquiring control—measures which may, in certain instances, primarily or solely affect foreign enterprises, and, on the other hand, measures by which the States take in order to exclude certain groups and/or individuals from exercising further control over certain or all property. Measures of the latter kind usually relate to considerations of national security and are, almost by definition, aimed against foreign property owners or concessionaires.

178. Measures by which the State takes to the end of acquiring control are distinguished largely by the form in which the State wishes to exercise that control: such legislation may be of a declaratory nature, without specific provision as to form of control in implementation of a principle enunciated at the constitutional level (as in the case of States with a centrally-

[173] For a review of the legal status and the various legal and statutory mechanisms by which States exercise control over, or direct the activities of, State enterprises, both in countries with private-enterprise economies and those with mainly nationalized economies, see the final report entitled "The Autonomous Public Economic, Industrial or Commercial Undertaking in Comparative Law" by Professor Roger Pinto (UNESCO/SS/Coop/Inter.1, Annex 5), submitted to the Interdisciplinary Conference on International Understanding and Peaceful Co-operation, held at Prague, 24 Sept.-1 Oct. 1958 under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO). [Information provided by UNESCO.]

directed economy); on the other hand, provision may be made for a variety of forms of State ownership and operational control. Thus the State may vest ownership directly in itself (e.g., Mexico: oil) or, in the case of a federal State, in the federation's component units (e.g., Austria: electric supply); alternatively, ownership and/or operational control may be vested in a body created for that purpose by the State (e.g., Iran: oil; United Kingdom: coal, gas, electricity, transport).

179. In certain instances, operational control may be exercised by regional bodies (e.g., Austria: electric supply; United Kingdom: gas). In other instances, the State may wish to acquire ownership only, leaving operational control to the original component parts of the industry concerned (e.g., United Kingdom: the iron and steel industry;[174] the Bank of England; the Cable and Wireless Company). In the latter instances, the State may vest ownership in itself, as such, or in a body created for the purpose which then exercises functions closely akin to those of a holding company.

180. Certain of the measures cited below do, in their effect, apply specifically to foreign enterprises, as in the case of the nationalization of the Mexican oil industry, the Anglo-Iranian Oil Company and Suez Canal Company. As a matter of convenience, these measures are grouped under a separate heading; nevertheless, they are here discussed in terms of their stated purpose of bringing under public control.

181. Measures of taking in the interest of national security aimed at specific enterprises or groups of enterprises in terms of nationality of ownership will be reviewed under a separate heading.

182. Finally, attention is also given to measures of taking in order to implement discretionary exclusions, as well as to introduce new régimes of concessionary grants.

183. As a general rule, the legislation described here is self-contained; in certain instances, however, enactment of a specific nationalization measure may pass through the preliminary stage of a general enabling measures (e.g., the Expropriation Law of Mexico). While such differences in the mechanics of enactment will be dealt with under the various country studies, a separate sub-section will be reserved for the topic of compensation which is, in many instances, in any case a subject of separate legislation.

184. Finally, separate attention will be given to regulatory legislation which expresses a general intent to nationalize a given industry or sector of the economy at a future date, as well as to measures which provide for guarantees against nationalization and/or the protection of foreign property.

a. States with a private-enterprise or mixed economy

i. *General nationalization or expropriation measures*

185. The measures cited below constitute relatively recent examples of the wide variety of forms under which States may acquire ownership and/or operational control of certain industries or sectors of the economy. These measures are general in the sense that they apply equally to nationals and foreigners.

186. In the case of *Austria,* recent nationalization measures have covered (1) various enterprises and assets in Austria relating to the over-all question of German assets in Austria; and (2) the electric supply industry.

187. Under the First Federal Nationalization Law of 26 July 1946 (No. 168), the Government acquired a number of corporations (enumerated in the text) engaged in the oil, oil refining, coal and metal mining, steel, aluminium, machinery and related industries, as well as the Austrian assets and liabilities of a number of German corporations. The law essentially covered a special situation arising out of the German annexation of Austria in 1938 and was nominative in its extent rather than covering specific industrial categories.

188. Under the Second Federal Nationalization Law of 26 March 1947 (No. 81), the country's electricity supply undertakings were nationalized. A supply corporation was established for each federal province (*Bundesland*) and its ownership vested in the province; the supply corporations, in turn, absorbed the private electric supply corporations in the province concerned.

189. In the case of *France,* the electric and gas production, transmission and distribution industries were nationalized under Law No. 46-628 of April 1946. Two public corporations, the *Electricité de France* and the *Gaz de France,* respectively, were vested with all property rights, assets and liabilities of the former producing concerns and were charged with the operation of all production facilities. Separate public corporations were charged with distribution services on a regional basis. The corporations were to be financially, technically and commercially autonomous and were to follow normal private commercial practices in their operations.

190. It may be noted that, where applicable, individual nationalized facilities continue to be subject to the provisions of the *cahier des charges* under which the original concession was granted.

191. The nationalization of the coal-mining industry was enacted by Law No. 46-1072 of 17 May 1946. A central body, the *Charbonnages de France,* was charged with over-all supervisory functions, while property rights, assets and liabilities of the former producing concerns were vested in individual regional (coal basin) bodies, the *Houillères de* [name of basin], which were also given full operational control.

192. The nationalization measures taken in the *United Kingdom* between 1946 and 1949 are illustrative of the range of the means and methods by which States may acquire and exercise control over specific resources or sectors of economic activity. Thus, under Coal Industry Nationalization Act of 1946, the National Coal Board was vested with the principal assets of all colliery concerns and was charged with the working and getting of coal. Similarly, under the Electricity Act of 1947, the British Electricity Authority was vested with all private and municipal electricity production facilities and charged with the production of electricity for all of Great Britain (except the North of Scotland).

193. Similar arrangements with respect to the gas industry were enacted under the Gas Act of 1948, though in this instance, property rights and operating functions (other than those of local authorities and of

[174] This industry was subsequently returned to private ownership.

certain companies providing composite services) were vested in twelve Area Boards.

194. Ownership and operation of the means of rail, canal and, with certain exceptions, road transport were, under the Transport Act of 1947, vested in the British Transport Commission, established as a body corporate with perpetual succession.[175]

195. In the above-cited instances, the State, acting through bodies established for the purpose, became both owner and operator of all relevant facilities in the economic sector concerned, while the original concerns lost their identity in so far as activity in the respective industry was concerned (the original concerns were free to turn to other fields of activity and, in many instances, did so).

196. On the other hand, under the Iron and Steel Act of 1949, the State acquired the securities of the producing concerns and vested them in the Iron and Steel Corporation of Great Britain, leaving in existence, as separate operating entities, the individual concerns within the industry.[176] Similarly, under the Bank of England Act of 1946, the Treasury acquired all existing capital stock of the Bank of England, while the Bank retained its original identity and functions. Under the Cable and Wireless Act of 1946, the Treasury acquired all shares of Cable and Wireless, Limited, while the company continued in existence as an operational entity. In these latter instances, the stress was on the acquisition by the State of financial control, leaving day-to-day operation in the hands of the original concerns as economic entities.

ii. *Measures of nationalization affecting foreign enterprises*

197. As explained earlier, certain specific measures of nationalization primarily or solely affect foreign enterprises. They are here presented under a separate heading by virtue of this effect rather than by virtue of any juridical distinction between them and the measures discussed in the preceding paragraphs.

198. By Law No. 285 of 26 July 1956, *Egypt* nationalized the Universal Company of the Suez Maritime Canal, a majority of the shares of which were held by foreign Governments or individuals. All assets, rights and obligations of the company were transferred to the nation and all the organizations and committees then operating its managements were dissolved (Article 1). At the same time, the assets and rights of the nationalized company in *Egypt* and abroad were frozen (Article 3).

199. The management of the Canal Services was entrusted to an independent body, having juridical status and placed under the Ministry of Commerce (Article 2).

200. In the case of *Iran,* the Oil Nationalization Act of 1 May 1951 enacted a measure approved by the Senate and the Majlis on 30 April 1951, obliging the Government "to dispossess at once the former Anglo-Iranian Oil Company" (Article 5).

201. The measures, in addition, provided for the gradual replacement of foreign experts by Iranian nationals and called for arrangements to enable students to become acquainted with oil operations abroad (Article 6). The measure also provided for certain conditions under which former clients of the Anglo-Iranian Oil Company might be assured of supplies "at a reasonable international price" (Article 7).

202. Nationalization legislation in *Mexico* constitutes a case in which a general enabling measure has preceded a decree specifically affecting a given industry. Thus, the Expropriation Law of 23 November 1936 provided a detailed definition of causes of public utility —a condition of expropriation under Article 27 of the Constitution—in the following terms:

> Establishment and conservation of a public service; straightening roads; beautification of towns, parks, etc.; preservation of places of beauty, art and national culture; necessity of war and emergency; national defence; conservation and utilization of national resources; equitable distribution of wealth; creation of an enterprise for the benefit of the collectivity; and so forth.

The law then stated that:

> "In the foregoing cases, and after a declaration by the Federal Executive, the authorities may proceed to the expropriation, to the temporary, total or partial occupation, or to a simple limitation of the rights of ownership for the purposes of the State and in the collective interest." [*Article 1021 (Articles 1 and 2).*]

203. Under the Decree Expropriating on Behalf of the Nation the Property of Certain Oil Companies (18 March 1938), the (foreign) oil companies enumerated in the decree were expropriated "for reasons of public utility and in favour of the nation" by virtue of their refusal to follow the order and award of 18 December 1937 which had resulted in the cancellation of work contracts with a consequent total suspension of activities in the oil industry.

204. The Department of National Economy was given discretionary powers to apply the decree in so far as it was necessary for the discovery, production, transport, refining and distribution of the (oil) products.

iii. *Compulsory acquisition according to prior law or agreement*

205. In certain instances, legislation provides for the discretionary exclusion of foreigners from specified economic sectors[177] and may, in such cases, also provide for expropriation in order to implement such exclusions in cases of prior acquisition.

206. In the case of *Sweden,* foreigners are generally placed on the same footing as nationals in matters of expropriation. Exceptionally, however, the Act of 21 December 1949 provides that, by decision of the King

[175] To illustrate the flexibility of certain nationalization arrangements, it may be noted that the Pullman Car Company, which provides certain special amenities on the British Railways network, retains its separate operational and corporate entity, but all its shares are held by the British Transport Commission.

[176] Under the Iron and Steel Act of 1953, there was established the Iron and Steel Holding and Realisation Agency to secure the return to private ownership of the undertakings in national ownership. The Agency was vested with all property, and so forth, of the Iron and Steel Corporation of Great Britain. At the same time, there was also established the Iron and Steel Board to exercise general supervision over the industry, with a view to promoting the efficient, economic and adequate supply under competitive conditions of iron and steel products. The Board is charged *inter alia,* with the determination of prices.

[177] For a full discussion of such legislation, see section E below.

in Council, a foreign national or foreign juridical person [including a Swedish corporation or other Swedish juridical person which must, under the Act of 30 May 1916 (on restrictions governing the acquisition of real property, mines or shares of certain companies), obtain special permission to acquire ownership rights in the said properties] may be required to dispose of his right to a mine in favour of the Swedish State or a person or corporation designated by the Government. The legislation is designed to assure the domination of Swedish interests over mineral resources.*

iv. *Measures for the introduction of new concessionary régimes*

207. In some instances, State taking may be designed to create a uniform régime of ownership of certain resources. Thus, the Petroleum Acts and Ordinances of the states and territories of the Commonwealth of *Australia* provide that, from a certain date (varying between states), all helium and petroleum found at or below the surface shall be, and shall be deemed to have always been, the property of the Crown, thus bringing the resources in question under a concession régime.

v. *Taking on grounds of national security*

208. Enactments of States providing for taking of property on grounds of national security are normally consequent upon a declaration of war. Legislation of a similar nature has also been adopted where armed conflict exists without a formal declaration of war.

209. Where a state of war has been declared, legislation is aimed at the property of enemy aliens subject to the jurisdiction of the enacting State and of natural or juridical persons, regardless of their nationality, who reside or carry on business in enemy States. Measures of control of such property pending a final settlement after the termination of war include mainly the blocking of accounts or freezing of assets,[178] sequestration or vesting of property,[179] and, in a few cases, expropriation of enemy property.[180]

210. Legislation adopted by *Egypt* to sequester the property of British and French nationals during the conflict in 1956 in the absence of a formal declaration of war was almost identical with the Egyptian legislation relating to the property of German and Italian nationals during the Second World War.[181]

211. It might be noted that measures of blocking or freezing of assets were adopted by some States which participated in the United Nations action in Korea in 1950.[182]

212. Another type of taking on grounds of national security is that enacted by the Government of *Indonesia* in 1958 concerning the nationalization of Netherlands-owned enterprises in Indonesia.[183] The preamble of the basic legislative instrument concerned[184] states[185]

"a. that the measures taken by the Government with regard to Dutch-owned enterprises situated within the territory of the Republic of Indonesia, as part of the struggle for the liberation of Irian Barat [West New Guinea], are consistent with the policy of annulling the Round-Table Conference (R.T.C.) Agreements;[186]

"b. that in the present stage of the aforementioned struggle in the framework of annulling the R.T.C. agreements and liberating Irian Barat, the moment has come to make a definite pronouncement on Dutch-owned enterprises ... and nationalize Dutch-owned enterprises into State property;

"c. that the nationalization of the aforementioned Dutch-owned enterprises is intended to provide the Indonesian society with the greatest possible benefit as well as consolidate the security and the defence of the State."

213. Under the principal operative article, Netherlands-owned enterprises within the territory of the Republic of Indonesia, which will be determined by Government Ordinance,[187] are nationalized and declared full and complete property of the State (Article 1). The Act is retroactive to 3 December 1957 (Article 7).

b. States with a mainly nationalized economy

214. The present sub-section is primarily concerned with the legislation of States which have adopted a mainly nationalized economic system in the relatively recent past and which thus provide a legislative illustration of the transition from a private-enterprise economy. It may be noted here that foreign investment in the States dealt with here had been extensive.

215. Basically, the legislative measures discussed below fall into two end categories: those designed to accomplish the transition from private to State ownership of resources, means of production and services in a single step (e.g., Poland), and those which implement a more gradual transfer to State ownership (e.g., Bulgaria, Czechoslovakia, Hungary, Romania).[188]

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* Information provided by the Government of Sweden.

[178] *Argentina:* Decree No. 110.790, 8 Jan. 1942, concerning control by the Ministry of Finance of transfers abroad of means of payment as well as of all connected monetary transactions within the country; *United States of America:* Trading with the Enemy Act, 1917, as amended, and Executive Order No. 8389, as amended.

[179] *France:* Decree of 1 Sept. 1939 on the prohibition and restriction of relations with the enemies; *Ethiopia:* Enemy Property Proclamation No. 14, 28 May 1942, as amended.

[180] *Colombia:* Decree No. 1723, 25 July 1944 (order for sale of German property held in Trust); *Guatemala:* Decree No. 3134, 14 Aug. 1944.

[181] Proclamation No. 5, 1 Nov. 1956, relative to commerce with British and French nationals and to measures regarding their property; cf. Proclamation No. 158, 15 July 1941 relative to commerce with German and Italian nationals and to measures concerning their property.

[182] E.g., *United States:* Code of Federal Regulations, Chapter V of Sub-title B of Title 31, on Foreign Assets Control.

[183] Certain litigation that has arisen in connexion with the measures cited here is dealt with in chapter III below.

[184] Act No. 86 of 1958.

[185] The English text of this and other related legislative material cited here is drawn from *The Nationalization of Dutch-Owned Enterprises in Indonesia*, Ministry of Information, Republic of Indonesia, Special Issue, 39.

[186] For a summary of the provisions of this Agreement, see chapter II, para. 33, below.

[187] Among implementing ordinances, mention may be made of Government Ordinance No. 2, 1959, 23 Feb. 1959, which defined the Netherlands-owned enterprises subject to nationalization, and Government Ordinance No. 4, 1959, 23 Feb. 1959, which set forth a list of Netherlands-owned agricultural enterprises and tobacco estates to be nationalized.

[188] In the case of Yugoslavia, the natural resources, means of production and major service institutions became State property all at once, and not gradually, under the Nationalization Act of 1946. This form of State property, however, was transformed by the Law on Workers' Self-Management of 1950 into general social property. (Information provided by the Government of Yugoslavia.)

Table I-3

Principal legislative measures for the nationalization of resources, means of production, transport and communication, and services in certain States with a mainly nationalized economy

Country	*Measure (citation)*	*Economic sector(s) covered*
Bulgaria	Decrees of 27 June 1946	Tobacco and alcohol production and distribution; major mining enterprises
	Decree of 24 Dec. 1947	All industrial undertakings, transport, communication, wholesale trade, hotels
	Decree of 26 Dec. 1947	Banking institutions
	Law of 15 April 1948	Urban real property
	Law of 3 Nov. 1948	All shipping and vessels
Czechoslovakia	Presidential Decree No. 100/1945*	Mines and certain industrial enterprises[189]
	Presidential Decree No. 101/1945	Certain enterprises in the food industry
	Presidential Decree No. 102/1945	Banks
	Presidential Decree No. 103/1945	Private insurance companies
	Law of 28 April 1948	All economic sectors with exception of agriculture and certain small-scale retail establishments
Hungary*	Law No. VI of 1945	Land
	Law No. XIII of 1946	Coal mining
	Law No. XX of 1946	Electric energy
	Law No. XXX of 1947	Banks
	Law No. XIII of 1948	Bauxite mining, aluminium production
	Law No. XXV of 1948	Certain industrial enterprises
	Law-Decree No. 20 of 1949	Certain industrial and transport undertakings
	Law-Decree No. 4 of 1952	Certain housing property
Poland	Law of 3 Jan. 1946	Industries of primary importance to country's economy, including all extractive industries; plants with major productive capacity
Romania	Law of 11 June 1948	Industrial establishments, mines; transport; banks and insurance companies
	Decree of 20 April 1950	Multiple dwellings, hotels
Yugoslavia*	Law of 5 Dec. 1946 (Law on Nationalization of Private Economic Enterprises; Official Gazette No. 98/1946)	Extractive industries, transport and communication, wholesale and foreign trade; most major industries; banks, credit and insurance institutions
	Law on Amendments to the Law on Nationalization of Private Economic Enterprises (Official Gazette, No. 35, 29 Apr. 1948)	All enterprises of general importance to the economy of the country, to the protection of public health and to national cultural development
	Law on the Nationalization of Dwelling Houses and Building Lots (Official Gazette, No. 52/1958)	

Measures specifically applicable to foreigners

216. While the nationalization legislation of States with a mainly nationalized economy noted in table 3 above in general makes no special reference to property of foreigners, the nationalization Law No. XXV of 1948 of *Hungary* specifically exempted foreign property as defined therein and acquired by the foreign interests concerned prior to 20 January 1945, the date of the Armistice Convention. These enterprises were, however, subsequently nationalized under the terms of Law-Decree 20 of 1949.*

217. It is of interest to note that the above-mentioned exemption did not cover enterprises acquired by foreigners after the Armistice Convention on the grounds that the future course of Hungary's economic and social development was to be foreseen and that nationalization was to be expected.

218. The nationalization of all real estate holdings of foreign nationals or foreign enterprises in *Yugoslavia* was provided for under Article 3 of the Law on Amendments to the Law on Nationalization of Private Economic Enterprises.*[190]

* Information provided by the Government.

[189] This Decree defined the concept of a national enterprise as a legal entity. [Information provided by the Government of Czechoslovakia.]

[190] Official Gazette, No. 35, 29 Apr. 1948.

c. Compensation

219. The present sub-section needs only to cover a selective discussion of the compensation provisions of the various legislative measures of taking dealt with above. In certain instances, notably those relating to measures for the expropriation or nationalization of the property of foreigners, a discussion of legislative provisions for compensation will inevitably be inadequate since the actual arrangements in the major cases (Anglo-Iranian Oil Company, Suez Canal Company, Mexican oil companies) have been the subject of complex international negotiations leading to agreements outside the legislative realm.

220. In the instances in which the legislative measures discussed here actually prescribe detailed compensation arrangements—as opposed to the mere mention that compensation shall be paid to the original owners—we may distinguish between two basic methods: (1) cash compensation, payable at a given time or over a certain period (the term "cash compensation" is here used to cover also payment in the form of negotiable government bonds or other payment instruments with various maturation periods); and (2) the issue of shares or other securities in newly-created State enterprises or their operational bodies in exchange for securities of the original private undertakings. No clear pattern regarding the basis of calculation of compensation payments is, however, apparent.

221. The actual method adopted in the various instances is primarily governed by the structural disposition of the property concerned, that is to say, by the operational form of the property under State ownership.

222. In the case of *Austria,* the compensation arrangements relating to the nationalization laws of 1946 and 1947 (see paragraphs 186 to 188 above) were the subject of the First Federal Compensation Law of 7 July 1954 (No. 189). In both instances, the financial arrangements provided for a basic compensation of a given multiple of the nominal value of the shares and securities or properties concerned, plus a fixed interest percentage to cover the period between the adoption of the nationalization law concerned and the present compensation measure. Payment was to be in cash or in interest-bearing Federal debt certificates with a maturation period of ten years.

223. In the case of *France,* the nationalization laws concerning electricity and gas production[191] and coal mining[192] provided for cash compensation for shareholders of the original private concerns affected on the basis of the liquidation value of the enterprise concerned or, where the company's securities were traded on the stock exchange, on the basis of the average value of such securities over a given period of time.

224. An example of compensation arrangements under a general stand-by measure is provided by the relevant provisions of the Expropriation Law of *Peru.**[193] This law provides for valuation and deposit of compensation prior to actual expropriation. The compensation shall be established on the basis of the average of direct and indirect valuations, the latter meaning valuations established by Government appraisers taking into account the owner's own valuation in his tax returns for payment of real estate, industrial and income taxes. Payment is to be made in national currency (Article 3).

225. The compensation provisions of the various nationalization measures taken in the *United Kingdom* and described above vary widely with the final structural disposition of the concerns affected by these measures.

226. Thus, in the case of the coal industry, in which both ownership and operational control passed to the Government, the Coal Industries Compensation Tribunal assessed the over-all value of the property nationalized. This over-all amount was divided among the several valuation districts and, then, in turn, among the individual units, on the basis of their open-market sale value on 2 January 1947 if no nationalization had taken place.

227. In the case of the nationalized transport and electric and gas supply industries and the Bank of England and the Cable and Wireless Company, holders of securities in the original private undertakings were compensated in Government-created stock in respect of the industries or activities concerned. This stock is freely negotiable.

i. *Measures specifically affecting foreigners*

228. As already indicated, the compensation aspects of the major cases of the nationalization of specific foreign enterprises cited here have been the subject of agreements negotiated under the auspices of Governments (e.g., the agreements relating to the nationalization of the Anglo-Iranian Oil Company) or of international organizations (e.g., the International Bank for Reconstruction and Development in the case of the Suez Canal Company nationalization).[194] A negotiated compensation settlement was also reached in the case of the Mexican oil companies.

229. As regards the nationalization of Netherlands property in Indonesia, the relevant Act[195] provided for the establishment of a Committee for the Determination of Compensation for Netherlands-owned Enterprises.[196]

ii. *Compensation measures in States with a mainly nationalized economy*

230. In the case of the nationalization measures in States with a mainly nationalized economy dealt with here, the Governments concerned retain wide discretionary powers to determine the extent and manner of payment of compensation for nationalized enterprises.

231. It may, however, be noted that compensation arrangements for foreign owners of, or shareholders in, nationalized enterprises have, in certain instances, been the subject of financial agreements between certain of the Governments concerned[197] and have, as a rule, also involved assets other than those involved in the nationalization measures. In those instances, the determination of the extent and manner of compensation pay-

* Information provided by the Government.

[191] Law No. 46-628, 8 Apr. 1946.

[192] Law No. 46-1072, 17 May 1946.

[193] No. 9125 of 1940.

[194] See *Agreement between the Government of the United Arab Republic and the Compagnie Financière de Suez,* Geneva, 13 July 1958, United Nations document A/3898, S/4089, 23 Sept. 1958.

[195] No. 86 of 1958.

[196] The Committee's terms of references were laid down in Ordinance No. 9, 2 Apr. 1959 (Statutes 1959, No. 16).

[197] For examples of such agreements, see chapter II below.

ments to the foreign nationals concerned has been the subject of legislative action in their respective home countries.

d. MEASURES FORESHADOWING EVENTUAL NATIONALIZATION

232. In certain instances, legislation concerning, for example, the regulation of a given industry, may foreshadow an eventual nationalization or may contain a statement of policy goals with respect to such nationalization or future restriction of the activities of private enterprises. In essence, such legislation serves notice upon current concessionaires that, at some future point in time, concessions will not be renewed.

233. In the case of *Costa Rica,* the Law on the National Electrical Service of 18 August 1941, states (Article 49) that the ultimate goal of the Electricity Board, established under the law, shall be the nationalization of electrical services; the Board is enjoined at all times to strive for the achievement of that goal.

234. In the instance of *Guatemala,* the Law for the Establishment of the National Electrification Institute (INDE)[198] provides that new electric supply plants for public service may henceforth only be constructed by INDE or the municipalities.

e. MEASURES GUARANTEEING AGAINST TAKING

235. A counterpart to measures foreshadowing nationalization is constituted by measures or policy statements which offer a guarantee against the taking of a given industry or economic sector.

236. Guarantees against taking (and related guarantees of compensation) are embodied in a number of recent laws for the encouragement of investment applicable both to nationals and foreigners. Thus, in the case of *Burma,* the Union of Burma Investment Act, 1959, provides that no business enterprise established under the Act will be nationalized within the period guaranteed by the President of the Union under the Act. The guaranteed period for each business enterprise is to be determined by the President (Article 5(1)). It is further provided that if an enterprise in which foreign capital forms part of the over-all investment is nationalized, compensation for the foreign capital so invested shall be paid in the foreign currency in which the original investment was made.**

237. In the case of *Bolivia,* the Investment Promotion Law of 16 December 1960 provides that investments under the provisions of this law shall not be subject to expropriation; if, exceptionally, expropriation should be necessary "for reasons of high national interest" it shall take place only after payment of its value in the currency in which the investment was made (Article 3).**

238. Policy statements on the same subject must, by their nature, needs be confined to general assurances that nationalization will not take place; such assurances may or may not embody a time-limit, depending on the extent to which a continuity of policy can be assured by the Government of the day.

239. In passing, two brief examples of such assurances may be cited. Thus, the Prime Minister of *Ceylon,* speaking[199] to an organization of tea and rubber planters, offered assurances that the Government would not nationalize Ceylon's plantation industries for at least ten years. In a statement on capital investment in the Gold Coast (now *Ghana*) Legislative Assembly on 1 March 1954, the Prime Minister said that "The present Government has no plans for nationalizing industry beyond the extent to which the public utilities are already nationalized, and it does not envisage any such proposals arising".[200]

Protection of foreign property

240. As regards legislative measures relating to the protection of foreign property, these fall into two basic categories: (1) measures by the investor's home State to insure investments abroad; and (2) national measures of guarantee to foreign property owners. The latter tend to relate primarily to compensation so paid. Measures in the first category are, from the operational point of view in the enacting country, essentially similar to any other commercial insurance system, under which a certain risk or series of risks are given insurance coverage; a given premium being payable by the insurer. The international agreements concluded with respect to such guarantees are covered in chapter II, paragraph 40 below.

241. A comprehensive guarantee system was established by the Government of the *United States of America* under Section 413 (*b*) of the Mutual Security Act of 1954[201] as amended by the Mutual Security Act of 1956.[202]. The Act provides, *inter alia,* for a system of expropriation guarantee contracts under which United States investors would, in the event of expropriation, be assured of compensation by the Government of the United States in United States currency, in accordance with a formula for determining loss fixed by contract. The term "expropriation" was specifically stated also to cover confiscation.

242. In cases where a private investor has been compensated under the above-mentioned system, the United States succeeds to any claim arising out of the expropriation measure concerned.

243. In certain instances, States will guarantee foreign investors in their territory against nationalization or expropriation for a given period of time. Selected instances of such legislation are set forth below.

244. *China (Taiwan)* provides, under the Revised Statute for Investment by Foreign Nationals (14 December 1959), for a twenty-year guarantee against the requisition or expropriation of enterprises in which the foreign capital participation is at least 51 per cent (Article 15).*

245. *Indonesia,* under Act 78, Year 1958, grants the Government a discretionary right to guarantee foreign enterprises that they shall not be expropriated by the State or nationalized; maximum time-limits of twenty years in the case of industrial enterprises and of thirty years in the case of agricultural estates are laid down.

* Information provided by the Government.

** Information provided by the Government in connexion with the Secretariat's studies on the promotion of the international flow of private capital.

[198] Congressional Decree No. 1287, published 17 June 1959.

[199] 17 Sept. 1959.

[200] Ministry of Commerce of Ghana, *Handbook of Commerce and Industry,* Accra, 1957, enclosure.

[201] Public Law 665, 83rd Congress.

[202] Public Law 726, 84th Congress.

246. In the case of *Iran,* the Law Concerning the Attraction and Protection of Foreign Capital Investments provides that:

"Any capital invested in Iran ... and the profits thereof shall be subject to the legal protection of the Government; and all the rights, exemptions, and facilities which are accorded to domestic investors shall apply also to foreign capital and companies. Should any capital be expropriated in accordance with specific legislation, the Government guarantees equitable compensation for the loss, provided that application for compensation be made to the Board ... [provided for in Article 2] not later than three months after the date of expropriation" [Article 3].*

* Information provided by the Government.

247. A note to the article states that qualified investors "shall not have the right of transfer of their shares, profits, and rights to their own Governments or other Government".

248. Under the Foreign Capital Investment Law (30 January 1958) of *Libya,* the property of any foreign investor cannot be expropriated (seized) except for the public good in the circumstances defined and specified in the Expropriation Law[203] (Clause 8).

249. Specific guarantees regarding the free transferability of any compensation payments that may be made to foreign enterprises in the event of nationalization or expropriation are also contained in the legislation of a number of other States (e.g., Japan, Pakistan).

[203] No such law has yet been enacted, though constitutional authority for enactment exists.

E. Measures excluding foreign enterprises from certain sectors of the national economy

250. The present section is devoted to a review of measures by which States specifically exclude foreign enterprises from one or more of the sectors of the economy concerned with the exploitation of the major natural resources. The term "foreign enterprise" here designates an enterprise incorporated or domiciled in a foreign country or one whose controlling interest is foreign-owned, regardless of domestic incorporation or domicile.[204]

251. The basic division of this section is in terms of the scope of the measures concerned: measures relating to specific natural resources, such as land, subsoil resources and water rights; measures excluding enterprises controlled by foreign Governments; and measures excluding all private capital, whether domestic or foreign.

252. In the context of measures relating to specific resources, a basic distinction is made between measures of general applicability and those operative only in the absence of reciprocity.

1. Measures relating to specific natural resources

253. In a number of countries, the access of foreigners—whether individuals or corporations—to ownership or user rights in land is restricted, by means of exclusions, in terms of type or purpose, area, length of lease, location, method of transfer, or any combination of these or essentially similar factors. It should be noted, however, that the access of foreign enterprises to rights in land is, aside from outright exclusions, in many instances, governed by systems of discretionary grants (see section A above).

254. Some States specifically exclude the acquisition of rights in land by foreigners through mortgages, inheritance and other methods distinct from outright purchase or lease (e.g. Burma, Liberia, Philippines) or by placing restrictions on the area acquired by such transfers (e.g., Thailand), or by making certain formal stipulations (e.g., United Kingdom [island of Jersey]).

255. Typically, exclusion measures relating to land are expressed in declaratory legislation or constitutional provisions limiting the types (whether in terms of original ownership or of purpose) of land in which foreign individuals or enterprises may acquire rights or establishing maximum limits in terms of area or duration of lease (e.g., Brazil, Burma, Cuba, Indonesia, Liberia, Philippines, Sweden, Thailand, and United States of America with respect of Federal lands).

256. In certain instances, exclusions may rest on a geographical basis and exclude foreign enterprises from rights in land or mineral resources in frontier or other strategic zones or in special reserved areas (e.g., Bolivia, Brazil, Honduras, Japan, Liberia, Panama, Peru).

257. As regards minerals and other subsoil resources, as well as water rights and hydroelectric power, exclusions are, in a majority of instances, based upon requirements with respect to domestic capital participation. In many of these cases, however, exemption from such requirements may be granted in the discretion of the competent authorities. The relevant legislation typically sets forth provisions implementing the basic domestic capital participation requirements in terms of the type of shares concerned (whether bearer or nominative shares), company registration, nationality of directors, and so forth.[205]

258. Outright exclusions of foreigners from access to specific minerals apply typically to the field of atomic energy (e.g., Finland, United States).[206]

a. Measures of general application

259. The range of exclusions outlined in the preceding paragraphs is illustrated in the series of brief studies set forth below.

Afghanistan Under the Constitution, foreign nationals may not own land (Addendum of 22 February 1933, Article 2).

*Bolivia** Immigrants wishing to settle on the land are entitled to acquire State lands to a maximum of 50 hectares each in areas set aside for immigrant settlement.

*Brazil** Regulations for land settlement provide that at least 30 per cent of the lots in land settlement centres must be granted or sold to Brazilian settlers, the remainder being distributed among other nationalities, with a limit of 25 per cent for any single nationality.

* Information provided by the International Labour Office.

[204] Control over entry, including registration and other requirements laid down in the discretion of the State concerned are discussed in section A above.

[205] See Section B above.

[206] See also paras. 24-29 above.

Burma Under the Constitution, agricultural land may not be granted by the Union for exploitation, development or utilization to any persons other than nationals (Article 220). Exceptions may, however, be authorized by Act of Parliament.

With respect to timber and mineral lands and forests, the Constitution calls for exploitation and development by the State, which may, however, grant such rights to nationals or corporations at least 60 per cent of whose capital is held by nationals. Exemption from this provision may be granted by Parliament if it is considered to be in the national interest (Article 219). By the Transfer of Immovable Property (Restriction) Act 1947 leases of immovable property to foreigners are limited to a maximum period of one year.

Cuba Under the Agrarian Reform Law, 1959, corporations owning or exploiting sugar estates must, within a time-limit of one year from the enactment of the relevant legislation, comply with the requirement that all their shares be nominative and that the holders of such shares be nationals.*

Under the reform, each peasant family is to have a minimum of two caballerias (approximately 26 hectares) of fertile land and no one may possess over thirty caballerias. The law exempts, in the national economic interest, certain large estates with an area of not over 100 caballerias which are used for the cultivation of sugar cane, rice and a few other crops or for stock-raising, provided their yield is above the current average.[207]

*Finland** Under the Act on Atomic Energy, 25 November 1957, the production of, trade in, possession and use of atomic energy must be authorized by the Ministry of Commerce and Industry. Such authorization may only be granted to a Finnish national, company or institution.

Indonesia Under Act No. 78, 27 October 1958, Concerning Foreign Capital Investment, foreign enterprises may obtain governmental grants of rights in land within the following categories and time-limits:

(1) Building rights may be granted to industrial enterprises considered to be vital to the State for periods of 20 years;

(2) Operating rights may be granted to large agricultural enterprises for periods of 30 or 40 years;

(3) Lease rights may be granted to other enterprises for 10 years.

The time-limits under (1) and (2) above may be extended "in consideration of the state of the enterprise".

The Foreign Investment Law specifically excludes the generation of electric power, irrigation and water supply from fields for foreign investment.

Italy Under the Petroleum Law (No. 6, 11 January 1957), only Italian nationals or companies whose offices are in Italy may obtain petroleum rights.

Japan Under the Mining Law, No. 289 of 1950, a mining right in a tract of land registered with the Government may only be granted to Japanese nationals and public companies incorporated under Japanese Law. Exceptions may be provided by treaty.

*Laos** Under the terms of the law of 8 January 1957 concerning concessions of vacant rural land, the exploitation of land is restricted to Laotian nationals and companies; foreign nationals may only obtain concessions on lease, except for companies and nationals of States having signed special agreements with Laos who may hold concessions for valuable consideration. So far, only France has signed such an agreement (France-Laos, Establishment Convention).

Under the terms of Law-Ordinance No. 197, 20 June 1959, foreign individuals and juridical persons, and Laotian nationals married to foreigners, require prior permission of the Minister of Finance in order to acquire land or land rights in any form.

Law No. 238, 23 July 1959 prohibits foreigners from holding forestry concessions, exploiting forest resources or trading in fire-wood and charcoal.

Liberia Under the Constitution, real estate rights are restricted to nationals with the exception of colonization, missionary, educational or other benevolent institutions, provided that the property is applied to its legitimate purpose [Article 5 (12)].

Under the Public Lands Law [Code of Laws (1956) Title 32], the President may, with legislative approval, lease public lands to foreign nationals (including corporations) for agricultural mercantile or mining operations for a term of 50 years, subject to renewal (Section 70).

Under the Property Law [Code of Laws (1956) Title 29], nationals may lease real estate to foreigners or foreign corporations for a maximum term of 21 years, subject to renewal (Section 20).

Mexico Under the Constitution, only Mexicans by birth or naturalization, and Mexican corporations may obtain concessions for the working of mines or for the utilization of waters or mineral fuel. The nation may grant the same right to aliens, provided that they agree with the Minister of Foreign Relations to consider themselves as Mexicans in respect of such property and on condition that they bind themselves not to invoke the protection of their Governments in matters relating thereto (Article 27).

The Mining Law 1930, as amended, provides that under no circumstances may foreign companies, Governments or rulers obtain such concessions (Article 6).

The Law of the Electric Industry (31 December 1938) provides that only Mexicans and Mexican companies may obtain concessions for the electric industry.

*Philippines** Under the Public Land Act (Commonwealth Act No. 141), reflecting Constitutional provisions [Article XIII (1)],[208] only enterprises under the control of nationals may purchase public agricultural lands and public lands suitable for residential, commercial or industrial purposes. Similar restrictions apply, under the Constitution [Article XIII (1)] to mining and water power utilization. Foreign-controlled enterprises may, however, under the Public Land Act, lease land suitable for residential or industrial purposes.

Under the same statute, homestead settlement on, or acquisition of free patent to, public lands suitable for agricultural purposes is limited to nationals, and, a similar restriction applies to the acquisition, at public auction, of public lands at new townsite reservations. Under Republic Act No. 1160, the acquisition of public agricultural land under the system of the free distribution of such land in sparsely-populated regions to landless tenants and farm workers is limited to nationals.

*Sweden** Under a Decree of 11 June 1948 in connexion with the promotion of homesteads in rural districts, "social leaseholds" (covering an arrangement for an eventual transfer of title to the lessee) of Crown lands are restricted to nationals (Article 10). Similar restrictions apply under a Decree of June 1943 regarding the allocation of Crown crofts for cultivation (Article 2), and under a Decree of 25 May 1945, regarding the transfer of Crown lands for the establishment of "family-size" and "subsistence" farms (Article 9).

Syria Under the Mining Law, No. 7, 21 December 1953, permits or concessions may be granted to Syrian nationals or to companies founded and domiciled in Syria, taking into account considerations relating to defence.

*Thailand** Under the Land Code [30 November 1954 (B.E. 2497)] the acquisition of land by foreign enterprises is to be governed by treaty provisions (see also under (*b*) below). The law makes governmental authorization a requirement for acquisition and area limits, varying with the purpose, are

* Information provided by the Government.

[207] Statement by the representative of Cuba, General Assembly, 14th sess., 2nd Com., 620th meeting.

[208] Under the Parity Amendment of 11 Mar. 1947, nationals of the United States of America are given the same rights as Philippine nationals in the operation of public utilities up to 3 July 1974.

imposed (Sections 86 and 87). The land thus granted may be used only for the purpose shown in the original authorization.

Particular industries may be given special exemptions and protection by the Board of Investment. Foreign limited companies or registered partnerships authorized by the Board of Investment as "promoted industries" may own land in excess of the maximum area provided by the Land Code.

Turkey Under the Mining Law (Law No. 6309, 3 March 1954), exploration permits may be given to Turkish citizens or to juridical persons formed under Turkish laws.

*United Arab Republic** Under the Egyptian Law No. 37 March 1951, non-Egyptians are not permitted to acquire agricultural lands, unless they have special rights relating to those lands.

*United Kingdom** In Scotland the Crown enjoys rights of sovereignty over land. In the foreshore the Crown enjoys both a right of sovereignty, which is inalienable and by virtue of which the Crown has the duty of guarding certain public rights in the foreshore, and a right of property, which may be alienated by the grant of the foreshore to a subject.

*United States of America** Licences relating to operations in the field of atomic energy may not be granted to foreigners or to entities known, or reasonably believed to be owned or controlled by foreigners or a foreign Government [42 USC, Section 2133 (*d*)]. Foreigners may not acquire title to lands in the Federal public domain in the United States or its territories under the Homestead Act. Legislation excludes aliens from access to major non-metallic minerals and mineral lands owned by the United States. (30 USC, Sections 22, 24, 181).

Foreign nationals and corporations are excluded from the operation of dams, reservoirs, power houses or other facilities on waters or lands under Federal jurisdiction [16 USC, Section 797 (*e*)].

b. Exclusions relating to geographical location

260. Exclusions or foreign natural resources ownership or operations from specifically defined areas or regions fall into two principal categories, covering: (*a*) designated defence or strategic areas (e.g., Brazil, Japan); and (*b*) frontier zones, coastal belts and islands and islets (e.g., Bolivia, Ecuador, Honduras, Mexico, Panama, Peru).

261. In the case of *Liberia*, under the General Business Law [Code of Laws (1956) Title 15], leases to foreigners with respect to public lands under tribal jurisdiction are limited to a maximum duration of 21 years (renewable), in addition to the generally applicable area maximum of one acre (Section 301).

c. Restrictions on acquisition by methods other than purchase

Burma By the Transfer of Immovable Property (Restriction) Act, 1947, the transfer of immovable property by sale, gift or mortgage to, or in favour of, foreigners, is prohibited. Exemption from this restriction may, however, be given in the discretion of the President, and foreigners may inherit immovable property.

Liberia Under the Property Law [Code of Laws (1956) Title 29] while foreigners may hold mortgages in land, they are excluded from bidding and acquiring mortgaged properties at foreclosure sales (Section 32).

*Thailand** Under the Land Code, 30 November 1954 (B.E. 2497), foreigners may, with governmental permission, inherit land, provided that the resulting total individual holding will not exceed the area maxima laid down (see under (*a*) above) (Section 93).

*United Kingdom** In the island of Jersey, a foreign national may not acquire land by succession unless there is a testamentary disposition in his favour; such testamentary disposition can lawfully be made in respect of land.

d. Exceptions under treaty and other reciprocal arrangements[209]

Afghanistan Under the Constitution, while foreign nationals are prohibited from owning land, foreign legations may acquire land under conditions of reciprocity (Addendum of 22 February 1933, Article 2).

Japan Under the Alien Land Law, No. 42, 1 April 1925, the access of foreign enterprises to rights in land is granted on the basis of reciprocity, and foreign nationals and foreign juridical persons are subject to such prohibitions, conditions and restrictions as are identical with, or analogous to, those to which Japanese nationals and Japanese juridical persons are subject to in the foreign country concerned. Any division of a foreign State which enjoys separate legislative power with regard to land is, under this system, considered as a separate country.

2. Measures resting upon reciprocity

262. Measures which provide for the access of foreign nationals or corporations to all or to specific sectors of the national economy only on the basis of reciprocity constitute an exclusion with respect to nationals of any country which does not provide for reciprocity in these matters.

263. While there is some variation in specificity of drafting in that some laws merely speak of "reciprocity", while others reiterate the rights involved, this does not appear to suggest any difference as regards scope of application. A broader approach to the question is, however, suggested by the use of the term "reasonably comparable facilities" (e.g., United Kingdom).

264. In certain instances, the grant of reciprocal rights must rest on a formal agreement (e.g., Laos); in others, rights may be granted by virtue of treaty provisions (e.g., Thailand). A narrower interpretation of reciprocity may call for equal treatment not only with respect to rights, but also with respect to any restrictions or disabilities applicable to nationals of one party in the territory of another (e.g., Japan).

265. Finally, it may be noted that some legislation provides for the granting of specific rights to nationals of States that grant broad economic rights (including the specific right in question) to nationals of the enacting State (e.g., Iran).

266. In certain cases, the absence of reciprocity may not result in exclusion, but may bring the activity involved under the operation of a system of discretionary grants (e.g., Austria).

267. The various types of legislation discussed here are illustrated by the examples set forth below.

Austria Under the Law on Limited Liability Companies, 1906, as amended, registration of a foreign corporation is contingent on submission of proof of reciprocal treatment for Austrian corporations in the applicant corporation's country of domicile. In the absence of such proof, registration becomes subject to a special authorization of the Federal Ministry of Justice.

* Information provided by the Government.

[209] Specific arrangements of this type are discussed in chapter II below.

Brunei Under the Oil Mining Enactment, 1955, no licence or lease may be granted to a company which is incorporated in, or controlled by a national or company of, a country which by law or custom does not permit companies incorporated in the British Commonwealth, or companies controlled by such companies or British nationals to acquire, hold and operate petroleum concessions which are reasonably comparable with the conditions upon which such rights are granted to nationals of that country.

*Chile** Under Act No. 5922, 25 September 1936, aliens may not acquire or possess real estate under any form or title for periods exceeding five years in areas (departments) designated by the President if similar prohibitions are in force against Chilean nationals in the alien's country of origin. This prohibition also extends to companies or juridical persons having their head-office in the foreign country whose nationals are subject to this prohibition or whose capital is held to the extent of 20 per cent or more by nationals of the foreign country concerned.

El Salvador Under the Constitution, ownership in rural real property (other than lands for industrial establishments) may not be acquired by foreigners whose country of origin does not grant equal rights to nationals of El Salvador. The exclusion applies also to foreign companies and to domestic juridical persons with a majority of foreign capital or members.

Iran Under the Petroleum Act (31 July 1957), authority to carry out petroleum operations may be granted to foreigners only in cases where the foreign country concerned would permit Iranian nationals to engage in economic activities and, in particular, to enter there into operations similar to those envisaged under this law.

Substantially similar provisions are contained in the Law Concerning the Attraction and Protection of Foreign Capital Investments.

Japan Reciprocal treatment with respect to prohibitions, conditions or restrictions on rights in land is provided for under the Alien Land Law (No. 42, 1 April 1925). Under this law, the relevant disabilities imposed upon foreign nationals will be identical with, or analogous to, the disabilities imposed upon Japanese nationals in the country concerned or in any part thereof which has separate legislative powers with respect to land.

*Laos*** Under the Mining Law (No. 42, 26 January 1959), mineral exploration or exploitation authorizations may be granted to foreigners only on condition that a reciprocal agreement exists between Laos and the State of which applicant is a national.

Pakistan Under the Pakistan Petroleum (Production) Rules, 1949, as amended, no licence or lease may be granted to any person controlled directly or indirectly by a national of a country where Pakistan nationals or companies are not accorded reciprocal rights to hold petroleum concessions.

Substantially similar conditions are contained in the Pakistan Mining Concession Rules, 1949, as amended; in this instance, however, the term "reciprocal rights" is replaced by the term "conditions which... are reasonably comparable with those existing in Pakistan".

Sarawak The relevant provisions of the Oil Mining Ordinance, 1958, are similar to those of the Brunei Oil Mining Enactment, 1955 (see above).

*Thailand*** Under the Law on the Rights of Aliens to Own Land in Siam (1943, as amended in 1954), aliens may acquire land by virtue of the provisions of a treaty giving the right to own immovable properties and subject to the provisions of the law [see paragraph 233 above] (Section 86).

*United Kingdom*** In the case of petroleum, prospecting and mining licences are, in practice, freely available for the benefit of foreign nationals or companies provided that their country accords reasonably comparable facilities to British-controlled concerns.

*Yugoslavia*** Under the Law on Amendments to the Law on Nationalization of Private Economic enterprises (Official Gazette No. 35, 29 April 1948), foreign nationals may not acquire real estate in Yugoslavia, except by inheritance and under conditions of reciprocity.

3. Measures excluding enterprises controlled by foreign Governments

268. In a number of instances, measures excluding foreign enterprises from given sectors of the national economy apply to specific forms of such enterprises, notably with respect to foreign Government ownership, control or interest.

269. In all instances, the exclusions cited here cover a specific sector of the economy; there is, on the other hand, considerable variation in definition of the degree of foreign Government control permissible before the exclusion becomes operative. In broad terms, the definitions range from any participation whatever (e.g., Bolivia, petroleum; Mexico, water rights; Iran, general investment), to an extent of participation essentially to be determined in the discretion of the enacting Government (e.g., Turkey, petroleum; Costa Rica, water rights).

270. In a number of instances, exclusions become operative if a foreign enterprise already established in the country concerned comes under the control of a foreign Government (e.g., Colombia, petroleum; Costa Rica, water rights; Iran, general investment; Mexico, electric power).

Bolivia Under the Petroleum Code, 26 October 1955, foreign Governments or States or corporate bodies or other entities subordinate thereto may not obtain a concession of any kind under any form of title, directly or through the intermediary of any other person. Similarly, they may not be admitted as partners or members of any company.

Colombia The Petroleum Code (Decree No. 1056, 20 April 1953) provides that contracts or permits granted are subject to termination on transfer to a foreign Government.

Costa Rica The Water Law, 28 August 1942, provides that concessions shall be cancelled whenever concession rights are transferred to foreign Governments or States or whenever foreign Governments or States are given any kind of participation in the concession or the enterprise exploiting the concession. The authorities will be guided in determining these circumstances only by their discretion and no ordinary rules of evidence shall apply to this determination. (Article 26, IV).

Under the Law on Combustible Minerals, 9 May 1938, concessions under the law may not be made to Governments of foreign States; rights under such concessions may not be sold, transferred or extended either fully or in part to Government or State.

Ecuador The Petroleum Law (6 August 1937, as amended) prohibits the grant of a concession to: (1) foreign Governments or States; and (2) agencies subordinate to foreign Governments or States.

*Iran*** Under the Law Concerning the Attraction and Protection of Foreign Capital Investments (29 November 1955) and the relevant regulations, capital to be invested in terms of the law and regulations must be privately owned without any foreign Government participation. The Board of Supervisors established under the law is authorized to require the repatriation of capital in which a foreign Government has a share, within a period of time. Persons, corporations and private institutions of foreign nationality which have been

* Information provided by the International Labour Office.
** Information provided by the Government.

permitted to make investments under the law are expressly prohibited from transferring their shares, profits, and rights to their own Government or to other Governments.

Mexico The Mining Law of 1930, as amended, provides that under no circumstances may foreign Governments or rulers obtain concessions (Article 6).

Under the Law of the Electric Industry, 31 December 1951, only Mexicans and Mexican companies have a right to obtain concessions for the electric industry. Provision is made for the Department of National Economy to declare the forfeiture of concessions in cases where the concessionaire has transferred or alienated the concession in whole or in part to a foreign Government or State or in cases where he has invoked their protection.

Under the Water Law, 31 August 1934, the transfer of the water concession or the encumbrance thereof in favour of a foreign Government or State, or the participation of any kind of a foreign Government or State in the concession or in the business of the concessionaire terminate the concession (Article 50).

Panama Under the Constitution, no foreign Government and no official or semi-official foreign entity or institution may acquire possession of any part of the national territory (Article 231).

Peru Under the Petroleum Law (No. 11780, 12 March 1952 and Regulations of 16 June 1952), concessions may not be obtained directly or indirectly by foreign Governments or States or by companies or corporate bodies that are their subordinate agencies.

Turkey The Petroleum Law No. 6326, 10 March 1954, as amended by Law No. 6558, 13 May 1955, provides that no person existing by virtue of law in which a foreign State holds a financial or beneficial interest of such extent or in such form as directly or indirectly to influence his actions, and no person acting for or on behalf of a foreign State may (*a*) hold a petroleum right or conduct a petroleum operation; (*b*) purchase, hold or retain a right or interest in movable or immovable property necessary to a petroleum operation; or (*c*) establish or operate installations incidental to or forming part of a petroleum operation. Exceptions may be permitted in the discretion of the Council of Ministers (Article 12).

Venezuela The Law of Hydrocarbons, 13 March 1943, as amended, states that in no case, not even through an intermediary, shall foreign Governments or States, or corporations dependent on them, be permitted to acquire concessions (Article 6).

4. Measures excluding private domestic as well as foreign capital

271. In a number of important instances, States exclude all private capital, whether domestic or foreign, from certain sectors of the economy. While such exclusions are of peripheral interest in the context of the present study, the relevant information is presented here in order to complement the data given in the foregoing parts of this section.

272. As regards the origin of the exclusions in question, we may distinguish between those which have been in force since the outset of industrial operations in a given field of natural resources exploitation and have thus constituted an *ab initio* Government reservation and those which have been created by a later constitutional or legislative act of reservation or taking.[210]

273. The present discussion is organized on the basis of variations in form and extent of the exclusions in question, that is to say, whether, in the first place, the exclusion is absolute or whether some provision for the admission of private capital under given conditions is made. Where such provisions do not specifically exclude foreign participation, they have been included under the heading of "Exclusions providing for exceptions with respect to private domestic or foreign capital participation". Other categories of exclusions discussed cover those resting on geographical or related security considerations.

274. It should be noted that the term "absolute exclusion" is here used in the immediate context of the specific examples cited below. An absolute exclusion may thus apply to a specified area with respect to, say petroleum exploitation, while an adjacent area, not reserved to the State, may be given to private operation and thus subject to the discretionary grants described in section A (see paragraphs 14 to 20) above.

275. While the material drawn on by way of illustration is largely of a constitutional or legislative character, reference is also made to official policy statements which are illustrative of the subject under discussion.

a. Outright exclusions

Bolivia In 1952, the Corporación Minera de Bolivia was established as an autonomous governmental agency for the exploitation of specified mineral deposits. After the nationalization of the mines of the Patiño, Hochschild and Aramayo groups, the mines were entrusted to the Corporation for administration and operation.

Brazil Law No. 2004 of October 1953 provides that the petroleum industry (including the prospecting and operation of all deposits of petroleum and other fluid or gaseous hydrocarbons) is to be a monopoly of the Federal Union. The monopoly is to be exercised through the National Petroleum Council and by a corporation under governmental control—Petroleo Brasileiro S.A. (Petrobras) as the operating organ. Petrobras is to undertake subject to the approval of the National Petroleum Council all prospecting, producing and refining operations with respect to petroleum.

*Ceylon** The Salt Ordinance No. 6, 1890, prohibits the collection of salt except on behalf of the Government and with governmental consent.

France The *Code Minier* (Decree No. 56—838 of 16 August 1956) provides that certain zones are reserved for State petroleum exploration and exploitation. The State's exclusive rights are to be exercised by the Régie Autonome des Pétroles within a portion of this reserved area. (See also under (*c*) below.)

Guatemala Under the law for the Establishment of the National Electrification institute (INDE) [Congressional Decree 1287, published 17 June 1959], only INDE or the municipalities may henceforth construct new electric supply plants for public service.

Iran The Petroleum Act, 31 July 1957, provides that the National Iranian Oil Company (NIOC) the Government authority responsible for the execution of the Act, may divide the country, including the continental shelf, into districts for the purposes of conservation, exploration or extraction. NIOC is authorized to declare any such district or part thereof as open to petroleum operations, but it is required to ensure that at least one third of the total exploitable areas shall be conserved at all times as national reserves which are to be closed to petroleum operations conducted by others than NIOC.

Israel Under the Petroleum Law, No. 5712, 1952, as amended, the Minister, after consultation with the Petroleum Board,

[210] For a more detailed discussion of the legal origin of the latter type of exclusion, see section D above.

* Information provided by the Government.

may determine and redetermine petroleum districts. He may, further, declare the whole or any part of a petroleum district open for petroleum exploitation and production or he may close any open area.

Italy The National Hydrocarbons Agency (Ente Nazionale Idrocarburi-ENI) was established as a juridical entity under Law No. 136, 1953, in order to exploit petroleum resources for the Government. That law designates certain regions in which ENI has exclusive rights of exploration and development of hydrocarbon fields, such as in a zone in the Po Valley. Areas reserved to the State, which include corridors adjacent to the perimeter of each concession, and tracts becoming available through the reduction, expiration and forfeiture of concessions (see also section A, paragraph 13, above) may be open to non-governmental exploitation after competitive bidding at public auction only if concessions in such areas have not already been granted to ENI.

Mexico Under the terms of the Petroleum Law of 29 November 1958, the exploitation of all petroleum deposits is reserved to Petroleos Mexicanos (PEMEX), a government agency.[21]

Pakistan The Industrial Policy Statement of 2 April 1948 enumerated a number of industries which for the time being, would be subject to central planning. These included, *inter alia,* the generation of hydroelectric power.

Peru Under a law of 11 January 1896, a Government monopoly over the production, transport and sale of salt was established. The Estanco de la Sal is the governmental agency established under the law for the operation of the monopoly. Similarly, the trade in (though not the production of) nitrates is a State monopoly, exercised through the Corporación de Ventas de Salitre y Yodo.

*Thailand** Under the Act for the Promotion of Industry, 4 October 1954 (B.E. 2497), the Committee constituted under the Act is to advise the Council of Ministers on, among others, the prohibition of any industrial activities throughout the Kingdom or in some particular locality when it appears that the undertaking may be detrimental to the national economy or against public safety. Provision is made for the prohibition by royal decree of such industrial activities.

Under the Mining Law of 1919, as amended, gold, oil and coal, wherever they may be found, may not be prospected or mined by private individuals.

b. Exclusions providing for exceptions with respect to private domestic capital participation or operation

*China (Taiwan)*** Under the Mining Law of 26 May 1930, as amended to 30 July 1959, certain minerals are reserved for State operation and other minerals for State reservation. The minerals reserved for State operation are iron, petroleum and copper, as well as high-grade coal suitable for smelting or coking and oil refining. Provision is made, however, for the leasing of mining lots for exploitation by Chinese nationals in cases where the State is of the view that there is no necessity for operating such mines itself.

The Ministry of Economic Affairs is authorized to specify regions for State reserves of such minerals as are reserved for exclusive State operation and of certain other minerals.

c. Exclusions providing for exceptions with respect to private domestic or foreign capital participation or operation

Bolivia Under the Petroleum Code, 26 October 1955, the country was divided into six clearly defined zones, one of which was reserved for exclusive exploitation by the Yacimientos Petroliferos Fiscales Bolivianos (YPFB). No concession was to be granted for exploitation within the reserve.

Upon authorization of the competent authority under the Code, YPFB would be entitled to organize companies or make leasing or operating contracts with any natural or juridical person for the exploration and/or exploitation of the area included in its reserve. In companies so organized, YPFB was, however, to retain a minimum of 51 per cent of the shares.

France Under the *Code Minier* (Decree No. 56-838, 16 August 1956), petroleum areas reserved to the State and not placed under the operational jurisdiction of the Régie Autonome des Pétroles (see under (*a*) above), may be exploited and explored for the State by one or more companies. The conditions under which the operations are to be performed are to be set out in conventions between the State and the Companies involved.

India The Industrial Policy Resolution of 30 April 1956, which replaces a similar resolution of 1948, set forth the industrial policy of the Government and redefined the governmental and private sectors in industrial investment. The resolution divided all industries into three categories.

The first category was to cover the basic, strategic and public utility industries, such as atomic energy; iron and steel; coal and lignite; mineral oils; mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond; mining and processing of copper, lead, zinc, tin, molybdenum and wolfram, and the generation and distribution of electricity. In this class of industrial activity, new units were to be set up only by the State and the future development in these sectors would, therefore, be a matter of exclusive State responsibility. This would not, however, preclude the expansion of existing privately-owned units or the possibility of receiving the co-operation of private enterprise in the establishment of new units when necessary in the national interest.

The second category was to consist of industries which were essential and which required investment on a scale which only the State could provide. The industries in this sector would be progressively State owned and the State, in general, would take the initiative in establishing new undertakings. Private enterprise would, however, be expected to supplement the efforts of the State in these sectors and would have the opportunity to operate in this field on its own or with State participation.

The third category would include all remaining industries; their future development would, as a general rule, be left to the initiative and enterprise of private investors without, however, excluding the possibility of State activity.

Mexico The Constitution prohibits the granting of concessions for the exploration or exploitation of petroleum or other hydrocarbons and provides that "the nation shall effect the development of these products" (Article 27). The Petroleum Law of 2 May 1941 provides for governmental development, (1) through a governmental organ; (2) through public institutions created by law specially for petroleum operations; and (3) through contracts with companies or private persons. In the latter case, payment is to be either in the form of a fixed amount or a stated percentage of the production and the maximum duration of such contracts is to be thirty years.

Philippines Under the Petroleum Act (Republic Act No. 387, 1949), the Secretary of Agriculture and Natural Resources is authorized to divide the prospective petroleum lands of the Philippines into prospective petroleum regions. Under this authorization, six petroleum regions were established. The Act authorizes the establishment of petroleum reservations which the Government itself, or persons under Government service contracts may explore, develop and exploit.

d. Exclusions resting on geographical and related security considerations

Chile Under the Mining Code (Decree-Law No. 488, 24 August 1932), the President of the Republic may reserve

* Information provided by the Government of Thailand in connexion with the United Nations study on the international flow of private capital.

** Information provided by the Government.

[21] *The Promotion of the International Flow of Private Capital, Further Report by the Secretary-General,* E/3492, p. 59.

to the State specific carboniferous areas. The President has made use of this authority in Decree 1080, 24 June 1936, by which he has set aside for the State coal deposits situated in the Bahia de Arauco area.

Greece Under the Emergency Law 1366/1938, no person may acquire by a contract *inter vivos* any right *in rem* or hold under lease or other contractual relation immovable property in border areas and on the islands of Greece.

Thailand Under the Mining Act, 1919, as amended, mining operations by private individuals are allowed only in the southern regions, extending from the province of Chumphorn to the Malayan border. Areas other than those mentioned, including islands, except the Island of Phuket, are reserved exclusively for prospecting or mining by the Government.

Turkey Under the Petroleum Law (No. 6326, 10 March 1954, as amended) and the regulations issued thereunder, the country is for the purposes of the law, divided into several districts. Such districts may, however, be modified and redetermined. All districts may be declared open areas, except areas which, in the opinion of the Council of Ministers, should be closed for reasons of national security, or for the purpose of creating national reservations, or with a view to future leasing by competitive bidding.

Chapter II

INTERNATIONAL AGREEMENTS AFFECTING THE FOREIGN EXPLOITATION OF NATURAL RESOURCES

A. Rights and Duties with Regard to Property and Business Activities of Foreign Nationals or their Enterprises

1. Bilateral agreements*

1. The bilateral agreements examined in this study are by no means exhaustive. Most of them were concluded after the Second World War and are taken from the published volumes of the United Nations Treaty Series. Some of the earlier agreements are included with a view to extending geographical coverage. In such cases, an effort has been made to ascertain that the agreements are still in force. While the body of this section provides an analysis of all the relevant agreements, the agreements cited by title in footnotes are intended merely to provide examples. Moreover, the provisions of those agreements are summarized under various interrelated headings. Thus, in order to appreciate the meaning of a specific provision of an agreement, it is sometimes necessary to read that provision in conjunction with those summarized under other headings or, in some cases, the whole text of the agreement.

a. PROVISIONS RELATING TO THE ENTRY OF FOREIGN ENTERPRISES

i. *Types and scope of activities*

2. In general, the bilateral agreements examined in this study provide for the entry of the nationals of one party into the territories of the other party to engage in and to carry on trade, industry and commercial, financial or other business activities. The types and scope of activities, however, vary from one agreement or one group of agreements to another, ranging from "commercial activity only"[1] to "all commercial, industrial and financial activities and, in general, all activities of an economic nature".[2] Some of these agreements grant entry "for the purpose of developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital" as well as for purposes of trade.[3] This provision has been construed, in some agreements,[4] as extending to persons who represent nationals and companies of the same nationality which have invested or are actively in the process of investing a substantial amount of capital, and who are employed by such nationals and companies in a responsible capacity.

3. A great majority of the agreements contain provisions whereby one party grants the right to engage in industry, commercial, financial or business activities in its territories to the companies[5] of the other party. In some cases, it is further stated that such companies, as well as nationals[6] enjoying similar rights under the agreement concerned, are permitted "(*a*) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (*b*) to organize companies under the general company laws of such other Party, and to acquire majority interests in companies of such other Party; and (*c*) to control and manage enterprises they have established or acquired".[7]

ii. *Recognition of the juridical status of foreign bodies corporate*

4. Nearly all the agreements examined include a clause to the effect that companies legally constituted in the territories of either party are recognized as having juridical status or legal existence in the territories of the other party. Consequently, they enjoy access to local courts in pursuit and in defence of their rights. Some of these agreements further require that such companies be domiciled or have their head offices in the territories of the party in which they are legally constituted,[8] whereas, under a few agreements, mutual recognition of legal status is granted whether or not such companies have a permanent establishment, branch or agency in the country of their nationality.[9] In one case it is stated as an understanding that "recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized".[10]

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* For full citations of the agreements mentioned in this section, see annexes at the end of this section.

[1] *Italy-Jordan,* Treaty of 1952, Article 4.

[2] *Belgium-Siam,* Convention of 1937, Article II (1).

[3] *USA-Japan:* Treaty of 1953, Article I (1); *USA-Federal Republic of Germany:* Treaty of 1954, Article II (1); *USA-Iran:* Treaty of 1955, Article II (1); *USA-Netherlands:* Treaty of 1956, Article II (1); *USA-Nicaragua:* Treaty of 1956, Article II (1).

[4] *USA-Iran:* Treaty of 1955, Article XX(4); *USA-Netherlands:* Treaty of 1956, Protocol, para. 2.

[5] The term "companies", as used here, refers to bodies corporate whether designated as corporations, partnerships or associations.

[6] In one agreement, the term "national" is construed as including "bodies corporate as well as individuals". (See *Sweden-France,* Convention of 1954, Protocol, para. 1.)

[7] E.g., *USA-Japan,* Treaty of 1953, Article VII (1).

[8] E.g., *Greece-Lebanon,* Treaty of 1948, Article 6; *Norway-Japan,* Treaty of 1957, Article III (1); *Greece-Hungary,* Trade Agreement of 1954, Article 5.

[9] E.g., *USA-China,* Treaty of 1946, Article III (2); *USA-Italy,* Treaty of 1948, Article II (2).

[10] *USA-Iran,* Treaty of 1955, Article III (1).

b. Provisions relating to the treatment accorded to foreign enterprises

i. *In respect of property, rights and interests in general*

5. Some agreements provide for the protection of property and interests by stating that "each Party shall at all times accord equitable treatment to the person, property, enterprises and other interests of nationals and companies of the other Party,".[11] There are other detailed provisions whereby one party accords national and/or most-favoured-nation treatment to nationals and companies of the other party in such matters as the acquisition, possession and disposal of movable and immovable property.

6. In general, the agreements provide for the right of nationals and companies of either contracting party to acquire and dispose of movable and immovable property in the territory of the other party. Provisions regarding the treatment accorded to such property may be summarized as set forth below.

7. A number of agreements accord most-favoured-nation treatment to all kinds of property. The following is an example of such provisions:

> "The nationals of each High Contracting Party shall receive treatment not less favourable than that accorded to the nationals of any other foreign country in regard to the acquisition, possession or disposal of all kinds of movable and immovable property, in conformity with such laws and rules as are in force or may be established in the territories of the other."[12]

8. Under another group of agreements,[13] nationals and companies of either party are accorded within the territories of the other party: (1) national treatment with respect to leasing land, buildings and other immovable property appropriate to the conduct of activities in which they are permitted to engage pursuant to the relevant provisions of the agreements concerned and for residential purposes, and with respect to occupying and using such property; (2) other rights in immovable property permitted by the applicable laws of the other party; (3) national treatment with respect to acquiring property of all kinds by testate or intestate succession or through judicial process [should such nationals and companies because of their alienage be ineligible to continue to own any such property, they shall be allowed a reasonable period to dispose of it]; (4) national treatment and most-favoured-nation treatment with respect to acquiring, owning and possessing personal property of all kinds[14] and (5) national treatment and most-favoured-nation treatment with respect to disposing of property of all kinds. One of these agreements further provides that:

> "With respect to the acquisition, ownership, use and disposition of property of all kinds within the territories of either party, companies constituted under the laws of that Party, which are controlled by nationals and companies of the other Party, shall be accorded treatment no less favourable than that accorded within such territories to companies of such other Party or to companies similarly constituted which are controlled by nationals and companies of any third country."[15]

9. Among the agreements concluded by the United States of America and according national treatment[16] or most-favoured-nation treatment[17] with respect to immovable property,[18] some further stipulate that in the case of any state, territory or possession of the United States which does not accord the same treatment as that accorded by the United States to the nationals and companies of the other party, that party shall not be obligated to accord to the nationals domiciled in or companies constituted under the laws of such state, territory or possession treatment more favourable than the treatment acccorded to its nationals and companies within such state, territory or possession.

10. In some agreements,[19] the right of treaty aliens to acquire, possess and dispose of movable and immovable property is granted on the basis of reciprocity. In one case,[20] reciprocity is required only with respect to immovable property in connexion with the grant of most-favoured-nation treatment.

ii. *In respect of business activities*

11. Foreign enterprises are usually accorded most-favoured-nation treatment and/or national treatment with regard to their business activities.[21] In this respect, the categories of provisions set forth below may be distinguished.

12. The most common type of provisions contained in a number of bilateral agreements[22] is that which accords most-favoured-nation treatment only. An example of such provisions is quoted below:

> "The nationals of either contracting party shall have right to carry on commerce, industry, trade or insurance in the territory of the other, in conformity with the laws and regulations in force therein, on terms and conditions not less favourable than those accorded to the nationals of the most-favoured-nation."[23]

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[11] E.g., *USA-Israel*, Treaty of 1951, Article I. Some agreements refer to the application of the international law standard. For instance, one agreement provides: "Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law". *USA-Iran*, Treaty of 1955, Article IV (2). Cf. *Greece-Lebanon*, Treaty of 1948, Article VI and letter relating to the Treaty; *U.K.-Iran*, Treaty of 1959, Article 6.

[12] *India-Muscat and Oman*, Treaty of 1953, Article 7; See also *Belgium-France*, Convention of 1927, Article 2; *Belgium-Siam*, Convention of 1937, Article III; *Sweden-Romania*, Convention of 1932, Article II; *U.K.-Nepal*, Treaty of 1950, Article V; *Sweden-France*, Treaty of 1954, Article 2; *India-Afghanistan*, Treaty of 1950, Article 2.

[13] *USA-Netherlands*, Treaty of 1956, Article IX; *USA-Nicaragua*, Treaty of 1956, Article IX. Cf. *U.K.-Iran*, Treaty of 1959, Article 12. See also paras. 18 and 19 below.

[14] In this connexion, it is sometimes stated that either party may impose restrictions on alien ownership of interests in enterprises carrying on particular types of activity; e.g., *USA-Ireland*, Treaty of 1950, Article VII (2).

[15] *USA-Netherlands*, Treaty of 1956, Article IX (5).

[16] *Ibid.*, Article IX (2).

[17] *USA-China*, Treaty of 1946, Article VIII (1).

[18] For qualifications with respect to such treatment, see paras. 16-21 and 43 below.

[19] *Thailand-Philippines*, Treaty of 1949, Article V; *Philippines-Switzerland*, Treaty of 1956, Article 5.

[20] *Norway-Japan*, Treaty of 1957, Article II (*c*).

[21] Some agreements apply the most-favoured-nation rule to the entry of foreign enterprises and national treatment rules to post-entry operations.

[22] *India-Afghanistan*, Treaty of 1950, Article 1; *India-Muscat and Oman*, Treaty of 1953, Article 4 (1); *India-Switzerland*, Treaty of 1948, Article IV; *U.K.-Nepal*, Treaty of 1950, Article V; *Sweden-Romania*, Convention of 1932, Article III; *Norway-Japan*, Treaty of 1957, Articles II (*a*) and III (2); *Italy-France*, Convention of 1951, Article 2; *Sweden-France*, Convention of 1954, Article 3.

[23] *India-Afghanistan*, Treaty of 1950, Article 1.

Sometimes it is further provided that such treatment is subject to reciprocity.[24]

13. Another type of provision accords national or most-favoured-nation treatment. Thus, one agreement[25] stipulates that nationals of each party shall enjoy throughout the territories of the other with respect to commerce, shipping and the exercise of trade, all the rights, privileges, immunities, advantages and protection, of whatsoever nature, which are or may be enjoyed by the nationals of the other party or the nationals of any other foreign country.

14. Two agreements[26] concluded by Belgium provide that the nationals of each of the parties

> "... shall be placed in the territory of the other Party on the same footing in every respect, both in law and in fact, as the nationals of that Party as regards the exercise of all commercial, industrial and financial activities and in general all activities of an economic nature, without any distinction in this respect between undertakings which are independent and undertakings which operate as branches or agencies."

One of these agreements further accords most-favoured-nation treatment subject to reciprocity.[27] Both agreements require that activities engaged in by the companies of either party in the territory of the other, either directly or through branches or agencies, be subject to the laws and regulations in force in the latter country. It is also stipulated that should either party require foreign companies to obtain an authorization in advance to operate in its territory, the granting of such an authorization to the companies of the other party should be based on most-favoured-nation treatment.[28]

15. Provisions of the fourth category are those contained in the agreements concluded by the United States with various countries which accord national treatment and most-favoured-nation treatment with the latter as a minimum standard. The following is a typical example of such provisions:[29]

> "1. Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial industrial, financial and other activity for gain (business activities) within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful, juridical entity. ... Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall in all that relates to the conduct of the activities thereof, be accorded treatment no less favourable than that accorded like enterprises controlled by nationals and companies of such other party.
>
> "...
>
> "4. Nationals and companies of either Party, as well as enterprises controlled by such nationals and companies, shall in any event be accorded most-favoured-nation treatment with reference to the matters treated in the present Article."

iii. *In respect of certain natural resources*

(1) *Land and other immovable property*

16. As stated in connexion with property, in general, of treaty aliens (see paragraphs 6 to 9 above), the various agreements prescribe the following treatment with respect to real and other immovable property: (*a*) most-favoured-nation treatment only (*b*) national treatment and most-favoured-nation treatment; and (*c*) mutuality and reciprocity. In most cases, subjection to the laws and regulations of the country where the immovable property is located is explicitly required.

17. Generally speaking, the right to ownership by treaty aliens of real property is more restricted than that pertaining to personal or movable property.

18. Most of the agreements grant national or most-favoured-nation treatment to treaty aliens with respect to their acquiring, leasing, possessing, occupying or using immovable property for treaty-sanctioned activities or purposes. Some of these agreements provide that such right to immovable property is granted for residential, commercial, manufacturing, processing, financial, professional, scientific, educational, religious, philanthropic and mortuary purposes;[30] others merely state that the treatment is accorded for the conduct of the activities which are permitted under the agreement concerned.[31]

19. In some of the above-mentioned agreements, the grant of national treatment is qualified by making a distinction between land and other immovable property such as buildings, dwellings or premises, and restrict the right in respect of land to leasehold only.[32] Other agreements permit the acquisition or ownership of land and other immovable property on the basis of national or most-favoured-nation treatment, with the proviso that, should the local laws of one party which is a federal State accord less than such treatment in this respect, the other party is not obligated to accord treatment more favourable than accorded under such laws.[33] In one case,[34] national treatment is accorded, subject to the following limitations: (*a*) in the case of nationals and companies of one party, the acquisition of ownership rights in land, buildings and other immovable property within the territories of the other party which is a federal State is dependent upon the applicable laws of the place where the property is located and (2) in the case of nationals and companies of the federal State in the territories of the other party, the latter may impose restrictions on such property rights "in specific frontier and coastal areas".

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[24] *Sweden-France*, Convention of 1954, Article 3.

[25] *U.K.-Muscat and Oman*, Treaty of 1951, Article 3 (1).

[26] *Belgium-Netherlands*, Convention of 1933, Article 2 (1); *Belgium-Siam*, Convention of 1937, Article II (1).

[27] *Belgium-Siam*, Convention of 1937, Article II (5).

[28] *Belgium-Netherlands*, Convention of 1933, Article 10 (3) and (4); *Belgium-Siam*, Convention of 1937, Article IX (3) and (4).

[29] *USA-Ireland*, Treaty of 1950, Article IV; *USA-Israel*, Treaty of 1951, Article VII; *USA-Japan*, Treaty of 1953, Article VII; *USA-Federal Republic of Germany*, Treaty of 1954, Article VII; *USA-Netherlands*, Treaty of 1956, Article VII; *USA-Nicaragua*, Treaty of 1956, Article VII. For exceptions to the national treatment rule, see para. 45 below.

[30] E.g., *USA-China*, Treaty of 1946, Articles II and III; *USA-Italy*, Treaty of 1948, Articles I and II; *Italy-France*, Treaty of 1951, Article 2; *Sweden-France*, Treaty of 1954, Article 2.

[31] E.g., *USA-Nicaragua*, Treaty of 1956, Article IX (1); *USA-Japan*, Treaty of 1953, Article IX (1).

[32] *USA-Ethiopia*, Treaty of 1951, Article IX (1); *USA-Iran*, Treaty of 1955, Article V (1).

[33] *USA-Israel*, Treaty of 1951, Article IX (1) and (2); *USA-Italy*, Treaty of 1948, Article VII (1); *USA-China*, Treaty of 1946, Article VIII (1).

[34] *USA-Greece*, Treaty of 1951, Article IX (1).

20. Conditions other than those stated above have sometimes been imposed by the contracting parties with regard to the acquisition of immovable property. Thus, one agreement[35] provides (1) that each party reserves the right, in the interests of the safety of the State, to require nationals of the other party to obtain permission in advance to acquire or occupy immovable property in certain districts, (2) that persons inheriting immovable property situated within said districts may be required, on the same ground, to sell it within a reasonable period, and (3) that in exceptional cases, such as, in particular, monetary crisis, when the acquisition by foreigners of immovable property or transferable securities would lead to the taking over or jeopardizing of vital resources of the country, each contracting party shall have the right to prohibit such acquisition. It is further stated that, while the companies of either party may acquire premises or landed property required for the purpose of carrying on their operations, such acquisition may not constitute the real object of their activities.[36]

21. Certain agreements contain restrictive provisions regarding the right of treaty aliens in the field of agriculture. Thus, some agreements,[37] while providing for national treatment to nationals of either party in the territory of the other in matters relating to the lease of dwellings, immovable property and premises for commercial, industrial or agricultural purposes, stipulate that, as regards legislation governing contracts for lease of farms or leases on a crop-sharing basis, such nationals shall not be entitled to make any claim under the provisions granting a right of pre-emption for the benefit of the person working the farm who is a leaseholder in possession. One of these agreements further requires any individual wishing to work an agricultural holding in one of the two States to obtain such permit as may be required under the regulations in force in that State.[38] In one case, where the agreement provides for national and most-favoured-nation treatment with respect to articles grown, produced or manufactured by nationals and companies of one party in the territory of the other party, it is specifically stated that the word "grown" shall not be construed to confer any right upon such nationals and companies to engage in agriculture.[39] However, Governments have by agreement undertaken jointly to develop agricultural projects.[40]

(2) *Mineral resources*

22. In some general commercial agreements,[41] the parties mutually accord most-favoured-nation treatment in respect of the exploration or exploitation of mineral resources. The following provision may be quoted as an example:

> "The nationals, corporations and associations of either High Contracting Party shall be permitted within the territories of the other High Contracting Party to explore for and to exploit mineral resources, in conformity with the applicable laws and regulations, upon terms no less favourable than those now or hereafter accorded to nationals, corporations and associations of any third country."[42]

Some of these agreements permit the nationals and companies of one party within the territories of the other to organize and participate in the companies of the other party for engaging in mining activities on a national treatment basis.[43] In certain instances, the most-favoured-nation treatment rule is qualified by a reciprocity requirement with respect to mining operations on lands in the public domain.[44]

(3) *Water resources*

23. Under the general commerce and navigation agreements which accord foreign vessels the right of entry into ports, restrictions are often imposed on the right of such vessels to engage in coasting trade and inland navigation. Provisions to this effect fall into the following categories: (1) each party may reserve exclusive rights and privileges to its own vessels with respect to coasting trade and inland navigation;[45] (2) national treatment and/or most-favoured-nation treatment accorded to foreign vessels by the agreements concerned are not applicable to coasting trade inland navigation;[46] (3) coasting trade and inland navigation are excepted from national treatment but accorded most-favoured-nation treatment;[47] (4) while coasting trade of the parties is excepted from the application of the provisions of the agreement concerned, each party may admit foreign vessels to the coasting trade only on a reciprocal basis.[48]

24. In so far as waterways of common interest to two or more States are concerned, the ownership and utilization of water resources are largely regulated by agreements between such States. Numerous agreements of this kind have been concluded and the problem of the exploitation and development of water resources through international action has been under study by various organs of the United Nations notably the regional economic commissions.[49] Moreover, in compliance with General Assembly resolution 1401 (XIV),[50]

[35] *Belgium-Netherlands*, Convention of 1933, Article 6.
[36] *Ibid.*, Article 10 (Sec. 5).
[37] *Sweden-France*, Convention of 1954, Article 2; *Italy-France*, Convention of 1951, Article 2 and Protocol, para. 2.
[38] *Italy-France*, Exchange of Notes regarding the Convention of 1951.
[39] *USA-China*, Treaty of 1946, Protocol, para. 6.
[40] *Israel-Burma*, Agreement of 1956, Part III.
[41] *USA-China*, Treaty of 1946, Article V; *USA-Italy*, Treaty of 1948, Article IV; *USA-Greece*, Treaty of 1951, Article XII (2).
[42] *USA-Italy*, Treaty of 1948, Article IV.
[43] *USA-Italy*, Treaty of 1948, Article III (2); *USA-Greece*, Treaty of 1951, Article XIII.
[44] *USA-China*, Treaty of 1946, Protocol, para. 3; *USA-Nicaragua*, Treaty of 1956, Protocol, para. 5; *USA-Japan*, Treaty of 1953. Protocol, para. 4; *USA-Israel*, Treaty of 1951, Protocol, para. 4; *USA-Republic of Korea*, Treaty of 1956, Protocol, para. 6; *Norway-Japan*, Treaty of 1957, Protocol; *USA-Ireland*, Treaty of 1950, Article VI (3) and Protocol, para. 6.
[45] E.g., *USA-Nicaragua*, Treaty of 1956, Article XIX (3); *USA-Ethiopia*, Treaty of 1951, Article XIV (2).
[46] E.g., *UK-Muscat and Oman*, Treaty of 1951, Article 4 (2); *Romania-USSR*, Treaty of 1947, Article 13; *Bulgaria-USSR*, Treaty of 1948, Article 9; *Czechoslovakia-USSR*, Treaty of 1947, Article 9; *Italy-USSR*, Treaty of 1948, Article 15.
[47] *USA-China*, Treaty of 1946. Article XXIV (2).
[48] *Norway-Japan*, Treaty of 1957, Article XII (1); cf. *Greece-Lebanon*, Treaty of 1948, Article 13.
[49] For lists of international agreements and discussion thereof, see United Nations docs. E/ECE/136, Chapter VI and Annex 1; E/ECE/360-E/ECE/EP/202, Part V; E/CN.12/511, Part V, Section 1.
[50] The resolution reads as follows:
"The General Assembly,
Considering that it is desirable to initiate preliminary studies relating to the legal problem in connexion with the utilization and use of international rivers with a view to

the Secretariat will prepare studies including a summary of bilateral and multilateral treaties relating to international rivers. For the purpose of the present study, therefore, only a brief account of certain provisions which are contained in a large number of those treaties and which bear on the exercise of sovereignty by States over their water resources is given below.

25. Where a waterway crosses two or more States, it is generally recognized that each State possesses rights of sovereignty and ownership over the section flowing through its territory. In treaties dealing with frontier waterways, it is sometimes indicated that each party possesses equal rights on either side of the boundary line and that the parties grant to each other the right to navigation and floating on frontier waters. Sovereignty of riparian States over waters within their territory is sometimes confirmed by treaty provisions which require mutual consent of the parties for any alteration of watercourses or the installation of works which may affect the waters situated in one or the other contracting States.[51]

(4) *Fisheries*

26. Under the general commerce and navigation agreements, national fisheries are usually excepted from the application of provisions granting national or most-favoured-nation treatment to treaty aliens. Some agreements[52] provide that each party reserves the right to accord special advantages to products of its national fisheries and may also reserve exclusive rights and privileges to its own vessels with respect to national fisheries. In one case[53] the parties undertake to grant each other reciprocally most-favoured-nation treatment with respect to fishing in territorial waters up to within twenty kilometres from the low-water mark.

27. Some agreements relating to fishing either provide for mutual permission to nations of either party to fish in the territorial waters of the other party[54] or unilaterally accord the right of fishing in its territorial waters by one party to nationals of the other party.[55] In such cases, the area in which fishing by treaty aliens is permitted is usually defined; the application of the laws and regulations of the host country is stipulated; and the right of inspection of foreign fishing vessels by the host State is recognized.[56]

iv. *In respect of legally acquired rights and interests*

28. Reference to legally acquired rights and interests is made in a group of agreements concerning friendship, commerce and navigation concluded by the United States with various countries. The majority of these agreements contain the following provision:[57]

> "Neither Party shall take unreasonable or discriminating measures that would impair legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established, in their capital or in the skills, arts or technology which they have supplied."

Some agreements[58] further provide that each party shall assure that the lawful contractual rights[59] of the nationals and companies of the other party are afforded effective means of enforcement, in conformity with applicable laws.

v. *In respect of taking of property and compensation*

29. A number of commercial agreements include provisions relating to the taking of alien property and compensation therefor. These provisions are described below.

30. A typical provision contained in recent commercial treaties between the United States and other countries reads as follows:[60]

> "Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose,[61] nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provisions shall have been made at or prior to the time of taking for the determination and payment thereof.
>
> "Nationals and companies of either Party shall in no case be accorded within the territories of the other Party, less than national treatment and most-favoured-nation treatment with respect to the matters set forth [above] ... Moreover, enterprises in which nationals and companies of either Party have a substantial interest shall be accorded, within the territories of the other Party, not less than national treatment and most-favoured-nation treatment in all matters relating to the taking of privately owned

determining whether the subject is appropriate for codification,

Requests the Secretary-General to prepare and circulate to the Member States a report containing:

(*a*) Information provided by Member States regarding their laws and legislation presently in force in the matter, and when necessary a summary of such information;

(*b*) A summary of existing bilateral and multilateral treaties;

(*c*) A summary of decisions of international tribunals, including arbitral awards;

(*d*) A survey of studies made or being made by non-governmental organizations concerned with international law."

[51] E.g., *Brazil-UK*, Exchange of Notes of 1 November 1932; *Brazil-Uruguay*, Convention of 20 December 1933.

For agreements involving restrictions on the exercise of sovereignty over water resources, see section B below.

[52] E.g., *Norway-Japan*, Treaty of 1957, Article XIV (3) (*c*); Sweden-France, Convention of 1954, Article 9 (2); *USA-Ethiopia*, Treaty of 1951, Articles XII (6) and XIV (2).

[53] *Greece-Lebanon*, Treaty of 1948, Article 13.

[54] *Norway-Sweden*, Agreement concerning fishing in certain waters belonging to Norway and Sweden, signed 20 December 1950, came into force 17 April 1951.

[55] *Yugoslavia-Italy*, Agreement regarding fishing by Italian fishermen in Yugoslav waters, signed 13 April 1949, came into force 1 May 1949; *USSR-UK*, Agreement on fisheries, signed 25 May 1956, came into force 21 March 1957.

[56] *Finland-USSR*, Agreement regarding fishing and sealing, 21 Feb. 1959, Article 4.

[57] E.g., *USA-Netherlands*, Treaty of 1956, Article VI (3); *USA-Nicaragua*, Treaty of 1956, Article VI (3).

[58] *USA-Ethiopia*, Treaty of 1951, Article VIII (1); *USA-Iran*, Treaty of 1955, Article IV (1).

[59] In this connexion, it may be noted that most agreements provide that each party shall accord to nationals and companies of the other party fair and equitable treatment, as compared with that accorded to nationals and companies of any third country, with respect to the awarding of concessions and other government contracts. See, e.g., *Norway-Japan*, Treaty of 1957, Article IX (2); *USA-Israel*, Treaty of 1951, Article XVII (2) (*b*).

[60] See, for example, *USA-Japan*, Treaty of 1953, Article VI (3) and (4) and *Protocol*, para. 2.

[61] While some agreements use the qualified phrase "except for a public purpose", other agreements employ such phrases as "without due process of law", "except for public benefit and in accordance with due process of law", or "except for public purposes and for reasons of social utility as defined by law". See *USA-China*, Treaty of 1946, Article VI (2); *USA-Federal Republic of Germany*, Treaty of 1954, Article V (4); *USA-Nicaragua*, Treaty of 1956, Article VI (4).

enterprises into public ownership and to the placing of such enterprises under public control.

"The [above] provisions . . . providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party."*

These agreements further provide that if either party imposes exchange restrictions, it shall make reasonable provision for the withdrawals, in foreign exchange in the currency of the other party, of the compensation for expropriated property.[62]

31. Under a second group of agreements[63] it is provided that each party undertakes not to take any measure involving disposal, limitation or expropriation for public purposes or in the general interest, of property, rights and interests legally held in its territory by nationals of the other party, unless such measure is applicable under the same conditions to its own nationals and to nationals of any other State, and that the same shall apply to compensation granted as a result of such measures. In the matter of requisition in time of peace and war, and indemnities therefor, treaty aliens are accorded national treatment.

32. Provisions of a different nature are contained in an agreement concluded between Burma and Japan. In this case, Japan undertakes to supply Burma with "the services of Japanese people and the products of Japan" which are made available in the form of joint enterprises between the Government or people of Burma and Japanese people. Article III of the agreement provides:[64]

"2. The ownership or shares of Japanese people in the joint enterprises shall not be expropriated by the Government of the Union of Burma for such length of time as that Government may respectively assure those Japanese people against expropriation at the time the individual contracts concerned are made.

"3. In the event that the ownership or shares of Japanese people in the joint enterprises should be expropriated by the Government of the Union of Burma after the lapse of the time of assurance referred to above, such expropriation shall be made only in accordance with the terms and conditions which shall be prescribed by that Government at the time the individual contracts referred to above are made.

"4. The Government of the Union of Burma shall permit the remittance to Japan of the proceeds from the expropriation referred to above or the sale of the ownership or shares of Japanese people in the joint enterprises, and the interest and dividends derived from such ownership or shares, as well as the salaries or other earnings which Japanese people may receive from the joint enterprises, in accordance with the terms and conditions which shall be prescribed by that Government at the time the individual contracts concerned are made."

33. The Netherlands-Indonesian Round-Table Conference Agreement of 1949[65] contained, *inter alia*, the following provisions:**

Indonesia will adhere to the principle of recognizing the rights, concessions and licences granted under Netherlands Indies law and valid at the transfer of sovereignty [Article 1 (1)]; these rights, concessions and licences may be infringed on only in the public interest, including the welfare of the people, and through amicable settlement with the rightful claimants (Article 2);

Any nationalization by expropriation of privately-owned public utilities shall have no influence upon the reinstatement of the rightful claimants in actual exercise of their rights [Article 1 (4)];

Expropriation, nationalization, liquidation, compulsory cessions or transfer of property or rights shall take place only for the public benefit in accordance with the procedure prescribed by law and, in the absence of an agreement between the parties, against prior or guaranteed compensation, to be fixed by judicial decision at the real value of the object involved (Article 3); in order to decide whether expropriation for the public benefit is desirable, Indonesia reserves the right to hold an investigation in respect of important rights, concessions and licences granted after 1 March 1942 which may influence the country's economic policy [Article 1 (2)];

Indonesia will safeguard the lawful owners in the exercise of their rights, concessions and licences to promote the resumption and continuity of economic activity (Article 6);

Should existing agrarian regulations be changed in the public interest, the interests of the lawful owners and, in particular, the security of enterprise will be taken into account (Article 13).

34. The right of expropriation is recognized in certain agreements relating to frontier waters. In one case, each party undertakes to acquire by purchase, expropriation or other means in accordance with its own laws, any properties within its territory that may be necessary for certain installations in the frontier river and any rights connected therewith.[66] In another case, where the two parties agree to recognize the regulation of the waters of a frontier lake as a work of public interest, each of the two Governments undertakes to accord with respect to its own territory the right to expropriate such land as may be necessary for the execution, operation and maintenance of the works and also any rights which may conflict therewith.[67]

35. Compensation for property rights or interests of aliens affected by measures of nationalization, expropriation or other restrictions such as land reform have become the subject of many agreements between the enacting State on the one hand and the State whose interests or the interests of whose nationals are thus affected on the other.[68] These agreements fall into four groups: (1) those providing for compensation in such general terms as "adequate and effective"; (2) those providing for direct compensation to the individual aliens concerned; (3) those providing for compensation to the Government of the State of which the individuals concerned are nationals; and (4) those providing for lump-sum or global compensation paid by the

* Information provided by the Government of the United States of America.

** Information provided by the Government of the Netherlands.

[62] *USA-Iran*, Treaty of 1955, Article VII (2); *USA-Netherlands*, Treaty of 1956, Article XII (3) (*a*); *USA-Ireland*, Treaty of 1950, Article VIII (2); *USA-Italy*, Treaty of 1948, Article V (2).

[63] *Italy-France*, Convention of 1951, Articles 4 and 5; *Sweden-France*, Convention of 1954, Articles 6 (1) and 8. Cf. *Belgium-Netherlands*, Convention of 1933, Article 8; *Belgium-Siam*, Convention of 1937, Article V.

[64] *Burma-Japan*, Agreement of 1954.

[65] UNTS, vol. 69, I: No. 894. The Agreement entered into force after ratification on 27 Dec. 1949.

[66] *Syria-Jordan*, Agreement concerning the utilization of the Yarmuk waters, 1953, Article 4, signed 4 June 1953, came into force on 8 June 1953.

[67] *Italy-Switzerland*, Convention concerning the regulation of Lake Lugano, 1955, Article III (1), signed 17 Sept. 1955, came into force on 15 Feb. 1958.

[68] A list of these agreements will be found in the annexes to the present sub-section.

debtor State to the Government of the creditor State. The second and third groups of agreements usually provide for the procedure relating to compensation and the calculation and determination of the amount thereof. The global compensation agreements discharge the debtor States from all liability to the creditor States in respect of all the debts, claims and obligations arising out of the nationalization, expropriation or other measures.

vi. *In respect of capital investment*

36. While the treatment accorded under bilateral agreements to the business activities, property, rights and interests of foreign enterprises affects directly or indirectly the various aspects of capital investment, such agreements sometimes contain specific references to the investment of capital.

37. Among the provisions of general commercial agreements designed not to hinder foreign capital investment, the following may be mentioned:

(*a*) *Taxation:* Many agreements accord national treatment to foreign enterprises with respect to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions or other business activities with most-favoured-nation treatment as a minimum standard.[69] It is sometimes stated that nationals and companies of either party shall only be taxed by the other party on the amount of registered capital they have invested in its territory, the profits they make there or the business they carry on.[70]

(*b*) *Exchange restrictions:* Some agreements provide that exchange restrictions shall not be imposed by either party in a manner (1) unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade or other interests of the nationals and companies of the other party, nor to the competitive position thereof,[71] or (2) to influence disadvantageously the competitive position of the commerce or investment of capital of the other party in comparison with the commerce or the investment of capital of any third country.[72]

(*c*) *Withdrawal of funds:* According to one treaty,[73] the two parties, recognizing that the international movement of investment capital and the returns thereon would be conducive to the full realization of the objectives of that treaty, are agreed that such movements shall not be unnecessarily hampered. In accordance with this mutually agreed principle, each party undertakes to afford to nationals and companies of the other party reasonable facilities for the withdrawal of funds earned by them as a result of making or maintaining capital investment.

38. On the other hand, a few agreements,[74] permit the imposition of restrictions by either party on the introduction of foreign capital as may be necessary to protect its monetary reserves or to prevent serious monetary disturbances arising from speculative operations.

39. A number of agreements on guaranty of private investments have been concluded by the United States with a number of States, including less developed or under-developed countries, to encourage and facilitate the investment by its nationals in development projects in those countries. On the one hand, the Government of the United States by national measures enables American investors to obtain guarantees against non-commercial risks for their investments such as guarantees against expropriation and war risks in countries which have signed the above-mentioned agreements with the United States. On the other hand, under those bilateral agreements,[75] the other party agrees that if the Government of the United States makes payment in United States dollars to any person under any such guarantee, the Government of such other party will recognize the transfer to the United States of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States to any claim or cause of action, or right of such person arising in connexion therewith.

40. In some agreements concluded between Latin American countries on free trade and economic integration[76] each of the contracting States undertakes to accord fair treatment to investments of capital by nationals of the other State and, in consequence, to abstain from adopting discriminatory measures capable of prejudicing any rights lawfully acquired by such nationals (Cf. paragraph 39 above). Moreover, subject to the provisions of its Constitution, each party extends national treatment to the nationals of the other party with respect to investments of capital.

c. Provisions relating to the status of State-owned or controlled enterprises

41. In the group of bilateral commercial agreements concluded by the United States since the Second World War, State enterprises are subject to the following provisions:[77]

> "No enterprise of either High Contracting Party which is publicly owned or controlled shall, if it engages in commercial manufacturing, processing, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, for itself or for its property, immunity therein from taxation, from suit, from execution of judgment of from any other liability to which privately owned and controlled enterprise is subject therein."

[69] E.g., *USA-Japan,* Treaty of 1953, Article XI. Cf. *UK-Muscat and Oman,* Treaty of 1951, Article 3.

[70] *Greece-Lebanon,* Treaty of 1948, Article 4. Cf. *Belgium-France,* Convention of 1927, Article 8 (5). Under the treaty between Greece and Lebanon, national treatment is not applicable to "taxes and charges on concessions for archaeological research on concessions for and on the exploitation of hydro-electric power, forests, mines and other wealth of the subsoil, and of refineries and other oil installations", such taxes and charges enjoy only most-favoured-nation treatment.

[71] E.g., *USA-Nicaragua,* Treaty of 1956, Article XII (4).

[72] E.g., *USA-Ethiopia,* Treaty of 1951, Article XI (3).

[73] *USA-Federal Republic of Germany,* Treaty of 1954, Article XII (4).

[74] *USA-Netherlands,* Treaty of 1956, *Protocol,* para. 14.

[75] E.g., *USA-Colombia,* Agreement relating to the guarantee of private investments, 18 Nov. 1955; *USA-India,* Agreement relating to the guaranty of private investments, 19 Sept. 1957. Cf. The *International Flow of Private Capital,* 1956-1958, United Nations publication, Sales No.: 59.II.D.2, pp. 100 and 101.

[76] Article XIV of each of the following agreements: *Guatemala-El Salvador,* Treaty of 1951; *Guatemala-Honduras,* Treaty of 1956; *Guatemala-Costa Rica,* Treaty of 1955.

It should be noted that a Multilateral Treaty on Free Trade and Central American Economic Integration was signed in June 1958 and, upon its coming into force, will supersede the above bilateral agreements. (Cf. E/3246/Rev.1—E/CN.12/530/Rev.1, p. 57).

[77] E.g., *USA-Italy,* Treaty of 1948, Article XXIV (6); *USA-Greece,* Treaty of 1951, Article XIV (5); *USA-Nicaragua,* Treaty of 1956, Article XVIII (3).

Some of these agreements provide that[78]

"Rights and privileges accorded by the Agreement to privately owned and controlled enterprises are extended to rights and privileges of publicly owned and controlled enterprises, in situations in which the latter operate in competition with the former."

42. Under a series of commercial agreements[79] concluded by the Soviet Union as a State trading country, the two contracting parties undertake to grant each other

(1) Most-favoured-nation treatment in matters relating to commerce, industry and other economic activities, and

(2) Most-favoured-nation treatment in respect of the persons and property of State economic organizations, other bodies corporate and citizens of the Soviet Union in the territory of the other party and of the bodies corporate and individuals of the other party in the Soviet Union in their exercise of economic activities subject to the laws of the situs.

d. Provisions relating to restrictions and control retained by contracting parties

i. *Subjection to applicable laws and regulations of the situs*

43. It has been shown that all the agreements provide, in one form or another, for the application of the laws and regulations of the situs, with respect to the acquisition, possession and disposal of movable and immovable property by foreign enterprises (see paragraphs 7 and 9 above) and to the business activities of foreign enterprises in general (see paragraphs 12 and 14 above).[80] In connexion with the establishment of alien-controlled enterprises, it is sometimes provided that each party may prescribe special formalities which, however, may not impair the substance of the rights enjoyed by such enterprises in its territory under the agreement concerned.[81]

44. Some agreements contain specific provisions regarding the application of the laws of the situs to certain categories of natural resources. Thus, for instance, one agreement provides that except in the case of acquisition of property by testate or intestate succession which is accorded national treatment, the ownership of real property within the territories of each party shall be subjected to the applicable laws therein.[82] Ownership and exploitation of mineral resources by aliens are, as a rule, governed by the laws of the Contracting State wherein the mine in question is situated (see paragraph 22 above; see also section B below). Where one party permits fishing in its territorial waters by nationals of the other party, observance of the applicable laws and regulations of the former party is usually required (see paragraph 27 above).

ii. *Reservation of rights and imposition of restrictions with respect to the activities of foreign enterprises*

45. Some of the agreements concluded by the United Nations on friendship, commerce and navigation contain a provision[83] to the effect that each party reserves the right to limit the extent to which aliens may within its territories establish, acquire interests in, or carry on public utilities enterprises[84] or enterprises engaged in air or water transport, banking involving depository or fiduciary functions, or the exploitation of land or other natural resources. This provision is subject to the following qualifications: (1) new limitations imposed by either party upon the extent to which aliens are accorded national treatment, with respect to carrying on such activities within its territories, shall not be applied as against enterprises which are engaged in such activities therein at the time such new limitations are adopted, provided that such enterprises are owned or controlled by nationals or companies of the other party; and (2) neither party shall deny to communications, transportation and banking companies of the other party the right to maintain branches and agencies to perform functions necessary for essentially international operations in which they are permitted to engage.

46. In one of these agreements, the two parties agree[85] that, on a reciprocal basis, the reservation of right referred to above

"shall not apply to the establishment of, or the acquisition of interests in, or the control, operation and management of, companies of either Party for engaging in the exploration for and exploitation of petroleum and other mineral resources within the territories of that Party, by nationals or companies of the other Party".

In some agreements it is stated[86] that each party may impose restrictions on alien ownership of interests in enterprises carrying on the said activities only to the extent that this can be done without impairing the rights and privileges secured by that agreement.

47. As indicated earlier and in addition to the reservation of rights described in the two preceding paragraphs, States have exercised control over their natural wealth and resources through the following provisions in bilateral agreements: permission to foreign enterprises to possess or acquire immovable property only for certain treaty-sanctioned purposes (see paragraphs 8 and 18 above) or in specific areas (see paragraph 19 above); prohibition of acquisition by foreign enterprises of im-

[78] *USA-Italy*, Treaty of 1948, *Protocol*, para. 2; *USA-Israel*, Treaty of 1951, Article XVIII (2).

[79] E.g., *USSR-Finland*, Treaty of Commerce, 1 Dec. 1947; *USSR-Italy*, Treaty of Commerce and Navigation, 11 Dec. 1948; *USSR-Romania*, Treaty on Trade and Navigation, 20 Feb. 1947.

[80] An agreement between the *United States and Ireland* contains the following provisions:

"Taking cognizance of existing economic policies which Ireland considers necessary to furthering essential interests, the Parties agree that Ireland may continue the application of measures that regulate, in a manner that departs from the treatment prescribed in paragraphs 1 (*a*) and 2 of the present Article [national treatment], the establishment of manufacturing, processing and insurance enterprises and the acquisition of ownership interests in such enterprises..." (Treaty of 1950, Article VI (4)).

[81] E.g., *USA-Israel*, Treaty of 1951, Article VII (3). Cf. *Italy-France*, Convention of 1951, Article 7 (4).

[82] *USA-Ireland*, Treaty of 1950, Article VII (3). In this case, nationals and companies of one party are permitted to possess and occupy real property in the territory of the other party "incidental to or necessary for the enjoyment of rights" secured by the treaty.

[83] E.g., *USA-Japan*, Treaty of 1953, Article VII (2); *USA-Israel*, Treaty of 1951, Article VII (2); *USA-Nicaragua*, Treaty of 1956, Article VII (2).

[84] The term "public utilities enterprises" is deemed to include enterprises engaged in furnishing communications services, water supplies, transportation by bus, truck or rail, or in manufacturing or distributing gas or electricity, to the general public. E.g., *USA-Japan*, Treaty of 1953, *Protocol*, para. 3.

[85] *USA-Netherlands*, Treaty of 1956, *Protocol*, para. 10.

[86] *USA-Federal Republic of Germany*, Treaty of 1954, Article IX (2).

movable property under certain circumstances (see paragraph 20 above); certain restrictions with respect to the right of treaty aliens in the field of agriculture (see paragraph 21 above); requirements of reciprocity with respect to the right of foreign enterprises to engage in mining on the public domain (see paragraph 22 above and section B below); reservation of rights with respect to coasting trade, inland navigation and national fisheries (see paragraphs 23 and 26 above); and restrictions on the introduction of foreign capital (see paragraph 38 above).

ANNEXES

List of bilateral agreements

1. General: Friendship, commerce, establishment, etc.[87]

Afghanistan-India: Treaty of Commerce, signed 4 April 1950 and came into force 24 March 1952
UNTS, v. 167:105; No. 2201

Belgium-France: Convention concerning Conditions of Residence, signed 6 October 1927 and came into force 27 October 1927
LNTS, v. LXIX:49; No. 1599

Belgium-Netherlands: Convention regarding Establishment and Labour, signed 20 February 1933 and came into force 7 January 1936
LNTS, v. CLXV:383; No. 3824

Belgium-Siam: Convention of Establishment signed 5 November 1937 and came into force 17 June 1938
LNTS, v. CXC:163; No. 4414

Bulgaria-USSR: Treaty of Commerce and Navigation (with annex). Signed 1 April 1948
UNTS, v. 217:97; No. 2946

Burma-Israel: Agreement for Economic Co-operation (envisaging joint ventures regarding industrial, construction and agricultural development projects), signed 5 March 1956 and came into force 11 June 1957. (And Exchange of Notes of 25 September 1956 modifying the Agreement.)
UNTS, v. 280:209; No. 4060

Burma-Japan: Agreement for Reparations and Economic Co-operation, signed 5 November 1954 and came into force 16 April 1956
UNTS, v. 251:215; No. 3543

China-USA: Treaty of Friendship, Commerce and Navigation, signed 4 November 1946 and came into force 30 November 1948
UNTS, v. 25:69; No. 359

Czechoslovakia-USSR: Treaty of Commerce and Navigation (with annex). Signed 11 December 1947
UNTS v. 217:35; No. 2943

Ethiopia-USA: Treaty of Amity and Economic Relations, signed 7 September 1951 and came into force 8 October 1953
UNTS, v. 206:41; No. 2785

Finland-USA: Treaty of Friendship, Commerce and Consular Rights, signed 13 February 1934 and came into force 11 July 1934
LNTS, v. CLII:46; No. 3484
— Protocol modifying the Treaty, signed 4 December 1952 and came into force 24 September 1953
UNTS, v. 205:149; No. 2774

France-Italy: Convention of Establishment, signed 23 August 1951 and came into force 6 December 1957
UNTS, v. 291:143; No. 4249

France-Sweden: Convention on Conditions of Residence and Navigation, signed 16 February 1954 and came into force 23 August 1955
UNTS, v. 228:137; No. 3147

Federal Republic of Germany-USA: Friendship, Commerce and Navigation, signed 29 October 1954 and came into force 14 July 1956
UNTS, v. 273:3; No. 3943

Greece-Lebanon: Treaty on Consular Arrangements, Navigation, Civil and Commercial Rights, and Establishment, signed 6 October 1948 and came into force 28 August 1950
UNTS, v. 87:351; No. 1179

Greece-USA: Treaty of Friendship, Commerce and Navigation, signed 3 August 1951 and came into force 13 October 1954
UNTS, v. 224:279; No. 3080

India-Iran: Treaty of Commerce and Navigation, signed 15 December 1954 and came into force 10 May 1957
UNTS, No. 4724

India-Japan: Agreement on Commerce, signed 4 February 1958 and came into force 8th April 1958
UNTS, No. 4687

India-Sultanate of Muscat and Oman: Treaty of Friendship, Commerce and Navigation, signed 15 November 1953 and came into force 2 March 1954
UNTS, v. 190:75; No. 2559

India-Switzerland: Treaty of Friendship and Establishment, signed by United Kingdom on behalf of India 14 August 1948 and came into force 5 May 1949
UNTS, v. 33:3; No. 509

Iran-USA: Treaty of Amity, Economic Relations and Consular Rights, signed 15 August 1955 and came into force 16 June 1957
UNTS, v. 284:93; No. 4132

Ireland-USA: Treaty of Friendship, Commerce and Navigation, signed 21 January 1950 and came into force 14 September 1950
UNTS, v. 206:269; No. 2792

Israel-USA: Treaty of Friendship, Commerce and Navigation, signed 23 August 1951 and came into force 3 April 1954
UNTS, v. 219:237; No. 2979

Italy-Jordan: Treaty of Friendship, signed 24 April 1952 and came into force 23 June 1956
UNTS, v. 281:167; No. 4078

Italy-USA: Treaty of Friendship, Commerce and Navigation, signed 2 February 1948 and came into force 26 July 1949
UNTS, v. 79:171; No. 1040

Italy-USSR: Treaty of Commerce and Navigation (with annex and protocol). Signed 11 December 1948.
UNTS, v. 217:181; No. 2948

Japan-Norway: Treaty of Commerce and Navigation, signed 28 February 1957 and came into force 14 October 1957
UNTS, v. 280:87; No. 4054

Japan-USA: Treaty of Friendship, Commerce and Navigation, signed 2 April 1953 and came into force 30 October 1953
UNTS, v. 206:143; No. 2788

Lebanon-Pakistan: Treaty of Friendship, signed 16 January 1953 and came into force 18 August 1954
UNTS, v. 284:193; No. 4137

Sultanate of Muscat and Oman-UK: Treaty of Friendship, Commerce and Navigation, signed 20 December 1951 and came into force 19 May 1952
UKTS, No. 44 (1952); Cmd. 8633

Nepal-UK: Treaty (on Relations), signed 30 October 1950 and came into force 3 May 1951
UKTS, No. 46 (1951); Cmd. 8271

Netherlands-USA: Treaty of Friendship, Commerce, and Navigation signed 27 March 1956 and came into force 5 December 1957
UNTS, v. 285:231; No. 4154

[87] For a listing of further recent treaties of friendship, commerce, establishment, etc., concluded by the United States of America, see United Nations Commission on Permanent Sovereignty over Natural Resources, Third Sess., A/AC.97/SR.23, p. 3.

Nicaragua-USA: Treaty of Friendship, Commerce and Navigation, signed 21 January 1956 and came into force 24 May 1958
USTIAS, No. 4024

Philippines-Switzerland: Treaty of Friendship, signed 30 August 1956 and came into force 9 December 1957
UNTS, v. 293:43; No. 4284

Philippines-Thailand: Treaty of Friendship, signed 14 June 1949 and came into force 1 August 1950
UNTS, v. 81:53; No. 1062

USSR-Finland: (with annex) regarding fishing and sealing. Signed 21 February 1959
UNTS, v. 338:3; No. 4830

2. *Agreements on compensation for nationalized or appropriated property*

a. Agreements in general terms

Czechoslovakia-Sweden: Exchange of Notes concerning Czechoslovakian Decrees on Nationalization, 15/18 March 1947
Swedish TS, 1947, p. 572

Czechoslovakia-USA: Exchange of Notes constituting an Agreement relating to Commercial Policy, 14 November 1946*
UNTS, vol. 7 (p. 119), No. 94

Poland-USA: Exchange of Notes in connexion with a loan to Poland, 24 April 1946
US State Dept. Bul. vol. 14 (1946), p. 761

b. Agreements providing for direct individual compensation

Belgium-Czechoslovakia: Exchange of Letters constituting an Agreement concerning Belgian property nationalized, confiscated or transferred by the Czechoslovak National Administration, 19 March 1947*
UNTS, v. 23:35; 1:341

Belgium-France: Convention concerning the condition for the compensation of Belgian interests in the nationalized gas and electricity undertakings, 18 February 1949
UNTS, v. 31:173; I:478

Canada-France: Convention (with annexes) relating to the terms of compensation of Canadian interests in nationalized gas and electricity undertakings, 26 January 1951
UNTS, v. 233:65; I. 3251

Czechoslovakia-Switzerland: Protocol of Negotiations concerning Swiss interests affected by the Czechoslovak national Decrees of 1945, signed 18 December 1946 and entered into force 12 May 1948*
Swiss *Recueil Officiel,* 1948, p. 547

France-Switzerland: Convention relating to the terms of compensation of Swiss interests in France in the nationalized electricity and gas undertakings, signed 21 November 1949, entered into force 22 December 1949
Switzerland: *Recueil Officiel,* 1949, p. 1953

France-UK: Agreement relating to the terms of compensation of British interests in nationalized gas and electricity undertakings, 11 April 1951
UNTS, v. 106:3; I:1456

Poland-Sweden: Protocol of Negotiations concerning the interests of Swedish physical or juridical persons in Poland, signed 28 February 1947
Swedish TS, 1947, p. 131

Poland-UK: Exchange of Notes constituting an agreement concerning compensation for British interests affected by the Polish nationalization law of 3 January 1946, entered into force on 24 January 1948
UNTS, v. 87:3; I:1163

* Information provided by the Government of Czechoslovakia.

c. Agreements providing for indirect individual compensation

Denmark-Poland: Protocol No. 1 on Danish interests and assets in Poland (with exchange of letters), 12 May 1949
UNTS, v. 87:179; I:1172

Mexico-Netherlands: Exchange of Notes regarding compensation in respect of expropriated petroleum industrial property, 7 February 1946
UNTS, v. 3:13; I:22

Mexico-UK: Exchange of Notes constituting an Agreement regarding compensation in respect of expropriated petroleum industrial property, 7 February 1946
UNTS, v. 6:55; I:68

Mexico-USA: Exchange of Notes constituting an Agreement relating to the final settlement of claims of American nationals whose rights and interests in the oil industry of Mexico were affected by acts of the Government of Mexico subsequent to 17 March 1938, 25/29 September 1943
UNTS, v. 106:265; II:345

Italy-Yugoslavia: Agreement (with exchange of notes) concerning Italian property rights in Yugoslavia, 23 May 1949
UNTS, v. 150:197; I:1972

d. Agreements providing for lump-sum compensation

Belgium-Hungary: Agreement concerning compensation for nationalized Belgian and Luxembourg property in Hungary, 1 February 1955.**

Denmark-Poland: Protocol No. 2 on Danish interests and assets in Poland, signed 26 February 1953 and entered into force 6 August 1953
UNTS, v. 186:301; I:2496

France-Bulgaria: Agreement with respect to the settlement of the French financial claims on Bulgaria, signed on 28 July 1955 (published by Decree No. 59-361 of 27 February 1959)
Journal officiel de la République française, 5 March 1959, p. 2742

France-Czechoslovakia: Additional agreement to the French-Czechoslovak Agreement of 2 June 1950 with respect to the indemnification of certain French interests in Czechoslovakia, signed at Paris on 6 June 1956***

France-Hungary: Agreement relating to certain French interests in Hungary and the implementation of certain provisions of the Peace Treaty, 12 June 1950**

France-Romania: Agreement with respect to the settlement of the financial questions pending between the two countries, signed at Bucharest on 9 February 1959 (published by Decree No. 59-439 of 11 March 1959)
Journal officiel de la République française, 19 March 1959, p. 3287

France-Yugoslavia: Agreement on the settlement of certain French financial claims, signed at Paris on 2 August 1958 (published by Decree No. 59-654 of 5 May 1959)
Journal officiel de la République française, 23 May 1959, p. 5244

Norway-Hungary: Agreement on the settlement of Norwegian claims against Hungary, 22 February 1957**

Sweden-Hungary: Agreement concerning payments for Swedish interests in Hungary, 31 March 1951
Swedish TS, 1951, p. 146

Sweden-Poland: Agreement concerning compensation of Swedish interests in Poland, 16 November 1949
Swedish TS, 1950, p. 921

** Information provided by the Government of Hungary.

*** Information provided by the Government of Czechoslovakia. (The text of the agreement is published in France by Decree No. 59-668 of 5 May 1959, *Journal Officiel de la République française,* 28 May 1959, p. 5379.)

Switzerland-Bulgaria: Agreement concerning the compensation of Swiss interests, signed 26 November 1954 and entered in force 10 May 1955
Switzerland, *Recueil Officiel,* 1955, p. 521

Switzerland-Czechoslovakia: Agreement concerning the compensation of Swiss interests in Czechoslovakia, 22 December 1949
Switzerland, *Recueil Officiel,* 1950, p. 21

Switzerland-Hungary: Agreement concerning the compensation of Swiss interests in Hungary, 19 July 1950
Switzerland, *Recueil Officiel,* 1950, p. 735

Switzerland-Poland: Agreement concerning the compensation of Swiss interests in Poland, signed 25 June 1949 and entered into force 1 July 1949
Switzerland, *Recueil Officiel,* 1949, p. 839

Switzerland-Romania: Agreement concerning the compensation of Swiss interests in Romania, 3 August 1951
Switzerland, *Recueil Officiel,* 1951, p. 832

Switzerland-Yugoslavia: Agreement concerning the compensation of Swiss interests in Yugoslavia affected by measures of nationalization, expropriation and restriction, signed 27 September 1948 and entered into force 10 October 1948
Switzerland, *Recueil Officiel,* 1948, p. 995

UK-Bulgaria: Agreement relating to the settlement of financial matters, 23 September 1955
UNTS, v. 222:347; I:3039

UK-Czechoslovakia: Agreement regarding compensation for British property, rights and interests affected by Czechoslovak measures of nationalization, expropriation and dispossession (with interpretative minute), 28 September 1949*
UNTS, v. 86:161; I:1157

UK-Hungary: Agreement relating to the settlement of financial matters, 27 June 1956**

UK-Poland:
Agreement relating to money and property subject to special measures since 1 September 1939, 14 January 1949
UNTS, v. 83:51; I:1101
Trade and Finance Agreement, 14 January 1949
UNTS, v. 83:3; I:1100
Agreement relating to the settlement of financial matters, 11 November 1954
UNTS, v. 204:137; I:2755

UK-Yugoslavia:
Agreement regarding compensation for British property, rights and interests affected by Yugoslav measures of nationalization, expropriation, dispossession and liquidation, 23 December 1948
UNTS, v. 81:121; I:1068
Agreement regarding the terms and conditions of payment of the balance of such compensation, 26 December 1949
UNTS, v. 87:402; II:1068

USA-Yugoslavia: Agreement regarding pecuniary claims of the United States and its nationals, 19 July 1948
UNTS, v. 89:43; I:1208

2. Multilateral agreements

48. In the field of international agreements, the matters with which this chapter is concerned are generally regulated bilaterally. There are relatively few multilateral agreements which are of direct relevance. Furthermore, their content covers a wide range of subjects and, consequently, the frequency of treatment of particular questions necessary to indicate common ground or a common approach is lacking. The discussion of multilateral agreements is here, therefore, restricted to an indication of the provisions found in certain particular cases.

49. The structure of the present sub-section follows, in the main, that of the preceding part on bilateral agreements, though with a lesser degree of specificity as a result of the relatively small number of applicable examples.

50. The treatment of multilateral agreements has been largely restricted to modern agreements which are presently in force. Agreements not yet in force are referred to, however, if they are of particular relevance.

Agreements regulating the rights of foreign nationals to ownership and exploitation of natural resources

a. *Self-determination*

51. The two draft International Covenants on Human Rights contain in the draft Article 1 of both the following provision:

> "3. The right of the peoples to self-determination shall also include permanent sovereignty over their national wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States."[88]

b. *Provisions relating to the entry of foreign enterprises*[89]

52. In the Treaty concerning the Archipelago of Spitzbergen[90] of 9 February 1920 involving recognition by the parties of the sovereignty of Norway over the archipelago, the nationals of all Parties are granted equal liberty of access and entry for any reason whatever to waters, fjords and ports and subject to the observance of local laws and regulations may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.[91] Under the same conditions they must be admitted to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters.[92] Ships and nationals of the parties are also entitled to enjoy equally rights of fishing and hunting in the territories concerned and their territorial waters,[93] subject to certain acquired rights and preservation measures.

53. In the European Convention on Establishment,[94] of 13 December 1955 concluded under the auspices of the Council of Europe, each party undertakes to facilitate entry for temporary visits and to permit free travel within the territory concerned,[95]

* Information provided by the Government of Czechoslovakia.

** Information provided by the Government of Hungary.

[88] United Nations Commission on Human Rights, Report of the Eighth Session, E/2256, Annex 1, pp. 44 and 46. For a summary of discussion by the General Assembly of this draft article, see A/AC.97/1, paras. 1-5. See also chapter IV, paras. 184-185 of this study concerning provisions regarding the preservation of natural wealth and resources in various Trusteeship Agreements.

[89] It is not within the scope of this section to deal with questions of treaty interpretation regarding any rights of entry which may be implied from permission to engage in various activities, hold property or have access to courts of law.

[90] LNTS, vol. 1, No. 41, pp. 8-19.

[91] *Ibid.*, Article 3.

[92] *Ibid.*

[93] *Ibid.*, Article 2.

[94] European Treaty Series (ETS) No. 19. This agreement, not yet in force, is to apply only to metropolitan territories unless extended by declaration (Article 29).

[95] *Ibid.*, Article 1.

and to facilitate prolonged or permanent residence of nationals of the other parties.[96] Each party is, however, entitled to exceptions based on *ordre public*, national security, public health or morality or its economic and social conditions, of which it is itself the judge on the basis of national criteria.[97] It is also specifically provided that national regulations concerning entry, travel and gainful occupations of aliens are affected by the agreement only to the extent that they are inconsistent with it.[98] Each party further undertakes to allow nationals of the other parties to engage in its territory in gainful occupations on an equal footing with its own nationals[99] unless there are "cogent economic or social reasons" for withholding authorization or the occupation is reserved or restricted in a manner[100] permitted by the agreement.[101]

54. In the case of the European Communities,[102] certain rights of entry are involved in the grant of freedom of movement within the Community concerned to workers in certain industries[103] and in the right of establishment of nationals, including companies, of Member States, dealt with in connexion with the European Economic Community (EEC). In the latter case, freedom of establishment includes the right to engage in and carry on non-wage-earning activities, and also to set up and manage enterprises and companies.[104] It does not include activities involving the exercise of public authority or activities excluded or specially treated in the case of aliens on grounds of public order, safety and health.[105]

c. *Provisions relating to the treatment accorded to foreign enterprises*

i. *In respect of property, rights and interests, and activities*

55. In the Spitzbergen Treaty,[106] the standard of treatment provided for is complete equality between all nationals of all parties. This applies not only to the activities referred to, but also to the acquired rights of nationals of the parties[107] and to the methods of acquisition, enjoyment and exercise of the right of ownership of property, including mineral rights.[108] Paid staff in mining activities are also guaranteed the "remuneration and protection necessary for their physical, moral and intellectual welfare".[109] In this latter connexion, the Economic Agreement of Bogotá (1948)[110] provides that just and equitable treatment should be accorded to all personnel, national and foreign, with respect to employment and the conditions thereof.[111]

56. In the European Convention on Establishment, the standard of treatment in respect of the possession and exercise of private rights, whether personal rights or rights relating to property, is national treatment.[112] However, on grounds of national security or defense, the acquisition, possession or use of any categories of property may be reserved to the nationals of the Party concerned or special treatment applicable to aliens generally may be applied.[113] Furthermore, restrictions in force at the eventual date of entry into force of the Convention do not have to be immediately abolished and fresh restrictions may be applied for imperative reasons of an economic or social character.[114] Similar exceptions apply to the exercise of gainful occupations referred to in paragraph 53 above.

57. In the peace treaties[115] concluded in respect of the Second World War, provisions appear regarding the treatment of nationals of the "United Nations". Similar provisions appear in the State Treaty for the re-establishment of an independent and democratic Austria[116] of 15 May 1955. These particular provisions of the treaties were limited in duration and have now expired, but reference to them is included in this section as they are examples of provisions intended to apply for a certain period pending the conclusion of commercial treaties or agreements with the State concerned. The general standard of treatment provided is national and most-favoured-nation treatment, subject to reciprocity, with regard to all matters pertaining to commerce, industry, shipping and other forms of business activity.[117] Another example refers to national treatment with respect to natural and juridical persons and their interests, such treatment to include matters pertaining to the levying and collection of taxes, access to the courts, the making and performance of contracts, rights to property (tangible and intangible), participation in juridical entities constituted under the local law and generally the conduct of all kinds of business and professional activities.[118]

58. In the case of the establishment of the European Economic Community, with institutions having powers over the member States and their nationals, the standard of treatment provided is related to the gradual abolition of restrictions in all member States. For this purpose, general programmes or, alternatively, directives are required to be laid down by one of the institutions acting by means of a specified majority or unanimity.[119] Priorities may be established, for example, with regard to the acquisition and exploitation of real property in one member State by the nationals

[96] *Ibid.*, Article 2 And see Article 3 for a statement of the grounds upon which lawful residence may be terminated.
[97] *Ibid.*, Protocol, Section I.
[98] *Ibid.*, Section II.
[99] *Ibid.*, Convention, Article 10.
[100] E.g., public functions or occupations connected with national security or defence; *ibid.*, Article 13.
[101] *Ibid.*, Articles 11-14.
[102] European Economic Community (EEC): UNTS, vol. 298, No. 4300, p. 11; European Coal and Steel Community (ECSC): UNTS, vol. 261, No. 3729, p. 140.
[103] EEC, Article 48; ECSC, Article 69. It is to be noted that progressive achievement in a transitional period may be involved and that regulatory decisions by certain organs may be required. See paras. 120 and 121 below for effective dates of these agreements and for transitional arrangements.
[104] EEC, *op. cit.*, Article 52.
[105] *Ibid.*, Articles 55 and 56.
[106] See note 90 above.
[107] *Ibid.*, Article 6.
[108] *Ibid.*, Article 7.
[109] *Ibid.*, Article 8.
[110] Not yet in force. For a review of the provisions of this Agreement, see Pan American Union, Department of International Law, *Manual of Inter-American Relations*, Washington, 1953.
[111] Article 23 (*op. cit.*, p. 107). See also para. 60 below regarding treatment of enterprises and investments under this Agreement.
[112] ETS, No. 19, Article 4.
[113] *Ibid.*, Article 5.
[114] *Ibid.*, Article 6.
[115] For the purposes of this section, the peace treaties are treated as multilateral agreements, even though parts of them might be regarded as multipartite but bilateral.
[116] UNTS, vol. 217, p. 223.
[117] E.g., UNTS, vol. 42, p. 67; UNTS, vol. 217, p. 285.
[118] UNTS, vol. 136, p. 45.
[119] UNTS, vol. 298, No. 4300, p. 11, Article 54.

of another or to activities where the freedom of establishment would constitute a specially valuable contribution to production and trade. In the case of the European Atomic Energy Community (Euratom),[120] participation by a third country, international organization, or national of a third country in the management of a Joint Enterprise requires unanimous approval by an institution.[121] In the case of the Multilateral Treaty on Free Trade and Central American Economic Integration (1958)[122] the standard of treatment applicable to nationals of the parties in connexion with the organization or management of or participation in production, commercial or financial undertakings is national treatment (Article XVII).

ii. *In respect of taking of property and compensation*

59. The Spitzbergen Treaty provides that "expropriation may be resorted to only on grounds of public utility and on payment of proper compensation".[123] The European Convention on Establishment provides that "nationals of any Contracting Party shall be entitled, in the event of expropriation or nationalization of their property by any other Party, to be treated at least as favourably as the nationals of the latter Party."[124] A further example is that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."[125] Under the Economic Agreement of Bogotá, the treatment to be provided is expressed in the following terms:

> "the States shall take no discriminatory action against investments by virtue of which foreign enterprises or capital may be deprived of legally acquired property rights, for reasons or under conditions different from those that the Constitution or laws of each country provide for the expropriation of national property. Any expropriation shall be accompanied by payment of fair compensation in a prompt, adequate and effective manner."[126]

iii. *In respect of capital investment*

60. In the Economic Agreement of Bogotá, specific reference to the question of capital investment is made in the form that foreign capital shall receive equitable treatment. This is accompanied by an undertaking that unjustified, unreasonable or discriminatory measures shall not be taken that would impair the legally acquired rights or interests of nationals of other countries in the enterprises, capital, skill, arts or technology they have supplied. Furthermore, no unjustifiable restrictions upon the transfer of such capital and its earnings shall be imposed. Subject to these guarantees, the Agreement provides for the effectiveness of local laws and the right of States to establish measures to prevent "foreign investments from being utilized directly or indirectly as an instrument for intervening in national politics or for prejudicing the security or fundamental interests of the receiving countries."[127] Standards may be laid down with respect to the extent, conditions and terms upon which future investment may be permitted.

61. The Agreement on Free Trade and Central American Economic Integration provides for national treatment with regard to capital investments. In the case of Euratom, provision is made for the encouragement of investment in the nuclear field,[128] and for discussion with an institution of the Community concerned of certain investment programmes.[129] However, in cases where a joint enterprise is constituted, the participation of a third country, international organization or national of a third country in the financing of such an enterprise requires a unanimous vote of one of the institutions.[130] In the case of EEC, restrictions on the movement of capital belonging to persons resident in member States shall be progressively abolished together with discriminatory treatment based on the nationality or place of residence of the parties or on the place in which capital is invested. Action by an institution of the Community is required in connexion with such progressive abolition.[131] The highest possible degree of liberalization of exchange policies regarding movement of capital between member States and third countries is also intended.[132] Protective measures in respect of movements of capital may, however, be taken in certain circumstances.[133] In the case of the European Coal and Steel Community (ECSC), the High Authority of the Community may give guarantees to loans obtained outside the Community and may in certain circumstances prohibit an enterprise from resort to funds other than its own.[134]

[120] UNTS, vol. 298, No. 4301, p. 167.
[121] *Ibid.*, Article 47.
[122] See *Report of the Central American Economic Co-operation Committee*, United Nations publication, Sales No.: 58.II G.3.
[123] LNTS, vol. 1, No. 41, pp. 8-19, Article 7.
[124] ETS, No. 19, Article 23. This provision is without prejudice to Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms (1952) (ETS, No. 9).
[125] The Protocol to the Convention on Human Rights and Fundamental Freedoms, 20 Mar. 1952 (ETS, No. 9), Article 1.
[126] Pan American Union, *op. cit.*, p. 103 (Article 25).
[127] *Ibid.*, (Article 22). See also the Economic Declaration of Buenos Aires of 1957 (*World Economic Situation*, E/3202) regarding the adoption of measures to facilitate the acquisition of and trade in capital, machinery, raw materials and techniques and the encouragement of investment.
[128] UNTS, vol. 298, No. 4301, p. 167, Article 40.
[129] *Ibid.*, Article 43.
[130] *Ibid.*, Article 47.
[131] UNTS, vol. 298, No. 4300, p. 11, Articles 67 and 69.
[132] *Ibid.*, Article 70.
[133] *Ibid.*, Article 73.
[134] UNTS, vol. 261, No. 3729, p. 140, Article 54.

B. Treaty rights of States in foreign territory pertaining to natural resources

62. The discussion in the ensuing paragraphs covers a variety of arrangements involving a restriction of territorial sovereignty in the interests of the more effective and efficient exploitation of natural resources and in the interests of the people of the territories concerned. The term "territories" is used here in its broadest geographical sense and, initially, bears no relation to political boundaries. It is precisely because territorial interests may cut across the boundaries of sovereign States that international agreements have been concluded to provide a means of solving certain problems that have their source in some of the concepts of territorial sovereignty.

63. Treaty rights thus enjoyed by a State or States in the territory of another State or States are localized in the sense that the rights are granted for certain purposes in particular parts of the territory of the grantor State(s). They include transit rights, mining rights, rights in connexion with the construction of international pipelines and water rights.

1. Transit rights

a. Bilateral arrangements

64. The rights discussed here are largely those created as a result of changes in territorial boundaries. They typically cover transit rights on rail or road routes which, as a result of boundary changes, cross the territory of a second State, though essentially serving one State only. Similarly, a route between two States may, as a result of such changes, transit a short stretch of the territory of a third State without, however, serving the economy of the latter.

65. A number of examples may briefly be cited here. Thus, the main route between Schaffhausen and Zürich, Switzerland, crosses a stretch of the territory of the Federal Republic of Germany. The route is, however, operated by the Swiss Federal Railways and trains not stopping on German territory are exempt from all customs regulations, and so forth. Similar arrangements cover Czechoslovak and Polish railway lines which pass over short stretches of the other State's territory;[135] the line between Aleppo (Syria) and Mosul (Iraq), which crosses and recrosses the Syrian-Turkish border; and the line between Niirala and Parikkala (Finland), which runs over some eighty-five miles of USSR territory through Syväoro and Värtsilä.[136]

66. Special regulations cover Greek and Turkish transit traffic respectively on the main railway line between Svilengrad (Bulgaria) and Istanbul which crosses a short stretch of Greek territory before reaching the Turkish city of Edirne. The line then recrosses to Greece near Pythion and thereafter re-enters Turkey at Uzunköprü.[137]

67. It may be noted that the Treaty of Peace with Italy (Paris, 10 February 1947) provides, in advance, for a transit right with respect to a French railway line between Briançon and Modane, via Italian territory near Bardonnèche (Bardonecchia) in the event that such a line is built.[138] The line would be operated by the Italian State Railways.

68. Generally similar in character to the rights discussed here is the arrangement under which Switzerland is granted special rights with respect to the road linking the joint Basle-Mulhouse airport of Blotzheim (France) with the city of Basle. Travellers to Basle arriving at that airport are exempt from French frontier formalities in respect of the ground journey to the city.[139]

69. A specialized type of transport right is envisaged under the treaty between Italy and Switzerland concerning the construction of the Simplon Tunnel (1895).[140]

70. Geographical peculiarities as well as operational considerations made it desirable to entrust the operation of the entire line between Brigue and Domodossola to one railway company, although the border between the two States crosses the line inside the tunnel. Under the treaty, provision was made to entrust, under bilateral concession, operation of the line to a Swiss private company which would have certain privileges on Italian soil. After enumerating these, the treaty states:

> "The Sovereign rights of the two States regarding the railway on their respective territory shall not be restricted in any further respect." (Article 18)

71. It might be noted that, when the Swiss Federal Railways took over the private concessionaire mentioned above, they also succeeded to the rights attaching to the line in question.

72. *General transit rights* constitute, in certain cases, an essential factor of sovereignty over natural resources if that sovereignty is interpreted to include the right freely to dispose of those resources or their derivative products. These cases primarily concern the access to the world's trade routes of the land-locked countries, discussed from the international legal point of view in the preceding sub-section. In addition, however, there are cases in which countries cannot, for reasons of climate or topography, make use of their own sea-coasts or even harbour facilities and are thus dependent on transit facilities through second States in order to have access to world trade routes. It is proposed to discuss here two major specific instances of major economic importance in which these considerations apply and where international rights of transit have been created by treaty.

i. *Sweden–Norway*

73. The important iron ore deposits of Northern Sweden (Kiruna and Gällivare) lie roughly half-way between the Swedish port of Luleå, on the Gulf of Bothnia, and the Norwegian seaport of Narvik. Luleå, however, is icebound in winter and the passage through the Baltic to the open seas is relatively cumbersome. Narvik, on the other hand, is open to navigation all year and has direct access to the Atlantic. As a result, a major portion of Swedish ore traffic is carried over the Ofoten (or Lappland) Railway to Narvik.

74. Free transit over the line is guaranteed under the Convention Regarding Transit Traffic[141] which forms part of the Treaties and Conventions Regarding the Dissolution of the Swedish-Norwegian Union (Stockholm, 26 October 1905). The Convention confirms (Article 7) the contract for the transport of minerals of 11/7 October 1898 between the Norwegian

[135] See for instance, UNTS, vol. 84, No. 1141, p. 34.

[136] See *Agreement Between Finland and the Union of Soviet Socialist Republics concerning Trackage Rights on the USSR Railways for Goods Trains of the Finnish Railways*, 14 Sept. 1956, UNTS, vol. 255, p. 377.

[137] See *General Greco-Turkish Regulations for the Application of the Provisions of Article 107 of the Treaty of Lausanne Regarding Traffic on the Railway Line between the Greco-Turkish Frontier near Pythion and the Greco-Bulgarian Frontier near Svilengrad*, 25 November 1937; LNTS, vol. 145, No. 4543, p. 138. The regulations permit, *inter alia*, free passage over intervening Greek Territory for traffic between two Turkish points and over intervening Turkish territory for traffic between two Greek points.

[138] UNTS, vol. 49, p. 132, Article 8.

[139] Franco-Swiss Convention of 4 July 1949, cited in Guggenheim, *Traité de Droit international public*, vol. 1, p. 400, note 3.

[140] Martens, 2nd series, vol. 28, p. 35.

[141] Martens, NRGT, 2nd Series, vol. 34, pp. 708-710.

State and the Luossavaara-Kiirunavaara Company establishing special freight rates for a contractual quantity of ore to be transported over the Ofoten Railway.

ii. *Congo–Portuguese Angola*

75. The vast copper deposits of the Congo (Leopoldville) lie in the Haut-Katanga region in the southern part of the territory. While the Congo has a seaport at Matadi, on the territory's north-west coast, this is several thousand miles away from the copper mines and access to it requires transshipment from river vessel to railway at Leopoldville. On the other hand, the seaport of Lobito in Portuguese Angola is only some 1,200 miles from the copper mines.

76. In 1927, Belgium and Portugal concluded a Convention regarding the Katanga Traffic through the Port of Lobito and the Benguela Railway,[142] by which Portugal granted Belgium transit through Angola for all persons, mails, goods and rolling stock, free of all transit fees, delays, restrictions, or pecuniary guarantees; in addition, Belgian vessels embarking or disembarking goods and passengers to and from the Congo were guaranteed treatment equal to that accorded to Portuguese vessels.

77. Essentially similar transit arrangements govern the important copper traffic between Northern Rhodesia and the ports of Beira and Lourenço Marques (Portuguese East Africa).[143]

iii. *Afghanistan–Pakistan**

78. Under an Agreement concluded in 1958, Afghanistan (a land-locked country) and Pakistan grant and guarantee each other freedom of transit to and from their territories, without distinction as to flag of vessels, place of origin, departure, etc., or ownership of goods, vessels and other means of transport. Transit traffic is exempted from all duties, taxes or charges other than transport charges and costs of services rendered. Provision is also made for the extension of the Pakistan railways to the proposed railheads of the Afghanistan railways, and for the creation of an Afghan transit area in the port of Karachi. Pakistan further undertakes to meet in full the requirement for freight cars for transit traffic on the two principal proposed rail routes. Interim arrangements concerning truck traffic are also included.

iv. *Afghanistan–Union of Soviet Socialist Republics*

79. Under an Agreement[144] dated 28 June 1955, Afghanistan and the USSR grant each other free transit of goods under the "conditions governing the transit of goods of any third country" through the territory of the party concerned, free of duties, taxes or any charges other than those relating to the handling and forwarding of goods in transit.

v. *Laos–Thailand***

80. Under an Agreement dated 22 July 1959, Laos is granted transit rights through Thailand over certain specified routes, as follows:

By rail: Bangkok-Nongkai; Bangkok-Ubol;

By road: Nongkai-Vientiane; Ubol-Nakon Panom; Ubol-Muk daharn; and Ubol-Pibul Mangsaharn-Muong Kao-Paksé.

81. The transit modalities are those set forth in the Barcelona Convention of 20 April 1921. The transport arrangements through Thailand are carried out by the Express Transport Organization of Thailand, while road transport between Thai and Laotian transit depots is carried out by both Thai and Laotian transport undertakings.

vi. *Laos–Republic of Viet-Nam***

82. Under an Agreement dated 11 June 1959, Laos is granted transit rights through the Republic of Viet-Nam over the routes Tourane—Lao-Bao—Tchépone—Laos and Saigon-Loc Ninh-Vientiane (by road); and Saigon or Tourane to Laotian points via Dong Ha, Lao-Bao (road/rail route).

83. The transport arrangements are carried out by carriers of both States, the modalities being those set forth in the Barcelona Convention.

vii. *Laos–Cambodia***

84. Under an Agreement dated 10 October 1959, Laos is granted transit rights through Cambodia over the routes Sihanoukville-Phnom Penh-Laotian points, and Viet-Nam to Laos via Stungtreng (by road); and Phnom Penh-Stungtreng-Veunkham (river route). Reference is again made to the Barcelona Convention of 1921. Traffic is to be carried by vehicles of both States; provision is also made for the establishment of mixed Cambodian-Laotian carriers which might obtain a monopoly for the carriage of transit goods via Sihanoukville.

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* Information provided by the Government of Afghanistan.

[142] LNTS, vol. 71, No. 1682, p. 430.

[143] The economic importance, in quantitative terms, of the arrangements noted here is illustrated by the following figures: In 1958, 434,302 metric tons, or 28.4 per cent of the total exports of the Congo passed through the port of Lobito (Angola). This part of the country's exports was represented largely by minerals—chiefly copper. In over-all terms, 45 per cent of the Congo's exports and 32 per cent of its imports in 1958 passed through foreign ports: Lobito (Angola); Beira (Portuguese East Africa); Pointe Noire [Congo (Brazzaville)]; Dar-es-Salaam (Tanganyika); and Mombasa (Kenya). [Chambre des Représentants, *Rapport sur l'Administration du Congo Belge pendant l'année 1958*, Brussels, 1959, p. 222.]

In the case of Northern Rhodesia—a land-locked country—all exports of minerals are shipped through ports in adjacent countries. Copper rail shipments in 1958 were as follows:

	Short tons
To Beira (Portuguese East Africa)	156,033
To Lourenço Marques (Portuguese East Africa)	193,448
To Lobito (Angola)	52,298
To the Union of South Africa	12,616
To points in Federation of Rhodesia and Nyasaland	2,380
TOTAL	416,775

[Northern Rhodesia, Chamber of Mines, *Year Book 1958*, table 14, p. 35.]

** Information provided by the Government of Laos.

[144] UNTS, vol. 240, No. 3407, p. 254.

viii. *Chile–Bolivia**

85. Transit facilities for traffic to and from Bolivia, a land-locked country, were initially granted by Chile under the Treaty of Peace, Friendship and Commerce of 1904,[145] under which Chile undertook to build a railway from the port of Arica to the Alto de la Paz, vesting the Bolivian section of the line in Bolivia after a period of fifteen years from the date of completion (Article 3). Chile recognized in favour of Bolivia, and in perpetuity, "the fullest and most unrestricted right of commercial transit through its territory and ports on the Pacific." (Article 6). Traffic of each party was to be accorded most-favoured-nation treatment in the other party's territory (Article 8).

86. The financial modalities relating to Bolivian-Chilean transit traffic were established in 1908,[146] while detailed regulations concerning Bolivian commercial traffic through Chilean territory were laid down in the Convention on Commercial Traffic of 1912[147] and the Convention on Transit Traffic of 1937.[148]

87. The Declaration of Arica of 1953[149] stated, *inter alia,* that all goods in transit through Chilean territory en route to or from Bolivia were to be considered to be under the exclusive jurisdiction of the Bolivian customs authorities from the time they were handed over by the Chilean authorities.

ix. *Chile–Peru*

88. In the context of a territorial settlement arising out of the War of the Pacific (Peace Treaty of 1883), the provinces of Arica and Tacna were, by Treaty of 3 June 1929, divided between Chile and Peru, with Chile retaining Arica. The Treaty included, *inter alia,* provisions for the free transit of goods and persons between the port of Arica and Tacna. The modalities relating to such traffic were established by two conventions* signed in December 1930.[150]

b. Multilateral arrangements, with special reference to the position of land-locked countries

89. At its eleventh session, the General Assembly of the United Nations invited[151] Member States to give full recognition to the needs of land-locked Member States in respect of transit trade and "to accord them adequate facilities in terms of international law and practice in this regard", with emphasis on future needs as a result of the economic development of the countries concerned.

90. The United Nations Conference on the Law of the Sea (1958) adopted a Convention on the Territorial Sea and the Contiguous Zone and a Convention on the High Seas.[152] Article 3 of the latter Convention provides that

> "1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:
>
> "(*a*) To the States having no sea-coast, on a basis of reciprocity, free transit through their territory; and
>
> "(*b*) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to ships of any other States, as regards access to seaports and the use of such ports.
>
> "2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

91. The right of a non-coastal State to enjoy the freedom of, and to sail ships under its flag on, the high seas is also laid down in Articles 2 and 4 of the Convention. Under Article 14 of the Convention on the Territorial Sea, all States whether coastal or not, enjoy the right of innocent passage through the territorial sea.

2. Mining rights

92. In so far as State rights are concerned, provisions of international agreements relating to mining are in the nature of consentment to certain restrictions on territorial sovereignty rather than the grant of positive rights.

93. Thus, the frontier agreement, between Norway and the USSR (1949)[153] provides that mineral deposits near the frontier line may not be so prospected or worked as to harm the territory of the other party and that, in a belt of specific width on either side of the frontier line, such work shall ordinarily be prohibited and shall be permitted only in exceptional cases by agreement between the competent authorities of the contracting parties.

94. States wishing to facilitate mining along their borders have sometimes concluded agreements to fix a mining boundary for underground operations independent of their surface frontier line. The legal effects of the relation between the ownership of the mine and ownership of the land together with rights *in rem* pertaining thereto, and in particular claims for damage caused by mining operations, are governed by the laws of the State in which the parcel of land is situated.[154]

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* Information provided by the Government of Chile.

[145] *Tratados, Convenciones y Arreglos Internacionales de Chile,* Tratado de Paz, Amistad y Comercio entre Chile y Bolivia, 20 October 1904. See also *United Nations Conference on the Law of the Sea, Official Records,* vol. I, Doc. A/CONF.13/29 and Add.1, pp. 316-317.

[146] *Ibid.,* Protocolo sobre Garantías Ferroviarias, entre Chile y Bolivia, 26 May 1908.

[147] *Ibid.,* Chile-Bolivia, Convención de Tráfico Comercial, 6 Aug. 1912. See also United Nations Conference on the Law of the Sea, *op. cit.,* p. 317.

[148] *Ibid.,* Chile-Bolivia, Convención sobre Tránsito, 16 Aug. 1937.

[149] *Ibid.,* Chile-Bolivia, Declaración de Arica, 25 Jan. 1953.

[150] *Tratados, Convenciones y Arreglos Internacionales de Chile,* Chile-Perú, Convenio para el Tránsito de Pasajeros entre Tacna y Arica, 13 Dec. 1930; Chile-Perú, Convención sobre Tránsito de Mercancías y Equipajes entre Tacna y Arica, 31 Dec. 1930.

[151] Resolution 1028 (XI), 20 Feb. 1957.

[152] *United Nations Conference on the Law of the Sea, Official Records,* United Nations publication, Sales No.: 58.V.4, vol. II, pp. 132-139 (A/CONF.13/L.52 and 53).

[153] UNTS, vol. 83, No. 1112, p. 345.

[154] *Netherlands-Federal Republic of Germany,* Treaty fixing a mining boundary between the coalfields situated to the east of the Netherlands-German frontier, signed on 18 Jan. 1952 and came into force on 30 July 1953, Article IV (5) (UNTS, vol. 179, No. 2364, p. 160); *Netherlands-Belgium,* Treaty fixing a mining boundary between the coal mines situated along the Meuse on both sides of the frontier, signed on 23 Oct. 1950 and came into force on 11 July 1952, Article 5 (*e*), (UNTS, vol. 136, No. 1831, p. 42).

3. International pipelines

95. The international transport of resources by pipeline (primarily petroleum products, although other mineral resources are likely to come into the picture in the not too distant future) comes under a variety of régimes, depending largely upon the governing economic factors. Thus we find pipeline régimes that are governed by international treaty, by series of national concessions and, finally by national common-carrier legislation.[155] Concession régimes apply in the cases (especially in the Middle East) in which the pipeline is the property or an affiliate of a petroleum company and exclusively carries that company's products.

96. States have concluded bilateral agreements either for economic co-operation to the advantage of both contracting parties or for defense purposes, to undertake the construction of petroleum pipelines which cross national boundaries.[156] With respect to economic development, an agreement[157] concluded between Brazil and Bolivia provides that both parties are to co-operate in the preliminary work of surveying, prospecting and drilling operations with a view to determining the true industrial value of the petroleum deposits in certain regions of Bolivia. Such operations are carried out by joint undertakings of the two States, constituted according to the legislation in force in each State. The companies so formed are required to send the petroleum produced to supply the market of Brazil only when the needs of domestic consumption of Bolivia have been satisfied. Where the production of oil fields warrants it, Bolivia undertakes to grant to joint undertakings of the two States (to the exclusion of any others) concessions for the construction and surveying of petroleum pipelines, and Brazil agrees to extend every facility for the construction of the said pipelines and, if the need arises, permit them to pass freely through its territory. It is further provided that petroleum and petroleum derivatives originating in one party which are exported through the other party shall enjoy the fullest facilities of free transit in accordance with accepted international practice and the treaties in force between the two countries.

97. An agreement* concluded between Chile and Bolivia in 1957,[158] provides for the construction of an oil pipeline from Bolivia to the Chilean port of Arica, along the general route of the La Paz-Arica railway. The construction, operation and maintenance of the line is to be in the hands of the Yacimientos Petroliferos Fiscales Bolivianos (YPFB), a Bolivian Government organization. The agreement provides for the free movement of construction materials and equipment for the line between the two countries and also for the permanent stationing of maintenance equipment and personnel on Chilean territory.

98. Chilean land rights for the line are conceded to YPFB for the duration of the line's operation and the Government of Chile may authorize YPFB to purchase land for the pipeline terminal, storage tanks and other installations, as well as housing for its personnel, in the Arica Department. Chile may request YPFB to establish junction points for branch pipelines at points to be determined.

99. In some agreements[159] concluded between the United States and Canada for defence purposes, the Government of the United States undertook to construct, own and operate oil pipelines passing through the territory of Canada. The following were among the conditions indicated in the agreements concerned: (1) all land or interest in land required for the right-of-way of the pipelines, and for access roads, was acquired by and remained in the title of Canada which granted to the United States an easement for and the use of access roads to the pipelines; (2) ownership of the pipelines and auxiliary installations remained with the United States pending termination of the arrangement, at which time the United States was to remove the pipelines from the right-of-way, restoring the right-of-way to its original conditions as far as it was practicable and reasonable to do so in the opinion of Canada; (3) any contractors awarded a contract for the construction of the pipelines were required to give preference to qualified labour of Canadian nationality for such construction in Canada; (4) nothing in the agreements concerned derogated from the application of the domestic law of Canada in its territory. The final transfer of the *Canol* pipelines from the United States to Canada was concluded on 31 March 1960.

4. Water resources

100. By their very nature, water resources common to two or more States constitute a realm that is well suited to regulation and control by international agreements. In many major instances lower riparian States exercise control over the headwaters and/or sources of that river situated in the territory of another State. Clearly, in areas where water supply is problematical, a change in the volume or timing of a seasonal flow can affect the vital interests of the lower riparian.

101. Thus, by Treaty of 15 May 1902, Ethiopia undertook not to permit the construction of any works on the Blue Nile, Lake Tsana or the Sobat River which "would arrest the flow of their waters into the Nile" except in agreement with the Governments of the United Kingdom and of the Sudan.[160] Egyptian consent to the construction of works on the Nile in the Sudan or in countries under British administration was an essential feature of the agreement contained in the exchange of notes of 7 May 1929 between Egypt and the United Kingdom.[161]

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* Information provided by the Government of Chile.

[155] This type of régime treats a pipeline as a national common carrier of whichever country the section in question is situated in. For a theoretical discussion of this and related questions, see *Legal Provisions for the Supply of Natural Gas through International Pipelines;* Economic Commission for Europe, *Ad Hoc* Working Party on Gas Problems, GAS/Working Paper No. 43, 23 Feb. 1959.

[156] *Brazil-Bolivia*, Agreement on the exportation and use of Bolivian petroleum, signed on 25 Feb. 1938 and came into force on 15 Sept. 1938 (UNTS, vol. 51, No. 192, p. 256).

[157] For a multilateral agreement on international pipeline which has not come into force, see Hudson, *International Legislation*, vol. VIII, p. 623.

[158] *Tratados, Convenciones y Arreglos Internacionales de Chile*, Chile-Bolivia, Acuerdo sobre el Oleoducto de Yacimientos Petroliferos Fiscales Bolivianos de Sicasica-Arica, a su paso por Territorio Chileno, 24 Apr. 1957.

[159] *USA-Canada*, Agreement relating to the Haines-Fairbanks oil pipeline installation, signed and came into force on 30 June 1953 (UNTS, vol. 206, No. 2786, p. 93); *USA-Canada*, Agreement relating to the establishment of a petroleum products pipeline in Newfoundland, signed and came into force on 22 Sept. 1955 (256, UNTS, No. 3632, 227). Cf. Agreements between the USA and Canada relating to the *Canol Project* (UNTS, vol. 99, Nos. 276-282, pp. 223-285 and UNTS, vol. 11, No. 172, p. 325).

[160] Martens, NRGT, 3rd Series, vol. 2, pp. 826 and 827.

[161] UNTS, vol. 93, No. 2103, p. 43.

102. In implementation of this agreement, the United Kingdom submitted for Egyptian approval plans for the construction of a dam at Owen Falls (Uganda) on the upper reaches of the White Nile. Joint construction arrangements made included a provision for the representation of Egyptian interests at the dam site by a resident Egyptian engineer, who would control the volume of water to be discharged through the dam.[162] A concurrent scheme to raise the water level of Lake Victoria, to serve Egyptian irrigation needs, would be financed by Egypt.[163]

103. The Treaty of Peace with Italy (Paris, 10 February 1947) provides for technical guarantees in respect of the supply of hydroelectric power and water supply to Italy from the Mont Cenis Lake area and Tenda-Briga (Tende-Brigue) district ceded to France under the Treaty.[164] The Treaty states that the rates of flow and/or production supplied shall be such as Italy may require.[165] Similarly, with respect to the water supply of Gorizia, the Treaty provides for the regulation of certain related services by Italy and Yugoslavia, respectively, with respect to the water supply for the city allocated to the other State.[166]

104. States have agreed to certain restrictions on their exercise of sovereignty within their territorial waters. Thus, many treaties concerning water rights, provide that, while each party has absolute right with respect to works undertaken by it in its territory, such as irrigation or the development of electric power, it should operate in such a manner as not to cause material damage in the territory of the other party.[167]

105. In some cases,[168] States have taken joint action and set up joint bodies for the supervision and execution of works in connexion with the utilization or regulations of waters in their common interest. The parties undertake, each within its own territory, to comply with the recommendations of the joint body to ensure the maximum utilization of their border waters, or to make arrangements to prevent interference with the regulations of their border waters.

106. Under an agreement concerning apportionment between the parties of the rights to utilize the water-power of their frontier river,[169] each party permits the construction of certain water-power installations in its territory by the other party. Moreover, each party undertakes to make available free of charge the land on which the said installations of the other party are built and which is required for the operation and future maintenance of these installations, for use by the latter party so long as the installations exist. It is also provided that while the construction is in progress, each party may also use land in the territory of the other party free of charge to build a road and install telephone and power lines to the water-stop walls.

107. The Indus Waters Treaty,* concluded between India and Pakistan on 19 September 1960, provides *inter alia*, for apportioning the waters of the Indus River and its principal tributaries over reaches where these rivers flow in the territory of one or the other of the signatories before finally crossing into Pakistan and where the use of their waters may affect the interests of the other signatory.

108. In broad terms, India is given unrestricted use of the eastern headwaters and tributaries, or Eastern Rivers, while it may only make restricted use of the waters of the western headwaters and tributaries, or Western Rivers.

109. While the political geography of the region concerned has necessitated a text of considerable complexity, interest in the Treaty in the present context may centre on the categories of water utilization distinguished and governed by separate provisions. These categories are:

1. *Agricultural use*, that is, use of water for irrigation other than irrigation of household and public recreational gardens;

2. *Domestic use*, that is, use for (*a*) drinking, bathing, sanitation, livestock; (*b*) household and municipal purposes; and (*c*) industrial purposes, including mining, milling, etc., but specifically excluding use for agricultural or hydroelectrical purposes;

3. *Non-consumptive use*, that is, control or use for navigation, flood protection and control, fishing and similar beneficial purposes other than agricultural or hydroelectric use. This definition includes the proviso that the waters so used shall remain in, or be returned to, the same river or its tributaries undiminished in volume except for natural losses (seepage, evaporation), incidental to its control or use.

In certain instances, withdrawals of waters are permitted against replacement.

110. The Treaty also provides for the establishment of a Permanent Indus Commission, consisting of two permanent commissioners, one from each of the signatory States, to serve as the regular channel of communication on all matters relating to the implementation of the Treaty.

* Text provided by the Government of Pakistan.

[162] UNTS, vol. 226, No. 3122, p. 273.

[163] UNTS, vol. 207, No. 2810, p. 277.

[164] UNTS, vol. 49, No. 747, p. 132, Article 9.

[165] *Ibid.*, pp. 180-184, Annex III.

[166] *Ibid.*, pp. 185 and 186, Annex V.

[167] See "Legal Aspects of the hydroelectric development of rivers and lakes of common interest", E/ECE/136.

[168] E.g., *Syria-Jordan*, Agreement concerning the utilization of the Yarmuk waters, signed on 4 June 1953 (UNTS, vol 184, No. 2437, p. 15); *Italy-Switzerland*, Convention concerning the regulation of Lake Lugano, signed on 17 September 1955 and came into force on 15 February 1958 (UNTS, vol. 291, No. 4257, p. 213).

[169] *Norway-USSR*, Agreement on the utilization of water-power on the Pasvik (Paatso) River, signed on 18 December 1957 and came into force on 27 June 1958 (UNTS, vol. 312, No. 4522).

C. Multilateral agreements involving acceptance of restrictions on sovereign powers over certain natural resources with a view to the achievement of common ends or benefits

111. The present section is concerned with multilateral agreements under which States accept restrictions of their sovereignty over certain natural resources in return for the possibility of realizing certain common ends or of securing certain common benefits. In its first and second parts, the section deals with the European Communities and similar proposed arrangements in Latin America; the third part is devoted to other multilateral arrangements bearing on restrictions on sovereign powers over natural resources, chiefly in relation to disposition, marketing, production or stocks.

1. The European Communities

112. The arrangements for the establishment of the various European Communities are discussed here as

examples of the creation of common institutions and of their endowment with powers over and in connexion with the member States, as well as by reason of their relevance, though often indirect, to natural wealth and resources.

113. The arrangements discussed here cover (1) the European Coal and Steel Community (ECSC);[170] (2) the European Economic Community (EEC);[171] and (3) the European Atomic Energy Community (Euratom).[172] Reference is first made to some common features of the three organizations; thereafter, each Community is dealt with separately to the extent relevant to this study.

a. The treaties

114. The treaty establishing ECSC entered into force on 23 July 1952, while the treaties establishing EEC and Euratom entered into force on 1 January 1958. The parties to the treaties are the same in each case: Belgium, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands. The ECSC Treaty is to remain in force for fifty years,[173] while the other two treaties are of indefinite duration.[174] In the case of ECSC, the treaty is expressly applied to the European territories of the parties, including those for whose international relations they may be responsible.[175] In the case of EEC, the treaty applies to the European territories of the Parties, with separate provisions regarding Algeria and the French overseas departments[176] and applies through a special system of association to certain countries and territories. The Euratom Treaty, unless specific provision to the contrary be made, applies to European territories of member States, to non-European territories subject to their jurisdiction and to European territories for whose international relations they are responsible.[177]

b. Aims of the Communities

115. The general aim of all three Communities is to contribute to economic harmony, expansion and development, to increase stability, and to improve standards of living.[178] This is to be achieved in the case of EEC and of ECSC by the creation of a common market. In the case of Euratom, the purpose is to create conditions necessary for the speedy establishment and growth of nuclear industries,[179] including the creation of a common market.

c. The institutions

116. The main institutions of ECSC are a High Authority assisted by a Consultative Committee, a Council, an Assembly and a Court of Justice; in the case of EEC and Euratom, the institutions are a Commission and a Council, assisted by an Economic and Social Committee, an Assembly and a Court of Justice. The Assembly and the Court of Justice are, since 1 January 1958, common to all three Communities.[180]

117. The Court, composed of seven judges, has power, generally, to pass on the validity of, and even annul, acts of the institutions[181] and to hear complaints from persons, juridical or natural, affected by certain decisions,[182] or by financial penalties imposed by institutions. Claims for damages are receivable. In the case of EEC and Euratom, the Court may also determine whether member States have failed to fulfil any of their obligations under the treaties.[183] The Court has power to interpret the treaties and the enactments made under them. Except in certain cases, it may not, however, review the conclusions, drawn from economic facts and circumstances, of the ECSC High Authority. No such provision occurs in the other two treaties.[184] An interesting provision in the treaties is the possibility that, in certain circumstances, a failure to act may be regarded as a decision which can be the subject of an appeal.[185] The Court may be empowered to act as an arbitral tribunal. The parties have undertaken not to submit any dispute regarding the application or interpretation of the treaties to any method of settlement other than those provided in the treaties.[186]

118. The institutions (High Authority, Commissions and Councils) are entitled, in a number of cases, to impose financial penalties directly on persons, both juridical and natural. Provision is also made for simple enforcement of decisions on the territory of each member State.[187] In all three cases, agreements affecting the scope of the treaty concerned must generally be communicated to the High Authority or Commission[188] and in certain cases agreements may be concluded on behalf of the Community concerned by its Council[189] and, in the case of ECSC, by its High Authority.

d. Acts of the institutions

119. The ECSC High Authority acts through decisions, recommendations and opinions.[190] Decisions are binding in all details, but recommendations are binding only as to the objective specified and not as to the means to be employed. Opinions have no binding force. In the case of EEC and Euratom, the Council and Commission adopt regulations and directives, make decisions and formulate recommendations or opinions.[191] Regulations have a general application, are binding in every respect and directly applicable in each member State. Directives bind the member States to which they are addressed as to the results to be achieved, domestic agencies having competence as to form and means. Decisions are binding in all respects upon the addressees named, whereas recommendations and opinions have no binding force.

e. Transitional measures and periods

120. Provision is made in all three treaties for transitional measures and periods. In the case of

[170] UNTS, vol. 261, No. 3729, p. 140.
[171] UNTS, vol. 298, No. 4300, p. 11.
[172] *Ibid.*, No. 4301, p. 167.
[173] ECSC, Article 97.
[174] EEC, Article 240; Euratom, Article 208.
[175] ECSC, Article 79.
[176] EEC, Article 227 (2).
[177] Euratom, Article 198.
[178] E.g., ECSC, Article 2; EEC, Article 2.
[179] Euratom, Article 1.
[180] Convention relating to certain institutions common to the European Communities, UNTS, vol. 298, No. 4302, p. 267.
[181] ECSC, Article 33.
[182] E.g., EEC, Article 173.
[183] EEC, Articles 169-171.
[184] ECSC, Article 33.
[185] E.g., ECSC, Article 35.
[186] Euratom, Article 193.
[187] E.g., EEC, Article 192.
[188] Euratom, Article 103.
[189] Euratom, Article 101.
[190] E.g., ECSC, Article 14.
[191] E.g., EEC, Article 189.

ECSC, there is a preparatory period of study and negotiation, followed by a transition period beginning on the date of creation of the Common Market and ending five years after the creation of the common market for coal.[192]

121. In the case of EEC, a transitional period of from 12 to 15 years is provided, divided into three periods, initially of 4 years each. A shift from the first to the second stage of transition requires unanimity in the Council, failing which the first stage will be extended for a further year. At the end of the sixth year, a qualified majority vote is applicable, failing which arbitration by a board may be requested. The Board may give an award, but the treaty does not indicate what happens if the award is negative.[193]

f. Common markets

122. The creation of common markets in all three communities involves, as between the member States, the abolition of customs duties on importation and exportation, or charges of equivalent effect, and the abolition of quantitative restrictions.[194] In the case of EEC and Euratom, the establishment of a common external customs tariff is also involved.[195] The ECSC Treaty does not contain a similar provision, member States generally retaining powers in this connexion. However, in certain circumstances, the Council, by unanimous decision, may fix maximum and minimum import and export duties on the proposal of the High Authority, which also has supervisory powers in respect of export and import licensing.[196]

g. Relationship of the Communities with certain other organizations

123. The treaties provide for suitable contacts or co-operation with other organizations. In the Euratom Treaty, for example, the Commission is responsible for ensuring all suitable contacts with the organs of the United Nations, the specialized agencies and the Contracting Parties to the General Agreement on Tariffs and Trade (GATT),[197] and provision is made for co-operation or collaboration with the Council of Europe and the Organisation for European Economic Co-operation (OEEC).[198]

124. The six States parties to the ECSC Treaty requested a waiver of the GATT rules to enable the Community to carry out the tasks devolving on it.[199] A waiver was granted under a Decision of 10 November 1952, and reports by a working party of GATT have been made on the annual reports of the member States of the Community.[200]

125. In the case of EEC, the parties to the Rome Treaty submitted it to the Contracting Parties to GATT on 17 April 1957, in conformity with Article XXIV of GATT.[201] The compatibility of the Rome Treaty with Article XXIV of GATT is apparently an undecided question, a GATT body having decided that "it would be more fruitful if, for the time being, attention could be directed to specific and practical problems...", and the Contracting Parties to GATT having agreed that "it was not possible, nor even desirable, to come to definite conclusions concerning this regional arrangement...".[202]

h. Particular features of each Community

i. *The Coal and Steel Community*[203]

126. *Financial provisions, investments and financial assistance:* The High Authority is empowered to procure the funds necessary for its tasks by placing a levy on the production of coal and steel or by borrowing or both (Article 49). Funds obtained by borrowing may be used only to grant loans, after consultations with the Council and the Consultative Committee. The High Authority may guarantee loans, and may approach member Governments in this respect after consulting the Council; it may also build up a reserve fund, in order to reduce the amount of levies, but may not thereby perform operations of a banking nature (Article 51). On certain conditions, the High Authority may authorize financial mechanisms common to several enterprises, or, with the concurrence of the Council acting by unanimous vote, itself institute such mechanisms (Article 53).

127. Investment programmes may be facilitated and, with the concurrence of the Council acting by unanimous vote, works and installations contributing to increased production, lower costs or better marketing may be financially assisted by the High Authority, either by granting loans or by guaranteeing loans obtained elsewhere. The High Authority is entitled to request, in order to encourage a co-ordinated programme of investments, that programmes be submitted to it in advance and may give non-binding opinions thereon. If a programme is found to be contrary to certain provisions of the Treaty, the opinion has the force of a decision and prohibits, under penalty of a

[192] ECSC Convention Containing the Transitional Provisions, Sect. 1 (ended on 10 Feb. 1958), UNTS, vol. 261, No. 3729, p. 277.

[193] EEC, Article 8.

[194] Progressively, in the case of EEC (see Articles 13-15, 32, 33; see also Article 31 referring to the OEEC [Organisation of European Economic Co-operation] level of liberalization at 14 January 1955 regarding the imposition of fresh restrictions). The Common Market is based on a customs union.

[195] Progressively, in the case of EEC. The tariff is to be based, subject to certain exceptions provided, on an arithmetical average of tariffs imposed on 1 Jan. 1957.

[196] Articles 72, 73.

[197] Article 199.

[198] Articles 200 and 201.

[199] See GATT L/38, supplementing W7/2.

[200] See GATT L/305, L/466 (and L/425) L/583 and L/755 for working party reports on the Second, Third, Fourth and Fifth Annual Reports. And see L/778 for Report submitted by the Committee on the Rome Treaty to the Contracting Parties on 29 Nov. 1957. The transitional period ended on 10 Feb. 1958 and GATT discussion in connexion therewith is reported in L/886, p. 44-5.

[201] See GATT L/637 for a memorandum explanatory of the Rome Treaty submitted on behalf of the Six countries. See also GATT L/656 containing questions addressed to the Community, and its replies for further elucidation of points in the Rome Treaty.

[202] See ECAFE Trade/35, 8 Dec. 1958, containing a comprehensive note by the GATT Secretariat on the Rome Treaty, certain details of its application and the question of relationship to GATT. See also Trade/57, 23 Oct. 1959, which brings Trade/35 up-to-date. For the Report of the Working Party on Association of Overseas Territories, see GATT L/805/Rev.1. Legal issues, including a reference to the possibility that such association would be contrary to GATT, Article 1, are discussed on page 5 of that document (see also GATT, Trade Intelligence Paper No. 6, Dec. 1957).

[203] The treaty provisions referred to in the ensuing paragraphs are contained in UNTS, vol. 261, No. 3729, p. 140.

fine not exceeding the sums improperly utilized, the enterprise concerned from resort to funds other than its own in putting the programme into effect (Article 54).

128. Provision is made for the encouragement and assistance of technical and economic research (Article 55) and also for financial assistance if the introduction of new processes or equipment leads to an exceptional reduction in empoyment (Article 56).

129. *Production:* The High Authority is expected to give preference to indirect means of action at its disposal in carrying out its tasks in the field of production (Article 57). In the case of a decline in demand of a serious character, however, the High Authority, after consulting with the Consultative Committee and with the concurrence of the Council, may establish a system of production quotas (Article 58), or in certain serious instances (Article 74), may take all measures consistent with the Treaty, including recommendations to Governments. The High Authority may regulate the rate of operation of enterprises by appropriate levies on tonnages exceeding certain levels and may impose on enterprises violating decisions a fine not exceeding the volume of the irregular production.

130. In certain circumstances, the Council, by unanimous vote, may require the High Authority to establish a quota system (Article 58).

131. If certain shortage conditions are found to exist, consumption priorities may be established (Article 59). Such a finding may be made by the High Authority, after consulting the Consultative Committee, or by the Council, by unanimity, if the matter is referred to it by a member State, no initiative having been taken by the High Authority. Priorities are established by the Council on the basis of proposals by, and in consultations with, the High Authority. Any Council action in this regard requires unanimity. Manufacturing programmes are then established by the High Authority, in consultation with the enterprises, which the latter are obliged to implement. If the Council fails to reach a unanimous decision, the High Authority itself proceeds to allocate the resources of the Community among the member States. In such a case, the allocation is carried out in each member State under the authority of its Government, although the High Authority remains responsible in all cases for allocating equitably among enterprises the qualities earmarked for the relevant industries.

132. In circumstances similar to those calling for consumption priorities, the High Authority, after consulting the Consultative Committee and with the concurrence of the Council, may decide on export restrictions [Article 59 (S)]. If the High Authority does not act, the Council may itself take the necessary decision by unanimous vote if a Government so proposes.

133. *Prices:* Pricing policies contrary to the general aims of the Community and its institutions are prohibited. Access to the market may be temporarily denied in case of repeated infractions (Article 63). The High Authority may impose fines on enterprises violating the price provisions, the fines not to exceed twice the value of irregular sales for the first offence or four times the value for subsequent offences (Article 64).

134. *Agreements and concentrations:* Agreements among enterprises, decisions of associations of enterprises and all concerted practices which tend, directly or indirectly, to prevent, restrict or impede the normal operation of competition within the common market are prohibited. Specifically forbidden are those which fix or influence prices, restrict or control production, technical development or investments, or allocate markets, products, customers or sources of supply. The High Authority may impose fines and daily penalty payments up to, in some cases, 10 per cent of annual turnover or 20 per cent of daily turnover. Any agreement or decision contrary to the Treaty is automatically void and may not be invoked before any court or tribunal of any member State (Article 65).

135. Transactions which would bring about a concentration, directly or indirectly, are generally subject to the prior authorization of the High Authority. The Treaty lays down conditions on which authorization of a transaction may be given, refused, or given subject to a fine. It also provides the method by which the High Authority may order a wrongful concentration separated or a common control to cease. The High Authority is authorized to undertake measures of execution against interested parties which fail to fulfil their obligations. It may also impose fines of up to 15 per cent of the value of the assets acquired or regrouped (Article 67).

136. The Treaty includes a provision (Article 69) governing the manner in which restrictions on workers on the basis of nationality in employment in coal and steel industries are renounced, and the method of reaching agreement on the method of applying the obligation undertaken. Provision is also made for removal of discrimination between national and immigrant workers.

ii. *The European Economic Community*[204]

137. *Economic scope:* The EEC Treaty does not affect those of ECSC and Euratom. The Common Market created under the EEC Treaty extends, however, to agriculture and agricultural products and a common policy shall be established between member States (Article 38). Regulations, directives, or decisions made by the Council in this regard require unanimity up to the end of the second transitional stage and a qualified majority thereafter (Article 43), on proposals by the Commission.

138. *Free movement of persons, services and capital:* Restrictions on the right of establishment must, in general, be progressively abolished. This right includes the right to engage in and carry on non-wage-earning activities, and to set up and manage enterprises and companies. The standard of treatment provided by the Treaty in this regard is national treatment (Article 52). A general programme for the progressive abolition of restrictions is within the power of the Council, on the proposal of the Commission and after consultation with the Economic and Social Committee and the Assembly (Article 54).[205]

139. The provisions relating to the right of establishment do not extend to activities which include, even incidentally, the exercise of public authority; and the Council, on a proposal by the Commission, may exclude other activities by qualified majority vote. Fur-

[204] The treaty provisions referred to in the ensuing paragraphs are contained in UNTS, vol. 298, No. 4300, p. 11.

[205] One matter of special concern to the institutions in taking action is to enable nationals of one member State to acquire and exploit real property in the territory of another member State.

thermore, special treatment may be applied to foreign nationals if justified for reasons of public order, public safety and public health (Articles 55 and 56).

140. For the purposes of the provisions relating to establishment, a company constituted in accordance with the law of a member State and having its registered office, central management or main establishment within the Common Market, is assimilated to a natural person possessing the nationality of a member State. The term "company" in this context means a company under civil or commercial law including a co-operative company and other juridical persons under public or private law, but excluding a non-profit company. So far as financial participation in the capital of companies is concerned, the Treaty provides for national treatment within three years. The protection of persons, elimination of double taxation, mutual recognition of companies and questions concerning reciprocal recognition of judgements and awards are matters which are subject to negotiations between member States (Articles 220 and 221).

141. The provision of services, including activities of an industrial or commercial character, artisan activities and those of the liberal professions, is to be progressively made more free from restrictions. Progressive abolition of restrictions to the extent necessary for the proper functioning of the Common Market applies also in the case of movement of capital belonging to persons resident in member States. Discriminatory treatment based on the nationality, or place of residence of the parties or the place in which such capital is invested must be similarly abolished (Article 67).

142. *Economic and social policy, and common rules:* Certain practices by enterprises and certain types of aid granted by member States which restrict or distort competition and affect trade between member States are prohibited (Articles 85 and 92).[206] Any tendency towards control or limitation of production, markets, technical development or investment in the case of enterprises is particularly referred to, although, in general, actions seeking to improve production or promote economic development are permitted. Rules relating to enterprises may be laid down within the first three years by the Council acting by unanimity on a proposal of the Commission and after the Assembly has been consulted (Article 87). After that time, a qualified majority is applicable.

143. Provision is made in the Treaty for the approximation of laws and enactments having a direct incidence on the creation or functioning of the Common Market (Article 100). Policy relating to economic trends is declared a matter of common interest (Article 103) and provision is made for co-ordination of certain aspects of economic (Article 105), commercial (Article 110), and social policy. A European Social Fund is also to be established for the purposes of assistance somewhat similar to that given for resettlement and training in ECSC (Article 125).

144. A European Investment Bank is established, the Statute of which is annexed to the Treaty. The task of the Bank is to contribute to balanced and smooth development by calling on capital markets and its own resources. It may grant loans and provide guarantees on a non-profit basis (Article 130).

[206] For implementing regulations relating to Article 85 (and 86), see *Journal Officiel des Communautés Européennes*, 5th Yr., No. 15, 21 Feb. 1962.

145. *Association of overseas countries and territories:* This matter is governed by the provisions of an Implementing Convention[207] annexed to the Treaty, which is concluded for five years. New provisions may be added. The Council has powers in this regard, but unanimity is required. The area concerned includes the non-European countries and territories which have special relations with Belgium, France, Italy and the Netherlands. The association is intended to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Common Market as a whole (Article 131). It is intended that member States shall, in their commercial exchanges, apply to the countries and territories the same rules which they apply among themselves and that each country and territory, on the other hand, shall apply the rules it applies with respect to the member State with which is has special relations (Article 132). Member States are intended to contribute to the investments required by the progressive development of the countries and territories, and the latter's nationals may participate on equal terms in tenders and supplies as regards investments financed by the Community.

146. The right of establishment of nationals and companies applies in the manner already indicated,[208] but freedom of movement of workers from member States and from the countries and territories is, subject to provisions relating to public health, safety and order, to be governed by subsequent agreements. Such agreements require the unanimous agreement of all member States (Article 135).

147. Imports originating in the countries and territories benefit from the abolition of customs duties by member States under the Treaty and customs duties imposed on imports into other countries and territories from member States or from countries and territories shall be progressively abolished. The countries and territories are, however, entitled to impose customs duties corresponding to the needs of their development and to the requirements of their industrialization or which contribute to their budgets. These duties and charges shall be progressively reduced under the Treaty to the level of those imposed on imports from the member State with which the country or territory con-

[207] The Implementing Convention (UNTS, *op. cit.*, p. 157) relating to the association of overseas countries and territories expires at the end of 1962. A meeting of ministers of the members of EEC and of the associated countries, held in Paris on 6 and 7 Dec. 1961, agreed on the general principles for a new agreement of association and on a timetable and work programme for elaborating the agreement.

The salient points of the agreement reached are as follows:

(*a*) The new convention, which apparently is visualized as an outline agreement to be complemented by bilateral or multilateral protocols, will have a duration of five to seven years;

(*b*) It will assure advantages at least equivalent to those guaranteed by the Treaty of Rome and provide for measures to facilitate marketing of tropical products and to improve profits and sales;

(*c*) The associated countries will have the right to levy customs duties to foster economic development and industrialization or for budgetary reasons;

(*d*) The establishment of a development institute, in Europe or in Africa, will be considered;

(*e*) A new development fund will be instituted with means at its disposal at least equivalent to the present fund;

(*f*) Measures will be agreed upon to develop private investment in the associated countries.

(Economic Commission for Africa, *Information Paper on Recent Developments in Western European Economic Groupings*, E/CN.14/139/Add.1, 6 Feb. 1962, pp. 3-4).

[208] See Articles 52-58. Application is to be applied progressively (see Article 8, Implementing Convention).

cerned has special relations (Article 133).[209] Financing of economic and social programmes in the countries and territories is carried out through a Development Fund established under the Implementing Convention. Each member State contributes thereto. The Fund is administered by the Commission.[210]

iii. *The European Atomic Energy Community (Euratom)*[211]

148. *Research and information:* Provision is made for promoting and facilitating nuclear research and supplementing it by a research and instructional programme of the Community itself (Article 4). A Joint Nuclear Research Centre is to be established (Article 8). In the field of information, the Treaty contains provisions by which the benefit of non-exclusive licences of patents, provisionally protected claims, utility models or patent applications may be made available through the Commission, to member States, persons and enterprises (Articles 12-23). Provision is made in certain instances for arbitration.

149. Security measures are also included in respect of information acquired by or communicated to the Community (Articles 24-27), and for damage claims in respect of information wrongly used or communicated. The Commission may conclude certain classes of agreements relating to information or may authorize their conclusion by member States (Article 29).

150. *Health protection:* Basic standards are to be worked out by the Commission and determined by the Council, by qualified majority. Each member State is to enact the necessary provisions to comply therewith (Article 33). Additional precautions must be taken in the case of certain experiments and the Commission's consenting opinion is required in certain cases (Article 34). Recommendations and, in some cases, directives may be issued requiring measures to be adopted to prevent standards from being exceeded.

151. *Investments; joint enterprises:* In order to facilitate the co-ordinated development of investment in the nuclear field, the Commission periodically publishes programmes indicating, *inter alia,* production targets and investments required (Article 40).

152. Undertakings of outstanding importance may be constituted as joint enterprises with a separate juridical personality. A decision of the Council is necessary for the purpose. Participation by a third country, an international organization or a national of a third country requires unanimity in the Council, as does the application of certain advantages to the joint enterprise concerned.[212]

153. *Supplies:* Practices, including pricing policies, designed to ensure a privileged position for certain users of ores, source materials and special fissionable materials are prohibited, and an agency is established having a right of option on all ores, source materials and special fissionable materials and having the exclusive right of concluding contracts relating to supplies of ores and materials originating inside or outside the Community (Article 52). The purpose is generally to ensure supply on a principle of equal access and by a common supply policy. Special fissionable materials are the property of the Community and provision is made for a special account. Rules relating to ownership of materials, objects and assets are determined by the laws of the member States to the extent they are not subject to any property right of the Community (Article 91).

154. The Commission may contribute financially to prospecting activities on the territories of member States. It receives reports from them on development of prospecting and production, reserves and mining investment. If the Council finds on reference from the Commission that prospecting and exploitation measures are in the circumstances of the case inadequate, the member State may be deemed, by qualified majority vote, to have lost for itself and its nationals the right of equal access so long as such state of affairs continues (Article 70). The Commission has certain powers of consent regarding agreements with third States or their nationals or international organizations relating to the delivery of products within the competence of the Agency (Articles 73-76).

155. The Treaty contains measures of safety control regarding the use of materials, including inspection (Article 81).

2. Other arrangements

a. The Latin American Free Trade Area

156. Establishment of a Free Trade Area in Latin America and creation of the Latin American Free Trade Association (LFTA) are provided for under the Treaty of Montevideo, signed on 18 February 1960 by Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay. The Treaty, which becomes effective upon ratification, includes the following provisions:[213]

There is to be a gradual elimination over a period of twelve years of tariffs and restrictions of any kind on trade between the parties. This is to be achieved by means of a common list in which commodities currently traded within the area are to be incorporated in several stages so that, by the end of the period, most of that trade would be free of customs duties and restrictions. Members are also to negotiate, on the basis of most-favoured-nation treatment, the inclusion of items in national lists to which annual tariff reductions are to apply.

The Treaty, to which any other Latin American country may adhere, calls for the expansion and diversification of trade within the area, the promotion of economic complementarity, and the co-ordination of policies of agricultural development. The Association is to provide the machinery to carry out the Treaty, co-ordinate commercial policies, and facilitate the expansion of reciprocal trade and the integration and diversification of the economies of its members.

A protocol to the Treaty provides for informal meetings of central bank representatives to undertake studies on credits and payments that may help to achieve the objectives of the Treaty.

[209] See also Articles 11-15, Implementing Convention (UNTS, *op. cit.*, p. 157).

[210] See Articles 1-5, Implementing Convention.

[211] The treaty provisions referred to in the ensuing paragraphs are contained in UNTS, vol. 298, No. 4301, p. 167.

[212] E.g. application of expropriation procedure, if necessary, to acquire land; exemption from taxation.

[213] As summarized in International Monetary Fund, *Annual Report, 1960,* pp. 138-139. For the text of the Treaty, see *Economic Bulletin for Latin America,* vol. V, No. 1 (March 1960), pp. 7-29. Among studies on the subject prepared by the Economic Commission for Latin America, mention may be made of *The Latin American Common Market* (United Nations publication, Sales No. 59.II.G.4); *Government Policies Affecting Private Foreign Investment in a Latin American Regional Market* (E/CN.12/C.1/12); *The Role of Agricultural Commodities in a Latin American Regional Market* (E/CN.12/499); and *Foreign Private Investment in the Latin American Free-Trade Area* (Sales No. 60.II.G.5). Information from the last-mentioned publication is also included in chapter V of the present study.

b. THE CENTRAL AMERICAN COMMON MARKET

157. In an effort to accelerate plans for a Central American common market, El Salvador, Guatemala and Honduras signed a Treaty of Economic Association on 6 February 1960, which became effective in April of that year upon completion of ratification. Nicaragua and Costa Rica, which, together with the above-named States, had signed the Multilateral Treaty of Free Trade and Central American Economic Integration (June 1958),[214] were invited to join in the new Treaty. An agreement among the five States to speed up the formation of a common market and the economic integration of the area was drafted in April 1960.

The agreement in question, is intended to provide for immediate liberalization of a substantial part of intra-area trade with the aim of establishing, within five years, a common market within which the persons, goods and capital of the participating countries would circulate freely.[215]

c. AGREEMENT ON THE RÉGIME FOR CENTRAL AMERICAN INTEGRATION INDUSTRIES

158. The Agreement[216] provides for the establishment of a Central American Industrial Integration Commission.[217] The Commission shall advise which industries comprise one or more plants which require access to the Central American common market in order to operate under reasonably economic and competitive conditions even at minimum capacity.[218] These are to be regarded by the parties as Central American integration industries. The parties declare their interest in the agreement in the development of such industries, and in the establishment of new or the expansion of existing industries on a reciprocal and equitable basis.[219]

159. The agreement provides for the application to the integration industries of the benefits of free trade and certain other advantages including tariff reductions. The application of the Agreement's régime depends, however, in the case of each of the industries, on the conclusion by the Parties of an additional protocol regarding the site of the plants concerned, their capacity, quality standards, participation of Central American capital, common tariffs and other relevant matters.[220]

3. Other multilateral agreements

a. RESTRICTIONS ON DISPOSITION, PRODUCTION OR STOCKS OF CERTAIN PRODUCTS

160. Examples of such restrictions which affect the free use of land may be found in commodity agreements and in agreements relating to the control of certain products which can be harmful to man, such as narcotics.

161. Restrictions in the commodity field are generally achieved through the acceptance of mutual rights and obligations connected with the supply,[221] production[222] or stocks[223] of the commodity in question.

162. Where a product which may be harmful to man is concerned, restrictions are usually achieved through the acceptance of definite limitations on the production,[224] manufacture,[225] supply[226] and use[227] of the product concerned.

b. WATER AND FISHERY RIGHTS

163. Agreements affecting water rights cover such fields as fisheries, navigation and use of rivers, hydraulic development and water supplies and the like. Such agreements do not deal directly with private rights and interests but are of indirect concern as well as constituting examples of the limitation of State rights by international agreement.

164. The Agreement concerning the Regulation of Plaice and Flounder Fishing in the Baltic Sea[228] and the Agreements regarding the Preservation of Plaice, and Plaice and Dab, in the Skagerak, Kettegat and Sound[229] are examples of agreements regulating certain fisheries. International agreements regulating whaling and fur seals are further examples. Reference has already been made to the Treaty concerning Spitzbergen as an example of free access to waters, fjords and ports, and fishing in territorial waters.

165. The regulation of navigation on the Danube is an example of this particular category of agreement.[230] A Convention on sea and river navigation on

[214] See *Report of the Central American Economic Co-operation Committee*, United Nations publication, Sales No.: 58.II.G.3. The treaty in question had provided for the initial freeing from tariffs and restrictions of a limited list of goods and had envisaged the attainment of a customs union within ten years.

[215] International Monetary Fund, *Annual Report, 1960*, pp. 139 and 140.

[216] See Central American Economic Co-operation Committee, *op. cit.* The Agreement is not yet in force.

[217] *Ibid.*, Article VIII.

[218] *Ibid.*, Article II.

[219] *Ibid.*, Articles I and II.

[220] *Ibid.*, Article III.

[221] E.g., International Wheat Agreement 1959, Articles 4 and 5 (See E/CONF.30/7, 12 Mar. 1959); International Tin Agreement 1954, Article VII (UNTS, vol. 256, p. 50) and see the International Coffee Agreement 1959 which, in common with the Tin and Sugar Agreements, imposes a quota system.

[222] E.g., International Sugar Agreement 1958, Article 10 (See E/CONF.27/5, 29 Oct. 1958).

[223] E.g., Tin Agreement, Article XII, or Sugar Agreement, Article 13.

[224] E.g., Convention on Traffic in Opium and Drugs, 19 Feb. 1925. (See Hudson, *International Legislation*, vol. III, p. 1589).

[225] E.g., Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium, 11 Feb. 1925 (*Ibid.*, p. 1580).

[226] E.g., Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 13 July 1931 (*Ibid.*, vol. V, p. 1048).

[227] E.g., Agreement concerning the Suppression of Opium Smoking, 17 Nov. 1931 (*Ibid.*, p. 1149).

[228] See Hudson, *op. cit.*, vol. V, p. 119.

[229] Hudson, *op. cit.*, vols. VI and VII. See also UNTS, vol. 175, p. 208 for an agreement for a limited region regulating fishing for prawns, lobsters and crabs. The International Convention for the Northwest Atlantic Fisheries (UNTS, vol. 157, p. 157) and the Agreement for the Establishment of a General Fisheries Council for the Mediterranean (UNTS, vol. 126, p. 237) are examples of a different character.

[230] See Convention instituting the definitive status of the Danube, Hudson, *op. cit.*, vol. I, p. 681. See also the Belgrade Convention regarding the navigation régime on the Danube, UNTS, vol. 33, p. 181. See also appropriate provisions in the Peace Treaties recognizing freedom of navigation on the Danube, e.g., Bulgaria (UNTS, vol. 41, Article 34) Hungary (*Ibid.*, Article 38). A similar provision appears in the Austrian State Treaty. For detailed treatment of the agreements affecting the Danube and Rhine rivers, see E/ECE/136, p. 165 *et seq.* and Annex 9.

the Mekong, and access of river navigation to the port of Saigon, is a further example.[231] Reference might also be made to the Statutes on the Régime of Navigable Waterways of International Concern and on the International Régime of Maritime Ports.[232]

166. Examples of agreements on hydraulic development and water supplies are the Geneva Convention on the Development of Hydraulic Power affecting more than one State[233] and the recent arrangement establishing the Committee for the Co-ordination of Investigations of the Lower Mekong Basin.[234]

c. Miscellaneous agreements

167. Other agreements which may be mentioned which involve some restrictions, although indirect, over the use of land include, *inter alia,* those relating to pipelines,[235] control or preservation of animals or plants,[236] and to the rights of other States, their officials and nationals regarding the crossing of frontiers.[237]

[231] Entered into force on 1 Jan. 1955, replacing a previous agreement signed in 1949. (See *Development of Water Resources in the Lower Mekong Basin,* Flood Control Series, No. 12, E/CN.11/457).

[232] Hudson, *op. cit.,* vol. I, p. 645, and vol. II, p. 1163. See also *Preliminary Review of Questions relating to the Development of International River Basins in Latin America* (E/CN.12/511) and *Systems of Administrative Organization for the Integrated Development of River Basins* (E/CN.12/503); the Second Report of the Rapporteur of the Committee on the Uses of the Waters of International Rivers, International Law Association, 1958, (and resolution on the use of such waters) provide examples of views of private organizations.

[233] See Hudson, *op. cit.,* vol. II, p. 1182 and E/ECE/136, pp. 152-165.

[234] In arrangement with ECAFE. The Agreement concerning the Division of Waters of the Pilcomayo River, Hudson, *op. cit.,* vol. VII, p. 631, is another example.

[235] Convention on Construction of Pipelines, Hudson, *op. cit.,* vol. VIII, p. 623, (not yet in force).

[236] E.g., Convention on Nature, Protection and Wild Life Preservation in the Western Hemisphere (UNTS, vol. 161, p. 193), International Plant Protection Convention (UNTS, vol. 150, p. 68), Convention for Preservation of Fauna and Flora in their natural state, Hudson, *op. cit.,* vol. VI, p. 504.

[237] E.g., International Convention to facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail (UNTS, vol. 163, p. 4) and similar Convention regarding Goods carried by Rail (*ibid.,* p. 28).

Chapter III

INTERNATIONAL ADJUDICATION AND STUDIES PREPARED UNDER THE AUSPICES OF INTER-GOVERNMENTAL BODIES RELATING TO RESPONSIBILITY OF STATES IN REGARD TO THE PROPERTY AND CONTRACTS OF ALIENS

1. Reference to due regard to the rights and duties of States under international law was made both in the resolution establishing the Commission and in the discussion of the Commission itself. This chapter, concerned with State responsibility for State action affecting property and contract rights of foreigners, deals in section A with international judicial and arbitral decisions and, in section B, with certain codification efforts and studies undertaken under the auspices of intergovernmental bodies. Although it has not been feasible to limit the scope of this chapter to State action directly concerned with private foreign interests in natural resources, particular emphasis has been placed on those cases and on those aspects of codification which relate to such action. Reference to such special areas as responsibility for public debt has been omitted.

2. In section A, decisions and dicta of international courts, arbitral tribunals and claims commissions are dealt with under three main headings: (1) acquired rights; (2) expropriation; and (3) State contracts. There are two exceptions to the limitation of the coverage to the inter-State adjudicatory character of the decisions dealt with: first, references are made to certain decisions of "quasi-international" arbitral cases to which States and foreign companies were parties, and, secondly, certain national court decisions relating to recent nationalization have been summarized in an appendix to section A.

3. Attention is drawn to the fact that neither State practice nor views of international law authorities or writers have been covered. It is, furthermore, not suggested that the decisions dealt with in section A give a complete indication of the various propositions and views to date accepted by jurists or by State practice or in national courts; these cases are presented for information, without evaluation of their merits or value as precedents.

4. Section B summarizes, in its first two parts, certain points contained in the documents submitted, for the purpose of codification, to the 1930 Conference of the League of Nations, and to the International Law Commission of the United Nations respectively, with particular reference to the international responsibility of States in regard to the property of, and contracts made with, foreign nationals. The third part refers briefly to the most recent report of the Inter-American Juridical Committee concerning the contribution of the American Continent to the principles of international law governing State responsibility. The last two parts deal respectively with the recommendations of the Asian-African Legal Consultative Committee on the right of aliens to property and with a report on nationalization submitted to a conference convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

5. The summary contained in section B is designed to provide information concerning codification efforts.

A. International adjudication

1. Acquired rights

6. Respect for acquired (vested) rights has been referred to in a number of cases and in a variety of contexts as a principle of general international law bearing upon international responsibility for State actions affecting private interests of aliens. The scope of the protection afforded by application of the principle and the correlative limits on States' powers to derogate from "acquired rights" of foreigners within their respective territories are far from being clearly defined in the jurisprudence of the tribunals. The principle of acquired rights has been invoked particularly in connexion with State responsibility for expropriation and breach of contract; cases on these subjects are dealt with in sub-sections 2 and 3 below.

7. This sub-section seeks to indicate (*a*) the context in which the principle has been recognized by various tribunals; (*b*) some of the types of interests which have been deemed "acquired rights"; and (*c*) the law to which tribunals have resorted to determine the existence of these rights.

a. Recognition of the principle of respect for acquired rights

8. *State succession:* Certain decisions of the Permanent Court of International Justice containing expressions of this principle have been concerned with the recognition of rights acquired prior to a change in sovereign.

9. In the *German Settlers* case, involving the non-recognition by Poland of rights of settlers acquired in territory ceded by Germany after the First World War, the Court, after concluding that the rights in question had already been vested at the time of the cession, made the oft-quoted statement that

> "... it suffices for the purposes of the present opinion to say that even those who contest the existence in international law of a general principle of State succession do not go so far as to maintain that private rights including those acquired from the State as the owners of the property are invalid as against a successor in sovereignty."[1]

[1] *Certain questions relating to settlers of German origin in the territory ceded by Germany to Poland* (1923), PCIJ, Series B, No. 6, p. 36.

The Court prefaced this statement by noting that

"The general question whether and under what circumstances a State may modify or cancel private rights by its sovereign legislative power, requires no consideration here."[2]

10. The Permanent Court of International Justice, in another well-known case, involving non-recognition by Poland of *certain German interests in Polish Upper Silesia*, viewed the act complained of together with the applicable treaty provisions as requiring reference to principles of general international law and recognized respect for vested rights of foreigners as one of these principles.

"Further, there can be no doubt that the expropriation allowed under Head III of the [Geneva] Convention is a derogation from the rules generally applied in regard to the treatment of foreigners and the principle of respect for vested rights. As this derogation itself is strictly in the nature of an exception, it is permissible to conclude that no further derogation is allowed. Any measure affecting the property, rights and interests of German subjects covered by Head III of the Convention, which is not justified on special grounds taking precedence over the Convention, and which oversteps the limits set by the generally accepted principles of international law, is therefore incompatible with the régime established under the Convention. The legal designation applied by one or other of the interested Parties to the act in dispute is irrelevant if the measure in fact affects German nationals in a manner contrary to the principles enunciated above.

"It follows from these same principles that the only measures prohibited are those which generally accepted international law does not sanction in respect of foreigners; expropriation for reasons of public utility, judicial liquidation and similar measures are not affected by the Convention."[3]

Later in the same opinion the Court cited the

"principle of respect for vested rights, a principle which, as the Court has already had occasion to observe, forms part of generally accepted international law, which, as regards this point, amongst others, constitutes the basis of the Geneva Convention."[4]

11. The Romano-Hungarian Mixed Arbitral Tribunal similarly considered that the respective rights and obligations of the parties concerning the expropriation of property of the *Hungarian Optants* were, by virtue of the Treaty of Trianon, to be determined according to principles of general international law, and the Tribunal regarded the expropriating measure as constituting "a violation of the general principle of respect for acquired rights".[5]

12. A recent arbitral award in the *Lighthouses* case refers to

"les principes généraux du droit international public commun, prescrivant le respect des droits patrimoniaux acquis en cas de changements territoriaux."[6]

13. *Contexts other than State succession:* An international arbitration tribunal concerned with the requisition of alien property in the *Goldenberg* case began its discussion of the question whether the facts, including those relating to compensation, amounted to an act contrary to international law with the following statement:

"The respect of private property and of the acquired rights of aliens undoubtedly forms part of the general principles accepted by the law of nations."[7]

14. An arbitral tribunal decision in a recent case between the *Arabian American Oil Company (Aramco)*, a private foreign company, and the Government of *Saudi Arabia* involving State action allegedly inconsistent with the rights of the company under an oil concession agreement placed emphasis on the principle of respect for acquired rights as "one of the fundamental principles both of Public International Law and of the municipal law of most civilized States".[8]

b. Subjects of acquired rights

15. *Interests deemed not to constitute acquired rights:* The type of interest which is protected by the international law principle on acquired rights was considered in the Permanent Court of International Justice decision adverse to the claim of a British national, one *Oscar Chinn*, whose business was effectively destroyed by a Belgian Congo law reducing transport rates charged by a governmentally controlled and subsidized company in competition with Chinn. On the question of whether any acquired right had been affected, the Court stated:

"It remains to consider the last alternative plea of the Government of the United Kingdom to the effect that the measure of June 20th, 1931, by depriving indirectly Mr. Chinn of any prospect of carrying on his business profitably, constituted a breach of the general principles of international law, and in particular of respect for vested rights.

"The Court, though not failing to recognize the change that had come over Mr. Chinn's financial position, a change which is said to have led him to wind up his transport and shipbuilding businesses, is unable to see in his original position—which was characterized by the possession of customers and the possibility of making a profit—anything in the nature of a genuine vested right."[9]

16. On the ground that no right either "vested" or "private" was involved, the Upper Silesian Tribunal, in the *Jablonsky* case, denied a claim brought under Article 4 of the German-Polish [Geneva] Convention[10]

[2] *Ibid.*
[3] PCIJ, Series A, No. 7, p. 22.
[4] *Ibid.*, p. 42.
[5] *Emeric Kulin père* c. *Etat roumain* (1927), Recueil TAM, vol. VII, p. 147.
[6] *Affaire des Phares, France/Greece* (1956), p. 122.
[7] *Affaire Goldenberg, Germany/Romania,* UNRIAA, vol. II, p. 909.
[8] Award in the *Arbitration between Saudi Arabia and the Arabian American Oil Company (Aramco)*, p. 101.
[9] PCIJ (1934) Series A/B, No. 63, pp. 87-88.
[10] Article 4 reads, in part, as follows:
Section 1
"1. Without prejudice to the provisions of Article 256 of the Treaty of Versailles, Germany and Poland will recognise and respect the rights of every kind, and in particular concessions and privileges acquired before the transfer of sovereignty by private individuals, companies or bodies corporate, in their respective parts of the plebiscite area, in conformity with the laws relating to the said rights and with the following provisions.
"....
Section 2
"The recognition and respect of vested rights involves in particular the observance of the following principles:
"1. Measures taken otherwise than through general legislation are inadmissible if they are not applicable to the nationals of the State which takes them.

and founded on the German official boycott of Jews which had caused the loss of the plaintiff's business as a notary and the supression of his right to practice which he had exercised prior to the transfer of sovereignty.

"The Arbitral Tribunal had repeatedly recognised the established business as the object of a subjective right protected by Article 4 of the Geneva Convention in so far as it had proposed compromised solutions in a series of claims concerning undertakings affected by the Polish monopoly laws. Yet, as a rule, the freedom to use one's working capacity and to exercise a profitable activity which rests on the general principle of industrial liberty does not constitute a subjective vested right. For such a right to exist there must be some title of acquisition and the recognition by the law of some concrete power. That is the case with the established business because there that power is embodied in a definite undertaking which is recognised and protected as the material foundation of a relationship analogous to property. The established business *(eingerichteter und ausgeübter Gewerbebetrieb)* thus bears the same characteristics as the rights of exploitation emanating from concessions which are also embodied in an undertaking, a plant or a definite object. ...

"As to the notary's practice, it further constituted a public function which could not fall within the notion of a subjective private right."[11]

17. *Intangible rights:* In the case concerning *Forests in Central Rhodopia* (Greece/Bulgaria), cutting rights, acquired from private owners of lands which were declared—after a change in sovereignty—to be public forests were deemed by the Arbitral Tribunal to be within treaty protection of "acquired" and "private" rights. It was not necessary that the rights be real, nor was it—under the circumstances—necessary to establish that the rights would, under the original law, have been valid against succeeding owners of the land.

"In the present case, it is a question of the interpretation of Article 181 of the Treaty of Neuilly[12] and of Article 10 of the Treaty of Constantinople.[13] The first of these two articles speaks of 'private rights', and the second of 'acquired rights'. Article 11 of the Treaty of Constantinople[14] enunciates, moreover, a special rule concerning 'property rights in land'. It seems necessary, because of the context, to interpret the first two expressions as not limited to real rights ...

"... It is also possible that, according to Turkish law, rights of cutting were so precarious that a regular cession of the realty to a new owner would have resulted in the impossibility of asserting the cutting right against the latter by transforming it into a right to indemnity against the grantor. This point was not entirely clarified during the hearings. But, in the present case, the Bulgarian Minister of Agriculture prohibited all further cutting with full knowledge of the claims of the contending parties, giving as the sole reason the fact that the forests were State property according to the Bulgarian Forest Law of 1904. The Bulgarian Government therefore took a step directly aimed at the rights of cutting as well, and based on the unjustifiable ground that the concession of that kind of rights was not allowable because the forests were the property of the State. Under these circumstances, it can hardly be doubted that the attitude of the Bulgarian Government concerning the cutting right was incompatible with the respect for 'acquired rights' imposed upon Bulgaria by Article 10 of the Treaty of Constantinople."[15]

18. Contract rights have been considered proper subjects for the application of the principle of protection for acquired rights. (See *Norwegian Shipowners Claims,* paragraph 52 below.)

19. *Rights acquired by contract with Governments:* Contractual rights to receive payments from Governments have, in several cases, been dealt with as acquired

"2. The right to appeal to the courts, administrative tribunals, or to the competent authorities may not be withdrawn by legislative amendments.

"3. If concessions or privileges authorising or concerning installations, enterprises, establishments or undertakings situated or to be situated in the plebiscite territory, or relating to an object situated within that territory (local concessions or privileges), or if subjective rights not arising out of a concession, such as claims, for which even one of the places of performance mentioned in paragraph 269 of the German Civil Code lies in the plebiscite territory, are suppressed or curtailed by the application of general statutes or by other provisions, the State which applies such statutes or adopts such provisions shall be bound to give full compensation. The foregoing does not apply to temporary restrictions which, according to the law in force must be tolerated by all holders of rights.

"Local concessions or privileges include in particular: concessions authorising or concerning installations, enterprises, establishments or undertakings, exclusive licenses to exercise a profession *(ausschliessliche Gewerbeberechtigungen)*, or industrial privileges attaching to real property *(Realgewerbeberechtigungen)*, concessions for normal or narrow gauge railways, concessions for the utilization of waterways, concessions and privileges relative to the keeping of pharmacies, the rights resulting from the concession of the right of expropriation or from the ownership of mines, including district concessions *(Distriktsverleihungen)*, lastly the rights resulting from application for mining concessions *(Mutungen)* as well as mining privileges *(Bergbauprivilegien)*.

"4. The official certificate of a doctor, dentist or veterinary surgeon, and the authorization to exercise the profession of midwife, as well as that of land or mine surveyor or of farrier, shall be assimilated to local concessions and privileges provided that the professions in question shall have been exercised in the plebiscite area at least since January 1, 1922, and up to the date of the transfer of sovereignty."

[English text from: Kaeckenbeeck, *The International Experiment in Upper Silesia,* pp. 576-578.]

[11] *Jablonsky* v. *German Reich,* (1936), *Annual Digest and Reports of Public International Law Cases, Years 1935-1937,* Case No. 42, p. 140.

[12] The article reads as follows:

"Transfers of territory made in execution of the present treaty shall not prejudice the private rights referred to in the Treaties of Constantinople, 1913, of Athens, 1913, and of Stamboul, 1914.

"All transfers of territory made by or to Bulgaria in execution of the present treaty shall, equally and on the same conditions, ensure respect for these private rights.

"In case of disagreement as to the application of this Article, the difference shall be submitted to an arbitrator appointed by the Council of the League of Nations."

[13] The article reads as follows:

"Rights acquired previous to the annexation of the territories, as well as judicial documents and official titles emanating from the competent Ottoman authorities, shall be respected and held inviolable until there is legal proof to the contrary."

[14] The article reads as follows:

"The right of holding landed property in the ceded territories by virtue of the Ottoman law on urban and rural properties shall be recognized without any restriction.

"The proprietors of real or personal property in the said territories shall continue to enjoy their property rights, even if they fix their personal residence temporarily or permanently outside of Bulgaria. They shall be able to lease their property or administer it through third parties."

[15] *Arbitration concerning some Forests in Central Rhodopia, Greece/Bulgaria,* UNRIAA, vol. III, p. 1405; English translation, AJIL, vol. 28, pp. 795-796.

rights subject to the same protection as other property interests.[16]

20. The fact that a right derives originally from a contract or concession with a State has not been sufficient in itself to remove it from the protection otherwise accorded to "private rights".[17] In the *German Settlers* case, the Permanent Court of International Justice, having concluded that the Treaty of Peace clearly recognized the principle that private rights are to be respected in case of a change in sovereignty, briefly considered the point raised by Poland on the "mixed public and private character" of the contracts under which the rights of the settlers were asserted.

> "But the political motive [on Germany's part in settling Germans in the area] originally connected with the *Rentengutsverträge* does not in any way deprive them of their character as contracts under civil law..."

The Court noted that the Annex to the Peace Treaty specified the maintenance of, *inter alia,*

> "Contracts between individuals or companies and States, provinces, municipalities or other similar juridical persons charged with administrative functions, and concessions granted by States, provinces, municipalities, or other similar juridical persons charged with administrative functions."[18]

Such contract rights having been maintained by the Treaty as between enemies, the Court was of the opinion that it was impossible to interpret Poland's rights as extending to the annulment of the contracts in issue in the case.

21. A concession granted by the City of Warsaw to a French company, the *Compagnie d'Electricité de Varsovie,* was deemed a contract vesting "private rights" in the company and to be within the protection of Article 11 of the Convention between France and Poland Concerning Private Property Rights and Interests.[19] In so deciding the Tribunal rejected the contention that the concession in question, as a public service concession, could not be assimilated to contracts of private law.

> *"...la concession accordée par la Ville à la Compagnie a, comme généralement toutes les concessions, un caractère double; elle relève tant du droit public que du droit privé.*
>
> *"Partout où la Ville a octroyé au concessionnaire des droits qu'elle ne peut lui accorder qu'en vertu de son autorité de municipalité, l'acte de concession est un acte de droit public; telle l'autorisation de poser des conduites électriques dans les rues et sur les places de la Ville, étant d'usage public; tel le droit exclusif de distribuer l'énergie électrique, le contrôle, exercé par la Ville sur l'exploitation par le concessionnaire, etc.*
>
> *"D'autre part, la concession contient nombre de dispositions qui rentrent dans le domaine du droit privé, comme celles concernant le paiement de l'éclairage de la Ville, le tarif pour la consommation privée, la redevance à la Ville, etc.*
>
> *"Il en suit que le caractère juridique de la concession ne s'oppose pas à y appliquer les dispositions de la Convention de 1922, qui traitent des contrats de droit privé notamment l'article 11 de cette Convention."*[20]

22. In the arbitration to which the Arabian American Oil Company and the Government of Saudi Arabia were parties, it was held that the oil concession in question was a concession for development of natural wealth of a contractual character under which the concessionaire had rights "in the nature of acquired rights".[21]

c. Law applicable to acquisition of rights

23. Whether or not an interest or right has been acquired has been considered—absent a treaty or other instrument to the contrary—a question to be determined by reference to municipal law in force at the time of the purported acquisition, whether it be the law of the same or of a different sovereign party to the case.

24. In the *Rio Grande Irrigation and Land Company* case, involving a decree of forfeiture, the Arbitral Tribunal considered that a United States Statute which made acquisition of real property by aliens unlawful, prevented an English company from having acquired from a United States company a valid right to a lease of concession and other privileges for the construction of a dam; in consequence a decree of forfeiture without compensation could not give rise to an international claim.[22]

25. In the *Canevaro* case, a Peruvian decree providing for payment of one per cent bonds in lieu of coin —which was already in force when the Italian claimants acquired cheques payable by Peru—was considered by the Arbitral Tribunal to be determinative of the Peruvian Government's obligation to the claimants.[23]

26. In the *George Hopkins* claim, money orders payable by the Mexican Government were declared to have been validly acquired, notwithstanding the undisputed illegality of the governmental régime in power at the time of the acquisition. The United States-Mexican General Claims Commission, drawing a distinction between transactions and relations with and by the Government itself and those with and by a particular régime, placed the money order purchase "within the category of purely government routine" and concluded that a subsequent decree by the legitimate Government—even though equally applicable to claims by Mexican citizens—"could not possibly operate unilaterally to destroy an existing right vested in a foreign citizen...".[24]

27. In considering the right of ownership to the *Chorzów Factory* in Upper Silesia, the Permanent Court of International Justice held that the German claimant's right was to be regarded as established by the fact of its name having been duly entered as owner in the land register prior to the cession. The Court stated:

> "If Poland wishes to dispute the validity of this entry, it can, in any case, only be annulled in pursuance of a decision given by the competent tribunal;

[16] See cases cited in paras. 97-107 below.
[17] See sub-section 3 below.
[18] PCIJ, series B, No. 6, pp. 38-39.
[19] LNTS, vol. 43, No. 1073.
[20] *Affaire de la Compagnie d'Electricité de Varsovie* (*France/Poland*) (1932), UNRIAA, vol. III, p. 1687.
[21] *Award*, p. 125. See also paras. 131 and 132 below.
[22] *Rio Grande Irrigation and Land Co. Ltd.* (*Great Britain* v. *USA*) (1923), UNRIAA, vol. VI, p. 131.
[23] *Canevaro Case* (*Italy and Peru*) (1912), J. B. Scott, *The Hague Court Reports,* 1st series, p. 285; see quotation from same case in para. 90 below.
[24] *USA on behalf of George Hopkins, Claimant,* v. *the United Mexican States* (1926), UNRIAA vol. IV, pp. 44 and 46.

this follows from the principle of respect for vested rights, a principle which, as the Court has already occasion to observe, forms part of generally accepted international law".[25]

In subsequently interpreting this language, the Court explained that the reference to annulment by a competent tribunal did not mean that a subsequent decision of such municipal court would affect the decision already taken by the Permanent Court which was based, *inter alia*, "on the finding that from the standpoint of municipal law, the Oberschlesische [the German claimant company] had validly acquired the right of ownership to the factory".[26]

28. In *Kemeny* c. *Etat serbe-croate-slovène*, a claim based on the failure of a new sovereign to recognize previously acquired rights, the Tribunal deemed the mineral "search and digging" rights as having been acquired inasmuch as they had been granted by the competent authority; the rights had been registered and, in accordance with the then applicable law, such registration constituted valid title.[27]

29. In *Burt (USA)* v. *Great Britain*, the recognized *bona fides* and regularity of British proceedings which resulted in the denial of the claimant's right to a tract of land in Fiji, subsequent to its cession to Great Britain, were not considered relevant by the Arbitral Tribunal which itself gave consideration to the applicable native law at the time of the claimant's acquisition and concluded that the Chiefs who had purported to grant the land were, under the customary law then recognized, acting within their power.[28]

30. In some arbitrations involving concession agreements between a State and an alien company, tribunals have had resort to general principles of law where domestic law on the subject was lacking in order to determine whether particular rights claimed could be deemed to be "acquired rights" (See paragraph 131 below).

2. Expropriation

31. This sub-section deals with pronouncements of international tribunals indicative of their views on the expropriation power and its limits deriving from (*a*) treaty obligations; (*b*) responsibility in connexion with purpose, application and procedures involved in the taking; and (*c*) obligations with respect to compensation; a fourth sub-section, (*d*), deals with specific references to the question whether or not a non-discriminatory measure affecting property of foreigners can give rise to international responsibility.

a. International responsibility arising from expropriation violating treaty obligations

32. Expropriation contrary to treaty obligations has given rise to international responsibility in itself and without regard to other circumstances.

33. The Permanent Court of International Justice characterized the taking in the *Chorzów Factory* case as violating the Geneva Convention; the award was therefore to be governed by "principles which should serve to determine the amount of compensation due for an act contrary to international law".[29]

b. International responsibility in connexion with purpose, application and procedure of taking

i. *Question of relevance of purpose to international responsibility*

34. The discussion by international tribunals of the public purpose of expropriation has been, for the most part, in the context of recognizing that expropriation for reasons of public utility is an unquestionably legitimate exercise of State power. Thus, for example, the Permanent Court of International Justice, in the *German Settlers* case, mentioned "expropriation for reasons of public utility" as among measures unaffected by the Geneva Convention, which prohibited measures which generally accepted international law did not sanction in respect of foreigners.[30]

35. The *Walter Smith* claim case is one of the comparatively few instances of a decision in which the absence of a public purpose for the expropriation was explicitly cited as at least one of the reasons for its illegality; the Arbitral Tribunal emphasized that the State's Constitution and legislation themselves protected against expropriation except on proof of public utility and previous indemnification.

> "From a careful examination of the testimony and of the records, the Arbitrator is impressed that the attempted expropriation of the claimant's property was not in compliance with the constitution, nor with the laws of the Republic; that the expropriation proceedings were not, in good faith, for the purpose of public utility. They do not present the features of an orderly attempt by officers of the law to carry out a formal order of condemnation. The destruction of the claimant's property was wanton, riotous, oppressive. It was effected by about one hundred and fifty men whose action appears to have been of a most violent character. There is some evidence tending to show that, before the expropriation proceedings, certain persons, being unable to purchase the property from the claimant, threatened to destroy it.
>
> "While the proceedings were municipal in form, the properties seized were turned over immediately to the defendant company, ostensibly for public purposes, but, in fact, to be used by the defendant for purposes of amusement and private profit, without any reference to public utility."[31]

36. In another case, *Goldenberg*, where public purpose was mentioned as a necessary element of legal expropriation, it was the absence of compensation which was the pivotal issue.

> *"Toutefois, si le droit des gens autorise un Etat, pour des motifs d'utilité publique, à déroger au principe du respect de la propriété privée des étrangers, c'est à la condition* sine qua non *que les biens expropriés ou réquisitionnés seront équitablement payés le plus rapidement possible."*[32]

[25] *Certain German Interests in Polish Upper Silesia*, PCIJ, Series A, No. 7, p. 42.

[26] Interpretation of Judgements Nos. 7 and 8 (The Factory at Chorzów), PCIJ, Series A, No. 13, p. 20.

[27] *Kemeny* c. *Etat serbe-croate-slovène* (1928), Recueil TAM, vol. VIII, pp. 593-594.

[28] *Burt (USA)* v. *Great Britain* (1923) UNRIAA, vol. VI, pp. 93 and 98.

[29] PCIJ, Series A, No. 17, p. 47; see also *German Interests in Polish Upper Silesia*, PCIJ, Series A, No. 7, p. 33, and *Peter Pazmany University* v. *the State of Czechoslovakia*, Series A/B, No. 61, p. 243, referred to below in para. 92.

[30] PCIJ, Series A, No. 7, p. 22.

[31] *Walter Fletcher Smith Claim (Cuba/USA)* (1929), UNRIAA, vol. II, pp. 917-918.

[32] *Affaire Goldenberg, Germany/Romania* (1928), UNRIAA, vol. II, p. 909.

37. In the *Norwegian Shipowners* arbitration, which was primarily concerned with the amount of compensation for the war-time taking by the United States of shipbuilding contracts, the Tribunal noted that the laws of both parties dealing with expropriation were in accord with the international public law of all civilized countries; in cases of takings, the Tribunal stated, Courts have to decide, *inter alia,* "whether the 'taking' is justified by public needs". The Tribunal considered relevant the question "Whether the taking for title and the keeping of the title without a sufficient emergency or after the emergency had passed, was necessary". Prefaced by a reference to the "liberal spirit of the municipal law of the United States" relied on in the arbitration, one of the Tribunal's conclusions was that the United States had failed to sustain its burden of proving "That the keeping for title to the claimant's property was needed for public use after 1st July, 1919".[33]

ii. *Discriminatory expropriation measures*

38. That discriminatory expropriation measures may engage the international responsibility of a State is implied in the *Norwegian Shipowners* case, in which the Tribunal stated:

> "making due allowance for the circumstances, and especially for war conditions, it may be said that discrimination against the claimants has not been sufficiently arbitrary to justify any special claim for damages by the King of Norway."

In fixing compensation due to the claimant, the Tribunal, referring again to discrimination, stated that:

> "In the present instance the liability of the Emergency Fleet Corporation [U.S.] is due to its disregard, not only of the public law, but also of the municipal private law, as it should have settled accounts and delivered the ships to their original owners at least after the end of June 1919.
>
> "The United States are responsible for having thus made a discriminatory use of the power of eminent domain toward citizens of a friendly nation, and they are liable for the damaging action of their officials and agents towards these citizens of the Kingdom of Norway."[34]

39. The fact situation in the *Oscar Chinn* case did not, in the opinion of the Permanent Court of International Justice, amount to discrimination, although Mr. Chinn's was the only enterprise destroyed by the measure complained of. The treaty obligation involved guaranteed complete commercial equality between the nationals of the United Kingdom and Belgium.

> "The form of discrimination which is forbidden is therefore discrimination based upon nationality and involving differential treatment by reason of their nationality as between persons belonging to different national groups.
>
> "It should be recalled in this connection that the treatment accorded to Unatra was based on the special position of that Company, as a Company under the supervision of the Belgian Government. The special advantages and conditions resulting from the measures of June 20th, 1931 were bound up with the position of Unatra as a Company under State supervision and not with its character as a Belgian Company. These measures, as decreed, would have been inapplicable to concerns not under government supervision, whether of Belgian or foreign nationality. The inequality of treatment could only have amounted to a discrimination forbidden by the Convention if it had applied to concerns in the same position as Unatra, and this was not the case.
>
> "In these circumstances, the Court is unable to attach any legal importance to the argument based by the Government of the United Kingdom on the fact—which is not disputed by the Belgian Government—that Mr. Chinn was the only private transporter who, like Unatra, confined his business to the transport of goods belonging to others."[35]

40. In the previous case of the *German Settlers,* the Court had expressed the view that taking of property under a law or decree which does not in terms discriminate does not preclude its violating a treaty obligation for equal treatment "in law and in fact".

> "The facts that no racial discrimination appears in the text of the law of July 14, 1920, and that in a few instances the law applies to non-German Polish nationals who took as purchasers from original holders of German race, makes no substantial difference ... There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law."[36]

41. That the measures discriminating in favour of nationals were, by municipal law, "gratuitous" did not —in one of the *Spanish Zone of Morocco* cases—preclude an international claim based on arbitrary and discriminatory State action.

> *"... Si un gouvernement, en vertu d'une loi ou d'un décret général, accorde, à titre gracieux, mais en utilisant les fonds publics, des indemnités ou autres faveurs, une discrimination manifestement arbitraire contre les étrangers pourrait éventuellement justifier une intervention de droit international.*
>
> *"Mais il est clair que, puisque même les juridictions nationales de droit public ne sont que très exceptionnellement disposées à qualifier d'arbitraires des mesures administratives ou législatives prises par les autorités dans l'exercice de leurs pouvoirs discrétionnaires, pareille réserve s'impose à plus forte raison à une juridiction internationale."*[37]

iii. *Manner and procedure: arbitrary action, denial of justice, bad faith*

42. Tribunals have contrasted expropriation in accordance with regular expropriation procedures legally in force in the country concerned with arbitrary takings in bad faith or without adequate procedure. When in the *German interests* case, the Permanent Court of International Justice considered the measures taken by Poland nullifying private rights in the Chorzów Factory, it noted that the Polish law was "applied automatically, without any investigation as to title of ownership ... No redress by legal action is open to interested Parties and no indemnification is provided for by law".[38]

43. The Arbitral Tribunal concerned with the taking of certain *Standard Oil Company Tankers* by Germany

[33] *Norwegian Shipowners Claims, USA/Norway* (1921), UNRIAA, vol. I, pp. 332, 335 and 336.
[34] *Ibid.*, pp. 336, 339.
[35] PCIJ, Series A/B, No. 63, p. 87.
[36] *Certain questions relating to settlers of German origin in the territory ceded by Germany to Poland,* PCIJ, Series B, No. 6, p. 24.
[37] *Great Britain/Spain (Spanish Zone of Morocco),* (1924), UNRIAA, vol. II, p. 652.
[38] PCIJ, *Certain German Interests in Polish Upper Silesia,* Series A, No. 7, p. 24.

in connexion with reparation obligations, contrasted the regularity of the proceedings and their legal basis with cases in which Governments "in appropriating without compensation the property of companies by arbitrary measures which affected them alone, had committed acts that might be ranked as overstepping of authority or abuse of law".[39] The Tribunal cited as examples of such measures, those taken by the Governments of Panama and Portugal with which the El Triunfo and Delagoa Bay Railway cases had been concerned. Both these cases had concerned, *inter alia*, deprivation of concession rights and property.

44. In the *Delagoa Bay Railway* case, the Tribunal considered the State action unreasonable by virtue of the manner of declaring forfeiture for failure to conform to obligations not contained in the original concession; the Tribunal said that the wrong was one of procedure rather than one of substance.[40]

45. In the *El Triunfo* case, in which the claimants had been deprived of property rights and interests by measures which included (1) bankruptcy proceedings which the Arbitral Tribunal deemed fraudulent; (2) a Presidential edict which practically destroyed the concession which was the subject of the bankruptcy proceedings; and (3) the subsequent granting of the same rights to others, the Tribunal characterized the circumstances as amounting to a denial of justice.[41]

46. In the *Walter Smith* case, although expropriation proceedings were formally carried through, the Arbitral Tribunal characterized them as not being in good faith and stated that "they do not present the features of an orderly attempt by officers of the law to carry out a formal order of condemnation". So far as the action in the Cuban tribunals was concerned, the Tribunal concluded that "Under all the circumstances of the case, it seems clear that the action of those tribunals should not be held to render valid the proceedings of attempted expropriation".[42]

47. In the *De Sabla* case, the United States-Panamanian General Claims Commission imputed neither bad faith nor discrimination, but it found denial of justice in the procedure by which the claimant's land had been granted to third persons as though it had been in the public domain. The purpose of the legislation involved had been the orderly administration of public lands and a procedure had been prescribed for opposition by private owners to adjudication on their lands. The Tribunal, rejecting the contention that the claimant had failed to take advantage of the procedures available prior to the adjudications, deemed these procedures—as actually applied—insufficient, *inter alia*, in providing inadequate notice and involving hardship in requiring opposition to each proposed adjudication on the claimant's extensive tract. The Tribunal found that "the adjudications and licenses granted by the authorities on Bernardino [the de Sabla property] constituted wrongful acts for which the Government of Panama is responsible internationally".[43]

[39] *Claim of Standard Oil Co. to Certain Tankers (Reparation Commission/USA)* (1926), UNRIAA, vol. II, p. 794.

[40] United States, Great Britain, Portugal (*Delagoa Bay Railway*, 1901), La Fontaine, *Pasicrisie Internationale*, p. 397. See same case, paras. 83 and 109 below.

[41] *El Triunfo Company, USA/Salvador* (1902), *US Foreign Relations*, p. 862. See also same case below in para. 101.

[42] UNRIAA, vol. II, pp. 913, 917 and 918.

[43] *Marguerite De Joly De Sabla (USA)* v. *Panama*, General Claims Commission, United States and Panama, 1933, UNRIAA, vol. VI, p. 366.

c. INTERNATIONAL RESPONSIBILITY FOR COMPENSATION

48. The question of compensation for takings as dealt with in international tribunal cases is concerned with the existence of an obligation to compensate and with the appropriate standards to be applied in ascertaining the amount which should be paid.

i. *Existence of obligation to compensate*

49. The existence of an international obligation to compensate for an otherwise lawful taking of an alien's property finds support in various opinions of international tribunals which often link the requirement for compensation to the principle of respect for acquired rights; occasionally, the doctrine of unjust enrichment has been utilized as the rationale. For the most part, the question whether compensation is itself an element of the lawfulness of the taking as distinguished from an obligation of the expropriating State consequential on a lawful act is not clearly dealt with in international tribunal cases.

50. The taking of property without compensation in the *Chorzów Factory* case was, in the first place, adjudged unlawful as violating a treaty obligation, but dicta in the Permanent Court of International Justice decision relates to the general question of the relationship of compensation to State responsibility for expropriation for public purpose.

> "The action of Poland which the Court has judged to be contrary to the Geneva Convention is not an expropriation—to render which lawful only the payment of fair compensation would have been wanting."[44]

The Court had already, in an earlier decision, considered the taking as going beyond and therefore violating permissible action under Head III of the Geneva Convention, which provision itself constituted an exception to the general principle of respect for vested rights.[45]

51. The relationship of compensation to the legality of an act was considered in the *Goldenberg* case concerning a war-time requisition for which the claimant had received compensation amounting to approximately one sixth of the value of the requisitioned merchandise. A basic issue was whether the claim was arbitrable as a claim "growing out of an act committed by the German Government" within the meaning of Section 4 of the Annex to Articles 297 and 298 of the Treaty of Versailles. The respondent State argued that the Treaty reference to "act committed" applied solely to acts contrary to international law and that the issue of whether full payment had been made for such an unquestionably legal act as requisition was not arbitrable. The Tribunal deemed it necessary to consider what was meant by "act contrary to international law" and whether the circumstances of the requisitioning in question was such an act. Deciding in favour of the claim, the Tribunal said:

> *"Toutefois, si le droit des gens autorise un Etat, pour des motifs d'utilité publique, à déroger au principe du respect de la propriété privée des étrangers, c'est à la condition* sine qua non *que les biens expropriés ou réquisitionnés seront équitablement payés le plus rapidement possible.*

[44] PCIJ, Series A, No. 17, p. 46.

[45] PCIJ, *Certain German Interests in Polish Upper Silesia*, Series A, No. 7, p. 22.

"L'application de ces règles aboutit au résultat suivant: la réquisition opérée par l'autorité militaire allemande ne constituait pas initialement *un "acte contraire au droit des gens". Pour qu'il continuât à en être ainsi, il fallait, cependant, que dans un délai raisonnable, les demandeurs obtinssent une indemnité équitable. Or tel n'a pas été le cas, l'indemnité, allouée plusieurs années après la réquisition, atteignant à peine le sixième de la valeur des biens expropriés.*

"... Il y a là un "acte contraire au droit des gens", que l'on applique le principe général qui s'oppose à l'expropriation de la propriété privée des étrangers sans juste indemnité ou la règle spéciale écrite concernant la réquisition pour besoins militaires."[46]

(1) *Acquired rights rationale*

52. International responsibility of a State to compensate for takings of the property of aliens has been considered a corollary of the principle of respect for acquired rights. The Tribunal in the *Norwegian Shipowners* case said:

"Whether the action of the United States was lawful or not, just compensation is due to the claimants under the municipal law of the United States as well as under international law, based upon the respect for private property.

"...

"No State can exercise toward the citizens of another civilised State the 'power of eminent domain' without respecting the property of such foreign citizens or without paying just compensation as determined by an impartial tribunal, if necessary."[47]

53. The principle of respect for acquired rights was referred to in connexion with compensation for various deprivations suffered by claimants in the *Spanish Zone of Morocco* arbitration. In an introductory section dealing generally with a group of claims, the Arbitrator stated:

"... En ce qui concerne la presque totalité de ces Réclamations, la question de la responsabilité n'a pas besoin d'être posée, parce qu'il peut être considéré comme acquis qu'en droit international un étranger ne peut être privé de sa propriété sans juste indemnité, sous réserve naturellement, du droit conventionnel en vigueur; cela est vrai surtout lorsque la restriction apportée au libre exercice du droit de propriété est la conséquence d'une mesure ne visant que des personnes déterminées, et non pas l'ensemble des propriétaires se trouvant dans des conditions semblables."[48]

54. Similarly, in the *De Sabla* case, the United States-Panamanian General Claims Commission said "it is axiomatic that acts of a government in depriving an alien of his property without compensation impose international responsibility".

"... It is no extreme measure to hold, as this Commission does, that if the process of working out the system [of public land administration] results in the loss of private property of aliens, such loss should be compensated."[49]

55. The Arbitral Tribunal in the *Delagoa Bay Railway* case declared obiter dicta that, even were it to consider the Government's action as a case of legal expropriation, the obligation to compensate would exist.

"... toujours est-il que cet acte a eu pour effet de déposséder des particuliers de leurs droits et privilèges d'ordre privé à eux conférés par la concession et que, à défaut de dispositions légales contraires — dont l'existence n'a pas été alléguée dans l'espèce — l'Etat, auteur d'une telle dépossession, est tenu à la réparation intégrale du préjudice par lui causé."[50]

(2) *Unjust enrichment*

56. The principle of unjust enrichment as a basis for establishing a State's obligation to compensate for an alien's loss of property has been mentioned in some cases although not applied as a principle of international law.

57. The United States-Mexico Special Claims Commission explicitly denied the acceptance of the principle in international law. It held, in the *Dickson Car and Wheel Company* case, that no international responsibility had arisen from the claimant's failure to receive payment for goods delivered to the then privately-owned National Railways Company, which failure was due to the company's having been taken over by the Government of Mexico and consequently being unable to meet its commitments. The fact that the Government had, during its possession of the railway, made use of the material delivered by the claimant did not entail the duty to compensate.

"It is obvious that the theory of unjust enrichment as such has not yet been transplanted to the field of International Law as this is of a juridical order distinct from local or private law... It is necessary to establish the international illegality of the causative act, and that the injury suffered by the national of the claimant country be the result of that act."[51]

58. The doctrine of unjust enrichment was the ground for awarding compensation where, in the *Chemins de Fer du Nord* case, the claimant railway in Belgium had been taken over and exploited commercially by the German Government. The Tribunal, referring to the Belgian Civil Code as applicable in the circumstance, concluded that the elements of *negotiorum gestio* were present and accordingly held the German Government liable for the proceeds received by virtue of the commercial exploitation.[52]

59. Dicta in one of the *Spanish Zone of Morocco* arbitral awards, concerning the occupation of the claimant's property by government authorities is in support of the application of the principle of unjust enrichment as a generally recognized juridical principle in order to establish the State's duty to pay indemnity to the owner, absent expropriation proceedings or military necessity.[53]

60. In the *Delagoa Bay Railway* case, dicta contained in a preliminary discussion of the juridical nature

[46] *Affaire Goldenberg (Germany/Romania)* (1928), UNRIAA, vol. II, p. 909.

[47] *Norwegian Shipowners Claim,* UNRIAA, vol. I, pp. 334 and 338.

[48] *Great Britain/Spain (Spanish Zone of Morocco),* (1924), UNRIAA, vol. II, p. 647.

[49] UNRIAA, vol. VI, pp. 358 and 366.

[50] La Fontaine, *Pasicrisie Internationale,* p. 402; see same case, para. 44 above.

[51] *Dickson Car and Wheel Company (USA)* v. *Mexico,* (1931), Lauterpacht, *Annual Digest 1931-1932,* p. 229.

[52] *Chemins de Fer du Nord* v. *German State* (1929) *Franco-German Mixed Arbitral Tribunal,* Lauterpacht, *Annual Digest 1929-30,* p. 498.

[53] Berka D'Ben-Karrish-Rzini *(Great Britain/Spain, Spanish Zone of Morocco,* No. 16), (1924), UNRIAA, vol. II, p. 682.

of compensation within the Tribunal's jurisdiction to award mentions *"remboursement d'une valeur dont le Portugal, s'il ne la restituait pas, se trouverait illégitimement enrichi"* as one of the possible alternative bases for an award of just compensation.[54]

61. In the *Landreau* claim involving repudiation of a concession-contract for working guano deposits, the Arbitral Tribunal based an award on the State's obligation to pay the fair value, *quantum meruit*, of denouncements by the claimant listing discoveries, in so far as the State utilized and benefited from these discoveries.[55]

62. In the *Lena Goldfields* arbitration—held pursuant to an arbitration clause in a concession agreement—the award was expressly based on the principle of "unjust enrichment". The award upheld the claim made for "restitution to the company of the full present value of the company's properties, by which in the result the Government had become 'unjustly enriched' ". The Tribunal referred to the acceptance of the principle in Continental law, including Soviet law, German law, Scottish law and to its partial acceptance in English law.[56]

(3) *Exempted takings*

63. It may briefly be noted that certain kinds of taking have been recognized to be exempt from the usual rules on compensation. These include fines and forfeitures of property in connexion with penal laws as well as takings and destruction for public health or safety reasons or within the area of "police power". There still may be, in any particular fact situation, a question of denial of justice, arbitrariness or other aspect relevant to international responsibility and there may also be the question of the characterization of the taking.

64. The auction of an alien's property consisting of merchandise bought in violation of Mexico's customs laws gave rise to no obligation where, in accordance with those laws, such auctions were prescribed in cases where triple duties were assessed and not paid.[57] On the other hand, compensation was awarded in a case where an alien's property was seized in the incorrect—although *bona fide*—belief that he had infringed the revenue laws of the United States.[58] In another case, an unreasonable lapse of time between the seizure and formal confiscation was held to engage the responsibility of the State and compensation was awarded, although the right of confiscation for the offence was acknowledged.[59]

65. The taking of an alien's property has been held non-compensable when the State action was deemed to be within its police power or for reasons of public health or safety. In a very brief decision which omits the factual background of the case, the destruction of a stock of liquors was deemed "a matter of police entirely within the powers of the military government" and a claim for compensation was accordingly denied.[60] Where property was set on fire by military authorities because of a fear of the spread of yellow fever, the Tribunal decided that under the circumstances—which included the non-disputed fact that the sanitary conditions made it necessary and advisable to fire the buildings—the taking was justifiable as a necessity of war and gave rise to no legal right of compensation; the Tribunal expressly avoided the question "whether generally speaking, the United States military authorities had a right in time of war to destroy private property for the preservation of the health of the army"; it also urged that payment be considered as a matter of grace and favour.[61]

66. International tribunal decisions have touched somewhat upon the question whether the exercise of such State powers as taxation or currency control adversely affecting property rights of aliens give rise to compensation obligations in the absence, again, of accompanying circumstances of discriminatory or arbitrary application or breach of specific obligations. The Upper Silesia Arbitral Tribunal dealt with taxation when it dismissed a claim for compensation for losses —culminating in the closing of the business caused by successively-imposed licence fees—on the ground that no right had been taken away.

> "It is true that taxation may render the trade less remunerative or altogether unremunerative. However, there is an essential difference between the maintenance of a certain rate of profit in an undertaking and the legal and factual possibility of continuing the undertaking. The trader may feel compelled to close his business because of the new tax... But this does not mean that he has lost the right to engage in the trade. For had he paid the tax he would be entitled to go on with his business...".[62]

67. An arbitral tribunal found no basis for a valid claim for compensation in the fact that a claimant suffered losses because of a United States law making paper money legal tender and thereby reducing the value and interest thereon of certain railway company bonds owned by the claimant.[63]

ii. *Standards of compensation*

(1) *Compensation for lawful taking*

68. International tribunals have characterized compensation obligation for lawful expropriation as the duty to pay "fair compensation",[64] "just compensation",[65] or *"la réparation intégrale"*.[66]

69. Value at time of taking has, in principle, been the standard applied in various cases of expropriatory action.

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[54] La Fontaine, *Pasicrisie Internationale*, p. 399.
[55] *Landreau claim* (*USA/Peru*), (1922), UNRIAA, vol. I, p. 365.
[56] Lauterpacht, *Annual Digest 1929-1930*, p. 1; Cornell Law Quarterly, vol. 36, p. 51.
[57] *Chazen* (*USA*) v. *Mexico*, (1930), UNRIAA, vol. IV, p. 564.
[58] *Owners of the Cargo of the Coquitlam* (*Great Britain*) v. *United States* (1920), UNRIAA, vol. VI, p. 45.
[59] *Consonno* (*Italy*) v. *Persia* (1891), La Fontaine, *Pasicrisie Internationale*, p. 342.
[60] *J. Parsons* (*Great Britain*) v. *United States* (1925), UNRIAA, vol. VI, p. 165.
[61] *William Hardman* (*Great Britain*) v. *United States* (1913), UNRIAA, vol. VI, p. 25.
[62] *Kügele* v. *Polish State* (1932), Lauterpacht, *Annual Digest, 1931-1932*, Case No. 34, p. 69; this case may be compared with the PCIJ decision in the Oscar Chinn case cited in para. 15 above.
[63] *Adams* (*U.K.*) v. *United States*, Moore, *History and Digest of the International Arbitrations to which the United States Has Been a Party*, vol. III, p. 3066.
[64] PCIJ, *The Factory at Chorzów*, Series A, No. 17, p. 46.
[65] E.g., *Norwegian Shipowners Claim*, UNRIAA, vol. I, p. 338; Goldenberg, UNRIAA, vol. II, p. 909; Great Britain/Spain (Spanish Zone of Morocco), UNRIAA, vol. II, p. 647.
[66] *Delagoa Bay Railway*, La Fontaine, *Pasicrisie Internationale*, p. 402.

70. The decision of the Permanent Court of International Justice in the *Chorzów Factory* case contains dicta to that effect.

> "The action of Poland... is not an expropriation —to render which lawful only the payment of fair compensation would have been wanting;...
>
> "It follows that the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. This limitation would only be admissible if the Polish Government had had the right to expropriate, and if its wrongful act consisted merely in not having paid to the two Companies [whose property had been taken] the just price of what was expropriated.[67]

71. The Tribunal in the *Norwegian Shipowners* case considered that "just compensation implies a complete restitution of the *status quo ante*". The Tribunal had stated earlier that just compensation in the case was to be measured not only by the actual value of the property at the time and place of its taking but also "in view of all the surrounding circumstances" among which numbered an unnecessary delay in settling the matter and an element of discrimination.[68]

72. Just compensation was, in a series of arbitrations between Turkey and the United States, defined simply as "the value of property taken or destroyed" and "market value", if there was one, at the time and place of the taking was considered the "basis for ascertaining the pecuniary equivalent of property taken".[69]

73. International responsibility arising from inadequacy of compensation already paid or provided for in the expropriation measure itself is referred to in dicta of arbitral awards.

74. A decision by the Turkish-American Claims Commission said:

> "The payment of inadequate compensation, not voluntarily accepted as an adequate settlement, may be considered to be a confiscation of property to the extent of the inadequacy of the payment. However, an international claim based on a complaint of confiscation of property must of course be established by clear, convincing evidence as to taking and value."[70]

75. In the *Goldenberg* case, where payment had been made amounting to one sixth of the undisputed value of the property taken, the Tribunal considered that there had been a taking without compensation of five sixths of the property, and that the international obligation to pay just compensation had not been met; the award was a sum amounting to five sixths of the value of the property with interest.[71]

76. The same decision refers to a requirement that compensation for expropriation be made *"le plus rapidement possible"*. There appears, however, to be a dearth of decisions dealing particularly with this question.[72]

77. The question whether this same standard of adequacy and promptness is applicable in cases of general expropriation or nationalization measures had not been discussed on its merits in international tribunal decisions. The question was raised in the *Hungarian Optants* case, in which the Romanian-Hungarian Mixed Arbitral Tribunal found for its jurisdiction on the basis that the expropriation measures in question implementing agrarian reform were, regardless of their motive or application, within the purview of the treaty provision relating to liquidation; the adequacy of the small indemnity promised but not paid was a question going to the merits, which the Tribunal did not discuss further.[73]

78. The question of an international standard of adequacy of compensation was raised in one of the American-Turkish Claims, the *Raissis* case, but—because of insufficient evidence not decided—in connexion with an alleged law providing for compensation payable to all deprived property owners in a particular area in the form of municipal bonds bearing a nominal value and usable only for purchase of ground put up for sale by the municipal authority. The Tribunal stated:

> "Land and other property may of course be taken by public authority in the proper exercise of the right of expropriation. However, a government may properly insist that just compensation should be paid for property taken from its nationals, and that a taking of property without compensation or with an inadequate compensation is a form of confiscation violative of international law... Had the record shown by convincing evidence that property belonging to the claimant was taken, and that inadequate compensation was made by the payment of bonds, an interesting contention might have been raised by the claimant to the effect that payment for expropriated land in such bonds did not meet the requirement of international standards with respect to compensation and therefore did not square with the law of nations."[74]

79. The non-discriminatory element of a Government's award of compensation was itself one element in the decision to dismiss the claim for further compensation in the *Standard Oil Company Tankers* case.[75]

(2) *Compensation for takings involving wrongful State action*

80. Tribunal awards of reparation for unlawful takings have sometimes been based in principle on the right to restitution in kind. In some cases, an arbitrary taking or one involving denial of justice has been compensated as an ordinary expropriation. A few examples, taken for the most part from cases already mentioned, will be referred to here without, however, reference to details of the methods used for computing the amount of the awards.

81. In the *Charzów Factory* case, the Permanent Court of International Justice drew a sharp distinction between compensation for lawful expropriation on the one hand and reparation for an illegal act on the other.

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[67] PCIJ, Series A, No. 17, pp. 46 and 47.

[68] UNRIAA, vol. I, pp. 334 and 338.

[69] *United States of America on behalf of the American Tobacco Company* v. *Turkey; United States of America on behalf of McAndrews and Forbes Co.* v. *Turkey*, Nielsen, *American-Turkish Claims Settlement*, 1937, pp. 144 and 92.

[70] *United States of America on behalf of Singer Sewing Machine Company* v. *Turkey*, Nielsen, *op. cit.*, p. 492.

[71] *Affaire Goldenberg*, UNRIAA, vol. II, p. 909.

[72] For relevant treaty provisions, see Chap. II, paras. 29-35 above.

[73] *Emeric Kulin père* c. *Etat roumain* (1927), Receuil TAM, vol. VII, pp. 147 and 150.

[74] *USA on behalf of Raissis* v. *Turkey*, Nielsen, *American-Turkish Claims Settlement*, 1937, p. 343.

[75] For relevant quotation from this case, see para. 91 below; see also paras. 88-92 below relating to international responsibility in absence of discrimination.

With respect to the latter, the basis for award of damages was declared to be equivalent to restitution in kind.

"The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."[76]

82. In the *Walter Fletcher Smith* case, the Tribunal, deeming the expropriation invalid, considered that restitution, although justified, would not be in the parties' best interests; a sum was awarded covering the deprivation of use from the date of the taking and expenses entailed, in addition to the value of the property.[77]

83. In the *Delagoa Bay Railway* case, the Tribunal stated that the State was to make *"la réparation intégrale du préjudice par lui causé"*, comprising *damnum emergens* and *lucrum cessans*. Although the Tribunal suggested that the taking was arbitrary, it stated that the measures of compensation would have been the same had there been a legal expropriation; extenuating circumstances excluded the award of punitive damages which, the decision noted, might be claimed by one who was a victim *"d'un traitement arbitraire absolument immérité"*.[78]

84. In the *De Sabla* case, the Tribunal having concluded that the claimant had been wrongfully although mistakenly deprived of land, based its award on the value as of 1912; the adjudication by which the property had been licensed to third persons had taken place over a period from 1910 to 1930 and the award was made in 1933.[79]

85. The Tribunal in the *Kemeny* case concluded that a cash indemnity would appropriately amount to but not exceed the commercial value of the digging and search rights as of the time they were wrongfully granted to another, contrary to treaty obligations.[80]

86. Some decisions indicate, without clear definition, that elements of discrimination in a taking increase or emphasize the obligation to pay. In the *Norwegian Shipowners* case, although the Tribunal expressly found that there was no such discrimination as would entitle Norway to claim damages, a consideration in determining just compensation was none the less that "the United States are responsible for having thus made a discriminating use of the power of eminent domain".[81]

87. In the *Spanish Zone of Morocco* case, the following language appears immediately following a statement to the effect that international law prohibited depriving an alien of property without just indemnity:

"cela est vrai surtout lorsque la restriction apportée au libre exercice du droit de propriété est la conséquence d'une mesure ne visant que des personnes déterminées et non pas l'ensemble des propriétaires se trouvant dans des conditions semblables."[82]

d. International responsibility for non-discriminatory measures

88. Somes cases have touched on the question whether the application of a municipal law or other measure to aliens and nationals alike precludes State responsibility for a resulting derogation of an acquired right of an alien.[83]

89. The United States-Mexican General Claims Commission, in the case of *George Hopkins,* having concluded that the claimant held an existing vested right under a money order, decided that the Government was obligated to pay, notwithstanding a generally applicable decree nullifying such rights. In so deciding, the Commission considered the argument that an alien would, in consequence, improperly have a right which a national in comparable circumstances would be denied.

"... the answer is that it not infrequently happens that under the rules of international law applied to controversies of an international aspect a nation is required to accord to aliens broader and more liberal treatment than it accords to its own citizens under its municipal laws. ... There is no ground to object that this amounts to a discrimination by a nation against its own citizens in favor of aliens. It is not a question of discrimination, but a question of difference in their respective rights and remedies. The citizens of a nation may enjoy many rights which are withheld from aliens, and, conversely, under international law aliens may enjoy rights and remedies which the nation does not accord to its own citizens."[84]

90. In the *Canevaro* case, the Arbitral Tribunal upheld the application to Italian claimants of a Peruvian law which substantially derogated from previously incurred obligations to nationals and aliens alike. The following consideranda, which precede the decision denying the claim, refer both to the general non-discriminatory character of the legislation and to the fact that the Italian claimants had acquired the bonds after the law had already been enacted.

"... Whereas the present owners of the claim are Italians, it would be proper for the tribunal to pass on the question whether the Peruvian Law of 1889 may, in spite of its exceptional character, be imposed on foreigners;

"But whereas, this view appears at variance with the general terms and spirit of the law of 1889;

"Whereas, Congress, whose acts are not under examination, intended to settle entirely the financial situation of Peru, and substituted the bonds which it issued for the old bonds;

"...

"Whereas, this was the situation with regard to the Canevaro firm, which was Peruvian when the Law of 1889 went into effect;

[76] PCIJ, Series A, No. 17, p. 47.
[77] UNRIAA, vol. II, pp. 913 and 918.
[78] La Fontaine, *Pasicrisie Internationale,* p. 402.
[79] UNRIAA, vol. VI, p. 358.
[80] *Kemeny* c. *Etat serbe-croate-slovène* (1928) Recueil TAM, vol. VIII, p. 597.
[81] UNRIAA, vol. I, p. 335.
[82] UNRIAA, vol. II, p. 647; see para. 53 above.
[83] See paras. 76 to 79 above.
[84] *USA on behalf of George Hopkins, Claimant,* v. *the United Mexican States,* UNRIAA, vol. IV, p. 47.

"And whereas, for reasons already set forth, this situation has not been changed by law by the fact that the claim has passed into the hands of Italians by endorsement or by inheritance".[85]

91. In the *Standard Oil Company Tankers* case, the non-discriminatory application of the taking measures was stressed by the Tribunal, which drew on general international law as well as on specific treaty provisions to support the decision denying the claim:

"... whereas it was in execution of an international undertaking [reparations] that the German Government proceeded to the confiscation of the tankers; whereas moreover, it has not been claimed that the indemnity paid under this head to the D.A.P.G. by the said government was [not] comparable to that which in the same circumstances has been granted to other German shipping companies;

"Whereas, in application of a generally accepted principle, any person taking up residence or investing capital in a foreign country must assume the concomitant risks and must submit, under reservation of any measures of discrimination against him as a foreigner, to all the laws of that country;

"...

"Whereas this principle of equality of treatment, and not of discrimination in favor of Allied and Associated Nationals, has moreover been consecrated by the Treaty of Versailles in Articles 276 C and D and 297 J dealing with the treatment to be accorded in Germany to the property and interests of the said nationals after January 10, 1920;

"...

Whereas, *in fine,* at the time of the confiscation of the tankers of the D.A.P.G., the German Government committed no act of discrimination against this company as compared with other German Shipping companies;"[86]

92. Two opinions of the Permanent Court of International Justice, in the *German Interests* and *Peter Pazmany* cases, state that the non-discriminatory nature of an expropriation measure is of no effect where the application to a foreigner violates a treaty obligation:

"Expropriation without indemnity is certainly contrary to Head III of the [Geneva] Convention; and a measure prohibited by the Convention cannot become lawful under this instrument by reason of the fact that the State applies it to its own nationals."[87]

3. Contracts

93. This sub-section seeks to indicate various views enunciated by international tribunals on the legal consequences of contracts between States and aliens. The two main sub-divisions represent an attempt to separate (*a*) pronouncements essentially relating to the conditions under which international responsibility is engaged (as for an international wrong); from (*b*) pronouncements relating to the nature of a sovereign State's contractual obligations to the alien contracting party.

94. As is the case in other parts of this chapter, the fact must be borne in mind that national judicial and State practice has not been included, nor are the views of international law publicists set forth. There have been, exceptionally, included in part *b* a few relatively recent pronouncements of arbitral tribunals, international in membership, which have decided cases between a State and an alien company rather than cases to which both parties were States.

a. International responsibility for breach involving a wrongful or arbitrary act

95. As distinguished from a breach of treaty obligation, a breach of a contract between a Government and an alien has, in itself, not been deemed to give rise to international responsibility on the part of the State.

i. *Distinction between treaty and concession-contract*

96. *Anglo-Iranian Oil Company:* The International Court of Justice did not accept the view that the contract signed between the Iranian Government and the Anglo-Persian Oil Company had a "double character" as both a treaty and a concessionary contract between a Government and a foreign corporation.

"The United Kingdom Government is not a party to the contract; there is no privity of contract between the Government of Iran and the Government of the United Kingdom. Under the contract the Iranian Government cannot claim from the United Kingdom Government any rights which it may claim from the Company, nor can it be called upon to perform towards the United Kingdom Government any obligations which it is bound to perform towards the Company."[88]

This decision of the Court did not go into the question whether the particular circumstances of negotiation and the provisions of the Concession itself could have the consequence of rendering the State internationally responsible for a breach. For the Court could take jurisdiction only if a breach of a treaty was involved, in view of Iran's reservation to its acceptance of the Court's compulsory jurisdiction.

ii. *Breach of contract: international delinquency as prerequisite to State responsibility*

97. *International Fisheries case (United States-Mexican General Claims Commission):*[89] The Commission found no international responsibility where the Government's action cancelling a contract-concession had been allegedly taken pursuant to its own rights under the same contract. The Commission refused to take jurisdiction over the claim by the concessionaire because it found no such international delinquency as arbitrary annulment or denial of justice in the administrative cancellation of the concession-contract where the cancellation had been based on the grounds that the corporation concerned had failed to fulfil its contractual obligations:

[85] *Canevaro Case (Italy and Peru)* (1912), J. B. Scott, *The Hague Court Reports,* 1st series, pp. 292-293; see also para. 25 above.

[86] *Reparation Commission/USA (Claim of Standard Oil Company to certain tankers)* (1926), UNRIAA, vol. II, pp. 794-795.

[87] *Certain German Interests in Polish Upper Silesia,* PCIJ, Series A, No. 7, p. 33; this language is repeated in *Peter Pazmany University v. the State of Czechoslovakia* (1933), PCIJ, Series A/B, No. 61, p. 243.

[88] *Anglo-Iranian Oil Co. case (jurisdiction),* Judgement of July 22nd, 1952. ICJ, *Reports* 1952, p. 112.

[89] *International Fisheries Co. (USA) v. Mexico,* 1931, UNRIAA, vol. IV, p. 691.

"... a declaration of cancellation similar to the one made in this case by the Mexican Government is nothing more than the use of the right which every party to a contract has of ceasing to comply therewith when the other party thereto fails in his obligations. It is a plain and simple notice given by the Government to the concessionary company that as the latter has not fulfilled its obligations to erect factories and establish shops, it [the Government] considers itself authorized not to continue fulfilling its own obligations. This is the situation which is always being aired by private parties before courts having jurisdiction, and no reason is seen why the same fact, for the sole reason that one of the parties to the contract is a government, can constitute an international delinquency.

"If every non-fulfilment of a contract on the part of a government were to create at once the presumption of an arbitrary act, which should therefore be avoided, governments would be in a worse situation than that of any private person, a party to any contract...

"...

"In the instant case the Government made use of a right [cancellation] given to it by the contract and so any question as to the grounds which the Government of Mexico had for acting in that sense or as to the interpretation of the clause of the contract upon which it based its reasons for acting in that manner, were the matters specially provided for by Article 32 [Calvo Clause] of the contract-concession respecting which diplomatic agents could not intervene."[90]

98. The Tribunal also rejected the contention that a denial of justice had taken place because the declaration of cancellation had been issued by the Government without first having recourse to the Courts; such a requirement would mean that the Government would "always have to continue fulfilling the contract and to assume the difficult role of plaintiff, never enjoying the advantage that a private person would have under the same circumstances".[91]

99. *Turnbull et al. (American-Venezuelan Claims Commission)*:[92] No finding of responsibility for executive decree annulling a contract-concession was made since the claimant's failure to perform its contractual obligations provided a basis for annulment. The executive action was considered as a communication on the Government's part which, if not agreed to by the concessionary, would have been followed by judicial proceedings. In the absence of any decision by competent national tribunals, the Commission could not consider the claim for damages.

(1) Arbitrary annulment and denial of justice as basis for international responsibility in connexion with breach of contract

100. Arbitrary annulment of a contract-concession by executive action has, in some cases, given rise to international responsibility. "Denial of justice" has sometimes been imputed based on the failure of the Government to subject itself to some impartial proceedings in its own established tribunals prior to giving effect to the annulment and also on the patent uselessness of the claimant's seeking judicial redress after the event.

101. *El Triunfo*:[93] Executive action in the form, first, of a decree closing the port for which the claimant had by contract the exclusive franchise and, secondly, of a subsequent grant to others of the same rights and franchise was considered tantamount to denial of justice and held to engage the international responsibility of the State. Fraudulent bankruptcy proceedings had preceded these decrees. The fact that the claimant company had not appealed from this adjudication did not preclude a finding of denial of justice.

"It is not the denial of justice by the courts alone which may form the basis for reclamation against a nation, according to the rules of international law...

"...

"It is apparent in this case that an appeal to the courts for relief from the bankruptcy would have been in vain after the acts of the executive had destroyed the franchise...

"...

"In any case, by the rule of natural justice obtaining universally throughout the world wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just grounds for complaint that under its organic law the grantees had, by misuse or non-use of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been to have itself appealed to the courts against the company and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgement, have invoked and secured the remedy sought.

"It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily, without hearing and without impartial procedure of any sort arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property and his investment of capital made on the faith of that contract."[94]

102. *Rudloff (American-Venezuelan Claims Commission)*:[95] The annulment by a municipal council of a concession-contract for a public market followed immediately by forcible dispossession was considered wrongful, arbitrary and unjust, and, inasmuch as the national Government's responsibility for the municipality's actions in connexion with the intent was established, the State was held responsible.

"... If any consideration of public policy required the abrogation of the Rudloff concession, the proper judicial proceedings should have been taken to that end, and in conformity with law. ... The jurisprudence of civilized states and the principles of natural law do not allow one party to a contract to pass

[90] *Ibid.*, p. 700; see *Illinois Central Railroad* case (paras. 125-126 below) for views of General Claims Commission on international character of contract claim in a case where the Calvo clause was not involved.

[91] *Ibid.*

[92] Ralston, *Venezuelan Arbitrations of 1903*, p. 239.

[93] *El Triunfo Company USA/Salvador*, 1902, *US Foreign Relations*, p. 862.

[94] *Ibid.*, pp. 870 and 871.

[95] Ralston, *Venezuelan Arbitrations of 1903*, p. 194.

judgment upon the other, but guarantee to both the hearing and decision of a disinterested and impartial tribunal."[96]

103. *Oliva case (Italian-Venezuelan Claims Commission):*[97] The Commission found that the expulsion of the concessionaire from the country was, under the particular circumstances of the case, itself an arbitrary act and an infraction of an international right and that the State was responsible for compensation for the concession-contract indirectly breached as a result of the expulsion.

(2) *"Confiscatory taking" as basis for international responsibility for breach of contract*

104. In some instances, contractual rights, viewed in themselves as acquired rights, have been considered as having been "confiscated" or wrongfully taken without compensation by reason of non-fulfilment of the State's contractual obligations. This type of rationale has been utilized particularly in connexion with non-performance by the State of an obligation to pay money where the contractual obligation of the claimant has already been performed.[98]

105. *Cook (United States-Mexican General Claims Commission):*[99] The refusal to pay money orders pursuant to what the Commission viewed as a contractual obligation was deemed to be a deprivation of property without compensation engaging State responsibility.

"When questions are raised before an international tribunal, as they have been in the present case, with respect to the application of the proper law in the determination of rights grounded on contractual obligations, it is necessary to have clearly in mind the particular law applicable to different aspects of the case. The nature of such contractual rights or rights with respect to tangible property, real or personal, which a claimant asserts have been invaded in a given case is determined by the local law that governs the legal effects of the contract or other form of instrument creating such rights. But the responsibility of a respondant Government is determined solely by international law ... The ultimate issue upon which the question of responsibility must be determined ... is whether or not there is proof of conduct which is wrongful under international law and which therefore entails responsibility upon a respondent government.

"By failure of the Mexican authorities to pay the money orders in question in conformity with the existing Mexican law when payment was due, the claimant, Cook, was wrongfully deprived at that time of property in the amount of 9053.16 pesos;"[100]

106. *Singer Sewing Machine (American-Turkish) Claim.*[101] Where payment had not been made for machinery purchased by a Government agency and delivered by the claimant, the Tribunal, noting that the Government did not question the debt, prefaced its allowance of the claim with the following statement:

"... International law does not prescribe rules relative to the forms and legal effect of contracts, but that law may be considered to be concerned with the action authorities of a government may take with respect to contractual rights. It is believed that in the ultimate determination of responsibility under international law, application can properly be given to principles of law with respect to confiscation, and that the confiscation of the property of an alien is violative of international law. If a government agrees to pay money for commodities and fails to make payment, the view may be taken that the purchase price of the commodities has been confiscated, or that the commodities have been confiscated, or that property rights in a contract have been destroyed or confiscated."[102]

107. *Hoffman and Steinhardt (American-Turkish) Claim:*[103] Dicta in another case before the same Commission, concerned with a claim—held unsubstantiated—for losses sustained by alien holders of railway bonds, suggests viewing non-payment of loans as confiscation of property.

"... There is an abundance of evidence in various forms to show general recognition of the principle that the confiscation of the property of an alien is a violation of international law. Principles relating to confiscation seem clearly to be applicable to contractual arrangements when a government obtains loans from private alien sources and later defaults in payment ... Contractual rights are property."[104]

iii. *International responsibility for compensation: analogy to legal expropriation*

108. Arbitral tribunals have, in some cases, awarded compensation for legislative or executive action abrogating a concession contract in full or in part; the suggestion is made in some such cases that the lawful exercise of sovereign power adversely to a particular contract engages the responsibility of the State to the extent that compensation is not paid. None of these cases involves the exercise of the State's right as a party under the contract itself to take action based on non-fulfilment by the other party.

109. *Delagoa Bay Railway:*[105] Compensation was awarded where the Government had declared the concession forfeit for reasons not covered by the terms of the contract. The Tribunal stated that compensation was payable regardless of whether or not the exercise of power was arbitrary and analogized the situation to one of lawful expropriation.

"Que l'on veuille, en effet, taxer l'acte gouvernemental de mesure arbitraire et spoliatrice ou d'acte souverain dicté par la raison d'Etat à laquelle toute concession de chemin de fer demeurait subordonnée, voir même qu'on considère le cas actuel comme un cas d'expropriation légale, toujours est-il que cet acte a eu pour effet de déposséder des particuliers de leurs droits et privilèges d'ordre privé à eux conférés par la concession, et que, à défaut de dispositions

[96] *Ibid.*, p. 197.
[97] *Ibid.*, p. 771.
[98] Cases involving public debt will not be dealt with. It may be noted that "confiscation" has been referred to, *inter alia*, as a basis for imputing international responsibility for compensation for a legislative termination of a concession-contract. See para. 114 below.
[99] *Cook (USA)* v. *Mexico* (1927), UNRIAA, Vol. IV, p. 213. This decision, as well as the two decisions following of the Turkish-American Claims Commission, were given by Commissioner Nielsen.
[100] *Ibid.*, pp. 215-216. See also *Hopkins* case (para. 26 above).
[101] *USA on behalf of Singer Sewing Machine* v. *Turkey*, Nielsen. *American-Turkish Claims Settlement*, 1937, p. 490.
[102] *Ibid.*, p. 491.
[103] *USA on behalf of Ina M. Hoffman and Dulcie H. Steinhardt* v. *Turkey*, Nielsen, *op. cit.*, p. 286.
[104] *Ibid.*, p. 289.
[105] La Fontaine, *Pasicrisie Internationale*, p. 397.

légales contraires — dont l'existence n'a pas été alléguée dans l'espèce — l'Etat, auteur d'une telle dépossession, est tenu à la réparation intégrale du préjudice par lui causé."[106]

110. *Company General of the Orinoco (French-Venezuelan Claims Commission):*[107] The Commission awarded compensation for the Government's refusal to give effect to a provision for the right of assignment contained in a concession contract for the exploitation of minerals and development of communication and transport facilities in a certain region of the State. The Tribunal explicitly recognized that the abrogation was a lawful exercise of the power of the State; reasons for the abrogation deduced by the Tribunal were antagonistic attitudes on the part of businessmen in the area, and it particularly stressed the fact that the concession was causing bad feelings and hostility on the part of a neighbouring State.

> "It was a question of governmental policy, and that Venezuela decided upon this plan of action must be attributed to its solicitude for peace with a sister Republic."

111. It was the arbitrator's judgement, "properly clarified and steadied by the ethical precepts of international law, equity and good conscience", that this lawful exercise of sovereign power had to be accompanied by compensation.

> "As the Government of Venezuela, whose duty of self-preservation rose superior to any question of contract, it had the power to abrogate the contract in whole or in part. It exercised that power and cancelled the provision of unrestricted assignment. It considered the peril superior to the obligation and substituted therefor the duty of compensation."[108]

112. *May Claim:*[109] In a case submitted to arbitration by agreement and concerned with a contract for the operation of a railway, the Tribunal noted that ejectment by the Government of the concessionaire had no basis in any non-compliance on his part, and awarded damages for damage suffered and profits lost by the premature termination of his contract. The Tribunal said, *obiter dicta:*

> "Whatever may have been the motives that actuated the Government, they afford no justification for May's ejectment without compensation.
>
> "If, for imperative reasons of state, the railroad had been withdrawn from May before he had completed the term fixed by his contract, he would have been entitled to all the profit to be derived from the railroad until the completion of the term."[110]

113. *Shufeldt Claim:*[111] The arbitrator—to whom the case was submitted by special agreement—found that the State was obligated to compensate for the legislative abrogation of a ten-year concession-contract for extraction of chickle from public lands; the abrogation had taken place four years after the concession had been granted.

114. The opinion noted as significant that the reasons for the abrogation were not concerned with any breach by the concessionaire. On the other hand, the decision did not judge the propriety of the legislative action, which was in terms based on the grounds that the contract was harmful to national interests and within the legislative power to disapprove.

> "... It is perfectly competent for the Government of Guatemala to enact any decree they like and for any reasons they see fit, and such reasons are no concern of this Tribunal. But this Tribunal is only concerned where such a decree, passed even on the best of grounds, works injustice to an alien subject, in which case the Government ought to make compensation for the injury inflicted and cannot invoke any municipal law to justify their refusal to do so."

Finding that the claimant had property rights acquired under the concession-contract, the Tribunal viewed the decree terminating the concession as "in effect confiscating all his rights and interests therein."[112]

iv. *Measure of damages; question of lost profits*

115. The main problem in connexion with compensation or reparation in cases where international responsibility is established with respect to breach of a concession-contract is whether lost profit should be taken into account. In the cases mentioned above under parts (ii) and (iii), there appears to be little distinction in this regard as between awards for breaches involving arbitrary acts and those for breaches considered as resulting from lawful exercises of sovereign power.

(1) *Compensation where arbitrary acts are involved in the breach*

116. In the *El Triunfo* case, in which the violation of the concessionary rights was deemed a denial of justice, the Tribunal awarded the value of the exclusive franchise of which the claimants had been wrongfully deprived, but declined to make an award for loss of future profits.

> "Under the terms of the protocol and by the accepted rules of international courts in such cases, nothing can be allowed as damages which has for its basis the probable future profits of the undertaking thus summarily put to an end."[113]

117. In the *Delagoa Bay Railway* case, on the contrary, the Tribunal considered that the proper measure of damage was *"la réparation intégrale du préjudice par lui causé"*, including direct damage *(damnum emergens)* and lost profits *(lucrum cessans)* regardless of whether the governmental measure breaching the concession was viewed as an arbitrary act or as a sovereign act dictated by reasons of state to which the concession was subordinate.[114]

118. In the *Rudloff* case, involving wrongful arbitrary and unjust State action, profits lost by virtue of the premature termination were deemed too speculative to form the basis of an award.[115]

119. In the *Oliva* case, involving arbitrary and wrongful State action, the award was based on the "value of the contract" in which future profits, deemed highly speculative, were not included.[116]

[106] *Ibid.*, p. 402.
[107] Ralston, *French-Venezuelan Claims Commission*, 1906, p. 244.
[108] *Ibid.*, pp. 362. 360.
[109] *Claim of Robert May*, Guatemala/USA (1900), *Foreign Relations of the United States*, 1900, p. 659.
[110] *Ibid.*, p. 672.
[111] USA/Guatemala, (1930), UNRIAA, vol. II, p. 1079.
[112] *Ibid.*, pp. 1095 and 1098.
[113] *US Foreign Relations*, 1902, p. 872.
[114] La Fontaine, *Pasicrisie Internationale*, p. 402.
[115] Ralston, *Venezuelan Arbitrations of 1903*, p. 198.
[116] *Ibid.*, p. 781.

(2) Compensation where the breach resulted from legitimate exercise of sovereign power

120. In the *Orinoco* case, the standard of compensation was the sum "commensurate to the damages caused by the act of the respondent Government in denying efficacy to the contract of assignment", which sum the Tribunal determined by reference to the amount which would have been paid for the assignment plus interest.[117]

121. In the *May Claim*, profits which would have been derived had the concession not been terminated were taken into account in the award and the Tribunal considered this appropriate even if the breach was for "imperative reasons of state".[118]

122. In the *Shufeldt Claim*, compensation included profits for the years for which the concession would have run if the contract had not been annulled by the legislature. These lost profits were deemed to be "the direct fruit of the contract and not too remote or speculative".[119]

b. NATURE OF STATES' CONTRACTUAL OBLIGATIONS

123. Apart from the question of the conditions under which international responsibility for a breach of contract may arise on the basis of international wrong, international tribunals—established by convention—and tribunals of a quasi-international character —agreed to by the contracting parties—have considered the extent to which a sovereign State may be bound by its own contractual obligation. Such cases have arisen where a State has agreed either with another State or the other contracting party to the arbitration of the dispute relating to contractual obligations.

124. The municipal law of the State party has generally been considered applicable—except where otherwise agreed or in exceptional circumstances of a lack of domestic law—to the question of the existence of a particular contractual obligation under the agreement in question. On the other hand, the law applied to the question of how far a particular contractual obligation—in itself—may be considered to have bound a State by restricting a subsequent exercise of sovereign powers, is not always clearly indentified. Occasionally, "principles of international law" and "general principles of law" have been explicitly referred to by the tribunals and the agreements establishing their jurisdiction.

i. *International tribunal cases*

(1) *Breach of contract as cognizable under principles of international law*

125. *Illinois Central Railroad Co. (United States-Mexican General Claims Commission)*:[120] A claim for breach of contract by a State was deemed cognizable under principles of international law. The Commission denied a motion by the Government of Mexico to dismiss, grounded on the fact that the claim was merely based on non-performance by the Government of a contract; for the Commission considered that, even if no international responsibility arose from such breach, the claim was an international claim to which principles of international law were applicable and which the Commission had, by virtue of the treaty, jurisdiction to decide.

126. The Commission declared that its jurisdiction over contract claims against the Government of Mexico was not precluded by the rule that international responsibility could not be engaged solely by virtue of nonfulfilment by a State of its contractual obligations to an alien. The General Claims Convention clothed the Commission with jurisdiction to decide the claim in accordance with the principles of international law; and the Commission decided that, although the claims had to be "international in character", they did not have to be claims engaging the international responsibility of States. International claims included claims as between a citizen and a Government of another country acting in its public capacity. In addition, claims as between a citizen of one country and the Government of another country acting in its civil capacity were deemed

> "international in character and they too must be decided 'in accordance with the principles of international law', even in cases where international law should merely declare the municipal law of one of the countries involved to be applicable...
>
> "If it were advanced that a state turning over claims of this category to an international tribunal waives part of its sovereignty, this would be true; but so does every treaty containing provisions which depart from pure municipal law, as the majority of treaties do."

The Commission rejected the contention that, notwithstanding a treaty provision whereby exhaustion of remedies was not required,[121] some resort to local tribunals was necessary to impress a claim with "an international character".[122]

127. *Deutz (United States-Mexican General Claims Commission)*:[123] The Commission took the view that the State was liable for breach of a purchase contract; the award was not limited to payment for goods actually delivered to the Government.[124]

(2) *Question of legitimate exercise of sovereign power inconsistent with contract*

128. *Martini (Italian-Venezuelan Claims Commission)*:[125] The State was deemed liable for the exercise of its sovereign power to control ports when it effectively abrogated the claimant's rights under a concession-contract for the operation of mines and transportation facilities. The Commission considered that the closure of the port in which concessionary rights had been granted

> "although entirely legal and within the power of the Government as against the world at large, rendered the Government liable to an extent hereafter to be discussed, under its original contract... It is not to be supposed that [the claimants] received the con-

[117] *Ralston, French-Venezuelan Claims Commission*, 1906, p. 362.
[118] *Foreign Relations of the US*, 1900, p. 672.
[119] UNRIAA, vol. II, p. 1099.
[120] 1926; UNRIAA, vol. IV, p. 21.
[121] The Treaty provided that "... no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim". Article V, General Claims Convention of 8 September 1923, printed in full in UNRIAA, vol. IV, p. 13.
[122] *Ibid.*, pp. 23-24.
[123] *Deutz (USA) v. Mexico* (1929), UNRIAA, vol. IV, p. 472.
[124] Compare "confiscatory cases" in paras. 102-107 above.
[125] Ralston, *Venezuelan Arbitration, 1903*, p. 837.

tract with the idea that the Government retained the power the following or any subsequent day to change its provisions, destroying or impairing the usefulness of the points of ingress and egress to and from the railways and mines. To allow the existence of such a power in the Government as a contracting party would be to give one of the parties to the contract the right to destroy all the interest of the other party in it."[126]

129. *Delagoa Bay Railway:*[127] The Tribunal recognized, in certain dicta, that the State could properly alter the terms of a railway concession-contract to require the concessionaire to conform with a newly-designated terminus, provided that the company might be compensated for additional expenses caused by the change.

"Celui-ci [the Government], *cependant, finit par se lasser d'attendre que l'accord avec le Transvaal aboutît et il prit sur lui d'arrêter de son seul chef le point terminus devant faire règle pour l'entreprise: acte parfaitement légitime et que les parties demanderesses ont critiqué à tort; car elles n'avaient pas à s'immiscer dans les relations internationales du Portugal, et si cet Etat, sous sa responsabilité, désignait une ligne de frontière, cette désignation devait être tenue pour valable, sauf à la compagnie à lui demander dans la suite la réparation du préjudice qu'aurait pu causer, le cas échéant, le déplacement ultérieur de cette ligne.*[128]

ii. *Quasi-international arbitral tribunal cases relating to sovereign power to alter or abrogate contractual obligations*

130. Arbitrations between the contracting parties —the State and the foreign company—have been concerned with the question of whether and under what circumstances a contract is subject to alteration or abrogation by the exercise of sovereign power. In the three such cases discussed below, compensation was not sought. The issues were first, whether or not, under the law applicable to the interpretation of the contract itself, a particular obligation had been assumed by the State, and second, whether or not the State was, in the circumstances, bound to fulfil this obligation. It is to be particularly noted that of the three cases, only the *Arabian American Oil Company (Aramco)* case explicitly applied principles of international law or general principles of law to the question of the relation of the contract obligation to the sovereign powers of the State.

131. *Saudi Arabia and Aramco:* A point at issue was the right of the Government to grant exclusive oil transport rights to a transport company in the face of a previous oil concession allegedly granting these same rights to the oil concessionaire. The Tribunal held, on the basis of the domestic Saudi Arabian law, that the sovereignty of one party to the contract was not a decisive factor in determining the nature of the concession; that the oil concession was a contract; and that the distinction between public law contracts and contracts of civil law was not made in Moslem law, which recognized all contracts and treaties as having the same validity and also recognized the rule *pacta sunt servanda.*[129] Applying the terms of the concession itself (deemed to fill a gap in the domestic legal system)[130] as the fundamental law of the parties, supplemented by general principles of law to interpret the contractual rights and obligations of the parties, the Tribunal held that the company had acquired irrevocable rights under the concession.[131] Applying public international law to matters relating, *inter alia*, to the sovereignty of the State over its territorial waters and State responsibility for violation of international obligations,[132] the Tribunal further held that the conferring of such irrevocable rights was consistent with the sovereignty of the State:

"Nothing can prevent a State, in the exercise of its sovereignty, from binding itself irrevocably by the provisions of a concession and from granting to the concessionaire irretractable rights. Such rights have the character of acquired rights. Should a new concession contract incompatible with the first, or a subsequent statute, abolish totally or partially that which has been granted by a previous law or concession, this would constitute a clear infringement, by the second contract, of acquired rights or a violation, by the subsequent statute, of the principle of non-retroactivity of laws, with the only exception of rules of public policy. This is because a legal situation acquired by virtue of a previous special statute cannot be abrogated by a subsequent statute—*generalia specialibus non derogant*—unless the legislator has expressly given retroactive effects to such statute, which the State cannot do in respect of concessions, without engaging its responsibility."[133]

132. With reference to the compatibility with territorial sovereignty of the binding nature of the exclusive grant of transport rights, the Tribunal said:

"In the exercise of its sovereignty, the State of Saudi Arabia has imposed restrictions upon itself in order to grant to the concessionary Company, for a valuable consideration of the importance stipulated in the 1933 Concession Agreement, an exclusive right of transportation by land and by sea for a limited period of time. It has guaranteed to the Company that it would not exercise its sovereignty in any way contrary to the obligations it has undertaken towards Aramco and to the rights it has granted. The sovereignty of the State is not limited by some exterior cause; it is the State itself which undertakes the (negative) obligation not to impede the grantee's exercise of its rights. The principle of respect for acquired rights prevents the State from derogating from this undertaking. By the signing of the 1933 Concession Agreement, the Government has already exercised its right to supervise the ingress and egress of ships into and from its territorial waters. The exclusive right of Aramco can no longer be modified without the Company's consent. This principle was applied by the Government in the Pipeline Agreement of 11 June 1947, Article XXIV [stipulating that the Agreement 'shall not prejudice or derogate from any right or privileges created by any existing convention or agreement by

[126] *Ibid.*, p. 843.
[127] La Fontaine, *Pesicrisie Internationale*, p. 397.
[128] *Ibid.*, p. 401.
[129] Award (1958), pp. 54, 56 and 57.
[130] As precedent, the Tribunal cited the Abu Dhabi case (see International and Comparative Law Quarterly, 4th Series, vol. 1, p. 247), in which the Arbitrator considered that application of the law of England (the company party to the arbitration was English) was not warranted and that the absence of applicable law in the State party therefore made it necessary to resort to general principles of law.
[131] Award (1958), pp. 60, 61 and 64.
[132] *Ibid.*, p. 65.
[133] *Ibid.*, p. 61.

which Government is bound] ... This provision contains an unequivocal recognition of the validity of the obligations previously undertaken by the Government. 'No one may derogate from his own grant' is a legal maxim which is universally accepted. It is recognized by the Hanbali School of Moslem Law, as has been found by the Tribunal; it applies to all legal relationships, whether in private law or in public law."[134]

133. *Radio Corporation of America (RCA)* v. *Czechoslovakia:*[135] A traffic agreement for the establishment and operation of a direct radio-telegraphic circuit to furnish commercial radio communication services was considered to be a contract. The Tribunal interpreted this contract as providing that the Government had agreed not to do what it, in fact, subsequently did, namely establish a second direct radio circuit.

134. A question which the Tribunal dealt with was whether this agreement bound the Government in the face of an argument that public interest motivated the breach. The Tribunal prefaced its discussion of the right of the Government to alter a contract on the ground of changed public interest by stating that "it may be already emphasized here that any alteration or cancellation of an agreement on this basis should as a rule only be possible subject to compensation to the other party". The Tribunal alluded to the unsettled legal question whether the State's contracts with private persons should be subject to civil or public law, or a mixture of both. But, although it did not consider that there was a basis in Czechoslovak law for considering the contract as a public law contract, this was not determinative since, under the facts and reasoning of the decision, the distinction was irrelevant to the case as presented.

"But even if this agreement should really be considered a public law agreement, it must at any rate be a condition for allowing the State to repudiate the responsibilities which such agreement might contain, and which the private party would be forced to respect, that the State would be able to show that public interests of vital importance would suffer if the agreement should be upheld under the rules of ordinary civil law."[136]

135. No such vital public interests were, in the Tribunal's view, involved in the stated reason for the Government's establishing a second circuit. Profits to the country in themselves were not such public interests as could form the basis of public contract alteration. The Government had contended that purely private law considerations were inapplicable to the case, although the telegraph administration was run on commercial principles, because "the modern State may not allow itself to be led by the tendency of commercial undertakings ... but is also exclusively directed by the consideration of commercial advantages for its citizens". The Tribunal rejected this contention, stating:

"When a public institution enters into an agreement with a private person or private company, it must be assumed that the institution has intended by this agreement to benefit its citizens. But that this expectation sometimes proves to fail in not giving the country as large a profit as was expected cannot be considered sufficient reason for releasing that public institution from its obligations as signatory of said agreement."[137]

136. *Radio Corporation of America (RCA)* v. *China:*[138] A decision in a case similarly involving the establishment of a radio-telegraphic circuit other than the one provided for in a traffic agreement, in which, however, the primary finding on the facts and by reference to Chinese law was that the agreement in question was not a contract and did not provide for exclusive rights, contains dicta concerning the binding nature of contracts to which a Government is party.

"... There may doubtless be established between public authorities and private organizations, with regard to certain matters, arrangements (by grant, concession or agreement) the effects of which are essentially and practically *exclusive,* leaving no proper place for competitive activities. In those cases no serious question can arise as to the nature of the obligations incurred by governmental authorities or a government, and these obligations may not be disregarded ...

"The Board agrees with the plaintiff that, if a specific contract of partnership or of joint adventure had been concluded between the parties, a limitative obligation prohibiting the conclusion and joint operation of the Mackay Traffic Agreement, would implicitly rest upon the Chinese Government."[139]

APPENDIX

Selected decisions of national courts relating to recent nationalization measures

137. In connexion with the nationalization of Netherlands tobacco enterprises in Indonesia (1958) and of the oil industry in Iran (1951),[140] the extra-territorial effects of a foreign act of State and the question of payment of compensation for the expropriation of foreign interests were reviewed by several national courts.

138. In view of their particular interest and recent origin, the opinions of these courts on the two above-mentioned aspects of international law are briefly summarized hereunder. It may be noted that two of the decisions mentioned in connexion with cases arising out of the nationalization of the Anglo-Iranian Oil Company refer to General Assembly resolution 626 (VII) of 21 December 1952, relating to the free exploitation of natural wealth and resources.

139. Netherlands tobacco companies claimed, before the courts of Bremen and Amsterdam, ownership to shipments of raw tobacco which had reached the Federal Republic of Germany and the Netherlands. The Anglo-Iranian Oil Company, Ltd. applied to the Courts of Rome, Tokyo and Aden claiming property in shipments of oil which had arrived in Italy, Japan and Aden, respectively.

1. Cases arising out of nationalization measures taken in Indonesia

140. Two Netherlands companies (hereafter called "the petitioners") applied to the *Bremen* courts for issue of interim injunctions in regard to several thousand bales of Indonesian raw tobacco which a German company had received in 1959 from the nationalized plantations of the petitioners.

141. The Court of Appeal dismissed the petitioners' application.[141] The Court held, *inter alia,* that the petitioners had not

[134] Award (1958), pp. 109-110.
[135] (1932) *AJIL,* vol. 30, 1936, p. 523.
[136] *Ibid.,* p. 531.
[137] *Ibid.,* p. 543.
[138] (1935) *AJIL,* vol. 30, 1936, p. 535.
[139] *Ibid.,* pp. 540 and 541.
[140] See chapter I, section D, above.
[141] Judgement of the Bremen Court of Appeal (*Hanseatisches Oberlandesgericht,* Bremen), dated 21 August 1959, relating to sale of Indonesian tobacco at Bremen. Quoted passages are taken from an official translation of the transcript.

made it sufficiently credible that they were the owners of the bales of tobacco and had retained their proprietory rights in spite of the Indonesian Nationalization Act. The petitioners had also failed to make it acceptable to the Court that there existed a general rule of international law to the effect that foreign expropriation infringing the law of nations should be regarded as invalid by a national court.[142] The petitioners further had not made it credible that the Indonesian expropriation legislation was contrary to German public policy.

142. In regard to the petitioners' contention that the expropriation had been carried out without compensation which, as they asserted, ought to be adequate, prompt and effective, the Court held that it had not been proven that Indonesia was not prepared, in principle, to pay compensation, although compensation proceedings had not yet been initiated. The Court recognized that, at the time of the expropriation, compensation was neither paid nor could it be foreseen when and to what extent it would be paid. In the Court's view, this could be objected to in cases of individual expropriation as being contrary to international law. In the case under consideration, however, the Court held that

> "the expropriation of the Petitioners constitutes simultaneously a shifting of proprietary relations which was effected by a former colony after having attained independence in order to change the existing economic structure of the country. It is not unreasonable that for such over-all expropriations there is an inclination nowadays for their special nature not to measure them by the same principle as individual expropriations of the conventional kind (vide de Nova in Friedenswarte 1952, p. 116 et seq.). Compensation could not be paid in full and promptly out of the substance but can only be made out of the proceeds of the nationalized enterprises. In determining the term and amount of compensation, the economic situation of the country concerned should be taken into consideration. Thus, the long standing principle of strict protection of private property and the modern idea that under-developed countries must be given a possibility to make use of the products of their own land are colliding (vide in this respect Seidl-Hohenveldern 'Eigentumsschutz durch Resolutionen internationaler Organisationen' in *Festschrift für Janssen,* p. 195)."

143. The *Amsterdam* Court of Appeal (*Gerechtshof*) reached different conclusions. Expressing the view that, in cases of flagrant violations of international law, a national court must decide on the legality of a foreign act of State, the Court, in its decision of 4 June 1959,[143] considered, *inter alia,* that the measures taken in 1957 and 1958 by the Republic of Indonesia in regard to Netherlands plantation estates (Netherlands enterprises were first put under Indonesian supervision and administration and subsequently nationalized) were of a discriminatory and purely political nature and, as such, contrary to the law of nations and illegal. Moreover, in the Court's opinion, there was no real prospect that compensation would be paid. The Court also held that the Indonesian measures were against Netherlands public order, especially in view of the clear stand taken in this matter by the Government of the Netherlands, which had declared that the nationalization and the preceding measures were contrary to international law and had no legal validity on the grounds that these acts were discriminatory and confiscatory and designed to exert political pressure in connexion with the dispute over Netherlands New Guinea.

2. Cases arising out of a nationalization measure taken in Iran

144. The Civil Court of *Rome,* in its decision of 13 September 1952, held,[144] *inter alia,* that the Italian Courts must examine a foreign law as to its legality so as to establish whether it was contrary to the constitution of the foreign country concerned or to international public policy or to any generally accepted principles of international law. The Italian Courts must therefore refuse to apply in Italy such foreign laws as might, even for non-political and non-persecutory motives, decree expropriation of the property of any foreign national without compensation. The Court held that the Iranian nationalization laws could be applied in Italy; in its view their legality was also implicity confirmed by General Assembly resolution 626 (VII).

145. As to the amount of compensation, the Court expressed the opinion that it was not required either by Italian law or by the generally accepted provisions of international law that the quantum of compensation must actually appear to be equivalent to the value of the property forming the subject of expropriation; it was enough that there was some compensation in order for the expropriation to be lawful.

146. The District Court of *Tokyo* recognized[145] that there exists a rule of international law which condemns expropriation of a foreign interest without compensation. The Court expressed doubt, however, that there existed a universally established principle of international law on the question whether or not the courts of a third State had the power to declare such an act invalid and without effect.

147. The Court also recognized the principle that expropriation of foreign rights and interests should be accompanied by just and immediate compensation. In that connexion, the Court pointed out the vastness, complexity and diversity of the interests involved, the extreme difficulty of the final assessment of compensation and the likelihood of disputes for determining fair compensation and expressed the view that it would be unreasonable to expect immediate payment in a special case, such as the one in question.

148. In dismissing the appeal of the applicants, the High Court of *Tokyo* recognized, *inter alia,* that it was an established principle of international law that, in the event of a violent social reform or revolution in a State, regardless of whether or not the property of the nationals of that State was confiscated, property belonging to foreign nationals could only be expropriated with compensation; moreover, such compensation would have to be adequate, effective and immediate. The Court also expressed the view that there was no universally accepted principle of international law that the effect of a foreign law be adjudged invalid by the courts of a State. The Court further held that it could not try the validity or invalidity of the Iranian Nationalization Law in question by examining whether or not the compensation was adequate, effective and immediate. The Court held that, by declining to pass on the validity or invalidity of the Law, it actually recognized the validity of the Law. The Court also considered that the Nationalization Law did not conflict with Japanese public policy and that it had been enacted in accordance with the General Assembly resolution 626 (VII), of 21 December 1952.

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[142] On the question of the extra-territorial effects of a foreign act of State constituting a violation of international law, the Court made the following observations:

"... The Senate is, therefore, entitled to follow that opinion which, starting from the positive effect of the territorial principle, sets a national court free to recognize a foreign act of State even though it is contrary to international law and, in case of a German court, gives it the option whether or not to apply the reservation clause of Art. 30 EGBGB. The Senate has decided to follow this opinion, which certainly prevails in jurisdiction still today, also because it is convinced that at long sight the ardently disputed problem of the extra-territorial effects of a foreign act of State constituting a violation of international law can be solved satisfactorily only in this way because having proper respect for foreign acts of State will help to prevent new strains between the nations and because the economic adjustment from State to State will be promoted by mutual assistance between the States rather than if national courts interfere on a large scale (vide in this respect the private legal opinion of Prof. Dölle/Zweigert... where it is suggested to fight international injustice by further developing the legal aid system of international organizations and by international treaties). This in the Senate's opinion is in full concurrence with the decisions of other German courts of appeal [Oberlandesgerichte] which likewise recognized expropriations being contrary to international law which took place in the Eastern Zone of Germany and in territories which were lost at the end of World War II, only trying them within the framework of Art. 30 EGBGB...."

[143] *Nederlandse Jurisprudentie,* 1959, No. 350.

[144] Lauterpacht, *International Law Reports,* 1955, p. 23 *et seq.*

[145] Lauterpacht, *International Law Reports,* 1953, p. 305 *et seq.*

149. The *Aden* Supreme Court, in its decision of 9 January 1953, held[146] that the Anglo-Iranian Oil Company was entitled to the oil which had remained its property and to which the Government of Iran had acquired no title since (1) the Iranian laws of 1951 were invalid under international law because the property of the company had been expropriated without any compensation; (2) British courts treated international law as incorporated into their domestic law in so far as it was not inconsistent with their own rules; and (3) the principle that the Court would not inquire into the legality of the acts of a foreign Government in respect of property situated in that Government's territory applied only where the property was that of a Government's own subjects.

[146] *Ibid.*, p. 316 *et seq.*

150. The Court accepted the company's contention that the expropriation had taken place without compensation. The Court did not consider that articles 2 and 3 of the Iranian Oil Nationalization Law constituted an offer to pay compensation; it was a mere suggestion that, at some future time, the matter of compensation would be reviewed; nor did a subsequent offer of compensation made by the Prime Minister of Iran amount to what was ordinarily understood by the word "compensation".

151. The Court also remarked that, in relation to international law, it had sometimes been said that compensation must be adequate, effective and prompt. The Court recognized that the question of adequacy might often be difficult for a court to decide and would continue to cause considerable difficulties in connexion with the extra-territorial effects of foreign nationalizations; the nationalization under consideration had, however, been of a confiscatory nature.

B. Studies prepared under the auspices of inter-governmental bodies

152. Studies of the topic of international responsibility of the State had been undertaken by both inter-governmental and private bodies for codification or other purposes. The present section will be confined to an examination of such efforts made by inter-governmental bodies.[147]

153. Before the Second World War, the most comprehensive study of the subject was made by the League of Nations. In 1929, the League convened a Conference on Treatment of Foreigners, held in Paris.[148] At The Hague Codification Conference convened by the League in 1930 on the topic of State responsibility, the Bases of Discussion drawn up by the Preparatory Committee were considered by the Third Committee, which adopted several articles on certain aspects of State responsibility.

154. A recent effort in this direction was made by the United Nations, which entrusted the International Law Commission with the task of codifying the topic of State responsibility. Five draft reports on the topic have been submitted to the Commission by the Special Rapporteur, but have not yet been fully discussed.

155. Although past efforts of the Inter-American Conferences had resulted in the adoption of a recommendation concerning claims and diplomatic intervention (1889-1890),[149] a Convention relating to the rights of aliens (1902)[150] and a resolution on international responsibility of the State (1933),[151] the latest effort is to undertake, pursuant to a resolution of the Tenth Inter-American Conference, "the preparation of a study or report on the contribution the American Continent *has made* to the development and to the codification of the principles of international law that govern the responsibility of the State".[152]

156. The Asian-African Legal Consultative Committee, at its third session, held in Colombo from 20 January to 4 February 1960, formulated certain general principles concerning admission and treatment of aliens. Some of these principles are relevant to the present study.

157. The United Nations Educational, Scientific and Cultural Organization (UNESCO) convened an Inter-Disciplinary Conference on International Understanding and Peaceful Co-operation which took place at Prague from 24 September to 1 October 1958. A final report on "The Legal Problem of Nationalization in International Law"[153] was submitted by Professor Manfred Lachs to the Conference.* The report was based on the discussion of the meeting of jurists organized by the International Association of Legal Science under contract with UNESCO. The Conference considered the suggestion that the subject of nationalization should be studied further.[154]

158. The studies mentioned in the preceding paragraphs are summarized below. It is to be noted that The Hague Conference did not result in the production of a final text on the subject and that the codification efforts of the United Nations and of the American States are still in progress. The following sub-sections, therefore, are intended merely to provide information on certain aspects of the law of State responsibility which have been proposed for codification or have become the subject of extensive study under the auspices of inter-governmental bodies and which are pertinent to the present study.

1. Codification under the auspices of the League of Nations

159. The efforts of the League of Nations to codify the topic of State responsibility began in 1924 and culminated at The Hague Codification Conference in 1930 when the question was entrusted to the Third Committee for consideration. Owing to lack of time, the Third Committee was able only to adopt the text of ten articles out of the thirty-one articles drawn up by the Preparatory Committee of the Conference as Bases of Discussion.[155]

* Information provided by UNESCO.

[147] For texts of codifications by private bodies, see ILC *Yearbook*, 1956, vol. II, A/CN.4/96, Annexes.

[148] A draft Convention on the Treatment of Foreigners was prepared by the Economic Committee of the League and served as a basis for discussion at the Conference, but the results of the deliberations of the Conference proved inconclusive.

[149] *The International Conferences of American States, 1889-1928*, p. 45.

[150] *Ibid.*, p. 90.

[151] *The International Conference of American States*, First Supplement, 1933-1940, p. 91.

[152] See A/CN.4/124, para. 101.

[153] UNESCO/SS/Co-op./Inter 1, Annex 4.

[154] UNESCO/SS/27, p. 9.

[155] In its draft report, the Third Committee stated: "...The fact, moreover, that the various questions were closely interdependent, each being subordinated to the others, precluded any attempt to reach a partial settlement. The Committee accordingly, though in agreement as to certain fundamental principles, was unable, owing to lack of time, to determine the exact limits of their application. It is therefore decided to refrain from any endeavour to embody them in definitive formula." League of Nations, Doc. C.351(c).M.145(c).1930.V., p. 238.

160. The text adopted by the Third Committee includes, *inter alia*, the following principles: (1) that a State incurs international responsibility if it fails to carry out its international obligations and thereby causes damage to the person or property of a foreigner on its territory (Article 1); (2) that international responsibility of a State imparts the duty to make reparation for the damage sustained as a result of the failure of the State to comply with its international obligations (Article 3); (3) that the State's international responsibility may not be invoked as regards reparation for damage sustained by a foreigner until after exhaustion of local remedies (Article 4); and (4) that international responsibility is incurred by a State if damage is sustained by a foreigner as a result of a denial of justice (Article 9).[156]

161. Among the Bases of Discussion drawn up by the Preparatory Committee which the Third Committee did not have time to examine, the following dealt with concessions granted to or contracts made with aliens (Bases of Discussion Nos. 3 and 8):[157]

> A State is responsible for damage suffered by a foreigner as a result of (*a*) the enactment of legislation of (*b*) an act or omission on the part of the executive power, which infringes rights derived by the foreigner from a concession granted or a contract made by the State.
>
> It depends upon the circumstances whether a State incurs responsibility (*a*) where it has enacted legislation general in character or (*b*) when the executive power has taken measures of a general character, which are incompatible with the operation of a concession granted by the State or with the performance of a contract made by it.

162. The following observations were made by the Preparatory Committee to accompany the above-mentioned two Bases of Discussion:[158]

> "The prevalent opinion is that a State renders itself internationally responsible if it enacts legislation incompatible with a concession which it has granted to or a contract which it has made with a foreigner. Some hesitation is, however, apparent. Certain replies (from Governments) consider that a concession or contract, as also the violation of a concession or contract, sets up relations which are merely matters of municipal law; others feel that distinctions must be made; while others, on the contrary deprecate entering too much into detail.
>
> "This hesitation may, it would seem, be diminished by observing that to hold a State to be responsible internationally does not affect the validity under municipal law of the action which it has taken. There is no question of discussing the reasons which it may have for putting an end to a concession or to the performance of a contract; it is merely a question of obliging it to make good the damage which it causes by so doing, in violation, *ex hypothesi*, of the terms of the concession or contract."

2 Codification under the auspices of the United Nations

163. By resolution 799 (VIII) of 7 December 1953, the General Assembly of the United Nations requested the International Law Commission "to undertake the codification of the principle of international law governing State responsibility". At its seventh session in 1955, the International Law Commission appointed a Special Rapporteur who has, in the seven subsequent years, submitted six reports on the topic,[159] together with a Draft consisting of twenty-five articles, for consideration by the Commission.[160] Very brief general discussion of the topic took place at the Commission's eighth, ninth, eleventh and twelfth sessions respectively. The draft reports are still before the Commission.

164. In introducing his first report and explaining his method of work, the Special Rapporteur referred to the necessity of bringing "the 'principles governing State responsibility' into line with international law at its present stage of development".[161] He stated that the draft articles therefore embodied both customary principles of international law and certain concepts in contemporary international law.

165. In so far as the subject of the present study (i.e., permanent sovereignty over natural wealth and resources) is concerned, the following aspects of State responsibility, as enunciated in the draft articles and reports of the Special Rapporteur, are particularly relevant: (*a*) obligations of a State in regard to contracts made with aliens; and (*b*) expropriation and nationalization measures. Since the various questions of State responsibility are interrelated, the summary, as set forth below, of the documentation of the International Law Commission, refers also to other questions, such as denial of justice, where appropriate.

166. One of the basic principles of international law regarding State responsibility, which is both customary and prevailing, is incorporated by the Special Rapporteur in a draft article[162] to the effect that a State incurs international responsibility for injuries to aliens if it acts in contravention to its international obligations. According to the Special Rapporteur, the expression "international obligations of the State" is construed to mean the obligations resulting from any of the sources of international law[163] and includes the prohibition of "abuse of rights" which is construed to mean any act or omission contrary to conventional or general rules of international law governing the exercise of the rights of the State.[164]

167. Two aspects of State responsibility, namely (1) expropriation and nationalization measures; and

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[156] Article 9 provides for two cases of denial of justice: "(1) that a judicial decision, which is not subject to appeal, is clearly incompatible with the international obligations of the State; (2) that, in a manner incompatible with the said obligations, the foreigner has been hindered by the judicial authorities in the exercise of his right to pursue judicial remedies or has encountered in the proceedings unjustifiable obstacles or delays implying a refusal to do justice." *Ibid.*, p. 237.

[157] *Ibid.*, p. 199.

[158] League of Nations, Doc. C.75.M.69.1929.V., p. 33. For opinions expressed by Governments in this regard, see *ibid.*, pp. 33-36.

[159] ILC *Yearbook*, 1956, vol. II, p. 173 (A/CN.4/96); 1957, vol. II, p. 104 (A/CN.4/106); 1958, vol. II (A/CN.4/111); 1959, vol. II, p. 1 (A/CN.4/119); 1960, vol. II, p. 41 (A/CN.4/125); and A/CN.4/134 (to be published in 1961 *Yearbook*, vol. II).

[160] A revised draft, consisting of 27 articles, was submitted as an addendum to the sixth report (A/CN.4/134/Add.1, 11 Dec. 1961).

[161] ILC *Yearbook*, 1956, vol. II, A/CN.4/96, para. 10.

[162] ILC *Yearbook*, 1958, vol. II, A/CN.4/111, Annex, p. 71.

[163] Article 1 of the draft contained in the Special Rapporteur's third report (ILC *Yearbook*, 1958, vol. II, A/CN.4/111, Annex, p. 71) and Article 2 of the draft contained in the addendum to the 6th report (A/CN.4/134/Add.1, p. 4).

[164] This concept was introduced in the fifth report: see ILC *Yearbook*, 1960, vol. II, A/CN.4/125, paras. 98 and 99.

(2) non-performance of contractual obligations in general, were subject to extensive examination by the Special Rapporteur in his fourth report to the Commission.[165] In that report, the Special Rapporteur adopted as a basis the principle of "respect for acquired rights".[166]

168. Some of the main points of the fourth report are set forth below.

(*a*) Acquired rights

In respect of acquired rights, international obligation of State is said to be involved in two sets of circumstances: State succession and fault attributable to the State which affect those rights.[167] However, respect for acquired rights does not mean inviolability of such rights; it is conditioned upon and subordinate to the paramount needs and general interests of the State.[168]

Attributability of responsibility to a State in regard to the acquired rights of aliens is deemed to consist of the notion of arbitrariness and the doctrine of abuse of rights which are distinguished from "wrongful" acts or omissions resulting from non-performance by the State of any conventional obligation undertaken by it with respect to patrimonial rights of aliens. The following criteria are considered applicable to the notion of arbitrariness: (1) whether the motives or purposes justify the State's action from the point of view of international law; (2) whether the method and procedure followed by State authorities constitute a denial of justice and (3) whether the State's action discriminates between nationals and aliens.[169] Abuse of right entailing State responsibility occurs when the State ignores the limitations to which State competence is necessarily subject and which are not always formulated in exactly defined and specific international obligations.[170]

Certain situations do not involve acquired rights. For instance, it does not seem that industrial, literary or artistic property can be the subject of an international claim based on the notion of "acquired rights", in the absence of convention between the States concerned.[171]

The principle of respect for acquired rights, as connotated above, and the doctrine of "unjust enrichment" are regarded as component elements of State responsibility, especially in determining the question of compensation.[172]

(*b*) Expropriation

The right of "expropriation", even in its widest sense, is recognized in international law, irrespective of the patrimonial rights involved or of the nationality of the person in whom they are vested.[173]

State responsibility may be involved if expropriation is "unlawful" or "arbitrary". An expropriation is not necessarily "unlawful" even when the action imputable to the State is contrary to international law; it can only be termed "unlawful" in cases where the State is expressly forbidden to take such action under a treaty of international convention.[174] An expropriation is "arbitrary" if it is enacted not for a genuinely public purpose or if the method adopted to effect it constitutes a denial of justice.[175]

The crucial question in the matter of expropriation in the public interest, from the international point of view, is compensation. The preponderant view based on the concept of private property, is that the State is under an international obligation to indemnify foreign property owners, although opinions differ as to the requirements that must be satisfied by the compensation paid.[176] However, the development after the First World War has resulted in three different views:[177] (1) in one group of States which adhere substantially to the principle of economic liberalism, expropriation in the public interest is lawful only if compensation is paid; (2) in a second group of States which emphasize the social function of property, compensation is no longer considered an essential element of expropriation; and (3) in the third group, consisting of States with a socialized economy in which ownership of the means of production has been transferred to the State and private property has been reduced to a minimum, compensation has become wholly dependent on the will or discretion of the State.

In solving the problem of compensation, it is necessary to take into consideration not only juridical considerations but also considerations of equity and considerations of a practical, technical and political character. The latter considerations have resulted in the conclusion, since the Second World War, of lump-sum compensation agreements which take into account a State's capacity to pay. The idea based on these considerations is that it would be unjust to deprive the less wealthy States and the under-developed countries of the power to exploit directly their natural resources or public service or other industries or undertakings established in their territory.[178]

(*c*) Contractual rights

In traditional international law, all contractual relations including those established by States with private individuals or bodies corporate of foreign nationality are always governed by municipal law. The mere non-performance by a State of its obligations under a contract with an alien individual does not in itself necessarily give rise to international responsibility.[179]

The traditional position contemplated contractual relations of the ordinary type and it will not always be possible to deal satisfactorily with the situations resulting from the modern forms of contractual relations by a strict application of the traditional notions and principles.[180] In this connexion, two groups of contractual relations are distinguished.

(1) The first group comprises contractual relations of the traditional type, which are still the most numerous and frequent, and in which there is no stipulation, express or implied, providing that the instrument shall be governed wholly or in certain particulars by legal principles of an international character. It is obvious that the obligations assumed by a State in these cases are "internal" in character and the principle *pacta sunt servanda* would be applicable to such obligations only as a principle of municipal law and in accordance with the legislation of the contracting State. In such cases, international responsibility is incurred not by reason of the failure to observe the principle *pacta sunt servanda* but because non-performance involves an act or omission contrary to international law.[181]

(2) The second group comprises instruments of two types (*a*) those which contain the stipulation, express or implied, that the instrument shall be governed wholly or in part by (public) international law, the "general principles of law" as a source of international law, or some other "legal system" described in less precise terms but substantially similar in content; and (*b*) those which contain arbitration clauses contemplating the settlement of disputes by means of international arbitration or some other method or procedure.[182] By these provisions, the contractual relations between a State and a private person is raised to an international plane. It may be said that a State, by agreeing to such provisions in a contract or concession with a private person, intends to confer upon that person the necessary degree of international personality and

[165] ILC *Yearbook*, 1959, vol. II, A/CN.4/119.
[166] *Ibid.*, p. 2.
[167] *Ibid.*, p. 4.
[168] *Ibid.*, p. 5.
[169] *Ibid.*, pp. 7 and 8.
[170] *Ibid.*, p. 8.
[171] *Ibid.*, p. 10.
[172] *Ibid.*, pp. 5-7.
[173] *Ibid.*, p. 11.
[174] *Ibid.*, p. 13.
[175] *Ibid.*, p. 16.
[176] *Ibid.*, pp. 16, 18.
[177] *Ibid.*, p. 18
[178] *Ibid.*, p. 24.
[179] *Ibid.*, pp. 30 and 31.
[180] *Ibid.*, p. 31.
[181] *Ibid.*, p. 31
[182] *Ibid.*, p. 31.

capacity.[153] Consequently, the principle *pacta sunt servanda* can properly be applied in such cases, and the mere non-performance by the State would directly give rise to international responsibility, as in the case of acts or omissions of the State which are incompatible with the provisions of a treaty or other international agreement.[154]

Under the first group, non-performance of contractual obligations gives rise to international responsibility only if the acts or omissions of the State are "arbitrary".[155] In such cases, provisions of municipal law govern the question of compensation.[156] Under the second group of contractual relations, since the contract or concession is governed not by municipal law but by a legal system or legal principles of an international character, non-performance of contractual obligations is "unlawful" and, in principle, calls for "reparation".[157]

169. In his fifth report, the Special Rapporteur submitted the following amended draft articles concerning expropriation and nationalization measures, and contractual obligations:[158]

ARTICLE 7

Expropriation and nationalization measures

1. The State is responsible for the expropriation of the property of an alien if the measure in question does not conform to the provisions of the domestic law in force at the time when such property was acquired by the affected holder thereof.

2. In the case of nationalization or expropriation measures of a general and impersonal character, the State is responsible if the measures are not taken for a public purpose or in the public interest, if there is discrimination between nationals and aliens to the detriment of the latter with respect to compensation for expropriated property, or if unjustified irregularities injurious to such property are committed in the interpretation or application of such measures.

ARTICLE 8

Non-performance of contractual obligations in general

1. The State is responsible for the non-performance of obligations stipulated in a contract entered into with an alien or in a concession granted to him, if the measure in question is not justified on grounds of public interest or of the economic necessity of the State or if it involves a "denial of justice" within the meaning of article 4 of this draft.[159]

2. The foregoing provision is not applicable if the contract or concession contains a clause of the nature described in article 16, paragraph 2.[160]

3. When the contract or concession is governed by international law or by legal principles of an international character, the State is responsible for the mere non-performance of the obligations stipulated in said contract or concession.

170. In his commentary on the above-quoted articles, the Special Rapporteur emphasized the deep impact of the new trends on the traditional notions and ideas and stated that this fact was certain that "it would be wholly unrealistic to disregard it and to deny that the new tendencies could make a valuable contribution to the development and codification of the relevant rules on international responsibility".[161] He gave the following explanation to the fundamental amendments and additions now incorporated in the draft articles quoted in paragraph 169 above:[162]

> "Article 7 now draws a distinction between the common type of expropriation and nationalization measures, a distinction which affects in particular the *quantum* of compensation and the form and promptness of payment; and Article 8 now contains the new provision on contracts or concessions governed by international law or by legal principles of an international character."

171. A revision of the two articles under discussion was submitted by the Special Rapporteur in the addendum to his sixth report in December 1961. The revised articles, which form part of the chapter entitled "Measures affecting acquired rights", read as follows:[163]

ARTICLE 9

Measures of Expropriation and Nationalization

1. The State is responsible when it expropriates property of an alien, if the measure is not in conformity with the provisions of the municipal law in force at the time when such property was acquired by the owner concerned.

2. In the case of measures of nationalization or expropriation of a general and impersonal nature, the State is responsible if the measures are not taken on grounds of public interest, if they involve discrimination between nationals and aliens to the detriment of the latter in the matter of compensation for the property in question, or if unjustified irregularities which are prejudicial to aliens are committed in the interpretation or application of such measures.

ARTICLE 10

Failure to Carry out Contractual Obligations in General

1. The State is responsible for failure to carry out obligations stipulated in a contract entered into with an alien or in a concession granted to him, if the measure is not justified on grounds of public interest or of the economic necessity of the State, or if there is imputable to it a "denial of justice" within the meaning of article 3 of this draft.[164]

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[153] *Ibid.*, p. 32.
[154] *Ibid.*, p. 32.
[155] *Ibid.*, pp. 33 and 34.
[156] *Ibid.*, p. 36.
[157] *Ibid.*, p. 36.
[158] ILC *Yearbook*, 1960, vol. II, p. 67. For the text of the earlier draft articles amended in the fifth report, see third report of the Special Rapporteur (ILC *Yearbook*, 1958, vol. II, pp. 71-72).
[159] Draft article 4 defines two cases of denial of justice. In so far as the civil responsibility of a State is concerned, denial of justice is deemed to have occurred (1) if the court of competent organ of the State did not allow the alien concerned to exercise (*a*) the right to apply to such courts or organs by means of remedies or proceedings which offer adequate and effective redress for violations of fundamental human rights and (*b*) the right to a public hearing, with proper safeguards in the determination of rights and obligations under civil law; and (2) if a judicial decision has been rendered, or an order of the court made, which is manifestly unjust and which was rendered or made by reason of the foreign nationality of the individual affected. ILC *Yearbook*, 1958, vol. II, A/CN.4/111, Annex, p. 2.
[160] Draft article 16, paragraph 2, provides: "...in cases where an alien claims to have suffered injury as a result of the non-performance of obligations stipulated in a contract entered into with the State, or in a concession granted to him by the State, the international claim shall not be admissible if the alien concerned has agreed not to seek the diplomatic protection of the State of his nationality;...". ILC *Yearbook*, 1958, vol. II, A/CN.4/111, Annex, p. 7.
[161] ILC *Yearbook*, 1960, vol. II, A/CN.4/125, para. 104.
[162] *Ibid.*, para. 105.
[163] A/CN.4/134/Add.1, 11 Dec. 1961, pp. 7 and 8.
[164] Draft article 3 defines three cases of denial of justice. In so far as the civil responsibility of a State is concerned, denial of justice is deemed to have occurred (1) if the courts of the State did not allow the alien concerned to exercise (*a*) the right to apply to such courts or to the competent organs of the State, by means of remedies and proceedings which offer adequate and effective redress for violations of fundamental human rights and freedoms, and (*b*) the right to a public hearing, with proper safeguards, by the competent organs of the State, in the determination of rights and obligations under civil law; (2) if a manifestly unjust decision is rendered with the evident intention of causing injury to the alien; and (3) if a decision by a municipal or international court in the alien's favour is not carried out, provided that the failure to carry out such decision is due to a clear intention to cause him injury. *Ibid.*, p. 5.

2. The foregoing provision shall not apply if the contract or concession contains a clause of the nature described in article 19, paragraph 2.[195]

3. If the contract or concession is governed by international law, or by legal principles of an international character, the State is responsible for the mere failure to carry out the obligations stipulated in the said contract or concession.

172. In his commentary on the revised draft article 9,[196] the Special Rapporteur notes that

Unlike the corresponding provisions of the original draft, this article distinguishes between individual expropriation and the general and impersonal nationalization or expropriation carried out as part of a programme of economic and social reform. The purpose of separating the two situations and subjecting them to different legal rules is fundamentally to subject individual and ordinary expropriations to the rules of municipal law in force at the time of acquisition of the property and expropriations forming part of a nationalization measure to the rules laid down for the purpose by the expropriating State, without prejudice to the conditions or prerequisites laid down in paragraph 2 of the article. As is fully explained in the Fourth Report [see paragraph 168 above], the matter depends largely on the type of compensation which should be paid to the alien owners of the nationalized property. In this respect, there seems no doubt that to continue to require the nationalizing State to pay an "adequate" or "just" (that is, equivalent to the market value of the property) "prompt and effective" compensation would be essentially incompatible with the exercise of the State's right to nationalize property, rights or undertakings within its jurisdiction.

173. It may be noted at this point that, at the few meetings[197] at which the International Law Commission discussed the item entitled "State responsibility", widely different, and sometimes opposing, views were expressed by members of the Commission. At the Commission's ninth session, for example, when the Special Rapporteur's second report was under consideration, the views set forth below were expressed either in general terms or with reference to draft article 9 on "Acts of expropriation".[198] It was stated[199] that the rule that a State was bound to respect the property of aliens, even in its traditional form, was subject to the proviso that extensive interference in private property was sometimes necessary in order to carry out fundamental changes in the political or economic structure of the State or far-reaching social reforms, and that in such cases the State might have the sole right to fix its own compensation terms for the damage done and to employ its own agencies for that purpose. It was also observed[200] that codification of the subject "State responsibility" should be grounded on recognition of the inherent right of peoples to own and develop their own natural resources, as formally enunciated in General Assembly resolution 626 (VII), and should provide legal rules that were consistent with the Charter of the United Nations and not merely ensure the protection of vested interests or the maintenance of the *status quo*. It was also said[201] that the problem of State responsibility reached down to the very foundations of contemporary international law in connexion with which two events were of particular importance: (1) the emergence and growth of a new socialist economic system resulting in the coexistence of two different systems both on a world-wide scale; and (2) the attainment of independence by many former colonial and dependent territories; consequently, present-day international law could not be a set of legal rules imposed by States belonging to one economic system on States belonging to another, and aliens must not be regarded as a select group enjoying special privileges. Another view expressed[202] was to the effect that anyone who studied the cases of expropriation which had arisen since the Second World War would be struck by the fact that they had frequently been aimed specifically against foreign interests, even against the interests of a particular country. It was often questionable whether such grounds of public interest which had been advanced were not a cloak for political considerations. Moreover, such cases had often entailed the repudiation of a contract or concession, contrary to its clear terms.

174. It must be pointed out that neither the fourth repo.: of the Special Rapporteur, as summarized in paragraph 168 above, nor the fifth report, which contains the amended version of the draft articles on expropriation and nationalization measures and contractual obligations, nor the revised draft annexed to the sixth report, have yet been considered in any detail by the International Law Commission. At this stage, therefore, the draft reports represent merely the result of the Special Rapporteur's research and his opinion on the subject. The whole topic of State responsibility is yet to be subject to scrutiny by the Commission.

3. Codification by Inter-American bodies—the latest efforts

175. In accordance with the resolution adopted by the tenth Inter-American Conference (see paragraph 155 above), the Inter-American Juridical Committee, at its 1958 meeting, prepared a preliminary report on the "Contribution of the American Continent to the principles of international law that govern the responsibility of the State".[203] In that report, the Committee indicated certain principles as forming "part of Latin American international law as well as, in certain aspects, of American international law".[204] These principles include State responsibility for contractual debts, national treatment as a basis for exoneration from responsibility, State responsibility in the matter of judicial protection, etc. The last mentioned principle, which is concerned with the notion of denial of justice, was subject to detailed formulation.

176. The principles thus formulated were included in the report of the Juridical Committee to the Inter-American Council of Jurists. The latter at its meeting

[195] Draft article 19 (2) provides "...in cases of failure to carry out the obligations stipulated in a contract or concession, the international claim shall not be admissible if the alien concerned has agreed not to seek the diplomatic protection of the State of his nationality; the exoneration shall operate in accordance with the terms of the waiver". *Ibid.*, p. 12.

[196] *Ibid.*, pp. 22 and 23.

[197] See ILC *Yearbook*, 1956, vol. I, pp. 228-249; 1957, vol. I, pp. 155-172; 1959, vol. I, pp. 147-154; 1960, vol. I, pp. 264-270 and 276-283.

[198] This article, as set forth in the draft second report, reads as follows:

"The State is responsible for the injuries caused to an alien by the expropriation of this property, save in so far as the measure in question is justified on grounds of public interest and the alien receives adequate compensation."

(ILC *Yearbook*, 1957, vol. II, p. 130). This article was revised in the Special Rapporteur's fifth report (For the revised text, see paragraph 163 above).

[199] ILC *Yearbook*, 1957, vol. I, p. 158.

[200] *Ibid.*, p. 161.

[201] *Ibid.*, p. 165.

[202] *Ibid.*, p. 165.

[203] A/CN.4/124, para. 105.

[204] *Ibid.*, para. 108.

on 8 September 1959, adopted a resolution[205] requesting the Committee to proceed with the study or report on the subject and instructing the Committee to "prepare an objective and documented presentation of all that which may demonstrate the contribution of the American Continent" to the principles of international law governing State responsibility and to "indicate at the same time the differences that may exist between the several American republics on the subject".

4. Principles formulated by the Asian-African Legal Consultative Committee

177. At its third session held in Colombo in 1960, the Asian-African Legal Consultative Committee provisionally recommended a set of general principles concerning admission and treatment of aliens. One of the principles which is pertinent to the present study reads:[206]

"Right to Property

"(1) An alien shall have the right to acquire and hold property subject to local laws, regulations and orders, and a State shall provide protection in respect of such rights.

"(2) A State shall, however, have the right to acquire, expropriate or nationalize foreign owned property in the national interest or for a public purpose. Compensation shall be paid for such acquisition, expropriation or nationalization in accordance with local laws."

5. Report on the legal problem of nationalization in international law submitted to the interdisciplinary Conference on International Understanding and Peaceful Co-operation convened by UNESCO

178. As stated in paragraph 157 above, a report on "The Legal Problem of Nationalization in International Law" was submitted to the above-named conference.[207] After setting forth his preliminary views on the questions of "sovereignty of the State", "protection of private property", and "the legal position of foreigners", the Rapporteur submitted the following propositions:[208]

"1. Nationalization, being the expression of certain historical processess and political, economic and social changes which are taking place in the modern world, is an institution of domestic law; it must be recognized as an attribute of State sovereignty, the exercise of which in no way impairs international co-operation. Understood thus, it is accepted and respected by modern international law.

"2. Given the coexistence of States having different political systems, modern international law, which applies to all these States in common, confers no inviolability upon private property and does not protect it through privileges accorded to vested interests.

"3. Nationalization affects both nationals and foreigners. Foreigners, as such, have no right to any prerogative or privilege not granted to nationals.

"4. Compensation for nationalization is prescribed by no general rule and by no principle of modern international law. Where compensation is granted, it is given in virtue either of legislative action or of individual bilateral agreements concluded between the States concerned."

179. As part of his final report, the Rapporteur stated that developments in line with the foregoing propositions and the main features of the discussion held in Rome made it possible to state the following conclusions:[209]

"(1) It was unanimously agreed that, in effecting nationalization, the State infringes no principle of international law. Nationalization must, however, be carried out in good faith and without discrimination.

"(2) There was no argument as to the effects of nationalization on the nationals of the nationalizing State.

"(3) In connexion with the problem of the property of foreigners, three opinions were put forward:

"(*a*) that the right to, and hence the duty of, compensation are established facts;

"(*b*) that the right to, and hence the duty of, compensation are in the formative process. They are only beginning to become part of common law, on the basis of the practice of States and, especially, of international treaties;

"(*c*) that there is no principle of international law which establishes the right and the duty of compensation, and that they must be treated quite separately and apart from the act of nationalization itself. The problem must be regarded as one of domestic law.

"However, notwithstanding the differences of opinion referred to above, unanimous agreement was reached on the following points:

"(*a*) It is highly desirable that in every case a liquidation agreement should be concluded between the country that is the creditor and the country that is the debtor, in the interests of economic co-operation between the nations and on the basis of the mutual advantage of both parties;

"(*b*) Where compensation is granted, it should be seen in the light of each actual economic situation, regard being had to all the factors having bearing on the case at issue.

"(4) The main problems and the complications and difficulties encountered when nationalization is carried out are caused by the particular circumstances and conditions in which the creditor States and the debtor States have come into contact."

[205] *Ibid.*, para. 140.

Speaking before the International Law Commission at its twelfth session, the observer for the Inter-American Juridical Committee reported that in the absence of any delimitation of the subject by the bodies concerned, the Committee had decided in effect to limit the scope of its work to the law of claims since the more universal questions concerning State responsibility were not appropriate subjects for regional organs of codification. (See ILC, *Yearbook*, 1960, vol. I, p. 265.)

[206] Asian-African Legal Consultative Committee, Third Session, Colombo, 1960, p. 155.

[207] Twenty-six experts from 17 countries took part and the United Nations was represented by two officials of the Economic Commission for Europe. The meeting was also attended by representatives of the General Agreement on Tariffs and Trade, the International Labour Office, the International Social Science Council, the International Economic Association, the International Sociological Association, the International Political Science Association, the International Association of Legal Science and the United States National Commission for UNESCO.

[208] UNESCO/SS/Co-op/Inter 1, Annex 4, p. 12.

[209] *Ibid.*, pp. 18 and 19.

Chapter IV

STATUS OF PERMANENT SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES IN NEWLY-INDEPENDENT STATES AND IN NON-SELF-GOVERNING AND TRUST TERRITORIES

1. The present chapter is based on information gathered by the Secretariat in the course of its activities pertaining to Trusteeship and Information from Non-Self-Governing Territories, save for certain exceptions, duly noted, covering (1) information provided by Governments in connexion with the present study; and (2) certain items of supplementary information gathered in the context of this study. The latter include, especially, legislative data on newly-independent States and factual economic information.

2. The chapter is divided into four major sections, covering: A. Newly-independent States; B. Non-Self-Governing Territories; C. Territories under the International Trusteeship System; D. The Mandated Territory of South West Africa. The information contained in the first section deals, as far as possible, with measures of transition relating to the change in status resulting from independence, while the three remaining sections provide information under the heading of *Legislative and factual data relating to the right of the peoples of the Territories to dispose of their natural wealth and resources and derive therefrom their means of support.*

3. As requested by the United Nations Commission on Permanent Sovereignty over Natural Resources at its second session in 1960, the present chapter also contains information on the status of land holdings and other related data illustrative of the extent to which the peoples of the Territories exercise sovereignty over their natural wealth and resources.

4. Considerable difficulty has, however, been encountered in obtaining data on the distribution of land between indigenous and non-indigenous owners in terms of relative fertility and other indices of quality, as requested by the Commission. One of the principal reasons for the absence of such data is the scattered nature of the population, the extent to which shifting cultivation is still practised and the impracticability of a total survey.

5. The broader economic aspects of the status of permanent sovereignty over natural wealth and resources in the under-developed countries in general, including newly-independent States and Non-Self-Governing and Trust Territories are discussed on a regional basis in chapter V below.

A. Newly-independent States

6. The present section deals only with the status of permanent sovereignty over natural resources in States which have attained their independence between 1959 and 30 April 1962.[1] Available legislative and economic information on these States largely dates back to the period of their former status as Non-Self-Governing or Trust Territories and they are thus dealt with here under this new heading by virtue of the fact that most of the States concerned have initially retained the legislation in force prior to the attainment of independence. While that legislation is thus subject to amendment and may indeed have been amended at the time of the publication of this study, it has not been possible for the Secretariat to obtain new information in time for inclusion here. As a result, this section must, in most instances, deal with the States in question in broad regional groups, conforming to the boundaries of the earlier legal and legislative systems.

[1] Under the terms of the General Declaration drawn up in common agreement by the delegations of the Government of France and the Algerian National Liberation Front at Evian-les-Bains on 18 March 1962, the question of Algeria's accession to independence was to be submitted to a referendum throughout Algeria between three and six months after the conclusion of the General Declaration.

If the solution of independence and co-operation with France in the conditions of the General Declaration is adopted, provision is made for certain measures pertinent to the topic of the present study.

Thus, the Declaration provides, *inter alia*, that:

"In the existing Departments of the Oases and of the Saoura [Sahara], the development of the wealth of the subsoil will be carried out according to the following principles:

"(*a*) French-Algerian co-operation will be ensured by a technical body for Saharan co-operation. This body will be composed of equal numbers from both sides. Its role will be, in particular, to develop the infrastructure necessary for the exploitation of the subsoil, to give advice on draft bills and regulations relative to mining, to examine requests concerning the granting of mining titles. The Algerian State will issue the mining titles and will enact mining legislation in full sovereignty.

"(*b*) French interests will be assured in particular by:

"The exercise, in accordance with the regulations of the Saharan petroleum code, such as it exists at present, of the rights attached to mining titles granted by France;

"Preference being given, in the case of equal offers, in the granting of new mining titles, to French companies, in accordance with the terms and conditions provided for in Algerian mining legislation;

"Payment in French francs for Saharan hydrocarbons up to the amount of the supply needs of France and other countries of the franc area." (Chapter II, B, para. 2.)

The General Declaration also provides for Algerian guarantee of French interests and the acquired rights of physical and juridical persons under the conditions set forth in the said Declaration. (Chapter II, B.)

On the topic of the settlement of disputes, the General Declaration provides that France and Algeria will resolve differences that may arise between them by peaceful settlement. They will have recourse either to conciliation or arbitration; failing agreement by these procedures, each of the two States shall be able to have recourse directly to the International Court of Justice. (Chapter IV.)

(Information circulated by the Permanent Mission of France to the United Nations, 18 Mar. 1962.)

7. Provisions governing the legislative aspects of State succession are, in the cases discussed here, typically included in the constitutions of the newly-independent States. These constitutions are, in the case of virtually all of the former French Non-Self-Governing Territories, the instruments enacted when the territories in question acceded to autonomous status within the French Community. It is understood that the modifications made more recently, when these States attained full independence, do not affect the matters dealt with here.

8. By way of example, the relevant provision of the Constitution of the Republic of Gabon of 19 February 1959 may be cited here.

> "The laws and administrative regulations in force on the date of the promulgation of the present Constitution which are not contrary to its provisions remain applicable in the absence of any modification or abrogation under the conditions set forth in the present Constitution." (Title XIII, Article 48).[2]

9. Essentially similar provisions are contained in the constitutions of the Central African Republic,[3] the Republic of the Congo (Brazzaville),[4] the Republic of Dahomey,[5] the Republic of Senegal,[6] the Republic of Sudan (now Mali),[7] and the Republic of Chad.[8]

10. In the case of the Republic of the Congo (Leopoldville), an essentially similar provision is contained in the *Loi fondamentale relative aux structures du Congo* (Title I, Article 2).[9]

1. Republics of Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Mali, Mauritania, Niger, Senegal, Upper Volta and the Central African Republic

11. The States listed in the above heading, together with the Republic of Guinea, formerly constituted the Non-Self-Governing Territories of French Equatorial Africa and French West Africa. While each of these States had a territorial identity at that time, the two major groupings constituted, essentially, legislative entities.

a. General aspects of land legislation and distribution[10]

12. Under French legislation, initially in force in the majority of the States enumerated above,[11] the State maintains rights over vacant lands. The principle is contained in Article 713 of the French Civil Code, which states, in part, that "Goods which have no owner, belong to the State". The principle was repeated in special legislation, such as the Decree of 28 September 1926 for Madagascar, which declares that vacant land without an owner forms part of the State domain. It was also contained in decrees applicable to French West and Equatorial Africa, but these decrees were superseded by new legislation (Decree No. 55-580, 20 May 1955, Article 21), reorganizing land tenure in these territories and recognizing indigenous customary rights on land. None the less, it was specifically stated that the provision in Article 713 of the Civil Code remains valid, without prejudice to the new provisions.

13. In the area under discussion, alienation of indigenous lands to non-indigenous persons cannot be effected in areas where African tribal organizations exist on the grounds that customary law does not permit transactions of this nature. In addition, most alienations are administratively subject to the consent of the governors. Later legislation for French West and Equatorial Africa, however, provided that individual customary owner-rights which had been officially adjudicated could be alienated to all other persons and, if the purchaser was non-indigenous, he was obligated to have the land registered as his property on the basis of the Civil Code.

14. In all cases of expropriation in the group of territories comprising the present republics of Chad, Congo (Brazzaville), Gabon and the Central African Republic, customary rights are reserved in connexion with crops necessary for the subsistence of the population. A considerable proportion of the land was ceded to private concessions in the nineteenth century. A number of those concessions were terminated around 1919 or required to lapse in 1929, and further reforms were effected in 1937. As regards the Middle Congo (Republic of the Congo), the following account has been given:[12]

> "The success, in the Belgian Congo, of the system of large concessions *(grandes concessions)* caused the French Government to try out this system in the development of the Middle Congo. Large parcels of land were conceded to companies which enjoyed a monopoly of exploitation and were entrusted with the improvement of the land under concession. This system resulted in a nearly complete failure, and it was then decided to revert to a liberal system of agricultural concessions *(arrêtés généraux of 1937)*.
>
> "Various considerations relating more specifically to the shortage of labour and to the modern view that the real settler is the indigenous one soon led to the *de facto* suspension of this system. In practice, since 1937, concessions have no longer been granted for areas covering more than 20 hectares nor for other purposes than truck farming.
>
> "The *Conseil général* (local assembly) of the Middle Congo must be consulted on the granting of all rural concessions covering more than 200 hectares and of all forestry concessions covering more than 500 hectares. If several territories of the Federation are concerned with the concessions, the

[2] *Journal officiel de la Communauté*, No. 5, 15 June 1959, p. 61.
[3] Constitution of 16 Feb. 1959, Title IX, Article 45. *Ibid.*, p. 46.
[4] Constitutional Law No. 1, 28 Nov. 1958, Article 12. *Ibid.*, p. 50.
[5] Constitution of 15 Feb. 1959, Title XIII, Article 58. *Ibid.*, p. 56.
[6] Constitution of 24 Jan. 1959, Title V, Article 48. *Ibid.*, p. 82.
[7] Constitution of 23 Jan. 1959, Title X, Article 52. *Ibid.*, p. 86.
[8] Constitution of 31 March 1959, Title XI, Article 60. *Ibid.*, p. 89.
[9] *Moniteur Belge*, Nos. 127-128, 27 and 28 May 1960, p. 3988. For the text of the article in question, see para. 28 below.
[10] Based on *Special Study on Economic Conditions and Development, Non-Self-Governing Territories, Summaries and analyses of information transmitted to the Secretary-General during 1951*, ST/TRI/SER.A/6/Add.2, Chap. VI, pp. 248-271, and *Special Study on Social Conditions in Non-Self-Governing Territories, Summaries and analysis of information transmitted to the Secretary-General (1957-1958)*, ST/TRI/SER.A/14, Chap. XII, pp. 141-155.
[11] See paras. 9 and 10 above. It may be noted that the Constitutions of the Republics of Ivory Coast, Niger and Upper Volta, as well as that of the Malagasy Republic, do not contain the provisions governing legislative succession mentioned in the paragraphs referred to.
[12] France: *Moyen-Congo*, Ministry of Overseas France, 1958, p. 17.

Grand Conseil (federal assembly) of French Equatorial Africa is required to be consulted."

15. In the group of territories comprising the republics of Dahomey, Guinea, Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta, the extent of agricultural concessions was never large and many have elapsed. Effective possession by the indigenous population excludes all claims on their land by the State, subject to expropriation in the public interest, in which case compensation is paid. It is stated:[13]

"Under the Decree of 15 November 1935, land subjected to collective tenancy by native communities can only be alienated with the approval of the Governor in conformity with the opinion of the local or federal assembly respectively. Considering the number of concessions already granted to Europeans and the lack of manpower in the areas where such concessions are most frequent, the granting of new concessions will probably be again regulated in a more restrictive way."

b. Mineral rights[14]

16. Under Article 552 of the Civil Code of the French Union,[15] minerals are controlled by special legislation. The salient provisions of a recently codified text[16] are summarized below.

Natural deposits of mineral substances are divided into two categories as far as their legal status is concerned: Quarries and mines. Quarries are considered as not separate from ownership of the soil and are governed by the conditions pertaining to the soil. Substances falling under the mines category are considered as concessible substances (Articles 2 and 3).

The right to exploit a mine may be acquired only by virtue of a mining permit or by a mining concession. The right to prospect for minerals may be acquired only by virtue of a prospecting permit. Prospecting or exploitation permits or concessions cannot be granted unless the applicant first obtains a personal authorization.

Without authorization by decree, no natural or juridical person may hold directly or indirectly a controlling interest in several exploitation permits or concessions having a total area of more than 2,000 square kilometres (Article 4).

The State may engage in all mining operations in any of the territories covered by the present decree. The Territories and groups of Territories have the same rights within their respective boundaries (Article 5).

A personal mining authorization shall be granted by the Chief of Territory in Government Council; it shall be issued for a limited period, for one or more concessible substances, or for one or more natural associations of concessible substances, and for a limited number of permits or concessions.

No company may obtain a personal authorization or hold a mining claim if it is not constituted under French law. Natural or juridical persons must, in order to carry on mining activities, fulfil certain conditions fixed by decree of the Conseil d'Etat concerning, in particular, their nationality or their leading executives [Decree 58-9 of 2 January 1958] (Article 7).[17]

Two categories of permits are issued: ordinary prospecting permits and prospecting permits A and B. In this connexion, the Territories shall be divided according to regions and concessible substances into zones closed, for reasons of public interest, to exploration; and prospecting zones open for the issuance of ordinary prospecting permits; and zones reserved for the issuance of prospecting permits A and B. This division shall be enacted by the Chief of Territory in Government Council with the advice of the Territorial Assembly (Article 8).

A prospecting permit A shall be granted by decree issued upon the recommendation of the Minister of Overseas France upon the advice of the Committee of Mines of Overseas France and after consultation with the Territorial Assembly or, in French West or Equatorial Africa, after consultation with the Grand Council when the permit in question concerns two or more grouped Territories. The permit shall always be granted subject to prior rights, and for a maximum period of five years, renewable for a similar period. There is no restriction on the number of such renewals (Article 9).

A prospecting permit B and the ordinary prospecting permit shall be issued for a square area, the sides of which shall not exceed ten kilometres, and for a period not exceeding two years; two renewals for a similar period are permitted. The ordinary permit shall be issued by the competent mining engineer of Overseas France; a permit B shall be issued by order of the Chief of a group of Territories or of the Chief of a non-grouped Territory after consultation with the Territorial Assembly. [In French West or Equatorial Africa, the provisions set forth under Article 9 above apply.] These permits shall always be granted subject to prior rights (Article 10).

Subject to the area restrictions noted under Article 4 above, the holder of a prospecting permit is, upon submission of proof of the existence of an exploitable deposit, entitled to an exploitation permit or a concession (Article 12).

Exploitation permits are issued subject to restrictions essentially similar to those governing the issuance of the prospecting permits upon which they are based. They are issued for a period of four years, renewable four times for a similar period (Article 13).

The holder of an exploitation permit is entitled to a concession upon submission of proof of the existence of an exploitable deposit. A mining concession shall be valid for seventy-five years and may be renewed for a twenty-five-year period. There is no restriction on the number of such renewals (Article 15).

Special provisions apply to petroleum products and substances related to atomic energy development (Articles 19 to 25).

c. State succession and the granting of minerals concessions

17. By Decree No. 57-458 of 4 April 1957, the Grand Councils of the Territorial Groups of French Equatorial Africa (comprising the present republics of Chad, Congo [Brazzaville], Gabon and the Central African Republic) and French West Africa (comprising the present republics of Dahomey, Guinea, Ivory

[13] France: *Notes documentaires et études,* 14 June 1948.

[14] It may be noted that the Malagasy Republic introduced new mining legislation by the Ordinance of 5 Sept. 1960 (*Journal Officiel de la République Malgache,* 10 Sept. 1960), replacing earlier legislation.

[15] *Code Civil de l'Union française,* edition prepared by G. H. Camerlynk, Paris, 1950, p. 80.

[16] The information set forth here is based solely upon a codified text of the mining laws governing the French Overseas Territories prepared by the *Direction fédérale des Mines et de la Géologie de l'Afrique Occidentale Française.* This text is based upon Metropolitan French Decree 54-1110 of 13 Nov. 1954, as amended by decrees 55-638 of 20 May 1955; 57-242 of 24 Feb. 1957; 57-458 and 57-460 of 4 Apr. 1957; and 57-859 of 30 July 1957. (*Mining Laws in French Overseas Territories,* WTIS, Part 1, No. 58-61.)

[17] It is pertinent to note here the relevant provisions of the French Constitution of 10 Nov. 1946 concerning the nationality status of the inhabitants of French Overseas Territories:

"All nationals of the Overseas Territories shall have the status of citizens, in the same capacity as French nationals of Metropolitan France or the Overseas Territories. Special laws shall determine the conditions under which they may exercise their rights as citizens" (Article 80).

"All citizens and nationals of territories within the French Union shall have the status of citizens of the French Union, which ensures to them the enjoyments of the rights and liberties guaranteed by the Preamble of the present Constitution" (Article 81).

Coast, Mali, Mauritania, Niger, Senegal and Upper Volta) were empowered to take decisions enacting regulations applicable to all the Territories of the respective Groups in matters concerning, *inter alia,* methods of applying the regulations governing mineral resources (Article 28). Revenue for financing the budget of each Group of Territories shall be derived from, among others, one half of the mining and petroleum royalties and one half of the export duties levied on mineral and petroleum products from the Territories of the Group concerned (Article 45).[18]

18. By Decree No. 570-460 of 4 April 1957, the Government Councils of the individual Territories were empowered to grant type B mining exploration permits upon the recommendation of the Territorial Assembly concerned (Article 29).[19]

19. A more detailed and up-to-date account of the transfer of powers with respect to mining concessions may be given in the case of the republics of Gabon and the Congo (Brazzaville) in the context of concessions granted to the Compagnie Minière de l'Ogooué (COMILOG).[20]

20. The concessions and related instruments cover the actual permission to mine, as well as the construction of a railway and cable-way, the construction of port facilities, and the establishment of a long-term fiscal régime relating to the operation of all the facilities involved. A considerable number of legislative instruments are thus involved and the present account must therefore be confined to a brief description of the procedures in so far as they bear on the topic discussed.

21. The system of concessions involved had its origin in 1953, when the company concluded a convention with the High Commissioner for French Equatorial Africa. The detailed provisions of the various concessions (mining and cable-way in the Gabon; railway and port facilities in the Congo) received the approval of the Grand Council of French Equatorial Africa[21] and of the territorial assemblies of Gabon[22] and the Middle Congo[23] in the course of 1957, when the bodies in question requested the respective competent officials to conclude long-term conventions with the Company.

22. An establishment convention between the company on the one hand and the republics of Gabon and Congo (Brazzaville) was concluded on 27 February 1959,[24] after these republics had become autonomous.

23. Article 12 of the last-mentioned convention provides that any constitutional changes which might affect the juridical character of the public bodies committed to the present convention and any changes in their powers which might occur, shall not modify the status of the rights and duties of the Company as governed by the relevant earlier legislation, regulations and conventions.

24. The establishment convention was also signed by the High Commissioner of the French Republic in his capacity of chief of the Territorial Group of French Equatorial Africa. When the Gabon and the Congo (Brazzaville) subsequently opted for non-grouped status within the French Community, a protocol of agreement[25] was concluded between the company and the two republics in question. Under that protocol, recalling, *inter alia,* Article 12 of the above-mentioned convention, the Company recognized that powers previously exercised by the Governor-General of French Equatorial Africa had now devolved upon the Governments of the two republics concerned.

2. Federation of Nigeria

a. Minerals legislation

25. Under the terms of the Minerals Ordinance of 1946, the entire property in, and control of, all minerals and mineral oils was, or was to be, vested in the then Colony save in so far as those rights might have been limited by an express grant made before the Ordinance came into force (Article 3).[26]

b. Extent of national participation in the exploitation of natural resources*

26. The greater part of Nigeria's natural resources, with the exception of minerals and mineral oil, are being exploited by nationals of the country. Rubber, forest products (such as palm products), groundnuts, cotton and cocoa are mostly exploited by nationals with the financial and supervisory help of the Government.

27. The situation with regard to minerals is as follows:

Coal: Coal is largely worked by the Nigeria Coal Corporation, which is a quasi-Government organization;

Tin: Of the total 1960 tin production of 8,300 tons, 95 per cent was won by foreign firms, while Nigerian firms accounted for the remaining 5 per cent;

Columbite: Out of a total production of 1,744 tons in 1960, foreign firms won 97 per cent and Nigerian firms 3 per cent;

Oil: No Nigerian firm is engaged in the exploitation of mineral oil, which is wholly under exploitation by foreign firms.

c. Mining operations: nationality distribution of enterprises[27]

28. A total of 162 operators held titles or licences under the Minerals Ordinance and were engaged in mining and prospecting at the close of the financial year ending 31 March 1958. Details as to place of incorporation or registration, and as to nationality of ownership are given below.

Company status, incorporation

Public limited liability companies:	
Incorporated in the United Kingdom	18
Incorporated in Nigeria	2
Private limited liability companies:	
Incorporated in Nigeria	48

[18] *Cessation of the Transmission of Information under Article 73 e of the Charter: Communication from the Government of France,* A/4096/Add.1, pp. 44-45.

[19] *Ibid.,* p. 65.

[20] For factual economic data on these concessions, see chapter V, para. 143 below.

[21] *Journal officiel de l'Afrique Equatoriale Française,* 1 Mar. 1957.

[22] *Ibid.,* 15 Dec. 1958.

[23] *Ibid.,* 15 Apr. 1957.

[24] *Ibid.,* 15 Mar. 1959, as corrected in *Journal officiel,* Gabon, 15 Nov. 1959; *Journal officiel,* Congo, 15 Apr. 1959, as corrected 15 Sept. 1959.

* Information provided by the Government.

[25] Dated 29 June 1959.

[26] *The Laws of Nigeria,* 1948, rev. ed., vol. IV, cap. 134, p. 346.

[27] Federation of Nigeria, *Annual Report of the Mines Department for the Year Ended 31 Mar. 1958,* Lagos, p. 1.

Others:	
Regional production development boards	1
Firms operating under registered business names	16
Private operators	77
Nationality of ownership	
Private limited liability companies incorporated in Nigeria:	
Nigerian	3
British	38
French	3
Lebanese	2
Greek	2
TOTAL	48
Firms operating under registered business names:	
Nigerian	15
British	1
TOTAL	16
Private mine owners:	
Nigerian	28
British	45
French	1
Lebanese	2
United States of America	1
TOTAL	77

Two public limited liability companies incorporated in Nigeria hold licences under the Mineral Oils Ordinance.

d. DISTRIBUTION OF LEASES[28]

Company status	*No. of companies*	*No. of leases*	*Total area (acres)*
Public limited liability companies incorporated in the United Kingdom	18	1,475	149,251
Companies incorporated in Nigeria	48	1,203	68,528
Registered business names firms.	16	152	5,819
Private operators:			
Tin and associated metals	69	546	27,482
Gold	13	17	749
Lead, silver, zinc	5	4	83

e. AGRICULTURE ACTIVITIES OF FOREIGN COMPANIES

29. Nine foreign companies are engaged in plantation farming for rubber and palm products and in forestry. The companies in question are established in the Eastern and Western regions of Nigeria and exploit, in all, 40,000 acres out of a total area of 60,000 acres under forest-product cultivation.

f. CAPITAL FORMATION OF FOREIGN COMPANIES*

30. The total capital formation of foreign companies engaged in the exploitation of natural resources in Nigeria which rendered returns from 1955 to 1959 is set forth in the table below.

Year and resources	*No. of companies*	*Total capital formation (Pounds sterling)*
1955-56		
Agriculture, forestry, fisheries	6	589,000
Mining	121	4,094,000
1956-57		
Agriculture, forestry, fisheries	8	168,000
Mining	82	4,037,000
1957-58		
Agriculture, forestry, fisheries	14	596,000
Mining	114	9,669,000
1958-59		
Agriculture, forestry, fisheries	9	721,000
Mining	109	14,297,000

* Information provided by the Government.

[28] *Ibid.*, pp. 30-36.

g. DISTRIBUTION OF NATIONAL AND PER CAPITA INCOME[29]

Table IV-1

Nigeria: gross domestic product and national income
(Million United States dollars)

	1950-51	*1952-53*
Agriculture, forestry, livestock and fishing	1,141.3	1,260.6
Transport and distribution	246.4	292.6
Minerals	21.6	26.6
Manufactures (including craft industries and public utilities)	30.8	37.5
Buildings	116.5	135.2
Other	114.0	150.3
Gross domestic product	1,670 6	1,902.8
Gross national income[a]	1,662.2	1,894.7
African component	1,638.4	1,863.1
Per capita income of African population (dollars)	53.20	58.80

[a] Adjusted for balance of dividends remitted to and received from abroad and remittance of migrant workers.

3. Republic of the Congo (Leopoldville)

a. LEGISLATIVE PROVISIONS

31. Under the terms of Title I, Article 2, of the *Loi fondamentale relative aux structures du Congo*, the laws, decrees and legislative ordinances, their implementing measures, as well as all regulations in effect on 30 June 1960 are to remain in force in the absence of any specific abrogation.[30]

32. Title V of the *Loi fondamentale* deals with the division of legislative competence between the Central Government and the provincial governments with respect to, *inter alia*, the regulation of natural resources exploration and exploitation.[31]

33. Thus, under the terms of Article 219, the competence of the Central Government extends to:

[29] From: *Special Study on Economic Conditions in Non-Self-Governing Territories*, United Nations Publication, Sales No.: 58.VI.B.1, table 28, p. 17.

[30] *Moniteur Belge*, Nos. 127-128, 27 and 28 May 1960, p. 3988. No abrogations or amendments of the legislation in question have been brought to the Secretariat's attention up to the time of the preparation of this revised study. For a review of natural resources legislation in the Trust Territory of Ruanda-Urundi and in force in the Congo up to 30 June 1960, see section C, paras. 259-260 of the present chapter.

[31] *Loc. cit.*, pp. 4007-4008. It may be noted that prior to the Republic of the Congo's attainment of independence, concession-granting powers and rights to royalties in respect of mining, forestry and agriculture over large areas were held by three semi-public corporations: the *Comité spécial du Katanga* (whose rights were to expire in 1990); the *Compagnie des Chemins de fer du Congo supérieur aux Grands Lacs africains* (CFL); and the *Comité national du Kivu*. The rights of the two last-named corporations were to expire in 2011. By a convention dated 25 May 1960 and implemented by Decree of 30 May 1960 (*Moniteur Congolais*, No. 23, 6 June 1960, pp. 1655 and 1657 respectively), the rights and powers of the *Comité national du Kivu* which the latter held directly from the State and not as a lessee of CFL, were revoked in favour of the Government of the Belgian Congo, against payment of compensation, with a view to permitting the Congo "to exercise in full, from the outset of its independence, its powers and administrative rights in the private sector and to dispose freely of its resources." (Decree of 30 May 1960, *Exposé des motifs.*)

(1) General regulations concerning land administration (para. 23);

(2) General regulations concerning the granting of agriculture and forestry concessions on State lands (para. 24);

(3) General regulations concerning subsoil exploration and exploitation (para. 25); and

(4) General regulations concerning the granting of mining concessions by the provinces (para. 26).

34. The competence of the provincial governments in the context under discussion is laid down in Article 220 and extends to:

(1) The granting and supervision of agricultural and forestry concessions on provincial lands (para. 9); and

(2) The granting of mining concessions within the framework of the general regulations set forth under Article 219 (26).

35. Certain basic provisions concerning the granting of natural resources concessions are also contained in Title V of the *Loi fondamentale* under the heading of "Special measures".

Until the enactment of legislation governing the regime of land, all cessions and concessions with respect to land, forests, mines, water and railways are to be granted within the framework of existing legislation. Grants are made by the provincial legislatures in respect of all matters within the legislative competence and by the provincial governments in respect of all matters within the executive competence (Article 223).

Legislation with respect to subsoil exploration and exploitation shall provide for direct and equitable participation by the provinces in which the exploitation is carried out in any revenue from charges levied (Article 224).

Legislation concerning the granting of mining concessions shall provide for the just and previous compensation of all land owners, whether individuals or communities (Article 225).[32]

b. Factual economic data

36. The information set forth under this heading relates to the extent of African participation in the production of the Congo's major commercial agricultural commodities up to 1958. The statistical data are based on information provided by the Government of Belgium under Article 73 e of the Charter.

i. Distribution of production of major crops between the African population and European planters[33]

[32] *Ibid.*, p. 4,009.

[33] Chambre des Représentants, *Rapport sur l'administration du Congo Belge pendant l'année 1958 présenté aux Chambres Législatives*, Brussels, 1959, pp. 253-258.

(1) *Coffee*

Area under Robusta coffee
(hectares)

Year	Bearing plantations			Seedling plantations		
	European	African	Total	European	African	Total
1955	43,221	7,430	50,651	31,843	6,672	38,515
1956	51,174	8,388	59,562	39,996	8,108	48,104
1957	56,984	11,943	68,927	43,971	11,504	55,475
1958	63,395	15,699	79,092	48,543	19,272	67,815

Area under Arabica coffee
(hectares)

Year	Bearing plantations			Seedling plantations		
	European	African	Total	European	African	Total
1955	10,723	1,307	12,030	6,359	1,186	7,545
1956	11,740	1,370	13,110	4,667	977	5,644
1957	12,165	2,347	14,512	5,179	1,535	6,714
1958	13,426	3,099	16,525	5,102	2,766	7,868

Production of Robusta coffee
(metric tons)

Year	European	African	Total
1955	22,392	2,433	24,825
1956	29.574	3,405	32,979
1957	32.107	4,382	36,489
1958	38,882	6,626	45,508

Production of Arabica coffee
(metric tons)

Year	European	African	Total
1955	4,206	562	4,768
1956	5,309	381	5,690
1957	5,980	586	6,566
1958	7,276	1,006	8,282

(2) *Palm oil*

Area under oil palms
(hectares)

Year	Natural groves		Plantations				
			European		African		
	European	African	Bearing	Seedlings	Bearing	Seedlings	Total area
1955	47,646	—	96,586	39,936	45,117	22,227	251.512
1956	42,693	7,130	98,789	35,778	49,901	27,894	262.185
1957	42,308	3,718	104,346	37,133	50,501	29,958	267,958
1958	3,146[a]	12,763	106,955	40,072	36,079	32,621	251,636

[a] Groves in Equatoria province abandoned.

Palm oil production
(metric tons)

	1955	1956	1957	1958
European	188,482	204,039	215,230	213,357
African	8,223	16,867	18,225	12,408
Total	196,705	220,906	233,445	225,765

Palm cabbage production
(metric tons)

	1955	1956	1957	1958
European	82,391	92,755	94,834	93,355
African	37,517	47,128	51,273	50,469
Total	119,908	139,883	146,107	143,824

Sources of palm oil production, 1958

	Metric tons
Oil delivered to trade channels by Africans	12,408
Industrial oil from fruit delivered to oil plants by Africans	136,047
Oil from European plantations	77,310
	225,765
Plus local consumption at producing villages	60,000

(3) *Rubber*

Area under rubber
(hectares)

	European			African		
	Bearing	Non-Bearing	Total	Bearing	Non-Bearing	Total
1955	46,573	10,290	56,863	8,111	13,650	21.761
1956	46,725	11,740	58,465	8,591	12,819	21,410
1957	47,589	13,557	61,146	9,539	13,382	22,291
1958	47,980	16,351	64,331	9,996	15,060	25,056

Rubber production
(metric tons)

	European	African	Total
1955	26,783	2,016	28,799
1956	29,017	2,717	31.734
1957	31,883	3,206	35,089
1958	33,886	3,576	37,462

ii. PRINCIPAL CROPS, AREA AND PRODUCTION[34]

	European			African		
	Area (hectares) (Bearing)	Production (metric tons)		Area (hectares) (Bearing)	Production (metric tons)	
		Total	Commercial		Total	Commercial
Wheat	3	—	—	3,638	2,694	1,070
Maize	1,561	2,541	—	344,310	317,781	112,808
Rice	—	—	—	162,973	173,347	110,076
Other cereals	32	17	—	83,373	56,953	7,020
Manioc	1,462	12,413	—	635.576	7,548,352	1,516,955
Cotton	302	32	[a]	331,472	129,797	[a]
Plantain	461	4,159	62	240,389	1,727,435	346,080
Bananas	18,293	34,732	34,632	3,349	14,063	7,461
Sugar cane	3,872	210,078	210,000	812	8,852	2,242
Cocoa	14,634	4,816	[a]	80	14	[a]
Rubber	47,980	33,886	[a]	9,996	3,576	[a]
Tea	2,802	1,995	[a]	5	3.5	[a]
Coffee (Robusta)	63,393	38,882	[a]	15,699	6.626	[a]
Coffee (Arabica)	13,426	7,276	[a]	3,099	1,006	[a]

[a] Not available.

[34] *Ibid.*, pp. 261-266.

iii. SHARE OF THE AFRICAN POPULATION IN THE NATIONAL INCOME AND PER CAPITA INCOME DISTRIBUTION

37. The following data, relating to the years up to 1955, that is, prior to the Congo's attainment of independence, are taken from the *Special Study on Economic Conditions in Non-Self-Governing Territories:*[35]

In the Belgian Congo the gross national product in 1955 was 63 per cent higher than that of 1950. The increase is evident in all fields, but the tendency towards a somewhat wider diversification of the economy is shown in the percentage distribution. Agriculture, which in 1950 constituted 36.5 per cent of the gross national product, accounted in 1955 for only 31.6 per cent; the share of mining increased from 19.9 to 23.2 per cent, and that of manufacture, construction and transport and communication increased from 17.8 to 22.7 per cent. During this period the share in the national income calculated as accruing to the African population increased by 86 per cent in terms of money compared with 69 per cent for the total population. Most of the increase is accounted for by wages. In 1955 the wages bill was more than double that of 1950. It represented 37 per cent of the total African income in 1950 and 44 per cent in 1955.

Table IV-2

Belgian Congo: gross domestic product
(Million United States dollars)

	1950	1953	1954	1955
Agriculture, forestry and fishing	205.4	281.8	287.2	308.6
Mining and quarrying	134.6	228.2	242 8	268 8
Manufacturing	77.0	111.6	122.6	133.8
Construction	33.6	66.0	70.8	77.2
Transport and communication	49.2	86.4	95.2	107.0
Trade	64.2	87.4	89.6	88.8
Public administration and defence	61.0	89.8	99.6	111.2
Services	20.8	45.0	51.8	59.2
Gross domestic product at factor cost[a]	657.2	980.6	1,037.8	1,119.2

[a] The value of imported raw materials and other imports has been deducted from the total product but not from its components.

Table IV-3

Belgian Congo: total and African income
(Million United States dollars)

	1950	1953	1954	1955
Net National Income:				
Total population	586.2	850.2	903.0	946.8
African population	269.8	445.0	472.2	501.6
African: percentage of total	46.0	52.3	52.3	53.0
Per capita income of African population (dollars)	23.4	37.4	38.8	40.4

Table IV-4

Belgian Congo: African income, 1950 and 1957[36]

	1950	1957
Total African income	$269.8 million	$548.2 million
Share in national income	46.0 per cent	56.0 per cent
Change in African income at current prices	—	103.2 per cent
Change in African income at constant prices	—	70.8 per cent[a]
African per capita income	23.4	42.2
Change at current prices	—	80 4 per cent
Changes at constant prices	—	51.5 per cent
Annual rate of change at constant prices	—	6.1 per cent

[a] Deflated by the index of retail prices of goods purchased by the African population (1950 = 100, 1957 = 119).

iv. LAND DISTRIBUTION

38. In 1947, out of 50 million hectares of cultivable land and 2,334,000 hectares of grazing land, the area cultivated by the African inhabitants—including fallow land—came to approximately 48.7 million hectares. By 31 December 1947, non-African inhabitants had been granted a total area of 6,740,782 hectares (12.9 per cent, or 1,226,893 hectares of which had been developed). There has been little change in the proportionate relationship of the various categories of land since that time.[37]

39. The population distribution in 1947 was as follows:[38]

Africans	10,761,353
Non-Africans	44,305

[35] United Nations publication, Sales No.: 58.VI.B.1, p. 16 and tables 23 and 24.

[36] From: *Progress of the Non-Self-Governing Territories under the Charter*, United Nations publication, Sales No.: 60.VI.B.1, vol. 2, tables 11 and 12, p. 19.

[37] *Ibid.*, p. 173.

[38] *Ibid.*, vol. 5, p. 1.

4. Togolese Republic

a. Land tenure[39]

40. The prevailing method of land tenure in the country while it was a Trust Territory under French administration was the customary form under which lands generally belong to collectivities and the individual occupier is limited to a right of usufruct over the land and is not free to sell or otherwise alienate it. There existed, however, a procedure by which persons effectively occupying lands could apply to have their lands registered (*immatriculés*). If no valid objections were lodged by other persons, the lands in question were entered in the Land Register and were then governed by provisions which are those of the French metropolitan *Code civil.*

41. The land tenure system was reorganized by Decree No. 55-581 of 20 May 1955.

The Decree confirmed all existing customary rights over unappropriated land, forbade the granting of concessions to land over which there were customary rights without the express consent of the holders of such rights; the holders of individual customary rights could, after public proceedings in which the agreements of all parties concerned were heard, obtain a deed affirming the existence and stating the extent of their rights. Furthermore, individual customary rights carrying with them the right to continuous possession and regular exploitation of the land could be freely transferred or mortgaged, and could be converted into permanent property rights by registration. Concerning lands in urban areas, the Decree provided that communes and urban centres might proceed to the systematic and compulsory registration of all land rights with a view to the preparation of a cadastral survey. It also provided that a complete inventory must be made of the property included in the private domain of the Territory and of the other local public authorities.

b. Mineral rights

42. The provisions governing the exploitation of mineral resources were essentially similar to those set forth in paragraph 16 above.

43. Under the terms of a convention[40] between France and the Republic of Togoland concerning defence, signed on 25 February 1958, Togo agreed, *inter alia,* to

consult the representative of the French Republic concerning applications for individual prospecting licences, for the purchase or sub-lease of licences or concessions with respect to mineral substances classified as defence materials and concerning permits to place such substances in circulation (Article 3).

5. Tanganyika

44. Tanganyika, a former Trust Territory under British administration, acceded to independence on 9 December 1961. In view of the recency of the country's independence, the factual economic data set forth here antedate the year 1961 and are drawn from reports submitted by the former Administering Authority.

a. Land

i. Distribution of non-African land by type of tenure[41]

45. In 1958, non-African holdings of land were distributed as follows (the number of holdings involved is shown in brackets):

	Acres
Non-African holdings (total)	2,600,000
Non-African holdings surveyed (898)	2,147,000
Leasehold	1,474,000
Registered freehold (178)	450,000
Non-registered freehold (27)	43,000
Tenure not specified (28)	180,000

ii. Land alienation[42]

46. Table IV-5 deals solely with land alienated under long-term rights of occupancy and does not include freehold land. At the end of the period convened there were 491 registered holdings of freehold land in rural areas covering 505,614 acres; compulsory registration of freehold land had not been extended to the whole Territory. Land over which mining operations were being carried out is not dealt with in the table but is referred to in paragraph 47 below.

47. Table IV-5 does not include land over which mining operations are carried out. Such operations were, during the period in question, in fact, carried out under the grant of either mining leases or mining claims which conveyed no surface rights to the holders, save for the purpose of winning minerals. In some cases, however, mining enterprises held rights of occupancy over portions of the land in connexion with mining operations. The amount of land thus held by mining enterprises was negligible compared with their rights to conduct mining operations. At 31 December 1960 there were 43 current mining leases covering an area of 115,478 acres. Two of these leases, totalling 87,040 acres, were held by African co-operative societies. In addition, there were 2,424 mining claims covering 21,835 acres. In all, therefore, mining rights covered an area of 137,313 acres.

iii. Nationality breakdown of long-term rights of occupancy over agricultural and pastoral land

48. The nationality breakdown of long-term rights

[39] A/3170, p. 247; *Report of the Government of France on the Administration of the Trust Territory of Togoland, 1957,* pp. 108-131 and Statistical Appendices, pp. 265-277.

[40] TCOR, Eighth Special Session, Summary Records and Annexes, p. 23.

[41] A/4404, pp. 21-22.

[42] *Tanganyika, Report for the Year 1960,* Part I, pp. 61-63, London, H. M. Stationery Office, 1961, Colonial No. 349.

Agricultural and pastoral land alienated under

Year (1)	Alienation of agricultural land up to 1,500 acres and pastoral land up to 2,500 acres				Alienation of agricultural land over 1,500 acres and pastoral land over 2,500 acres				Total of columns (2) to (5) (smaller acreage group)		Total of columns (6) to (9) (larger acreage group)	
	Agricultural up to 1,500 acres		Pastoral up to 2,500 acres		Agricultural over 1,500 acres		Pastoral over 2,500 acres					
	No. (2)	Acres (3)	No. (4)	Acres (5)	No. (6)	Acres (7)	No. (8)	Acres (9)	No. (10)	Acres (11)	No. (12)	Acres (13)
1946	3	3,673	—	—	2	5,171	—	—	3	3,673	2	5,171
1947	3	1,140	—	—	4	8,320	—	—	3	1,140	4	8,320
1948	11	8,575	—	—	3	32,960	—	—	11	8,575	3	32,960
1949	101	65,353	1	500	30	130,082	—	—	102	65,853	30	130,082
1950	186	102,583	—	—	22	71,804	—	—	186	102,583	22	71,804
1951	91	44,888	2	693	43	189,063	—	—	93	45,581	43	189,063
1952	128	68,559	4	3,678	33	188,398	10	135,698	132	72,237	43	324,096
1953	76	44,669	2	4,403	16	95,514	4	42,080	78	49,072	20	137,594
1954	40	20,888	2	2,545	14	54,339	2	13,900	42	23,433	16	68,239
1955	78	21,681	—	—	10	23,497	1	18,647	78	21,681	11	42,144
1956	51	27,443	9	12,969	12	31,433	4	152,275	60	40,412	16	183,708
1957	50	30,785	8	6,284	7	26,152	5	85,874	58	37,069	12	112,026
1958	40	15,372	5	8,227	10	58,934	4	33,962	45	23,599	14	92,896
1959	26	8,806	6	4,805	4	18,726	2	7,200	32	13,611	6	25,926
1960	16	8,000	—	—	8	64,023	—	—	16	8,000	8	64,023
TOTALS	900	472,415	39	44,104	218	998,416	32	489,636	939	516,519	250	1,488,052

(*a*) Includes minor adjustments not reflected in preceding columns.

(*b*) The total land area of the Territory is estimated to be 219,331,840 acres or 342,706 square miles.

long-term rights of occupancy since 1 January 1946

Total of smaller and larger acreage groups columns (10) to (13)		*Alienation to public or semi-public bodies*		*Total alienations during year*		*Surrenders, revocations, etc. during year*		*Net increase in alienated land during year*		*Total area of long-term rights of occupancy at end of year*	
										Acres See note (a)	*% of territory (b)*
No. (14)	*Acres* (15)	*No.* (16)	*Acres* (17)	*No.* (18)	*Acres* (19)	*No.* (20)	*Acres* (21)	*No.* (22)	*Acres* (23)	(24)	(25)
5	8,844	—	—	5	8,844	6	10,482	— 1	— 1,638	788,038(*c*)	0.4
7	9,460	1	363	8	9,823	4	1,707	4	8,116	795,683	0.4
14	41,535	1	1,000	15	42,535	251	175,836	—236	—133,301	663,102	0.3
132	195,935	—	—	132	195,935	23	72,541	109	123,394	786,248	0.4
208	174,387	3	195,629	211	370,016	40	33,139	171	336,877	1,122,017	0.5
136	234,644	—	—	136	234,644	16	14,797	120	219,847	1,341,151	0.6
175	396,333	4	335,299	179	731,632	21	132,411	158	599,221	1,938,941	0.9
98	186,666	1	25	99	186,691	23	15,916	76	170,775	2,109,985	1.0
58	91,672	—	—	58	91,672	25	21,627	33	70,045	2,180,166	1.0
89	63,825	3	69,404	92	133,229	45	60,239	47	72,990	2,248,366	1.0
76	224,120	5	2,280	81	226,400	33	98,967	48	127,433	2,376,123	1.1
70	149,095	4	5,913	74	155,008	28	43,291	46	111,717	2,488,469	1.1
59	116,495	2	2,526	61	119,021	36	63,110	25	55,911	2,533,966	1.2
38	39,537	—	—	38	39,537	22	19,651	16	19,886	2,554,864	1.2
24	72,023	1	1,032	25	73,055	18	135,006	7	—61,951	2,488,743(*d*)	1.1
1,189	2,004,571	25	613,471	1,214	2,618,042	591	898,720	623	1,719,322		

(*c*) This total takes into account 1,043 holdings comprising approximately 789,676 acres previously subsisting.

(*d*) This total is held in 1,666 holdings.

of occupancy over agricultural and pastoral land as at 31 December 1960 was as follows:[43]

Nationality	Holdings	Acreage	Percentage of total land area*
British (other than British of South African origin)	470	1,315,966	0.6000
Greek	279	355,351	0.1620
Indian and Pakistani	287	256,192	0.1168
British of South African origin	107	192,399	0.0877
Dutch	14	32,654	0.0149
German	45	32,021	0.0146
Swiss	24	31,189	0.0142
Danish	11	30,555	0.0139
African	35	17,226	0.0079†
Missions	265	16,710	0.0076
Arab	34	9,502	0.0043
Goan	11	5,517	0.0025
Italian	7	4,852	0.0022
Syrian	4	2,897	0.0013
French	4	2,695	0.0012
United States	3	548	0.0003
Others	66	182,469	0.0832
Total	1,666	2,488,743	1.135

* The total land area of the Territory is estimated to be 219,331,840 acres.
† This figure does not include land held by Africans otherwise than on long-term Rights of Occupancy.

iv. LAND UTILIZATION[44]

*Estimated agricultural production and value, 1960**

Crop	Total Production (Tons)	Value (£'000)
Wheat	11,335	340
Coffee	26.223	7,636
Tea	3,663	1,324
Copra	7,126	535
Sisal	204,868	15,099
Cotton Lint	32,010	7,268
Tobacco	2,238	597
Pyrethrum	1,010	281
Cashew nuts	48.031	2,824
Groundnuts	20,904	1,505
Castor seed	10,472	503

* Preliminary estimates.

b. INCOME DISTRIBUTION

National income, 1957[45]

Total national income	$406 million[a]
Total subsistence income	$147 million[a]
Per capita national income	$ 48[a]

[a] Converted from national currency units at official rate of exchange.

[43] *Op. cit.*, vol. II, p. 51.
[44] *Ibid.*, p. 52.
[45] *Economic Survey of Africa Since 1950*, United Nations publication, Sales No.: 59.II.K.1, table I-III, p. 15.

c. SUBSOIL RIGHTS

49. The following concerns produced minerals to the value of £50,000 or more during 1960. All are registered companies and the shareholding is believed to be predominantly British:[46]

Williamson Diamonds, Ltd.	Diamonds
Alamasi, Ltd.	Diamonds
Uruwira Minerals, Ltd.	Lead
Geita Gold Mining Co., Ltd.	Gold
Buhemba Mines, Ltd.	Gold
Nyanza Salt Mines (Tanganyika)	Salt
Tangold Mining Co., Ltd.	Gold
Kyerwa Syndicate, Ltd.	Tin

The above-mentioned concerns produced about 90 per cent of the total value of minerals produced in Tanganyika during 1960. A large number of smaller concerns, especially those engaged in quarrying, are companies owned and operated by Asians.[47]

[46] The Government of the Trust Territory itself had interests in certain mining concerns in the territory by way of loans, guarantees and the purchase of shares. The main concerns in which the Government held such interest were Williamson Diamonds Ltd., Nyanza Salt Mines and Uruwira Minerals. [Information provided by the Government of the United Kingdom.]
[47] Tanganyika, *Report for the Year 1960, op cit.*, Part I, pp. 72-74, Part II, Appendix XII.

Areas held under mining titles by sections of population on 31 December 1960[48]

Section of population	Claims (acres)	Mining leases (acres)	Total (acres)	Percentage of total
African	2,669	87,040	89,709	65.33
Asian	2,132	2,176	5,308	3.87
Non-British European	5,125	870	5,995	4.36
British	10,909	25,391	36,300	26.44

NOTES: (i) The above figures are approximate.
(ii) Missions hold no mining titles.
(iii) The Government has a majority share-holding in the largest salt-producing concern and a 50 per cent interest in the largest diamond-producing mine.
(iv) Several Government departments work quarries for public purposes which are not included in the above figures.
(v) Of the 620 prospecting rights held on 31 December, 1960, 247 were held by Africans, 115 by Asians and 258 by persons of European extraction.

[48] *Op. cit.*, Part II, p. 56.

50. The annual report for 1960 of the former Administering Authority did not contain exact figures on the total workable reserves of various minerals but it is known that there are useful reserves of gold, silver, diamonds, coal, iron ore, kaolin, phosphate, rock salt, gypsum, tin and niobium-bearing pyrochlore. It was expected that the production of mica would continue unless the price for this mineral fell very considerably. Copper and some silver and gold were produced from lead concentrates during the year.

Distribution of mining titles by sections of the population on 31 December 1960[49]

	Gold			Diamonds			Lead			Tin		
	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims
African	8	—	22	—	—	—	—	—	—	6	—	13
Asian	4	1	10	—	—	—	—	—	—	7	—	27
Non-British European	7	1	27	—	—	—	—	—	—	7	—	56
British	16	16	170	2	2	12	1	3	—	10	3	7
TOTAL	35	18	229	2	2	12	1	3	—	30	3	103

	Mica			Salt			Building minerals			Lime			Miscellaneous		
	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims	Persons or concerns	Mining leases	Claims
African	14	2	24	—	—	—	69	—	247	7	—	9	19	—	36
Asian	—	—	1	8	8	3	109	1	1,182	12	—	21	9	—	28
Non-British European	7	—	24	2	—	2	27	1	156	4	—	12	12	—	34
British	7	—	40	3	5	—	13	—	162	3	—	12	16	1	87
TOTAL	28	2	89	13	13	5	218	1	1,747	26	—	54	56	1	185

There is a considerable unrecorded production of salt by Africans under native rights from various salt springs and salt pans. No mining rights are granted over such sites.

Details of the grant or refusal of prospecting licences and mining titles to various sections of the population during 1960[50]

	Prospecting Rights	Exclusive Prospecting Licences	Mining Claims	Mining Leases
Granted:				
Africans	151	—	129	Nil
Asians	64	—	179	Nil
Europeans	151	1	77	1
TOTAL	366	1	385	1
Refused:				
Africans	7	—	32	Nil
Asians	1	—	36	Nil
Europeans	1	—	5	Nil
TOTAL	9	—	73	Nil

NOTE: A large proportion of the claim applications which are refused are on account of the failure of the applicants to submit proper applications or to take possession of the ground in the prescribed manner. In such instances the mistakes made are pointed out and the applicant is normally given an opportunity to submit a fresh application. Applications made in the proper manner may not be refused.

51. According to the information furnished by the former Administering Authority the value of mineral production has been steadily increasing in the past few years and was expected to exceed £7 million in 1960, owing to increased exports of diamonds, gold bullion, mica and tin concentrates. The focus of oil exploration shifted to Kenya during 1960, but drilling was to be resumed in Tanganyika in 1961.

52. As at 1 January 1961, the monopoly of Williamson Diamonds Ltd. was terminated and it was announced that authorization to prospect for diamonds would be allocated to selected mining concerns on application.[51]

6. Western Samoa

53. Western Samoa acceded to independence on 1 January 1962. The information set forth here is based on data antedating the country's accession to independent status.

[49] *Ibid.*, p. 57.
[50] *Ibid.*, p. 61.
[51] A/4818, p. 27.

a. Constitutional provisions

54. The Constitution of the Independent State of Western Samoa was adopted on 28 October 1960 and contains the following provisions relevant to the subject of the present study:[52]

No alienation of customary land

102. It shall not be lawful or competent for any person to make any alienation or disposition of customary land or of any interest in customary land, whether by way of sale, mortgage or otherwise howsoever, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of any person on his decease or insolvency:

Provided that an Act of Parliament may authorize

(*a*) the granting of a lease or licence of any customary land or of any interest therein;

(*b*) the taking of any customary land or any interest therein for public purposes.

Vesting of property

123. (1) All property which immediately before Independence Day is vested in Her Majesty the Queen in right of the Trust Territory of Western Samoa or in the Crown in right of the Trust Territory of Western Samoa shall, on Independence Day, vest in Western Samoa.

(2) Subject to the provisions of Clause (3), land which immediately before Independence Day is, under the provisions of the Samoa Act 1921, Samoan land, European land or Crown land shall, on and after Independence Day, be held, under the provisions of this Constitution, as customary land, freehold land or public land, respectively.

(3) All land in Western Samoa which immediately before Independence Day is vested in the Crown in right of the Government of New Zealand shall, on Independence Day, become freehold land held by Her Majesty the Queen in right of the Government of New Zealand for an estate in fee simple.

b. Land tenure

55. The ownership of land (*pule*) lies in the family or kin-group and is traditionally vested in one or more titles of that group. The *Matai* (head of the group) assumes with his title the responsibility of administering the estates This *pule* is distinct from usufructuary rights which are vested to a greater or lesser extent in the sub-groups occupying the land as long as they fulfil certain local customary conditions.

56. The modern tendency has been for the overriding rights of *pule* to be slowly modified, and for property to become localized in the group actually cultivating the soil. This gradual trend for *pule* to be interpreted as the rights of occupation of the family has been far more pronounced than has any inclination to individualize title.

57. Some Samoans have acquired land by individual title. The Samoan Individual Property Ordinance, 1925, permitted the bequeathing of this land by will, as if it were freehold.

58. The Land and Titles Protection Ordinance, 1957, provided for the keeping of a register of all *matai* titles. The lands vested in each *matai* title were not registered, except in so far as specific titles came before the Land and Titles Court. In these cases the land title, with a description based upon a compass survey, was entered in a special register. All non-Samoan land must be registered by the Registrar of Lands, an official of the High Court in Apia. Transfers of European land were entered in this land register, as were the interests held by Samoan inhabitants in land not held by Samoan title. According to the Administering Authority's annual report, the Administering Authority and the Territorial Government had made ample legislative provision to protect the tenure and future needs of the indigenous inhabitants.

c. Mining legislation

59. Under the Samoa Act, 1921, the mineral rights in Samoan land may not be alienated save to the Crown, unless other provision is made by regulation or Ordinance. This provision does not apply to European land. No discrimination against Samoan land is intended under the Act, but the provision is simply to afford the usual protection to the beneficial owners of Samoan land to ensure that they may receive the benefit of any minerals in the same way as they receive the benefits of any produce or anything grown on the land.

d. Economic information on land utilization

60. The following figures from the former Administering Authority's annual report for 1960[53] are the provisional results of the Land Use Survey.

[52] Transmitted by the Permanent Representative of New Zealand to the United Nations by *note verbale* of 10 Nov. 1960 to the Secretary-General for circulation to the members of the Fourth Committee of the General Assembly (A/C.4/454).

[53] Annual report of the Administering Authority for 1960, p. 132, T/1579, Appendix VIII.

Cultivated
(acres)

	Samoan lands		*All lands*	
	Upolu	*Savai'i*	*Upolu*	*Savai'i*
Coconuts	14,361	15,098	22,708	16,013
Cocoa	2,561	4,694	7,899	4,809
Bananas	3,012	236	3,664	275
Coconuts, cocoa, and bananas	12,082	4,337	14,649	4,482
Food crops (taro and bananas)	7,021	3,386	10,498	3,542
Mixed crops (taro, bananas, taamu, and breadfruit)	18,700	17,116	19,670	17,224
Coffee	4	—	480	—
Rubber	464	—	1,624	—
	58,205	44,867	81,192	46,345

Uncultivated
(acres)

	Samoan lands		All lands	
	Upolu	*Savai'i*	*Upolu*	*Savai'i*
Swamps	1,460	173	1,727	200
Scrub	2,793	11,455	3,793	12,670
Fern	—	1,087	—	1,087
Lava and rocks	—	28,387	—	28,463
Pasture	4,074	14,242	9,086	21,447
Villages, churches, schools, shops	2,484	1,761	3,450	1,826
	10,811	57,105	18,056	65,693
Forests	112,119	263,827	171,952	299,496
Scattered bush	3,725	10,403	7,530	10,638
	115,844	274,230	179,482	310,134
Total areas	184,860	376,202	278,730	422,172

B. Non-Self-Governing Territories

61. The present section gives separate attention to (1) general aspects of land legislation and distribution; and (2) mineral rights. Under a third heading, country studies, covering Kenya, Uganda, Northern Rhodesia and Netherlands New Guinea* are presented. In order to avoid duplication of material, information given in the country studies is omitted from the general sections.

1. General aspects of land legislation and distribution[54]

62. In indigenous societies, land is the essential resource; it touches every phase of indigenous life. Economically, land fulfils purposes similar to those in more specialized communities in that it is used to meet agricultural, grazing, industrial, commercial and residential needs; but, contrary to conditions in more industrialized areas, land is often the only form of capital and means of livelihood.

63. Land is the basic element in what was a slowly evolving, highly integrated system in which the peoples of the communities live, bound together by common work, religious ritual and beliefs.

64. In a number of Non-Self-Governing Territories, there is a dual land system where indigenous and Western systems of land tenure exist side by side. In others, a homogeneous land system has been established on the basis of Western concepts. In the former case, the legal nature of the rights of the Governments to the land or part of the land has been a problem of great complexity, the solution of which has been sought under varied forms.

65. In the *United Kingdom Territories,* local circumstances have led to diverse solutions. In several territories, all public or unoccupied lands or land not under the settled government of local rules are declared Crown land[55] and may be disposed of by sale or lease (e.g., Kenya, Uganda). In other territories, Crown land comprises the land not specifically granted as concessions or set aside for the use of the indigenous inhabitants (e.g., Swaziland, Bechuanaland). Similarly, State lands are those lands not set aside for a public purpose, or not leased or granted or occupied by any person (North Borneo), or public land vested in the local ruler is defined as including all waste and unoccupied land and land occupied by natives in accordance with local or tribal custom (e.g., Zanzibar).

66. In some instances, Crown land consists only of lands acquired by the Government for public purposes (e.g., Fiji, Nyasaland since 1936). The concept of trusteeship for land is explicitly established in a number of territories, as in Basutoland, where, with few exceptions, all land is held by the Paramount Chief in trust for the Basuto nation.

a. Land utilization

67. The present sub-section is designed to show, largely in statistical form, the extent to which the peoples of the territories are, from an economic point of view, able to dispose of their natural wealth and resources and to derive therefrom their means of sup-

* There is a dispute between the Government of Indonesia and the Government of the Netherlands regarding the political status of the last-named Territory.

[54] Based on *Special Study on Economic Conditions and Development, Non-Self-Governing Territories, Summaries and analyses of information transmitted to the Secretary-General during 1951,* ST/TRI/SER.A/6/Add.2, Chap. VI, pp. 248-271, and *Special Study on Social Conditions in Non-Self-Governing Territories, Summaries and analysis of information transmitted to the Secretary-General (1957-1958),* ST/TRI/SER.A/14, Chap. XII, pp. 141-155.

[55] The term "Crown land" in its application in the Non-Self-Governing Territories has a different meaning from that used in the United Kingdom. While originally land unowned and unoccupied by tribes was, in many territories, declared Crown land, changes in the needs of the indigenous peoples and corresponding changes in Government policy have modified its meaning, and this land has now for many years been held by the Government of the territory concerned as the trustee for the local community as a whole, indigenous and immigrant alike, and not at all as the agent of the Metropolitan Power. While grants of land under this new system have been made to settlers, the system has equally been used, and indeed was originally devised largely to control such non-indigenous acquisitions from the indigenous inhabitants and to prevent them from improvidently selling their own or tribal land to the settlers. Thus the Crown and local Governments have been acting as the trustee of the indigenous inhabitants and as the preserver of their rights and sovereignty over this major element of their natural resources. Moreover, the whole course of the policy of the Government of the United Kingdom in the years since indigenous land needs have grown has been to superimpose upon this Crown land further categories of land reserved primarily for indigenous use (in addition to the original Native Reserves), such as the Native Trust lands in Kenya, Northern Rhodesia and Nyasaland. [Information provided by the Government of the United Kingdom.]

port, in so far as land is concerned. Since the material presented here is drawn from a variety of United Nations studies and reports, the territorial coverage will vary somewhat among the various tables.

68. Particular attention may be drawn to table IV-6 below, showing the population by territories and ethnic composition in 1956. This table bears, basically, on much of the material presented throughout this chapter in so far as it relates to the utilization and productivity of resources by the indigenous as compared with the non-indigenous population in the various territories. It is primarily included here in order to permit the calculation of per capita data which were, for the most part, not available to the Secretariat within the scope of the terms of reference governing the present revised study. References to this table will be found wherever land area data are given in the ensuing text.

i. *Population*

Table IV-6

Population by territory and ethnic composition, 1956[56]

(Thousands of persons)

Territory	*African*	*European*	*Asian*	*Other*	*Total*
Basutoland	...	...	...	...	643
Bechuanaland	...	...	...	...	327
Swaziland	...	...	...	...	237
Rhodesia and Nyasaland, Federation of	6,980	251		30	7,260
Northern Rhodesia	2,110	66	7[a]	—	2,180
Southern Rhodesia	2,290	178		13	2,480
Nyasaland	2,580	7		10	2,600
Kenya	5,902	58	185[b]	5	6,150
Mauritius	...	...	...	...	569
Mozambique[d]	5,923	66	17[c]	35	6,040
Réunion	...	...	...	...	296
French Somaliland	...	...	...	...	67
Uganda	5,527	8	56[b]	1	5,593
Zanzibar	...	...	...	...	280
Angola[d]	4,222	110	—	30	4,362
Gambia	...	...	...	...	285

[a] Including coloured.
[b] Indians and Arabs.
[c] Mixed.
[d] 1955.

ii. *Economic utilization of land*

Estimated area under crops for subsistence and for domestic and export markets—Kenya and Uganda[57]

Territory & Period	*Subsistence*	*Cash crops*	
		Domestic markets	*Export markets*
	(percentage of total crop area)[a]		
Kenya, 1947-50 ..	93	5	2
Uganda, 1948-50.	67	5	28

[a] Area cultivated by the indigenous population only.

b. SHARE OF THE INDIGENOUS POPULATION IN THE NATIONAL INCOME AND PER CAPITA INCOME DISTRIBUTION

69. The data presented here are designed to show income in certain territories, both in terms of national income and of per capita income, and, wherever possible, in terms of both the national economy as a whole and of the (usually indigenous) subsistence economy or the indigenous economy as a whole.

70. It will be seen that the tables presented below cover rather similar ground, but in terms that vary somewhat in definition or basis of calculation. No attempt could therefore be made to consolidate the statistical material.

71. The over-all picture covering a number of Non-Self-Governing Territories is discussed in a recent Secretariat report[58] in the terms set forth below. The material quoted here excludes data concerning territories which have in the meantime achieved their independence.

Data on the part of national income obtained by the African population (see table IV-7) are of particular interest for the evaluation of the progress made in the standards of living. They are available for four African Territories only. In all of them an increase in African income may be noted at current as well as constant prices. On the latter point, however, no information is available for Kenya. The share of African income in the total national income has increased in three Territories, Northern Rhodesia being the exception. In that Territory the increase in African income, even in real terms, was spectacular; it was due mainly to a considerable increase in the numbers and wage level of Africans employed in the copper mines. The reduction in the share of African income is due entirely to the drastic decline in the share of subsistence income, estimated throughout the period at a constant figure, which was stated[59] to be unrealistic and to underestimate this income during the latter part of the period. The share of money income accruing to the African population has, on the contrary, increased.

Data on changes in per capita income, which appear to be the most important indicator of standards of living, after taking into account the increase in population, are given in table IV-8. For the Territories for which data on the income accruing directly to the African population are available, it has been possible to calculate per capita personal African income. For the other Territories, only per capita domestic product, applying to the population as a whole, could be obtained, using the same method of deflation and adjustment as has been described for the real domestic product... above. In view of the difference in the nature of data available, figures obtained respectively for per capita personal income and for per capita domestic product for the different Territories are not comparable. Comparison of rates of growth would appear to be more significant.

Changes in the relative importance of the share of national income received by different groups of recipients reflected generally the growing share of profits of enterprise and wages at the expense of agriculture, even though the scale of this development has greatly varied in different Territories.

...

[56] From: *Economic Survey of Africa Since 1950,* United Nations publication, Sales No.: 59.II.K.1, table I-1, p. 13.
[57] *Progress of the Non-Self-Governing Territories under the Charter, op. cit.,* vol. 2, table 6, p. 151.
[58] *Ibid.,* pp. 17 and 18, and tables 11 and 12, p. 19.
[59] Northern Rhodesia: *The National Income and Social Accounts of Northern Rhodesia,* Salisbury, 1954, p. 20.

For the Territories under United Kingdom administration taken as a whole, estimates are available only for domestic product at current prices. From 1948 to 1957 gross domestic product rose by 111 per cent from 4,354 million dollars to 9,184 million dollars. There have been considerable differences in the rate of increase as between groups of Territories; thus, gross domestic product increased by 71 per cent in West Africa, 167 per cent in East Africa (including the then Trust Territory of Tanganyika), 102 per cent in the Far Eastern Territories (including the Federation of Malaya), 184 per cent in the Caribbean Territories and 150 per cent in others. The per capita gross domestic product at current prices for the United Kingdom Territories as a whole increased from 1950 to 1956 from 72.8 to 117.6 dollars (61 per cent).

More detailed information is available for some of the United Kingdom Territories, such as Kenya, where the share of salaries and wages in domestic income — before deduction of income flowing abroad — increased from 34 per cent in 1947 to 43.7 per cent in 1957; African wage income for which separate data are available from 1951 increased from 12.1 to 19.7 per cent in 1957; on the other hand, the share of African agriculture has gradually declined: 33.8 per cent in 1947, 26.1 per cent in 1951 and 22.6 per cent in 1957, while the profits and earnings of the self-employed remained stable at 28.6 per cent in 1957 compared with 28.5 per cent in 1947.

In Uganda, full data on the distribution of domestic income, including income accruing to the African population, are available only for the period 1952-1957. During that period, total domestic income at current prices increased by only 13.9 per cent, owing mainly to the substantial fall in prices of the major crops, cotton and coffee, during the last two years of the period. The increase in the categories of income accruing to the African population was substantially higher: 50.2 per cent for income from cash crops, which is the major factor, amounting in 1957 to more than half of the African income; 14.2 per cent for income from subsistence agriculture; and 95.4 per cent for wages paid to African workers. Profits from private business enterprise, however, have increased by only 10.1 per cent, while the profits of the statutory marketing boards, which reflect the variations in the prices of export products and thus protect the stability of income of agricultural producers, have declined by 63.6 per cent.

. . .

In Northern Rhodesia, data on distribution of net domestic product are available for the period 1945-1953. The increase in income from wages amounted to 548 per cent, rising from 23.3 million to 127.7 million dollars, while the income of companies increased by 1,282 per cent and was equivalent in 1953 to 50 per cent of the net domestic product, compared with a share of 21.8 per cent in 1945. From 1945 to 1951, the net amount of remittances abroad of profits and dividends (after deduction of receipts) increased from 12.2 per cent to 31.5 per cent of the net domestic product. Owing to the transfer of domicile to Northern Rhodesia of several large mining companies, these remittances subsequently were reduced and amounted in 1953 to 21.3 per cent of the net national product. Data are available for all categories of income accruing to indigenous households in the money economy, i.e., wages and income from unincorporated enterprise. However, the income of African subsistence economy has been estimated for each of the years under consideration at a constant amount of 14 million dollars. Total African income increased by 326 per cent; its share in net national income, however, declined from 44.6 to 30.5 per cent.

Table IV-7

African income in selected Non-Self-Governing Territories

Territory	First year	African income (million dollars)	Share in national income	Last year for which data are available	African income (million dollars)	Share in national income	Change in African income at current prices (per cent)	Change in African income at constant prices
Kenya	1951	110.0	38.2	1957	201.0	42.3	82.8	— [a]
Uganda	1952	173.9	57.7	1957	243.3	70.8	40.0	30.0[b]
Northern Rhodesia .	1948	29.1	40.8	1953	75.9	30.6	160.0	106.0[c]

[a] Impossible to calculate owing to lack of retail prices index applying to African population.

[b] Deflated by index of retail prices in African markets Kampala (1947=100, 1952=91, 1957 = 98).

[c] Deflated by consumer price index (1959 = 100, 1948 = 141, 1953 = 179).

Table IV-8

African per capita income or product

Territory	First year	Per capita income or product (dollars)	Last year for which data are available	Per capita income or product at current prices (dollars)	Change at current prices	Change at constant prices (per cent)	Annual rate of change at constant prices
A. *Per capita personal income*[a]							
Kenya	1951	20.0	1957	33.55	66.7	—	—
Uganda	1952	33.4	1957	43.34	30.0	20.1	3.7
Northern Rhodesia ...	1948	16.9	1953	38.0	125	77.1	12.0
B. *Per capita domestic product*							
Mauritius	1950	192.1	1956	258.7	34.7	14.7	2.3
Jamaica	1950	138.6	1955	245.6	77.2	45.3	7.7

[a] Per capita personal income at constant prices of the African population for the Territories for which data on income accruing directly to the Africans are available has been calculated by deflating per capita income at current prices by the respective African cost-of-living indexes. For other Territories, per capita domestic product at constant prices, applying to the population as a whole, has been obtained on the same basis as in table 10 (not shown here) as follows:

Changes in real gross domestic product have been calculated by estimating the major exports of each Territory during the last year for which data were available at prices of base year and deflating all other components of domestic product by the respective retail price indexes.

72. A more direct measure of the benefits accruing to the indigenous population in the agricultural sector is available for Kenya and Uganda as shown in table IV-9 below.

Table IV-9

Ratio of subsistence agriculture in Kenya and Uganda[60]

Territory	Year	Ratio to national income (Per cent)	Ratio to income of indigenous population
Kenya	1947	29.1	56.2
	1957	18.6	43.9
Uganda	1950	27.6	51.2[a]
	1957	24.2	40.0[a]

[a] Ratio of African agricultural income.

73. The topic of income distribution in terms of total national income and the proportion thereof derived from subsistence agriculture, as well as in terms of per capita income, is pursued further in tables IV-10 and 11 below.

Table IV-10

National Income of Selected Territories, 1957[61]

Territory	National income[a] Total (millions of dollars)	Subsistence	Per capita national income (dollars)
Kenya[b]	480	90	78
Mauritius	132		232
Uganda[b]	321	84	57
Zanzibar[c]	27–35		98–126
Rhodesia and Nyasaland, Federation of	959	48	132
Gambia[c]	16–20		56–70
Sierra Leone[c]	147		70

[a] Converted from national currency units at official rates of exchange.
[b] Net domestic product at factor cost.
[c] Gross domestic product at market prices.

Table IV-11

Per capita income in selected Non-Self-Governing Territories[62]

(United States dollars)

	1950	1952	1953	1954
British Guiana	168	183[a]	...	...
Jamaica	140	182	...	...
Kenya	44	51	52	60
Kenya (African)	...	...	24[b]	29[b]
Northern Rhodesia	57	99	123	...

[60] *Ibid.*, table 2, p. 11.
[61] From: *Economic Survey of Africa Since 1950, op. cit.*, table I-III, p. 15.
[62] *Special Study on Economic Conditions in Non-Self-Governing Territories*, United Nations publication, Sales No.: 58.VI.B.1, table 36, p. 20.

Table IV-11 (continued)

	1950	1952	1953	1954
Northern Rhodesia (African)	25	39	...	...
Uganda	37	52	50	55
Uganda (African)[c]	21	29	32	35

[a] 1951.
[b] Partial income, based on African cash, subsistence agriculture and wages.
[c] Partial income based on African subsistence agriculture and cash.

Table IV-12

Annual personal income, African and Non-African, in selected territories[63]

	Federation of Rhodesia and Nyasaland 1956	Kenya[a] 1957
	(*millions of pounds sterling*)	
Total personal income	270	167
African	98	72
Money income	81	40
Subsistence income	17[b]	32
Non-African	172	95
	(*pounds sterling*)	
Per capita personal income	37	27
African	14	12
Money income	12	7
Non-African	611	393

[a] Domestic income.
[b] Nominal.

74. It may be noted here that, while the *Economic Survey of Africa Since 1950* contains statistical material[64] on the yield of selected field crops in a number of African countries and territories, no distinction is drawn between farm and estate production on the one hand, and village production on the other for territories to which this chapter relates—a distinction which would be indicative of any difference between commercial yields and those obtained by the indigenous agriculture.

75. Somewhat more detailed breakdowns of per capita African income in selected territories for earlier years, shown below, are taken from the *Special Study on Economic Conditions in Non-Self-Governing Territories.*[65]

In Kenya, the net domestic product increased by 78 per cent between 1949 and 1954. The industrial origin of the domestic product has not much changed. Agriculture has maintained its prominence throughout, with a share of around 40 per cent of the total domestic product, while manufactures increased their share from 9.4 per cent in 1949 to 12.6 per cent in 1954. The net per capita income increased from 36.2 dollars in 1949 to 51.9 in 1953, and to 60.0 dollars in 1954. The national income accruing to the African population showed little change in terms of percentage of the total national income. Subsistence agriculture remains the most important factor in the African income, but its increase has been less than that of other factors.

[63] *Economic Survey of Africa Since 1950, op. cit.*, table 1-LIV, p. 94.
[64] *Op. cit.*, table 1-VIII, pp. 25 and 26.
[65] United Nations publication, Sales No.: 58.VI.B.1, pp. 16-17 and tables 25, 26, 27 and 29.

Table IV-13

Kenya: Net Domestic Product
(Million United States dollars)

	1950	1952	1953	1954
Agriculture	102.5	126 6	126.6	144.5
Commerce, finance, insurance	38.1	49.8	46.8	54.0
Manufacturing	24.9	32.2	35.6	44.8
Government	17.9	26.0	34.4	39.8
Transport	17.1	21.8	20.7	23.5
Building	11.5	18.2	17.6	19.0
Rentals	6.7	9.5	10.6	12.0
Mining and quarrying	3.1	3.6	3.1	3.9
Other services	9.8	11.8	10.9	12.9
Total net product	231.6	299.5	306.3	354.4

Table IV-14

Kenya: African Income
(Million United States dollars)

	1953	1954
Total African income	134	163
Subsistence agriculture	68	75
Commercial agriculture	13	19
Wages	53	69
Per capita income of African population.	23.5	28.6

In Uganda, the net geographical income increased by 53 per cent between the years 1950 and 1954. The rise was shared by all major categories with the exception of the profits of marketing boards which declined sharply with a fall of export prices. Cash income from African enterprise increased by 94 per cent and its share of the total geographical income rose from 28 to 36 per cent. The amount of salaries and wages rose by 77 per cent. The relative importance of the African income to the total geographical income increased from 57 per cent in 1950 to 68.6 per cent in 1955.[66] The per capita income of the total population rose from 37.0 dollars in 1950 to 56.8 dollars in 1955. The parallel figures for the African population were 21.1 and 39.9 dollars.

[66] Information on the distribution of income from wages and salaries between African and non-African population is not available and therefore this income category, a major part of which accrues to the African population, has been omitted from this calculation.

Table IV-15

Uganda: Distribution of net geographical income
(Million United States dollars)

	1950	1953	1954	1955*
Total geographical income	188.7	265.0	288.8	312.2
African enterprise cash income	52.6	90.4	102.8	130.2
African subsistence income	55.4	81.6	84.0	84.0
Salaries and wages	36.7	61.3	65.0	76.4
Rentals	1.4	1.7	1.7	2.0
Profits and surpluses: Total	42.6	30.0	35.3	19.6
(i) Private business enterprise	16.5	22.3	27.2	...
(ii) Statutory marketing board	24.4	6.2	6.7	...
(iii) Public enterprise	1.7	1.4	1.4	...

* Provisional.

Table IV-16

Northern Rhodesia: Domestic Product and National Income
(Million United States dollars)

	1949	1952	1953
Wages	47.6	94.0	127.7
Income from mining and refining	45.1	111.7	119.3
Other income	21.5	47.0	53.8
Total domestic product	114.2	252.7	300.8
Total net national income[a]	90.1	194.7	247.6
African income	32.5	54.0	75.8
Per capita income of African population (dollars)..	18.4	28.3	38.7

[a] Adjusted for balance of dividends and profits remitted to and received from abroad but including African subsistence income.

c. Production and exports of agricultural commodities

76. In so far as the proportion of agricultural production retained in the territory of origin may be considered as an indicator of the extent of indigenous sovereignty over natural resources or of the ability of the peoples to enjoy the fruits thereof, the data set forth below constitute a review of the situation for the years 1955 to 1957 with respect to a number of African territories and selected crops.[67]

[67] From: *Economic Survey of Africa Since 1950, op. cit.*, table 1-VII, pp. 21-24.

Table IV-17

Selected African territories: Output and exports of selected crops, average 1955-1957
(Thousands of tons)

Commodity		*Angola*	*Kenya*	*Mozambique*	*Rhodesia and Nyasaland, Federation of*	*Sierra Leone*	*Uganda*
Cereals							
Maize	O	135[a]	688[b]	40[c]	742[d]	9[e]	154[f]
	E	72	35	5	97	—	6
Rice[g]	O	14[c]	5[c]	—	98[a]	223	5[a]
	E	3	—	3	1	—	—
Sorghum	O	—	—	—	211[a]	—	—
	E	—	—	—	—	—	—
Beverage crops							
Coffee beans .	O	78	21	—	—	—	67
	E	71	23	—	—	—	75
Tea	O	—	10	6	9	—	3
	E	—	6	6	9	—	3
Fibres							
Cotton (lint).	O	7	2	29	—	—	68
	E	6	2	29	—	—	62
Sisal	O	41	40	29	—	—	1
	E	42	38	29	—	—	1
Oil-seeds, oil							
Copra	O	—	1	53	—	—	—
	E	—	—	41	—	—	—
Cotton-seed ..	O	13	4	59	3	—	145
	E	10	2[e]	—	—	—	8
Ground-nut ..	O[h]	4	2	26	50[j]	4	170
	E[i]	3	—	1	16	—	10
Palm kernels.	O	11	—	—	—	60	—
	E	11	10	—	—	57	—
Palm oil	O	—	—	—	34[k]	—	—
	E	9	—	—	—	—	—
Misc. crops							
Sugar	O	50	22	142	—	—	83
	E	35	—	102	—	—	—
Tobacco	O	2	—	1	91	—	—
	E	—	—	—	65	—	—
Cassava	O	1,250[c]	—	4[a]	605[l]	46	—

O = output.
E = exports.
[a] 1948-1952.
[b] Average output of villages in 1948-1952 was 574,000 tons.
[c] 1955-1956.
[d] Including 307,000 tons produced in Nyasaland in 1948-1952.
[e] 1956.
[f] 1955.
[g] The figures for output relate to paddy; those for export to milled equivalent.
[h] In shell.
[i] Shelled basis.
[j] Including output of Northern Rhodesia and Southern Rhodesia in 1948-1952, estimated at 36,000 tons.
[k] 1954.
[l] 1949.

77. As far as the over-all role played by exports in the economy of a number of territories in Africa, as well as Jamaica, is concerned, the following observations[68] would appear to be relevant:

Reduction in the ratio of exports to national product, and thus in the degree of dependence of the economy on the world market, is... generally considered as an indication of progress towards a more balanced economy.

Available data do not, however, permit the conclusion that dependence of the economy of most Non-Self-Governing Territories on export of primary products has been reduced to a significant extent. For the . . . Territories for which a comparison between national product and proceeds of exports has been possible [see table IV-18] the ratio has not changed considerably. It should, however, be pointed out that in nearly all cases the stability of the ratio was the result not of a stagnation of the economy but of the increase at a more or less similar rate of both national product and exports. As a general rule, the ratio of exports was highest in the years when proceeds of exports expanded substantially, while national product increased at a somewhat slower rate. This seems the natural consequence of the fact that export production, which is generally the most dynamic and efficient sector in primary producing countries, such as most Non-Self-Governing Territories, responds most quickly and strongly to any increase in world demand. The stimulating effect of the increase of exports is then gradually transmitted to the other sectors of the economy. On the other hand, in periods of declining of demand on the world market, exports usually fall sharply and their ratio to national product decreases, while the other sectors have a stabilizing effect. The continued dependence of the Non-Self-Governing Territories on exports of primary products remains a serious factor of fragility for their economy, and a cause of major difficulties in case of decline in value and volume of these exports.

It can be seen that in most Territories for which data are available, in particular Kenya and Uganda, the highest ratio of exports to national product was reached during the boom years 1950 and 1951, when both prices and volume of exports of most primary products were at a climax; that ratio declined during the period of falling prices which followed.

The only Territory where changes in export ratio have been due to local conditions, rather than fluctuation in world prices and demand, is Jamaica where the gradual increase in the ratio appears to be due to development of new export activities (bauxite and alumina).

[68] From: *Progress Achieved of the Non-Self-Governing Territories under the Charter,* United Nations publication, Sales No.: 60.VI.B.1, vol. 2, pp. 11-12 and table 3, p. 12.

Table IV-18

Ratio of exports to national product in selected Non-Self-Governing Territories

	Base year	*Ratio*	*Highest year*	*Ratio*	*Lowest year*	*Ratio*	*Latest year*	*Ratio*
Kenya (net domestic product)	1947	18.1	1952	24.1	1949	15.4	1957	15.8
Uganda (net domestic product)	1950	40.3	1951	53.7	1953	35.3	1957	37.6
Jamaica (gross domestic product)	1950	21.0	1954	25.0	1952	18.2	1955	24.1
Mauritius (gross national product)	1950	34.1	1951	46.3	1950	34.1	1956	42.3

d. Indigenous land laws

78. Personal rights of the idigenous population over land range from the right of a member of a group (family, clan, tribe) to collect products in the forest area over which the group has a claim, pastoral rights, the temporary usufract in a system of shifting cultivation, and permanent occupancy to individual rights which resemble ownership in the Western sense of the term. The rights of the group, usually exercised by the chief, heads of family, express themselves in various ways, usually in the control of the manner in which the land is used by individual members or families.

79. In the closed economy of the village or tribal community, each member or family is entitled to the use of land needed for his or its subsistence. Only members of the community are entitled to the use of the land or to the fruits of the forests or to the ownership of trees within that area. Depending on the land available and on the effort of a villager to clear and cultivate regularly a particular piece of land, his right with respect to his allotment will tend to become permanent. In modern times, such established rights have developed in certain areas so that the right of the group has disintegrated and the individual has obtained a status with respect to his land which approaches full ownership, implying that he can sell the product of his land freely, that he can pawn or even sell the land, at first within the group but later outside the group without interference from the community.

80. In almost all Non-Self-Governing Territories inhabited by Moslem populations, the indigenous land tenure system is governed by or follows the principles of Islamic law (e.g., Zanzibar, the Comoro Islands and parts of East Africa).

81. In the territories which either were uninhabited before colonial occupation or from which the indigenous population rapidly disappeared, the definition of the rights of the State followed the precedents set by metropolitan law and practice; and there was no complicating difficulty of the pre-existence and survival of indigenous rights based on different principles. The State, on assuming sovereignty, assumed over the land rights of the nature of those existing in the metropolitan country. Since, however, before State intervention, or State intervention may have been effected through the agency of individuals or companies, the State rights may have been largely granted or pledged before being effectively assumed.

82. In these instances, as in the Caribbean, while the modern State is not confronted with a complex of indigenous rights, as in Africa, it still has the same basic problems of the use or resumption of its rights in order to meet the needs of the evolving community and of the definition of a number of peasant rights obscured by past conditions of ownership and by diverse family relationships.

Table IV-19

Non-African land occupation in certain African Territories, 1951[m]

(Square miles)

Territory	*Total area*	*Non-African holdings*	*African population*	*Non-African population*
Bechuanaland	275,000	4,158	306,000[a]	5,000[a]
Kenya	224,960	12,737	5,479,000[b]	190,000[c]
Northern Rhodesia	290,580*	8,760*	2,220,000[d]	72,000[e]
Nyasaland	36,829	1,937	2,336,000[a]	4,000[a]
Swaziland	6,705	3,244	201,000[a]	4,000[a]

* Information provided by the Government of the United Kingdom.

[a] *Demographic Yearbook, 1959*. United Nations publication, Sales No.: 59.XIII.1; Estimate for 1951.

[b] *Kenya, 1958*, London, HMSO, 1959. Estimate for 1951.

[c] *Ibid.*, including 38,600 Europeans; 120,300 Indians, Pakistanis and Goans; 27,000 Arabs; 4,100 others.

[d] *Demographic Yearbook, op. cit.*, 1958 estimate.

[e] *Ibid.* 1958 estimate. There are, in addition, 6,000 Asians and 2,000 persons of mixed race.

e. Non-African land holdings in Africa

83. In *Bechuanaland,* certain areas were granted in perpetuity to the British South Africa Company with power to sell or lease the land. This land has been divided into farms covering 2,404 square miles, and many of the farms have been sold with freehold titles. The Tati District is owned by the Tati Company, which has full power to sell or lease any portion. Within the District, however, an area of approximately 320 square miles is set aside as a native reserve. Crown lands are unalienated, with the exception of a few farms which have been granted or leased for short terms. All land in the reserves is vested in the chiefs and tribes.

84. In over-all terms, native reserves comprise 38 per cent of the Territory, and the land owned and

[m] ST/TRI/SER.A, p. 145.

cultivated by Europeans 1 per cent; the remainder is Crown land.[70]

85. In *Swaziland,* before the establishment of European administration, practically the whole country "was covered two, three, or even four deep by concessions of all sizes, for different purposes, and for greatly varying periods".[71] On the assumption of British administration, certain concessions were brought to an end, and in 1907 legislation was adopted which subjected land and grazing concessions to a deduction, without compensation, of one third of the area for indigenous use; the remainder was left to the concessionnaires under freehold title.[72] In 1942, action was taken to acquire additional land. Approximately 135,000 acres of the 157,000 acres held by the Crown were set aside for a Native Land Settlement Scheme, and, with a grant from the Colonial Development and Welfare Fund, a total of 229,875 acres was acquired from European owners. Following a survey in 1947, however, the settlement scheme was curtailed to 183,000 acres instead of the 364,875 acres originally planned, and by the end of 1948, only 464 families had been settled in the areas planned.

86. According to the volume on Economic Conditions of the series *Progress of the Non-Self-Governing Territories under the Charter,*[73]

> "half the country is owned by Europeans and 80 per cent of that land consists of farms held under freehold title; the other half, which is largely bush, consists of native areas and land purchased by the Swazi nation. Those lands are communally owned and held in trust for the Swazi people."

87. As a result of the report, issued in 1959, of the Committee on the Reversionary Rights of the Swazi Nation in the Land, the Government of the United Kingdom formally recognized the present Native Areas and Native Land Settlement Areas, together with all unoccupied Crown land, as the property of the Swazi nation. The territorial government is to limit itself to leases of the lands used for government buildings, etc., and is to pay rent therefor to Swazi funds. The territorial government has also recognized the right of the Swazis to buy back existing European holdings.*

88. In *Northern Rhodesia,* large concessions were obtained by the British South Africa Company and the North Charterland Exploration Company. On the assumption of administration by the United Kingdom, control of the land was taken over by the Crown, and various land claims were liquidated, leaving in 1925 some 19,000 square miles held as concessions, subject to the assignment of native reserves.[74] In general, the lands reserved for indigenous use may not be alienated (except for small trading sites leased for a maximum of five years) and are vested in the Secretary of State for the Colonies for the exclusive use of the natives. On the other hand, although Crown land is regarded as primarily for non-African settlements, there is no bar on purely racial grounds to the acquisition of Crown land by non-Europeans. In 1959, land held by or on behalf of the indigenous inhabitants totalled 268,280 square miles; land held by the Crown totalled 22,300 square miles, of which 3,210 square miles were alienated by leasehold, and land held in freehold title totalled 5,550 square miles; Crown land for European use has been reduced to 5-6 per cent of the Territory's total area.*

89. In *Nyasaland,* the land situation had been complicated before the assumption of British administration by the fact that settlers had purchased lands from chiefs. The present legal position is that, under the Nyasaland Protectorate (African Trust Land) Order-in-Council 1950 and the Public Lands Bill, the lands of the Protectorate are placed in two main categories: (*a*) *Public land,* which means all lands and interests in land acquired or occupied on behalf of His Majesty, and includes government sites, land in townships not in private ownership, land in forest reserves, land which has been declared to be a public road, land acquired for public purposes and alienated land on reversion or surrender to government; (*b*) *African Trust Land,* which is the whole of the lands in the Protectorate with the exception of public lands and interests in land (other than yearly tenancies) alienated or held under certificate of claim prior to 30 April 1936, lands granted, leased or otherwise disposed of by the holder of any certificate of claim, and lands disposed of under the Crown Lands Ordinance since 30 April 1936. The present position is that approximately 1,207,000 acres or 5.1 per cent of the lands is held in freehold; approximately 1,799,000 acres or 7.65 per cent is held as public land, and the remainder, comprising approximately 20,532,000 acres or 87.25 per cent, is African Trust Land. On the African Trust Land, rights of occupancy have been granted in respect of about 65,300 acres.[75]

90. In the *Comoro Archipelago,* large concessions were originally granted to European companies, but the Government is now trying to establish its own lands, and the number of farm owners is constantly increasing. Of an area of 47,870 hectares under cultivation in 1950, a total of 11,430 hectares were being used for European export cultivation, 4,190 for indigenous use and 32,250 hectares for food crops.

f. Land alienation in Asia and the Pacific

i. *Borneo*

(1) *Systems of tenure**

91. Agricultural land in *North Borneo* is divided into two categories:

(1) Land held by indigenous persons of the territory under Native Title which conveys upon the owner a permanent, heritable and transferable right in the land, subject to the duty of preparing padi fields and of participation in the performance of works of common benefit. No premium is charged and the annual rent is fixed at a nominal rate of 50 cents per acre per annum. The holding of one person is restricted to 15 acres;

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* Information provided by the Government of the United Kingdom.

[70] *Progress of the Non-Self-Governing Territories under the Charter,* op. cit., p. 176.

[71] Swaziland: *Colonial Report for 1907-1908,* p. 13.

[72] Swaziland: *Concessions Partition Proclamation,* 1947.

[73] *Op. cit.,* p. 176.

[74] Northern Rhodesia: *Colonial Annual Report for 1947.* Grants to Europeans in Trust and similar lands are limited to leases (usually of a maximum of 99 years), and then only when the grant is in the common interest of the indigenous inhabitants; in addition, the rents derived from such leases go into the Native Trust Funds or the Native Authority Treasury or its equivalent. The indigenous right of ownership is thus recognized and preserved, and the proceeds of the use of such land are channelled to indigenous revenues. [Information provided by the Government of the United Kingdom.]

[75] See note 74 above.

(2) Country land for a term of ninety-nine years on which a premium is charged together with an annual rent per acre which increases after six years to a maximum of $6.00.

(2) *Land distribution*

92. In *North Borneo,* land reserved solely for use by indigenous persons amounted to 45,382 acres in 1960, compared with 45,268 in 1959. Excluding Native reserves, the area under Native Title increased from 135,400 acres in 1958 to 143,107 acres in 1959 and 150,525 acres in 1960. Excluding town areas, the non-indigenous inhabitants held leases for about 555,791 acres in 1960, compared with 543,703 acres for the previous year. About 205,000 acres of the total area leased to the non-indigenous persons were owned by Europeans, the balance being occupied by Asians.[76]

93. In *Sarawak,* the alien holders of land are, with a few exceptions, Chinese. The usual form of alienation of Crown land is by lease for a term not exceeding ninety-nine years. The total area of alien holdings is described as negligible compared with the area of land under title held by Malays.

94. All land in Sarawak is classified under one of the following types: mixed zone land, Native area land, Native customary land, interior area land or reserved land. Only mixed zone land, which in 1960, amounted to 4,400 square miles, may be alienated under title to a non-indigenous person. Native area land, which may be held only by an indigenous person of Sarawak, was estimated at 2,500 square miles. The alienated land was owned mostly by small holders but there are a few holdings of 500 acres or more.[77] A new land code was promulgated in December 1956.[78]

95. In *Brunei,* a distinction is made between government land and private holdings. As a result of an amendment to the land code in 1954, no landholder may sell, rent or mortgage land to anyone who is not by birth a subject of the Sultan of Brunei without the permission of the Sultan in Council. With that permission, however, non-indigenous persons may acquire or rent farm land. Native titles are granted in perpetuity. Apart from oil concessions, over 5,000 hectares were held by aliens in 1957.[79]

ii. *Pacific territories*

96. In some of the Pacific territories, most of the productive land has passed out of the ownership of the State into that of private owners. In the *New Hebrides,* the over-all distribution of land in 1948 was as follows:

	Hectares
Total area	1,183,899
Claimed by non-indigenous population	715,867
Owned by indigenous population	467,938
European estates	24,060

97. In *Papua,* approximately 97 per cent of the total area of 58 million acres is held by the indigenous inhabitants. In 1948, a total of 24,285 acres were held by non-indigenous inhabitants under freehold and a total of 282,814 under leasehold; the Administration held 1,422,382 acres.

98. The Land Ordinance, 1911-1960, was amended during the year to remove restrictions on Papuans in regard to transactions in non-Native land, thus placing them on an equal footing with non-Papuans in such matters. The Administration retains power under the Transfer of Land Control Ordinance, 1951, to prevent any exploitation of Papuans which might arise from the removal of these restrictions. The Territory has a total area of 90,540 square miles, of which approximately 2 million acres have been alienated, the balance being either Native-owned or waste and vacant land.[80]

99. In *Fiji,* the control of Fijian land was, in 1940, vested in a Native Land Trust Board and provision was made to set aside native reserves. Areas not included in the reserves are available for leasing under the control of the Native Land Trust Board. Except for a short period between 1905 and 1909, the sale of native lands other than to the Crown has been prohibited.

100. The following was the distribution of land reported in 1960:[81]

	Acreage	*Type of ownership*
Crown	85,424	Freehold
	120,000	Schedule "A"—land whose owning units have become extinct
	88,000	Schedule "B"—unclaimed land
Companies	75,091	Freehold
Europeans	246,242	Freehold
Indians	75,380	Freehold
Others	36,851	Freehold
Fijians	3,776,000	Indigenous land
	8,000	Freehold
Rotumans	11,000	Indigenous land

Particularly in the sugar cane growing areas much of the land is leased to Indians who hold 350,000 acres under lease.

101. In the *Cook Islands,* the land held by non-indigenous inhabitants totals 4,809 acres, of which 3,194 acres are leased by Europeans and 1,146 owned by the Government for public purposes. The over-all land area is approximately 6 million acres.

102. In the *British Solomon Islands,* new land legislation, enacted in 1959, provides for a new system of land tenure and registration of title specifically adapted to the circumstances prevailing in the Territory. It will be implemented as soon as the necessary staff is available. A land trust board will be set up and charged with furthering the use of land for the benefit of the people and with bringing areas of vacant land of economic value under public control. The ordinance does not modify the existing forms of indigenous customary tenure which will be continued until the owners require registered titles. The non-customary tenure will be either a perpetual estate in land or a fixed term estate (corresponding broadly with freehold and leasehold respectively in English law). Registration of titles will provide the owner with the security of that title. There is also a provision for Solomon Islanders to acquire registered estates in indigenous customary land. At present, 497 titles are in existence covering 432,630

[76] Information from Non-Self-Governing Territories: Summaries of Information Transmitted under Article 73 e of the Charter of the United Nations, Report of the Secretary-General, *Asian Territories,* A/5079, 8 Feb. 1962, pp. 58-59.
[77] *Ibid.,* p. 84.
[78] *Progress of the Non-Self-Governing Territories under the Charter, op. cit.,* p. 177.
[79] *Ibid.*
[80] Information from Non-Self-Governing Territories, *op. cit., Pacific Territories,* A/5081, 15 Mar. 1962, p. 106.
[81] *Ibid.,* pp. 26-27.

acres of land; the remaining area is either indigenous customary land or vacant land.[82]

103. In *Guam*, approximately 42 per cent of the total area is owned by the United States Government or the Government of Guam.

g. Land distribution in the Caribbean

104. Outstanding questions of land distribution in the Island territories of the Caribbean are those of estates versus peasant cultivation and, where estates exist, their local or overseas ownership.

105. In *Barbados*, of the total area of 106,470 acres, estates own 77,063 acres (52,133 arable) and peasants 17,283 (14,000 arable).

106. In *Jamaica*, in 1943[83] the 66,173 farms in the island were divided into 137,966 holdings; in addition, plots of land under one acre and not classified among the farms numbered 138,425 in all parishes outside Kingston.

107. The land situation in the continental territories of British Honduras and British Guiana is in marked contrast to that of the island territories owing to the limited exploitation of much of the land, particularly in the interior.

108. In *British Honduras*, the exploitation of forest resources was the principal economic activity between the 17th century and the early part of the 20th century. With the increase in population and the decrease in forest resources owing to lack of proper forest management practices in the past, this industry is no longer able to support the economy on its own. Because of this the British Honduras Government has been trying for the past three decades to interest the community in agricultural development. As, however, there is a shortage of available domestic capital, Government has sought to encourage investment from abroad especially in the production of economic crops for export. It has at the same time sought to encourage the increased production of food for domestic consumption. As far as foreign investment in agriculture is concerned, the Government has helped chiefly by the grant of development concessions consisting of income tax and import duty relief in respect of processing factory installations (e.g. citrus and sugar factories).*

109. The distribution of land as of 1960 showed that, of a total acreage of 5,674,800, private land suitable for agriculture covered 1,068,000 acres; of this area, 62,000 acres were under actual cultivation.[84] One of the handicaps to economic development has been the extensive alienation of the land, mainly in the form of large estates held in freehold tenure in the mahogany and logwood-bearing areas, which include most of the fertile lands of the colony. There are also cases of absentee owners whose estates have reverted to secondary forest.[85]

110. Most of the land in *British Guiana* is also under forest (70,000 square miles, out of an estimated total of 83,000 square miles). In the developed coastland areas, some 200,000 acres held by estates under freehold or leasehold are under sugar-cane, rice or coconut cultivation. There are 21 sugar estates covering 155,000 acres which grow 98 per cent of the colony's sugar. With one exception, all the estates are owned by three companies, one of which controls 12 estates and 11 factories. About 1,235 peasant proprietors cultivate 1,435 acres of sugar-cane, producing less than 2 per cent of the total production of the Territory.[86]

2. Mineral rights

a. Mining rights[87]

111. Mineral rights are generally vested in the State, but there are important exceptions. Although, in principle, the Government of a territory is the authority to grant concessions, it sometimes delegates, concedes or even cedes its rights and privileges to private or semi-public companies which may in turn exercise these rights.

i. *Territories under United Kingdom administration*

112. The general position regarding the ownership of mineral rights in territories under United Kingdom administration is that such rights are, with certain exceptions,[88] vested in the Crown. Among the territories which have enacted legislation to this effect since 1946 are Jamaica, Antigua, St. Kitts-Nevis, St. Helena, Gambia, Somaliland and Hong Kong.*

(1) *Bechuanaland*[89]

113. Mineral rights in Bechuanaland are not vested in any one single authority but are distributed as follows. In the tribal areas and the Barolong farms the rights are vested in the Chief or African Authority on behalf of the tribe concerned. The British South Africa Company owns the mineral rights in the Lobatsi, Gaberones and Tuli Blocks. The Tati Company owns the mineral rights in the Tati Concession and over the remainder of the Protectorate the rights are vested in the Crown. The High Commissioner may declare an area to be open for exploring or prospecting, but can only throw land open to public prospecting in a tribal territory with the written permission of the owner of the mineral rights. At present, with the exception of a portion of the farm known as Ramathlabama's Kuil in the Lobatsi block which was declared open for prospecting for diamonds by the High Commissioner in 1941, no areas in the Protectorate are open to public prospecting.

114. No prospecting or mining either by individuals or mining concerns is allowed on Crown Land or in the tribal territories unless a Crown Grant or a mineral concession has been negotiated. A mineral concession is a concession negotiated by the Chief or African Authority and is subject to approval by the Secretary of State. This confers upon the holder of the concession

* Information provided by the Government of the United Kingdom.

[82] Information from Non-Self-Governing Territories, *op. cit., Pacific Territories*, A/5081, 15 Mar. 1962, p. 131.

[83] Jamaica: *Eighth Census of Jamaica and its Dependencies 1943*, pp. XCVI and XCVII.

[84] Information from Non-Self-Governing Territories, *Caribbean and Western Atlantic Territories*, A/5080, 20 Mar. 1962, p. 35.

[85] United Kingdom: *Report of the British Guiana and British Honduras Settlement Commission*, 1948, pp. 282-283.

[86] United Kingdom: *Report of a Commission of Inquiry into the Sugar Industry of British Guiana*, 1948, pp. 6-7, 104.

[87] Based on Docs. ST/TRI/SER.A/6/Add.2 and ST/TRI/SER.A/14 (see note 10 above) and *Progress of the Non-Self-Governing Territories under the Charter, op. cit.*, pp. 137-138.

[88] See United Kingdom: Colonial Office, *Memorandum on Colonial Mining Policy*, London, 1946, Col. 206, p. 3.

[89] *Basutoland, Bechuanaland Protectorate and Swaziland, Report of an Economic Survey Mission*, London, HMSO, 1960.

the right to prospect for or mine minerals within the area over which rights have been negotiated. Crown Grants are grants made by the High Commissioner conferring rights to prospect or mine over the area of the grant and they can only be made in respect of tribal territories if the Chief or African Authority, after consultation with the tribe, has given his written consent to the grant. Mineral concessions and Crown Grants normally embody the terms which will govern any mining activity which may ensue as a result of prospecting work.

(2) *Swaziland*

115. In Swaziland, mineral rights—the communal property of the Swazi nation—were alienated to Europeans by the King in the 1880s. Expropriations, cancellations and renunciation of rights held by a number of lessees formed the basis of the Crown's mining domain; the Crown was thus vested with those rights and they were not returned to the Swazi nation. They are about equally divided between the Crown and private concessions. All land had at one time also been ceded to Europeans. The Swaziland Concessions Partition Proclamation in 1907 restored to the Swazi nation one third of the land concessions. Ownership of the surface, however, nowhere in Swaziland involves title to mineral resources.

116. Some time ago, the Swazi nation petitioned the Government of the United Kingdom to the effect that additional land be made available for the Swazi nation; that controls on purchase of land by Africans be removed; and that mineral concessions granted in the 1880s by Ngwenyama Mbandzeni should, as they expire or are surrendered, revert to the ownership of the Swazi nation instead of to the Crown. The Government, in its reply, agreed to ownership of native areas, native land settlement areas and some Crown lands being transferred to the Swazi nation; to the removal of controls on the purchase of land by Swazi; and to the reversion of mineral rights to the Swazi nation, on conditions which will ensure the orderly development of the mineral resources of the territory in the interests of the Territory as a whole.*

(3) *Trinidad**

117. In Trinidad, surface and mineral rights in the part of the island where rights of the Crown have been alienated are vested in private ownership, while in the rest of the Territory such rights are vested in the Crown. The leasing of Crown oil rights under the oil mining regulations of 1939 and 1945 implies the granting of exploration licences for oil, and mining leases for a period of thirty years. All oil rights are internally owned.

118. The exploitation of mineral resources in this territory has been financed exclusively by public limited liability companies whose capital was initially subscribed in the United Kingdom. There has been no investment of local public funds in such exploitation and local participation has been limited to the extent to which individuals purchased company shares.

(4) *Jamaica*

119. In Jamaica the ownership of most minerals is vested in the Crown, exceptions being gypsum, phosphate and certain minor minerals. Petroleum mining is subject to special rules; three types of licences may be granted: oil exploration, prospecting and mining. For all other minerals, prospecting rights, exclusive prospecting licences and mining leases can be granted under the provisions of the general mining law. The grant of a mining lease for bauxite is made only if the company applying for the lease owns the land to be leased; bauxite companies arrange, therefore, for an option to purchase land while prospecting under prospecting rights. Bauxite companies have also entered into agreements with the Government for restoring the land after the termination of mining operations.

(5) *British Guiana*

120. In British Guiana, ownership of minerals is vested in the Crown. Prospecting and mining rights issued by the Government include: prospecting licences for a year; exclusive permission for prospecting of bauxite given for a nominal fee; oil exploration licences for petroleum; claim licences which entitle the holder to start mining; and mine concessions for a period not exceeding twenty-one years.

(6) *Fiji**

121. All minerals, including crude oil, in the Colony are vested in the Crown under the provisions of the Mining Ordinance, Cap. 145.

122. The control of prospecting and mining of all minerals other than crude oil and diamonds is vested in a Mining Board, appointed by the Governor under this Ordinance. The Board is empowered to grant Prospector's Rights, Prospecting Licences, Interim Permits to Mine, Mining Leases and Special Mining Licences for the purposes of prospecting and exploiting these minerals. Under Cap. 145 and 146 the Government is impowered to collect a royalty on all minerals and crude oil extracted. Apart from the provision for the setting up of a Mining Board, the Mining Ordinance Cap. 145 is more or less identical with similar legislation in other territories.

123. The control of the exploration, prospecting, working and winning of all mineral oils and gas in a natural state below any land in the Colony is vested in the Governor by virtue of the Oil Mines Ordinance, Cap. 146. There is no prospecting for oil being carried on in the Colony at the present time.

124. There is no legislation in force to allow prospecting for diamonds. The indigenous population is on the same footing as other British subjects in regard to their right to participate in prospecting and mining ventures. With regard to non-British nationals, the Mining Ordinance as it stands at present provides that the holder of a mining lease may not allow the control of the undertaking to which the lease relates to pass into the hands of other than British subjects, without the consent of the Governor. The Governor-in-Council and Secretary of State for the Colonies have agreed that this limitation on aliens be removed and a Bill to this effect has now been published. There is no restriction on non-British participation in prospecting nor is there anything to prevent the Mining Board from granting a Mining Lease to an alien.

125. The following table sets out the participation in prospecting and mining by each section of the population as at the end of July 1960:

* Information provided by the Government of the United Kingdom.

Race of holder or joint holder	*Prospectors rights*	*Prospecting licences*	*Interim permits to mine*	*Mining leases*
Fijian	25 persons	2 persons	6 persons	1 person
Indian	32 persons	15 persons	17 persons	2 persons and 3 companies
European	18 persons	2 persons and 2 companies	6 persons	1 person and 4 companies
Chinese	2 persons	—	3 persons	1 person
Japanese	1 person	1 company	1 company	—

126. This table is compiled on a comparative numerical basis only as partnerships between people of the various races and between indigenes and expatriates are such that to show the true relationship would cause it to become unnecessarily complicated. All Fijians are indigenous. As far as can be ascertained from Mining Board records, all Indians engaged in mining are locally domiciled. Of the Europeans and others some 50 per cent are local citizens while the balance are expatriate British subjects and aliens. Almost all the Fijians and Indians are engaged in the mining of manganese.

(7) *Hong Kong*[90]

127. The ownership and control of all minerals is vested in the Crown according to the Mining Ordinance 1954, which provides for the issue of prospecting and mining licences by the Commissioner of Mines, concurrently Commissioner of Labour. An amendment to this ordinance came into effect in 1960 extending the periods of renewal for prospecting and mining licences from 2 to 5 years and from 5 to 10 years, respectively. At the end of 1960, there were 2 mining leases (4 in 1959), 21 mining licences (22 in 1959) and 6 prospecting licences (2 in 1959) in operation.

ii. *Papua under Australian administration*

128. A 1907 ordinance stipulates that the minerals and precious stones found in the native lands shall thenceforth be the property of the Crown. The 1934 Petroleum Mining Ordinance states that oil and helium found anywhere in the territory shall be the property of the Crown.

b. PROTECTION OF INDIGENOUS MINING INTERESTS

129. The laws in most territories generally enable the indigenous inhabitants to obtain prospecting and mining licences. In practice, mining by indigenous persons is on a small scale; though in Sierra Leone quite extensive alluvial diamond mining is carried on by African miners under the provisions of the Alluvial Diamond Mining Ordinance, 1956. In Fiji also the Government encourages the small scale mining of manganese by indigenous miners, and training courses for indigenous prospectors are provided by Governments in East Africa.*

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130. The mining laws are the same for all persons. To enable an applicant to obtain a mining lease, claim or location, under which more extensive operations are possible than under a prospecting licence, the legislation of most territories empowers the governor to demand proof of financial backing and technical skill, and to the extent that the indigenous population does not often have access to either, the size of the indigenous share in the mineral exploitation in most territories is restricted.*

131. In the *Bechuanaland* Protectorate, mines located on native reserves are the property of the chiefs and tribes occupying those lands. In *Swaziland*, on the other hand, the indigenous inhabitants have no claim to the minerals in the lands reserved to them, as stipulated in section 2 of the Swaziland Native Area, Proclamation No. 10, 1917.[91] Government policy tends to discourage any mining operations on indigenous lands in order to protect the land rights of the Swazis.

3. Country studies

132. The country studies set forth below cover some of the territories where natural resources exploitation is a major economic activity. Data on these territories thus relate most closely to the general context of this study and warrant a more detailed review than that afforded by the preceding more general parts.

a. KENYA

i. *Land*[92]

133. All land in Kenya, apart from a few freeholds, falls into one of two categories: (*a*) Native lands which are permanently reserved for Africans; and (*b*) Crown lands, which include the Highlands, Native leasehold areas, Native reserves and Native settlement areas. Crown land in the Highlands, outside a municipality, township or Native reserve, was until recently alienated to Europeans only, on 999-year leases.

134. Proposals for a new land policy, designed to ensure that the basis of tenure and management of all agricultural land will be similar throughout Kenya, regardless of race or tribe, as far as local economic and agronomic factors will permit, were published by the Kenya Government in October 1959.[93] After approval by the Kenya Legislative Council, these proposals were brought into effect by the Kenya (Land) Order in Council of 30 November 1960. The Order replaces the former land laws [the Kenya (Native Areas) Orders in Council, 1939 and 1958, and the Kenya (Highlands) Order in Council, 1939]. It provides for the replacement of the Highlands Board by

* Information provided by the Government of the United Kingdom.

[90] Information from Non-Self-Governing Territories, *op. cit., Asian Territories*, A/5079, 8 Feb. 1962, p. 31.

[91] Swaziland: *Mineral Ownership as affecting Mineral Development in Swaziland*, p. 18. See, however, para. 116 above.

[92] Information from Non-Self-Governing Territories: Summaries of Information Transmitted under Article 73 e of the Charter of the United Nations. Report of the Secretary-General. African and Adjacent Territories. A/5078, 31 Jan. 1962, p. 53.

[93] Kenya: Sessional Paper No. 10 of 1958/59, *Land Tenure and Control Outside the Native Lands.*

a multi-racial Central Land Advisory Board, prohibits the creation of racial restrictions on the ownership or occupation of land, and empowers the Governor to make regulations governing the development, control and use of all land.

135. In the Native lands, the occupation, use, control, inheritance and disposal of land is still governed by customary law, but in 1959 provision was made for the recognition, by registration, of rights of ownership under customary law as freehold. Individual title has already been registered over large areas of Kikuyu District and parts of Nandi and Elgeyo-Marakwet Districts. In the registered areas, except as regards inheritance, Native law and custom and the Native Land Trust Ordinance have been superseded by the provisions of the Native Lands Registration Ordinance, 1959. A second ordinance, also enacted in 1959, provides for control over land transactions to be exercised by provincial and divisional boards, composed predominantly of Africans. It is the intention gradually to extend the system of registration and control to other areas of the Native lands, where the concept of individual ownership has emerged. This development, however, will take considerable time: in 1960, out of a total area of African land holdings amounting to 33 million acres, only 1.3 million acres had been consolidated and registered.

136. Legislation with respect to land tenure currently in force is summarized below.[94]

Crown Lands Ordinance, 1915 (Cap. 155, 1948 Revised Laws of Kenya): Crown grants under this Ordinance are normally on leasehold terms, as follows:

(*a*) Agricultural land: for a term of 999 years and in recent years disposed of by direct grant and not by auction.

(*b*) Township plots: for any term not exceeding 99 years for business, industrial or residential purposes.

(*c*) Special purposes: normally for any purpose other than agricultural if outside of townships and for terms not exceeding 99 years.

(*d*) Temporary occupation licences: licences may be granted either for special purposes, e.g. quarrying, grazing, etc., or for temporary purposes or residence.

Provision is also made for the reservation of areas for native reserves, temporary native reserves, native leasehold areas and native settlement areas.

Land Titles Ordinance, 1908 (Cap. 159, 1948 Revised Laws of Kenya): This Ordinance is applicable to the ten-mile coastal strip only and provides for the certification and registration of titles or interest in immovable property within the prescribed area. All land within the area the title of which has not been certified in favour of a private owner or the title to which is not awaiting adjudication is deemed to be Crown land.

Native Lands Trust Ordinance (Cap. 100, 1948 Revised Laws of Kenya): This defines the areas of the Native Land Units for occupation by Africans. Provision is made for the grant of (1) leases up to 33 years and, with the consent of the Secretary of State, for periods up to 99 years; (2) mining leases up to 21 years.

Registration of Titles Ordinance (Cap. 160, 1948 Revised Laws of Kenya): The underlying principle of this system of registration is indefeasibility of title. Since the enactment of the Ordinance, all grants of land and land transactions are made subject to its provisions.

The Native Lands Registration Ordinance No. 27 of 1959 provides for the registration of individual title to land within the Native Lands proper and, when title has been so registered, the land ceases to vest in the Trust Board and is vested in individual African proprietors.

The Land Control (Native Lands) Ordinance No. 28 of 1959, enacted simultaneously with the Native Lands Registration Ordinance, provides for control to be exercised over land transactions after registration.

The Kenya (Land) Order-in-Council, 1960. S.I. 1960, No. 2202.

ii. *Forests*[95]

137. It is the Government's stated policy to reserve in perpetuity existing forests and wherever possible to add them in order to:

> develop and maintain all needs of the territory in timber and other forest products adequate to meet the requirements of the community under a fully developed national economy and to provide the greatest possible surplus... for export markets; in particular to provide fuel supplies for African areas...

138. Under current forest development schemes, 210,000 acres of exotic softwood plantations are to be established at an annual planting rate of about 23,000 acres.

iii. *Water resources*[96]

139. The right to the use of all water was vested in the Crown by the Water Ordinance of 1951. The Water Resources Authority was set up to investigate the water resources of the Colony and to advise and make recommendations to the Minister as to improvement, conservation, development and apportionment of such resources. A number of new supply and conservation projects have been carried out.

iv. *Mineral rights*

140. All mineral rights are vested in the Crown with the exception of Common minerals as defined under the Mining Ordinance (Cap. 168, 1948 Revised Laws of Kenya). These are held under land tenure. Prospecting rights are issued to *bona fide* prospectors whose activities are governed under the Mining Laws and Regulations of Kenya (Cap. 168, *ibid.*).

v. *Data on land distribution, income and profits*[97]

141. The statement of land areas as at 31 December 1958[98] is as follows:

	Sq. miles approx.
Native Areas (including Settlement Areas, etc., Communal Reserves, Alienated land, Forest and Water)	52,271
Crown Forests	5,173
Townships	508
Agriculture, Veterinary, Outspan, other Government Reserves and Railway Reserves	419
Alienated land including Coastal freehold	13,071
Unalienated Crown land part of which is suitable for alienation:	
(i) Within the Highlands	220
(ii) All other areas excluding the Northern Frontier and Turkana	17,961
Royal National Parks	8.516
Northern Frontier and Turkana	120,439
Crown land earmarked for Native areas	1,297
Open water (non-native)	5,085
TOTAL	224,960

142. Figures for the area of agricultural land exploited by foreign companies are not available. The breakdown of land areas is as follows:

[94] Colonial Office Report on Kenya for the year 1959.

[95] Information transmitted under Article 73 e of the Charter, 1957: Report of the Forest Department for the period 1 July 1955 to 31 Dec. 1957, Nairobi, 1958, pp. 3 and 4.

[96] Kenya: Ministry of Agriculture, *Animal Husbandry and Water Resources, Three-Year Report*, 1955-1957, pp. 26, 35, 36.

[97] For related population figures, see table IV-6 above.

[98] Colony and Protectorate of Kenya, Lands Department, *Annual Report 1958*, Nairobi, 1959, p. 2.

	Square miles
Land alienated (including municipalities, townships and Government reserves about 900 square miles)	13,998
Crown Forests	5,173
African land (including 731 square miles of forest, 36 square miles of alienated land and 86 square miles of water)	52,271
Crown land (including African priority areas, National Parks, Crown land earmarked for native areas, and water)	153,518
TOTAL AREA	224,960

143. Data on income and profits from natural resources exploitation are shown below.

Income and profits derived from investments in the exploitation of natural resources

	1956	1957	1958
	(*in millions £*)		
Agriculture			
Non-African	24.8	25.9	27.1
African			
Marketed produce	6.0	6.8	7.0
Subsistence	31.0	32.1	33.7
Mining and quarrying			
Non-African	1.9	1.9	1.7

b. UGANDA

i. *Land*[99]

144. There are no native reserves in Uganda and the whole of the unalienated lands of the Protectorate are classified as Crown lands. In the disposition of these lands the needs, present and future, of the African population are paramount. Within townships and trading centres the ownership of land is almost entirely in the hands of the Crown.

145. The total area of Uganda is 93,981 square miles, of which 74,622 square miles are land, 5,670 square miles swamp, including grassy swamp, and 13,689 square miles open water. The total area of land and swamp is thus 80,292 square miles which is divided between the indigenous and non-indigenous population as follows:

	Sq. miles	
Land allotted to individual Africans under:		
Buganda Agreement	9,003	
Ankole and Toro Agreements	710	
Eastern Province special grants	25	9,738
Crown land in Eastern, Northern and Western Provinces for African use and benefit		62,087
Crown land in Buganda		7,948
Land owned or occupied by non-indigenous population:		
Buganda	344	
Eastern Province	71	
Western and Northern Provinces	104	519
		80,292

146. Of these 80,292 square miles, 9,776 are arable land, 1,494 orchards, 6,141 forest reserve, 3,052 built-on or waste land, while 59,829 square miles are uncultivated. This last area includes grazing land and game reserves.

147. For many years there have been no grants in freehold to non-Africans except in respect of exchanges of land, and the Land Policy Pronouncement of 1950 declared that "subject to the fulfilment of any undertakings already given there will be no further alienations in freehold".

148. Alienations in freehold consist of (*a*) grants, made in the earlier years of the century, of agricultural estates where the property was first leased by the Crown on terms which permitted conversion to freehold on satisfactory development; (*b*) grants to religious bodies; (*c*) grants made under the Ankole Agreement of 1901 and the Toro Agreement of 1900; (*d*) grants made in more recent years on exchange of equal areas between the Crown and freeholders and between African landowners and non-Africans; (*e*) grants made early in the century as rewards for services rendered to the Protectorate Government, for example the Kakunguru Estate at Mbale which was presented by Government to Kakunguru, a Buganda notable, in recognition of his services in settling the country around Mount Elgon.

149. Leases of Crown land outside townships have until fairly recently been granted to non-Africans for agricultural purposes and also for ginneries and cotton stores. The maximum term is ninety-nine years. Leaseholds in townships are usually for a short term of years extendable to forty-nine years or ninety-nine years on certain conditions.

Domestic income
(£ million)

	1955	1956	1957
African enterprises:			
Net farm income	42.5	37.6	38.2
Other business income	3.5	4.0	5.0
Profits and surpluses:			
(*a*) Private business enterprise	10.7	9.0	8.7
(*b*) Statutory marketing boards	2.7	6.2	8.4
(*c*) Public enterprise	0.5	0.3	0.4
Salaries and wages	27.3	29.1	31.0
Rentals	0.6	0.6	0.6
African subsistence economy	30.2	30.3	30.1
TOTAL DOMESTIC INCOME	118.0	117.1	122.4

150. The report of the East Africa Royal Commission 1953-1955[100] outlined the basic position of land status and tenure in Uganda in the following terms:

"The Uganda Order in Council of 1902 gave all land not held in private title the status of Crown land, and provision for the administration of Crown land was made in the Crown Land Ordinance of 1903 and subsequent amendments to that Ordinance.

[99] For related population figures, see table IV-6 above.
[100] See note 92 above.

In order to ascertain what land was Crown land, or conversely what land was held in private title, the Crown Land Ascertainment Ordinance of 1912 established a procedure for the claim and recognition of rights and interests, African and non-African, against the Crown; but in 1922 the Crown Land Declaration Ordinance was passed which limited to twelve months the period within which claims could be submitted. African claims were not in fact submitted and the lapse of the statutory period in effect excluded them from legal recognition.

"The position today is, therefore, that the private titles legally recognized consist of grants made prior to 1902, mostly to non-Africans, the 'mailo'[101] titles in Buganda[102] and elsewhere, and all grants in Crown land made after 1903 in accordance with the provisions of the Crown Lands Ordinance.

"Land in African customary occupation and subject to African rights under native law and custom is not, under the legislation, recognized as in private title; but the policy has been to hold this land in trust for the use and benefit of the indigenous population and, although its ownership is legally vested in the Crown and not in the African community or the individual Africans holding it in native law, the Africans' rights of occupancy in it are administratively respected and protected. The most recent declaration of the policy of protecting the rights and interests of Africans in Crown land, notwithstanding their strictly legal position as tenants-at-will of the Crown, was made in 1951. This recognition and protection of customary African rights and interests in land is applied in all Crown land with the exception of that within Buganda and within townships. No African may hold Crown land in Buganda or in a township except on a lease or licence from the Governor, and no non-African can hold Crown land anywhere in the Protectorate except on a lease or licence from the Governor.

"The position regarding the transfer of land rights is that in Buganda 'mailo' land cannot be transferred to non-Africans except with the consent of the Governor and the Lukiko [legislature], and outside Buganda land held in registered title by Africans cannot be transferred to non-Africans without the Governor's consent. The Africans' customary occupancy of Crown lands throughout the Protectorate is, in effect, similarly not transferable to non-Africans except with the Governor's consent, by reason of the fact that it is unlawful for a non-African to occupy any Crown land except under a lease or licence from the Governor."

151. On the basis of the recommendations of the Commission, land tenure proposals were made in 1956 by Government and machinery was set up to replace customary tenure by individual title in districts where there was a demand for such a change. During 1958, grants of registered titles were issued to some 750 individuals over the land which they already occupied according to native custom.

152. During 1959, further progress was made on systematic grants of registered titles in rural areas. The grants of title continued to be confined to two pilot schemes in Kigezi and Ankole districts covering approximately eighty square miles. By the end of the year, some 3,400 holdings had been adjudicated.

[101] The Uganda Agreement (in respect of the present Province of Buganda) of 1900 provided for the holding in freehold of estates claimed at the time as being in the possession of various "chiefs and private landowners". These freehold estates came to be known locally as "mailo" lands.

[102] One of the four provinces of Uganda, a constitutional kingdom.

ii. *Mineral rights*

153. Mineral rights are vested in the Crown except on private land in Buganda where the mineral rights are held by the landowner.

154. In 1957, there were 165 private and Government-owned mining titles. There were no external companies (registered outside Uganda) owning mining titles.

155. Kilembe Mines Ltd. (a company formed to exploit the copper cobalt deposits in the Ruwenzori Mountains of Western Uganda under a concession previously held by Frobisher Ltd. of Toronto, Canada); Sukulu Mines Ltd.; and the Uganda Cement Industry, Ltd., utilizing the limestone at nearby Sukulu, all are associate companies of the Uganda Development Corporation, established in 1952.

c. Northern Rhodesia

156. Base metal mining, chiefly copper, is the main economic activity of Northern Rhodesia. Other minerals mined are cobalt, lead, zinc and manganese. Farming, principally European, takes second place and is concerned mainly with the production of foodstuffs for domestic consumption. The main export crop is tobacco.

i. *Mining*[103]

157. The right of ownership in, of searching for, or of disposing of minerals, mineral oils or natural gases is, with certain exceptions, vested in the British South Africa Company, which administered Northern Rhodesia until 1924, when the administration passed to the Colonial Office, although the Company retained its ownership of the mineral rights throughout the territory. Concessions are a matter for arrangement with the Company. Prospecting is carried out either under an ordinary prospecting licence, valid for any part of the Territory open to prospecting, or under a grant of exclusive prospecting rights in respect of a specific area. Approximately 95 per cent of the Territory is held under such grants, leaving approximately 5 per cent open to prospecting under an ordinary licence. This open area is in the Northern Province, east of Lake Bangweulu. Mining rights are acquired by pegging and registering mining locations (claims) under a prospecting licence or by "special grants" of mining rights from the British South Africa Company.

158. Under an agreement between the British South African Company and the Government signed in London in 14 September 1950, the Company agreed to pay 20 per cent of the net revenue from its mineral rights to the Government; in addition, all the mineral rights of the Company will vest in the Crown with effect from 31 October 1986.

159. There is no direct indigenous financial participation in mining activities as such, but some local capital has been invested in the big mining companies

[103] Information transmitted under Article 73 *e* of the Charter, 1947, 1948, 1955; Colonial Office, *Report on Northern Rhodesia for the year 1957*, p. 30; Colonial Annual Report, *Northern Rhodesia, 1949*, pp. 3 and 4; United Kingdom Central Office of Information, *The British Colonial Territories in 1950*, p. 31, and information provided by the Government of the United Kingdom in connexion with the present study.

and there are a few small local companies which exploit minor minerals such as sand, clay, mica.*

ii. *Factual data on the economic importance of the mining industry and on royalty payments*

Table IV-20

Federation of Rhodesia and Nyasaland

Estimated contribution of the copper mining industry to the net domestic output and exports[104]

Year	Total net domestic output (£ million)	Estimated contribution of copper mining industry (£ million)	Percentage	Total value of exports merchandise (£ million)	Value of copper exports (£ million)	Percentage
1952	237.4	57.9	24.4	127.6	74.1	58.1
1953	265.9	67.0	25.2	141.0	86.7	61.5
1954	290.0	76.7	26.4	146.8	86.5	58.9
1955	334.3	97.2	29.1	171.4	110.6	64.5
1956	369.8[a]	92.8	25.1	181.7	113.8	62.6
1957	358.3[b]	52.6	14.7	156.1	82.5	52.9
1958	344.0[c]	43.8[b]	12.7	135.8	69.0	50.8

[a] Provisional.
[b] Preliminary estimate.
[c] Unofficial estimate.

Copper royalty payments[105]

160. Royalty is payable to the British South Africa Company, Ltd. on the copper content of cupreous materials produced each month, the rate per long ton being 13.5 per cent of the average of London Metal Exchange quotations for the month, less £8.

	Copperbelt totals	
	1957	1958
Short tons of copper subject to royalty..	462,862	419,027
Total copper royalties paid (£)	8,857,691	6,699,693
Average royalty payment per short ton (£)	19.13	15.99
Cobalt royalty payments[106]		
Short tons of cobalt subject to royalty..	1,585	1,840
Total royalties paid on cobalt (£)	111,709	119,405
Average royalty per short ton (£)	70.5	64.9

iii. Land

	Acres	Population	1959
*Land distribution:**			
Native trust land	104,814,000	Africans	2,310,000
Native reserves	35,656,000		
Barotseland Protectorate	31,231,000	Asians	6,900
Alienated Crown land ..	5,608,500	Coloured	3,000
Township lands	103,000		
Unalienated Crown land.	8,563,500		75,000
	185,976,000		2,394,900

161. Before 1943, Crown land was usually alienated under a lease with option to purchase. Crown land is now alienated under short-term (30 years) and long-term (999 years) leases. Ownership plots and small-holding leases are for periods of not more than 99 years. Certain areas of Crown land amounting to 2,431,000 acres have been declared forest reserves and protected forest areas.*

162. In general, lands reserved for indigenous use, whether Native reserves or Native trust land, may not be alienated, and are vested in the Secretary of State for the Colonies for the exclusive use of and development of the indigenous population.[107] Barotseland Protectorate is secured to the indigenous population by treaties, and the Barotse people retain the mineral rights[108].

iv. *The Natural Resources Board*[109]

163. The Natural Resources Board was set up in 1950 under the Natural Resources Ordinance, Chapter 239 of the Laws, to supervise conservation and to stimulate public interest in the protection and improvement of natural resources. The Board is empowered to make orders for conservation of natural resources pertaining to:

(*a*) The use to which the land may be put; (*b*) the construction and maintenance of soil and water conservation works, and other works for the preservation or improvement of natural resources; (*c*) the prohibition or restriction of cultivation of any part of the land; (*d*) the method of cultivation of the land and the system of farming to be used thereon; (*e*) the manner of watering, pasturing and moving stock; (*f*) the preservation and protection of the source, course, and banks of streams; (*g*) the control of water, including storm water and drainage water; and (*h*) the preservation of trees and other vegetation, and the method and systems by which forest produce may be taken and used.

d. Netherlands New Guinea**

164. Under the legislation of Netherlands New Guinea on natural resources, the interests of the indigenous population have been placed in a position of priority.

165. Articles 37 to 39 of the Netherlands New Guinea (Constitution) Act of 30 June 1960 take special account of the interests of the indigenous population.

Article 37: "(1). The protection of the indigenous population, in particular against arbitrary acts, shall be one of the main concerns of the Governor.

"(2). With a view to protecting the indigenous population rules may be laid down by Ordinance, providing that:

"A...

* Information provided by the Government of the United Kingdom.

[104] Northern Rhodesia, Chamber of Mines, *Year Book 1958*, pp. 26 and 27.

[105] *Ibid.*, table 12, p. 33. For a more detailed review of cost and profit data, and royalty remittances abroad, see Chapter V, tables V-10 and 11.

[106] *Ibid.*, table 13, p. 34.

** Information provided by the Government of the Netherlands.

[107] See note 74 above.

[108] Information transmitted under Article 73 e of the Charter, 1955.

[109] The Natural Resources Board. Annual Reports, 1951 to 1954, 1958.

"B. Certain well-defined areas in New Guinea may be temporarily designated as areas within which the establishment of agricultural enterprises by non-indigenous persons shall be prohibited and mining shall be subject to special conditions in the interests of the population.

Article 38: "With due observance of the duty imposed upon him in the preceding article, the Governor shall promote the opening-up and economic development of New Guinea with every means at his disposal.

Article 39: "(1) It shall be the Governor's concern to ensure that the rights of the indigenous population to the land be respected. The population cannot be dispossessed of these rights except in the general interest (see Article 127*), nor can these rights be restricted except in accordance with legal regulations.

"(2) The Governor may, if he deems it to be necessary in the general interest to have the disposal of land to which the indigenous population have a title (with the exception of yards, gardens, arable land in permanent use or other land to be designated by Ordinance) impose upon those having title to it the obligation to accept the resulting restriction of their rights by an order stating the reasons for the measure in accordance with rules and under guarantees to be laid down by Ordinance.

"(3) Non-indigenous persons cannot dispose, either directly or indirectly, of land to which the indigenous population have title, nor of the building, perennial plants or forests on it, other than in the cases, in the manner and in accordance with the rules to be laid down by Ordinance.

"(4) Land having no owner and to which indigenous persons have no title shall be the property of the State.

"(5) The Governor may, in accordance with rules to be laid down by General Administrative Order, grant land in freehold.

"(6) In accordance with rules to be laid down by Ordinance, land with other civil rights may be granted.

"(7) Land intended for agricultural or stock-breeding undertakings shall, in accordance with rules to be laid down by Ordinance and with the exception of small sections also to be laid down by that Ordinance, only be granted in long lease for a period not exceeding 99 years, or in lease. This land shall not include yards, gardens and arable land in permanent use owned by indigenous persons, and other land to be designated by Ordinance, barring a few exceptions to be defined by Ordinance, after an amicable settlement has been arrived at."

i. *Land*

166. Paragraph 1 of Article 39 of the Netherlands New Guinea (Constitution) Act of 30 June 1960 places paramount the Governor's concern to ensure that the rights of the indigenous population to the land be respected and thus to protect the economically-weak indigenous population against persons who are economically stronger, especially with regard to their rights to the land. This protection is one of the main principles of the Government's policy in the field of land legislation and is in full conformity with Article 73 of the Charter of the United Nations. The Governor will therefore have to see to it that the rights of the indigenous population to the land are not infringed and that the indigenous population enjoys the same protection as do non-indigenous persons in this field. It will not be possible to dispossess the population of these rights except for reasons of the general interest, as provided for under Article 127 of the Act. The rights in question can be restricted only in accordance with legal regulations.

167. The preservation of forests and the reclamation of waste land are necessary for the development of the country. It may, for this reason, be necessary to restrict to some extent the rights to certain tracts of land. In such cases, close consultations are held with the indigenous persons concerned to arrive at an amicable settlement. If these consultations should not lead to the desired result and it is necessary to restrict the rights of indigenous persons to certain waste lands in the general interest (e.g. for the preservation of forests and the reclamation of waste land), such persons may be obliged to accept a restriction by order of the Governor; the order must set forth the reasons for the restrictions. The restrictions may only apply to *waste* land, however, and may be imposed only under legal guarantees to be laid down by Ordinance, *inter alia,* with respect to any investigation of objections raised and the payment of compensation. This is the purport of the second paragraph of Article 39 of the Act.

168. The third paragraph of Article 39 of the Act contains what is termed a "ban on alienation." This ban, too, is an important principle of the Government's land policy, the purpose of which is the protection of the indigenous population against being dispossessed of their land. This principle implies that non-indigenous persons can have neither the direct nor the indirect disposal of land to which indigenous persons have title. The cases admitting of exceptions to the rules to be observed, e.g., hereditary succession in case of death or when indigenous rights are bought off, will be designated by Ordinance in so far as this is possible.

169. Land having no owner and to which indigenous persons have no title (waste and vacant land) is the property of the State. The Government may grant this land with real or personal rights. The chief real rights are the right of erecting buildings and the right of hereditary lease. The chief personal rights are the right of lease and the right of use. Land cannot be granted in freehold.

170. The right of erecting buildings is granted for sites intended for the erection of dwellings and industrial installations for a period not exceeding 75 years. Land to which indigenous persons have title may be granted with the right of erecting buildings only when such persons have permanently relinquished their title against payment of adequate compensation.

171. Waste land for agricultural or stock-breeding undertakings and for farming may be granted in long leasehold for a period not exceeding 99 years. The subsoil is not included in the lease. The rights and obligations of the leaseholder shall, in so far as they have not been regulated by investive act, be regulated by the provisions concerning leasehold in the Civil Code and in the Long Lease Ordinance.

172. As regards indigenous titles to the land, indigenous common law, of which little has been laid down in writing so far, applies. In a number of regions there are strong ties of a mystic character between indigenous groups and the land, affecting its alienability. Title to the use of the land is granted to members of,

* Article 127 reads as follows: "(1) The population can only be dispossessed of any property or right after a previous declaration by Ordinance to the effect that the general interest requires the dispossession and after compensation has first been paid or an undertaking has been given that such compensation will be paid; all this under regulations to be laid down by Ordinance.

"(2) The requirement that dispossession shall be preceded by a declaration by Ordinance, payment of compensation or an undertaking to pay compensation shall not apply in case war, the danger of war, sedition, fire, floods, earthquakes, volcanic eruptions or other emergencies require immediate dispossession.

"(3) Cases other than those referred to in the preceding paragraph in which a previous declaration by Ordinance is not required may be designated by Ordinance."

or families within, the group; however, this title is sometimes also granted to persons outside the group, but in these cases generally only for a short period. In a number of regions a development towards more individual rights may be observed.

ii. *Forests*

173. State property of waste and vacant land implies that the State also owns any timber stands and other forestry products, without prejudice to the right of the indigenous population to gather wood, etc., on this land.

174. There are regulations concerning the granting of forest concessions and licences for cutting timber. These regulations protect the rights of the indigenous population. Indigenous persons who, in accordance with local usage, are entitled to gather firewood, timber and other forestry products for their private use on these lands shall be free to do so. Trees to which indigenous persons are entitled may be cut only with the approval of those entitled to them and on payment of compensation.

iii. *Mining*

175. Those entitled to surface rights shall not have the free disposal of the mineral resources. This does not apply to the mining of minerals by the indigenous population.

176. Holders of prospecting licences or of mining concessions shall be:

(*a*) Netherlands nationals;

(*b*) Residents of the Netherlands or of Netherlands New Guinea;

(*c*) Companies having their seat in the Kingdom. As regards such companies rules have been laid down to the effect that the majority of their governors, directors or partners shall be Netherlands nationals or residents. Rules have also been laid down regarding the proper representation of these companies in Netherlands New Guinea.

iv. *Water resources*

177. Coastal fisheries may be carried on without a licence only by vessels flying the Netherlands flag. The crew of these vessels shall consist solely of Netherlands subjects.

178. Coastal fisheries shall only be allowed if the fishing rights to which the indigenous population are entitled under their institutions and customs are duly respected. The fishing rights of the indigenous population referred to above shall not be alienated or transferred.

179. Natural persons not being Netherlands nationals or judicial persons coming under the provisions applicable to Europeans, shall not carry on any coastal fisheries without a special licence.

180. The indigenous population has the sole right to fish for pearl shells, mother-of-pearl shells, sponges, etc. in the waters round Netherlands New Guinea; in so far as this is an old-established right, it shall be reserved to them, with the execution of others, with regard to all places of a depth not exceeding five fathoms (nine metres) at low tide.

181. The fishing rights of the population shall not be alienated or transferred.

182. The fishing rights regarding the marine produce referred to above may be leased. The interests of the indigenous population shall be duly considered. Natural and legal persons may lease these rights under the same rules as those laid down in the Mining Act.

C. Territories under the International Trusteeship System[110]

1. The legislative framework of the Trusteeship Agreements[111]

183. With respect to the framing of laws relating to the holding and transfer of land and natural resources, a number of the Trusteeship Agreements require the Administering Authority concerned to take into consideration native laws and customs, to respect rights, and to safeguard the present and future interests of the population. In other instances, the previous consent of the competent public authority is required for any transfer to non-natives of native land and natural resources or for the creation of real rights in such land or resources in favour of non-natives.[112]

184. Broad provisions in respect of land and natural resources are included in the Trusteeship Agreement for the Pacific Islands. Under this agreement, the inhabitants are protected against the loss of their lands and resources and the Administering Authority undertakes to promote the economic advancement and self-sufficiency of the inhabitants, and to this end to "regulate the use of natural resources, and encourage the development of fisheries, agriculture and industries and improve means of transportation and communication". (Article 6.)

2. Equal treatment for all Members of the United Nations and their nationals

185. According to Article 76 (*d*) of the Charter, one of the basic objectives of the International Trusteeship System shall be to ensure equal treatment in economic matters for all Members of the United Nations without prejudice to the attainment of the other objectives of the System.[113]

[110] Up to the time of the preparation of the present edition of the revised study, the following former Trust Territories had either acceded to independence or had joined adjacent States: Cameroons under British administration, Cameroons under French administration, Somaliland under Italian administration, Tanganyika, Togoland under British administration, Togoland under French administration, and Western Samoa. In each instance, the General Assembly, by resolution, declared that the revelant Trusteeship Agreement was no longer in force upon the territory's accession to independence.

To the extent that information on these countries available to the Secretariat was believed to be relevant to the post-independence situation it has been included in part A above of the present chapter.

[111] For the text of the Agreements cited here, see: *Ruanda-Urundi:* T/Agreement/3 (United Nations publication, Sales No.: 1947.VI.A.5); *New Guinea:* T/Agreement/8 (Sales No.: 1947.VI.A.8); *Nauru:* T/Agreement/9 (Sales No. 1947.VI.A.11); *Trust Territory of the Pacific Islands:* T/Agreement/11 (Sales No. 1957.VI.A.1).

[112] E.g., Ruanda-Urundi (Article 8); New Guinea (Article 8); Nauru (Article 5); Pacific Islands (Article 6).

[113] Agreement for Ruanda-Urundi (Article 9). In the case of the agreement for the Trust Territory of the Pacific Islands, the text reads as follows: "...the Administering Authority, subject to the requirements of security, and the obligation to promote the advancement of the inhabitants, shall accord to nationals of each Member of the United Nations and to companies and associations organized in conformity with the laws of such Member, treatment in the Trust Territory no less favourable than that accorded therein to nationals, companies and associations of any other United Nation except the Administering Authority." (Article 8.)

186. These agreements, with the exception of that for the Trust Territory of the Pacific Islands, also state that, in order to ensure equal economic treatment, the Administering Authority should ensure to nationals of all Member States of the United Nations the same rights as its own nationals enjoy in respect of the acquisition of movable and immovable property. The Administering Authority should not discriminate on grounds of nationality against nationals of any Member State in matters relating to the grant of concessions for the development of natural resources and shall not grant concessions having the character of general monopoly.[114]

3. Annual reports

187. Under the provisions of Article 88 of the Charter, the Administering Authorities shall make an annual report to the General Assembly on the administration of each Trust Territory on the basis of the questionnaire formulated by the Trusteeship Council.[115] Sections 3 and 4 of Part VI of this questionnaire deal with natural resources and have some bearing on the question of sovereignty over natural resources in the Trust Territories. Sections VIII to XII of the statistical appendices request information on the area of land held by indigenous and immigrant inhabitants respectively; alienation of land; and production of crops, livestock, fisheries, forests, mineral resources, etc. The annual reports on the administration of Trust Territories must, to the extent that they cover the information requested, be considered as the main official source material relating to land, land utilization and land alienation.

4. Action taken by the General Assembly

188. In conformity with the provisions of the Charter and of the Trusteeship Agreements, the Trusteeship Council adopted several conclusions and recommendations on economic advancement in specified Trust Territories, in general, and natural resources, in particular.

189. In conformity with the resolutions of the General Assembly[116] and of the Trusteeship Council the Trusteeship Council, after having established[117] a Committee on Rural Economic Development, adopted, with some changes, three of the Committee's reports[118] containing complete studies of population, land utilization and land system in the Territories concerned. Working papers of the Committee contain very detailed information on land and land alienation in all Trust Territories.[119] Other important source material are the reports of the Trusteeship Council to the General Assembly (or to the Security Council with respect to the Trust Territory of the Pacific Islands).

190. At its twenty-seventh session, the Trusteeship Council decided to disband its Committee on Rural Economic Development; the question dealt with by the Committee would henceforth be dealt with directly by the Trusteeship Council.[120]

[114] Ruanda-Urundi (Article 9).
[115] T/1010 and Add.1.
[116] GA resolutions 322 (IV); 438 (V); 561 (VI) and 1208 (XII).
[117] TC resolution 305 (VIII).
[118] Ruanda-Urundi (T/1369), New Guinea (T/1399).
[119] T/AC.36 Series.
[120] A/4818, p. 21; T/PV.1146, pp. 57-60; T/PV.1171, p. 87; T/PV.1173, pp. 81-82.

5. Action taken by the Trusteeship Council in matters relating to natural wealth and resources and with respect to complaints of infringements of related rights

191. According to Article 87 of the Charter the General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may consider reports submitted by the Administering Authority, accept and examine petitions, provide for periodic visits and take these and other actions in conformity with the terms of the Trusteeship Agreements. Under these Agreements, the Administering Authorities concerned undertook to collaborate with the General Assembly and to discharge all their functions as defined in Article 87 of the Charter.

192. The Trusteeship Council, after considering the annual reports, petitions and reports of the Visiting Missions, has adopted a number of recommendations, observations and conclusions bearing on natural wealth and resources in Trust Territories. Some of the more important decisions of the Trusteeship Council are summarized below.[121]

a. Ruanda-Urundi

193. The Trusteeship council has adopted a number of decisions, recommendations and commendations dealing with such topics as non-indigenous agricultural settlement,[122] suspension of concessions to non-indigenous settlers,[123] African credit facilities to increase participation in wealth-producing factors,[124] land reclamation to reduce congestion,[125] alienation of land,[126] and customary land tenure and excess cattle stocks.[127]

194. At its twenty-sixth session, the Council noting that basic reforms were needed in the land tenure system of the Trust Territory, expressed the hope that the new representative bodies to be constituted in Ruanda-Urundi would give urgent consideration to these problems.[128]

195. At its fifteenth session, the General Assembly adopted a resolution[129] by which it recommended that the Administering Authority urgently request the United Nations and the specialized agencies, under the technical assistance programmes, to dispatch an expert mission to study the problem of land tenure and land utilization in Ruanda-Urundi, in co-operation with the local authorities, with a view to determining how far the present system was prejudicial to the Territory's social and economic development, and to recommend corrective measures.

196. At its twenty-seventh session, the Council was informed by the Administering Authority that it wished to contribute to a just and systematic reform of rights of land tenure in Ruanda-Urundi, and to do so with the co-operation of the specialized agencies of the United Nations. However, it felt that, before an expert

[121] A great number of recommendations, observations and conclusions of the Council refer to participation of indigenous inhabitants in the economic life of the Territory in general, and, in particular, to agriculture, economic development plans, diversification of economy, financial assistance, economic surveys, standard of living, co-operatives, marketing, etc.
[122] A/1306, p. 25.
[123] A/1856, p. 66.
[124] A/3595, p. 64.
[125] A/3822, vol. II, p. 49.
[126] A/4100, p. 51.
[127] T/1538.
[128] A/4404, p. 80.
[129] GA resolution 1606 (XV), 21 Apr. 1961.

mission could usefully embark on a study of land tenure problems it was essential that the local authorities should be established beyond question. Moreover, if such a mission were to arrive in Ruanda-Urundi when two other United Nations missions were there and were occupying the full attention of the indigenous population as the agents of the Administration, it must inevitably encounter serious difficulties in carrying out its task. For those reasons, the Administering Authority had not yet requested that the mission provided for under resolution 1606(XV) should come to the Territory, but would do so as soon as circumstances permitted.[130]

b. New Guinea

i. *Land questions*

197. On a number of occasions between 1948 and 1959 the Council expressed concern with regard to the protection of rights to land of the indigenous inhabitants, covering such topics as legal protection of indigenous landowners,[131] purchase and alienation of indigenous land,[132] developing shortages of land and a change from customary tenure to individual holdings.[133]

198. In 1960, the Council was informed that after a close study, over a considerable period of time, of customary systems of indigenous land holding and problems involved in their reform, a number of broad principles had been laid down as a basis of policy. The most important decision with regard to land tenure in the Territory was the following:

(*a*) The ultimate and long-term objective was to introduce throughout the Territory a single system of land-holding regulated by the Territorial Government by statute, administered by the Department of Lands of the Territorial Government, and providing for secure individual registered titles after the pattern of the Australian system;

(*b*) Only the Territorial Government (i.e. the Administration working through the Department of Lands and the Registrar of Titles) might issue and register land titles;

(*c*) Land subject to native custom remained subject to native custom only until it was taken out of custom either by acquisition by the Administration or by a process, to be provided for by ordinance of the Territory, of conversion of title to an individual registered title;

(*d*) Upon either acquisition or conversion of title, compensation was to be provided in respect of extinction of rights under native custom;

(*e*) Land held under native custom might not be acquired outside of native custom by other than the Administration;

(*f*) For the time being, land might not be acquired by the Administration unless the indigenous owners were willing to sell and in the opinion of the Administration the land was not required by them; and conversion of title from native custom to individual registered title might take place only if the majority of those interested in the land under native custom consented to conversion and the method of conversion;

(*g*) The services of Native Land Commissioners were to be used as a first priority on investigations into claims by the Administration that land was ownerless and might therefore be declared Administration land; on investigation into the native custom of land proposed to be acquired by the Administration; on settlement of disputes about the ownership of land held under native custom, and, when legislative provision had been made, on investigations into the rights held under native custom in land proposed to be converted to individual-registered title. The aim was that all the time of the Commissioners should be taken up with this work. To the extent that at any time it was not, the Commissioners should continue investigations into the holding of land under native custom; the results of such investigations were to be recorded for use in connexion with future acquisitions or conversions of title, but were no longer to be registered.

199. The council's recommendations and conclusions covered the following points:

The Council welcomed the outline of principles of the Administering Authority (set forth above) and stressed the importance of adequate indigenous representation on the Land Development Board.

It also expressed concern with the questions of population pressure and land shortages, and urged the Administering Authority to use great care in the matter of acquisition of land and its leasing to non-indigenous persons; in its view, the Administering Authority should also consider a reduction in the maximum ninety-nine years period of agricultural lease.[134]

200. At its twenty-seventh session, the Council adopted conclusions and recommendations which covered the following points:

The Council noted that the Administering Authority was preparing plans for bringing all land in the Territory under a single system of landholding, and that the legal and other implications of such plans were being investigated. The Council wished to be informed of these plans in detail as soon as possible, as a solution of the problems resulting from customary land tenure in the context of a growing economy based primarily on agriculture remained urgent.

It was also necessary, in the Council's view, that the maximum support of the indigenous people for plans and policies of land reform should be obtained to ensure their successful implementation. This could best be done by the close association of the representatives of the indigenous people with the preparation and implementation of such plans and policies.

The Council was also of the opinion that the Administering Authority should take steps, as recommended by the Council at its twenty-sixth session, to associate the indigenous inhabitants in discussions of land policy at local government council and district levels as well as at the centre.

In view of the importance of ensuring the maximum popular support for all policies relating to land, the Council regretted that the Administering Authority had not as yet granted any representation to New Guineans on the Land Development Board, which was recommended by the Council at its twenty-sixth session.

It appeared from the report of the Administering Authority that during the year under review a further 8,215 acres of land were acquired by the Administration and that 11,004 were given out in leases, of which 7,729 acres were leased to expatriate firms and individuals, 1,472 acres to foreign missions and only 538 acres to New Guineans. While recognizing that the acquisition of some land for public purposes or the leasing thereof for similar purposes might be necessary, the Council viewed with some concern the continued leasing of large areas of land to expatriates. The Council wished to urge, once again, that the utmost care was exercised in this matter in order to avoid creating serious problems for the future. As recommended by the Council earlier, suitable reduction in the period for which the Administering Authority granted leases, namely ninety-nine years, should be given urgent consideration.

The Council was also of the view that the leases of Administration-owned land should be given by preference to New Guineans, local government councils and particularly to indigenous co-operatives, which should be organized and encouraged to undertake cultivation of cash crops on a large scale with the help of modern methods and techniques. While avoiding wasteful fragmentation of land, this might also encourage the co-operative and more productive exploitation of the lands now held under customary tenure.[135]

[130] A/4818, pp. 31-32.
[131] A/603. pp. 17-18.
[132] A/2150, p. 278; A/3170, p. 309.
[133] A/4100, p. 144.
[134] A/4404, pp. 138-139.
[135] A/4818, p. 51.

ii. *Other natural resources*

201. With respect to other natural resources, the Council has, on various occasions, adopted recommendations and conclusions bearing, among others on such matters as indigenous participation in natural-resources development,[136] the provision of skills and capital for such development,[137] the role of European-controlled industry,[138] economic planning and the role of the indigenous people.[139]

202. The Administering Authority stated that investigation were being made with a view to establishing a comprehensive plan for the integrated development of the Territory's economy; surveys of resources were being continued; and financial and technical help from the United Nations would be sought if considered to be in the interest of the indigenous inhabitants.

203. On a number of occasions in 1952 and 1954 the Council also took up the question of increasing the return to the territory in royalties from gold or tax revenues.[140]

c. NAURU

204. Nauru's sole export industry is the mining of phosphates, and on several occasions the Council has expressed its concern with the question of indigenous participation in various aspects of the industry, with special reference to the royalty rates paid to the Nauruans by the British Phosphate Commissioners.[141]

205. In view of the expected exhaustion of the phosphate deposits in about 40 years, the Council has also made a number of recommendations on a possible resettlement of the Nauruan population elsewhere.[142]

d. TRUST TERRITORY OF THE PACIFIC ISLANDS

206. Customary forms of land tenure, which vary from place to place, prevail throughout the Territory. A handbook on customary land tenure designed to serve as a preliminary guide for use of administrative and judicial personnel was published in 1959.

207. Land holdings by non-indigenous persons were small and dated from previous administrations. Such alienation was now prohibited under the Trust Territory Code.[143]

208. The previous administrations of the Territory had claimed as public domain all lands not then in actual use by the islanders and had also acquired title to various parcels of land, such title being considered to have devolved upon the current Administration. According to the Administering Authority, some of this land has been or will be returned to original owners to rectify inequities and other areas released to new potential owners under the settlement system known as homesteading. Other lands again are being reserved to accommodate future population increases. The inhabitants in general desire the return of land to the original owners. Claims of this kind, and also in respect of land acquired for military and administration purposes have in fact created a land problem which has for some time occupied the attention of the Trusteeship Council.[144]

209. In 1960 and 1961, the Council was also concerned with claims for compensation for use of land by the Administering Authority on Kwajalein and Majuro Atolls and with the question of land classified as public domain, topics also covered by the Visiting Mission to the Territory (1961).[145]

210. At its twenty-seventh session the Council adopted a recommendation that full information concerning all public domain land, including plans for its future use, should be made available to the people, and that all private claims against public domain land should be settled with the utmost speed. If a satisfactory solution of the Kwajalein and Majuro land claims was not arrived at in the very near future, the amount and modalities of compensation payments should be determined by arbitration.[146]

6. Resources legislation and factual economic data with respect to selected Trust Territories

a. RUANDA-URUNDI

i. *Legislative information**

(1) *Mining*

211. The Decree of 24 September 1937, as amended, constitutes the ordinary mining legislation in force in Ruanda-Urundi. Its principal provisions are summarized below.

Ownership of mines is distinct from that of the soil, and mines are vested in the Territory.

Mining concessions are granted by the territorial Administration or its agents, either under agreement or under licence. The agreements system applies in areas not open to public exploration and to special types of exploration, while the licensing system applies only to areas opened to public exploration by decree.

Under the agreements system, the parties determine, *inter alia*, the area of exploration, the conditions governing any eventual exploitation, and the fees and royalties payable to the grantor of the concession.

Both systems provide for a grant or rights in three phases: (1) a general exploration right [general licence]; (2) an exclusive exploration right [special licence]; and (3) an exploitation right [exploitation licence]. These rights derive from each other; i.e., a general exploration right is a prerequisite for obtaining an exclusive right, and so on.

The initial (general) right may be granted to individuals immatriculated in the Territory, i.e., listed in the population register; to prospectors acting on behalf of the applicant provided that such prospectors are themselves immatriculated and that approval is obtained from the grantor of the concession; and to corporate bodies established under local law, or Belgian or foreign companies established in Ruanda-Urandi. In practice, establishment requirements cover the filing of the articles of association with the appropriate court with jurisdiction over the place where the company's head office or branch is located.

(2) *Land tenure*

212. The land is divided into the following three categories:

* Information provided by the Government of Belgium. The legislation set forth here also applied to the Congo (Leopoldville) prior to its attainment of independence. For transitional provisions applicable in the Republic of the Congo, see section A, paras. 31-39 above.

[136] A/933, p. 65.
[137] A/1306, p. 124; A/1856, p. 248.
[138] A/2150, p. 276.
[139] A/2427, p. 95.
[140] A/2150, p. 278; A/2680, p. 255.
[141] A/933, p. 77; A/2680, pp. 271-272; A/3822, vol. I, p. 99; A/4100, pp. 160-161.
[142] A/4404, p. 149; A/4818, p. 62.
[143] S/4890, p. 51.
[144] S/3636, pp. 47 and 48, S/4380, p. 31.
[145] T/RES. 2063 (XXVI).
[146] S/4890, pp. 51-53.

1. Indigenous land;
2. Registered land; and
3. State land, consisting of (*a*) land comprised in the public domain; and (*b*) land comprised in the private domain.

Indigenous land

The legislation grants Africans exclusive disposal of land which they occupy. Fallow land is placed in the same category as occupied land. Furthermore, Africans may exercise certain customary rights of use, such as hunting, fishing and wood-cutting, but the exercise of these rights does not imply exclusive ownership of the land. The State may dispose of land that is merely encumbered with such rights, which are said to be *sui generis*, but subject to the condition that the purchasers respect the special rights of use. Indigenous inhabitants enjoy the use of their land in conformity with custom and subject to the authority of their chiefs.

Under the terms of article 13 of the Decree of 31 May 1934, as amended, the Administration alone is empowered to conclude contracts with indigenous inhabitants for the acquisition or occupation of part of their land or for the transfer of their rights in respect of non-State land. The State itself will dispose of land and rights transferred to it in this manner.

In order to take effect, contracts concluded between the State and indigenous inhabitants must satisfy two requirements: (1) they must have been drawn up in duly certified form, in accordance with a procedure established by order of the executive authority; and (2) they must have been approved by the Administration.[147]

Registered land

Registered land comprises the private property of non-indigenous persons or of immatriculated indigenous persons who are subject to civil law. The system of tenure for this land is laid down in Book II of the Congolese Civil Code.

Private ownership of the soil may not be legally established otherwise than by a certificate of registration of title recognized or granted by the Administration. Apart from encumbrances resulting from statutory servitudes and indigenous rights, the nature of the ownership is that stated in the certificate. The certificate constitutes binding evidence, and the ownership right defined therein is unassailable. The certificate provides absolutely assured proof of ownership. The Congolese Civil Code does not recognize the validity of any transfer effected solely by contract. The transfer of immovable property is only binding, both as between the parties to a contract and as regards third parties, upon registration.

State land

Land comprised in the public domain is land which is set aside for public use or service. Such land may not be the object of a commercial transaction until such time as its utilization for public purposes is duly declared terminated. It is inalienable and imprescriptible. The State may, however, grant some land of this type under concession on a temporary basis, as, for example, by granting concessions for waterfalls.

Land comprised in the private domain of the State includes all land other than that forming part of the public domain, that encumbered with ownership rights or that occupied by indigenous inhabitants. The laws governing land tenure regard unoccupied land as within the private domain of the State, on the principle that all ownerless property belongs to the State.

ii. *Factual economic data*

(1) *Mining*

213. According to the latest annual report of the Administering Authority for 1960[148] the known mineral resources in the Territory include gold, cassiterite, wolfram, columbo-tantalite often associated with cassiterite, bastnasite, mica, feldspar, spodumene and amblygonite, kyanite, beryl, monazite and bismuth, as well as calcareous deposits.

214. The minerals worked by mining companies and settlers are gold, cassiterite, columbo-tantalite, wolfram, bastnasite, amblygonite, beryl, and the minerals associated with cassiterite (columbite, tantalite, titanium and sillimanite).

Table IV-21

Ruanda-Urundi: Tonnage and value of mineral production[149]

Minerals	*Unit*	*Companies*	*Individual settlers*	*Total*	*Average value of production*	*Total value (Congolese francs)*[a]
Pure gold	kg	47.3	1.4	48.7	56,078	2,731,000
Cassiterite	ton	1,667.3	87.7	1,755.0	80,000	140,407,000
Tantalo-columbite ...	ton	46.7	1.4	48.1	115,480	5,543,000
Wolframite	ton	40.6	381.3	421.9	70,000	29,538,000
Amblygonite	ton	2,331.5	—	2,331.5	4,400	10,492,000
Bastnasite	ton	—	—	—	—	—
Beryl	ton	281.3	—	281.3	17,198	4,838,000
TOTALS	Unit	4,414.7	471.8	4,886.5	—	193,549,000

[a] 50 Congolese francs = $1.

Ruanda-Urundi: Number of licences issued

	To 31 December 1958	*To 31 December 1959*	*To 31 December 1960*
(1) General prospecting licences. As of 31/12/59, only two general prospecting licences remained in effect	246	247	2-7
(2) Exclusive prospecting licences for mining tracts....	537	538	121

(2) *Land*

(a) *Land distribution*[150]

215. The aboriginal inhabitants, the pygmoid Batwa, who were forest dwellers with a hunting-gathering

[147] The land tenure legislation of Ruanda-Urundi was modified by the Decree of 11 July 1960, which (1) transferred the powers of the Administration to the Government of Ruanda and the Government of Urundi, then in the course of being established, and to the municipalities; (2) made new provisions for the investigation of customary rights and their transfer; and (3) provided a possibility for the acquisition of individual title to land on the part of those having customary land rights.

[148] Annual report for 1960, T/1583, pp. 153-157.

[149] *Ibid.*, p. 452.

[150] A/3822, vol. I, p. 19 (Report of the Committee on Rural Economic Development).

economy, granted concessions to later agricultural colonizers, the Bahutu, to clear forest areas for food production. No rights over unoccupied lands were involved and, when the pastoral Batutsi subsequently infiltrated the area, they took possession of the large areas of idle savannah lands for pasture purposes. Cattle occupied a privileged position in Batutsi culture and were not raised primarily for subsistence or economic reasons.

216. In order to obtain cattle, the Bahutu contracted their services to the Batutsi and a complicated relationship arose which bound not only the original Bahutu but also their descendants in a feudal arrangement, with the Batutsi as the aristocracy and Bahutu as their dependants.

217. The Bami, the paramount chiefs of the two divisions of the Territory eventually exercised absolute right of property over all land. The Bahutu became essentially tenants-at-will, being granted only usufructuary rights over the minimum land for subsistence purposes. The best lands were retained for pasture purposes and were distributed annually to the cattle raisers. Men and cattle increasingly competed for the land as both populations increased. Famines among the Bahutu, who represented 90 per cent of the total population, were not uncommon when climatic conditions were unfavourable because of their limited supply of land for food production. The shortage of land was further aggravated by the system of shifting cultivation traditionally practised by the Bahutu, mainly on the steeper slopes in the central plateau highlands.

(b) *Land utilization*[151]

218. The 54,172 square kilometres of land of the Territory may, for land utilization purposes, be classified as follows:

	Sq. km.	*Per cent*
Forest	1,550	2.86
Woodlands	675	1.25
Pastures	17,325	31.98
Arable lands	21,190	39.12
Mining lands	85	0.16
Reserves and Parks	2,825	5.21
Waste land	6,902	12.74
Lakes	3,620	6.68
	54,172	100.00

219. The latest statistical data show the following distribution of land by uses and categories of land holders:[152]

[151] A/3822, vol. I, pp. 17 and 19; *Report of the Committee on Rural Economic Development*, T/1369; *Report of the Government of Belgium on Ruanda-Urundi for 1960*, p. 111 and statistical appendices, pp. 439-54, Doc. T/1583.
[152] Annual report for 1960, p. 439.

Table IV-22

Ruanda-Urundi: Use of land (properties and leased areas larger than 10 hectares)

(Hectares)

Category	*Temporarily fallow and arable lands*	*Industrial shrub crops*	*Uncultivated fertile land*	*Permanent pasture land*	*Reforestation land*	*Land unfit for farming*	*Totals by category*	*Percentage of land area of territory*
(I) Indigenous inhabitants	2,036,700	70,434	—	1,730,020	61,853	686,500	4,585,507	84.65
(II) Companies and associations:								
(*a*) Belgian	594	813	909	631	347	242	3,536	—
(*b*) European, other than Belgian	—	—	—	—	—	—	—	—
(*c*) Asian	50	—	—	—	—	—	50	—
TOTALS	644	813	909	631	347	242	3,586	0.06
(III) Religious missions ...	940	130	524	384	969	1,035	3,982	0.07
(IV) Government	(694)	290	350	251	2,350	227	4,162	0.09
(V) Belgian nationals	2,674	2,152	327	948	1,646	1,892	9,639	0.17
(VI) Aliens:								
(*a*) Europeans	491	355	154	137	250	223	1,610	—
(*b*) Asians	318	32	69	52	65	34	570	—
TOTALS	809	387	223	189	315	257	2,180	0.04
GRAND TOTALS	2,042,461	74,206	2,333	1,732,423	67,480	690,153	4,609,056	85.08

Note: Perennial plants such as pyrothium, geranium, etc., have been classified as industrial shrub crops.

220. Following are the most recent data for the utilization of land as included in the last annual report of the Administering Authority for 1960:[153]

	Indigenous			*Non-indigenous*		
	Area	*Production in tons*	*Value in R.U. francs*	*Area*	*Production in tons*	*Value in R.U. francs*
Subsistence crops	1,302,588	5,617,314	8,311,584,200	770	2,405	7,200,000
Cash crops	70,434	32,940.5	718,245,300	3,329	1,231.1	37,325,000

221. The Committee on Rural Economic Development which prepared its report in 1958[154] specified that the total area of owned and leased land in the Territory amounts to 3,638,271 hectares, or 67.14 per cent of the total area of the Territory; it is estimated that the indigenous inhabitants hold in customary tenure some 3.6 million hectares, or 66.45 per cent of the total area of the Territory. The remainder, 0.69 per cent,

[153] Report for the year 1960, T/1583, p. 440.
[154] T/1369.

is owned or leased by the Government, religious missions, societies and associations and non-indigenous individuals. Of the area held by the indigenous inhabitants, it is estimated that 1,492,500 hectares represent cultivate land, 2,052,006 hectares, permanent pasture land and 55,494 woodland. Of the cultivable area, it was estimated in 1956 that some 1,406,275 hectares, or 73 per cent, were in actual use, the remaining 27 per cent being presumably in temporary fallow. No statistics are available for the utilization of the permanent pasture land, but it is to be noted that the estimated total pasture land held by the indigenous inhabitants exceeds the figure of 17,539 square kilometres given as pasture land for the Territory as a whole.

222. It was estimated by the Administering Authority that each family has an average of 2.88 hectares available for cultivation. In the densely populated regions, this average may fall to 1.5 hectares. The Administering Authority also estimates that, depending on the region, between 2 to 5 hectares of cultivable land per family is required for subsistence purposes with present methods of cultivation if the land is not to suffer further deterioration. In the Imbo *paysannat*, distribution of land is on the basis of 4 hectares per family.

Ruanda-Urundi: Output and exports of selected crops, average 1955-1957[155]

(Thousands of tons)

Commodity	*Output*	*Exports*
Maize	136	—
Sorghum	203	—
Coffee beans	18	—
Palm oil	34[a]	—
Cassava	1,892	—
Sweet potatoes, yams	1,568	—

[a] 1954.

iii. *Land alienation*

223. The latest statistical data on the alienation of land included in the 1960 annual report are as follows:[156]

[155] From: *Economic Survey of Africa Since 1950*, United Nations Publication, Sales No.: 59.II.K.1, table 1-VII, pp. 21-24.

[156] Annual report for 1960, *op. cit.*, p. 439.

Table IV-23

Ruanda-Urundi: Land alienation (only properties over 10 hectares are included in this table)

(Hectares)

Category	*Temporarily fallow and arable lands*	*Industrial shrub crops*	*Uncultivated fertile land*	*Permanent pasture land*	*Reforestation land*	*Land unfit for farming*	*Totals by category*
(*a*) Companies and associations:							
(1) Belgian	594	285	861	544	177	75	2,536
(2) Foreign	—	—	—	—	—	—	—
(*b*) Religious missions	940	130	524	384	969	1,017	3,964
(*c*) Belgian nationals	666	689	212	310	469	310	2,656
(*d*) Aliens:							
(1) Europeans	113	60	58	31	64	71	397
(2) Asians	—	—	13	—	—	34	47
TOTALS	113	60	71	31	64	105	444
(*e*) Government	694	47	350	255	—	227	1,573
GENERAL TOTALS	3,007	1,211	2,018	1,524	1,679	1.734	11,173

Note: Perennial plants such as pyrothium, geranium, etc., have been classified as industrial shrub crops.

224. The Committee on Rural Economic Development which prepared its report in 1958[157] specified that land owned and leased by non-indigenous inhabitants totalled 21,851 hectares and Government-occupied land 16,420 hectares. Alienated land (freehold) totalled 12,612 hectares at the end of 1956. Temporary or permanent alienation of land for agricultural or pastoral purposes is only authorized in the public interest for educational or economic reasons and for soil or water conservation. It is the policy that transfers or concessions of land for residential, industrial or commercial purposes shall not exceed five hectares.

225. The Administration has reported that there are no economic or social problems arising out of the alienation of land to non-indigenous persons and that the total area of alienated land amounts to only about 0.7 per cent of the area of the Territory.

[157] T/1369.

226. Custom is developing towards the recognition of an individual right of ownership, but the Administration does not consider that the customary system of occupation can at present be replaced by the non-customary legal system.

b. NEW GUINEA[158]

i. *Land legislation*

227. Lands in the Territory are classified as (*a*) native-owned lands; (*b*) freehold lands; (*c*) Administration land, including land leased to indigenous and non-indigenous inhabitants; and (*d*) ownerless land. Native owned land is defined as land which is owned or possessed by an indigenous person or community

[158] A/3822, pp. 26-28 and *Report of the Rural Economic Committee*, T/1399. *Report of the Government of Australia on the Administration of the Territory of New Guinea*, 1958-59, T/1514, pp. 58-85 and Statistical Appendices, pp. 179-186.

by virtue of rights of a proprietary or possessory kind which belong to that individual or community and arise from, and are regulated by, indigenous custom.

228. There is great variation in the nature of customary land ownership throughout the Territory. Land used for gardening is, in some places, individually-owned and in others, group-owned, while in some communities, individually-owned and group-owned garden land may be found side by side. In most areas, superior rights remain vested in the group, individuals enjoying limited rights of use by virtue of birth. Details of inheritance systems vary greatly, involving, in some cases, patrilineal, and in others matrilineal or bilineal inheritance. The system of succession to land rights normally remains rigid until the group becomes involved in a cash economy, when the whole situation tends to become progressively more fluid and confused. Once cash cropping has become firmly established, land use rights—which in societies not on a cash economy are normally clearly demarcated from residual land ownership—also tend to become rapidly modified, with a gradual swing towards individualism. The Administering Authority has reported that, while the acquisition of rights through purchase appears to have been unusual in the past, this practice is at present an established custom in some localities and appears to be increasing in those localities in which it exists. Individual ownership is also involved in the sub-leases of the Vudal settlement sponsored by the Rabaul Native Local Government Council.

229. All unalienated land is regarded as native-owned until it has been demonstrated, by prescribed procedures, that it is unoccupied and unclaimed. Provisions for the investigation and recording of indigenous rights and interest in land and the establishment of a register of indigenous-owned land are contained in the Native Land Registration Ordinance, which is administered by the Native Lands Commission. The Administering Authority has reported that the policy is first to complete registration of land in those districts where the main agricultural development has taken place, i.e., New Britain and New Ireland and in the densely populated areas of the Highlands.

230. The Native Lands Commission is empowered to inquire into and determine what land in each district is the rightful and hereditary property of natives or native communities by customary right, and the shares in which the land is owned. Lands so dealt with by the Commission are registered, but the title is deemed to be presumptive and subject to amendment during a period of five years after which, if it has not been amended, it becomes absolute. Land so registered may not be mortgaged or charged and dealings in such lands are subject to certification by the District Commissioner. This procedure is closely related to the determination of areas of land available for alienation but no precise information is available as to the extent to which native-owned lands have been registered.

231. Freehold land was largely acquired before the First World War and, although the Land Ordinance provides for the granting of land in a fee simple, it is the policy of the Administration to grant only leasehold tenure, usually on the basis of a 99-year lease for agricultural purposes and on the basis of a 30-year lease for pastoral purposes.

232. No land can be alienated from the possession of indigenous owners except to the Administration, and the Administration in no case assumes title to any land unless that land is found, on detailed investigation, to be ownerless, or the consent of the owners has been freely obtained by the Administration. The procedures with regard to the alienation of native-owned land are designed to protect the land needs of the indigenous community both in the present and foreseeable future. An investigation is made to determine the following factors:

> Ownership according to native custom; the arable area owned by the community; the population trends; the subsistence pattern; the effect of the introduction of new foods, cash-cropping and improved agricultural techniques; ecological factors; and probably future development based on improved land utilization and management.

Land may be acquired compulsorily from indigenous owners only for specified public purposes, including defence. The land price offered by the Administration for land acquired from native owners is based on its potential accessibility and distance from markets. No land is transferred by the Administration to the use of non-indigenous lessees unless the whole area has been surveyed and, if necessary, sufficient land placed in reserve to provide for the present and conceivable future needs of the indigenous population of the area.

233. The Land Ordinance[159] provides that land which has never been alienated by the Administration and of which there appears to be no owner may be declared to be Administration land. A total of some 39,000 acres had been so acquired by the Administration under this provision. None was so declared during 1956-57.

234. Of the total area of 59,520,000 acres, some 1,383,724 acres, or a little more than 2.3 per cent, had been alienated as at 30 June 1957, as follows:

	Acres	*Acres*
Unalienated land		58,136,276
Alienated:		
Freehold land	518,490	
Administration	865,234	
	1,383,724	1,383,724
TOTAL		59,520,000

235. According to the annual report of the Administering Authority for 1959-60,[160] the amount of land acquired by the Administration during the past five years was:

Year	*Total acreage*
1955-56	41,460
1956-57	113,300
1957-58	13,458
1958-59	7,669
1959-60	8,215

236. A total of 2,619 acres of land previously alienated had been leased to individual indigenous inhabitants or corporate bodies controlled by indigenous persons as follows:[161]

	Total acres
Agricultural leases	
Rabaul Native Local Government Council	1,000
Vunamami Native Local Government Council	390
Ambenob Native Local Government Council	670
Individual Indigenous Inhabitants	495
Special leases	
Various Native Local Government Councils in New Britain, Madang and Eastern Highlands Districts	35

[159] For further details, see the annual report of the Administering Authority for the year 1959-60, pp. 58 *et seq.*
[160] Report for 1959-1960, p. 62.
[161] Annual Report for the Year 1959-60, p. 61.

Leases in towns	*Total acres*
64 leases	24
Business leases	
13 leases by indigenous societies	5

237. According to the annual report for 1959-60 of the Administering Authority, the following were the figures for: (1) Land tenure at 30 June 1960; (2) land held under lease at 30 June 1960; (3) leases granted during 1959-60; (4) leases granted during 1959-60 to Indigenes and others; and (5) holdings of alienated land of one acre or more used for agricultural or pastoral purposes in each district at 31 March 1960.[162]

[162] *Ibid.*, pp. 208-210.

Land tenure at 30 June, 1960

Tenure	*Acres*	*Acres*	*Acres*
Total area of New Guinea	...	...	59,520,000
Freehold land owned by non-indigenous persons	...	541,253	...
Administration Land—			
(i) Leases under Land Ordinance	329,974[a]	...	...
(ii) Native reserves	26,936	...	...
(iii) Other (including land reserved for public purposes and land available for leasing)	537,666		
		894,576	
			1,435,829
Unalienated Land	...	...	58,084,171

[a] Includes 2,619 acres leased to indigenous persons.

Land held under lease at 30 June, 1960

Class of lease	*Number of leases*	*Area in acres*
Agricultural	828	223,351
Dairying	6	1,300
Pastoral	17	85,907
Residence and business	2.345	1.649
Special	327	9,367
Mission	741	3,885
Long period leases from the German régime	104	4,515
TOTAL	4,368	329,974

Leases granted during 1959-60
(Areas in acres)

Class of lease	*Total*	
	No.	*Area*
Agricultural	49	6,783
Pastoral	1	270
Residence and Business	144	54
Special[a]	67	1,160
Special Leases to Missions[b]	27	1,328
Missions[c]	41	144
Administration Purposes[d]	84	1,265
TOTAL	383	11,004

[a] A special lease is designed to enable the Land Board to lay down particular conditions the nature of which are specified in Section 50 of the Land Ordinance.
[b] Special mission leases are granted to missions under Section 50 of the Land Ordinance.
[c] Mission leases are granted under Section 46 of the Land Ordinance.
[d] Leases for Administration purposes are really reservations for Administration purposes for schools, etc.

Leases granted during 1959-60 to indigenes and others
(Areas in acres)

Class of lease	*Indigenes*		*Non-indigenes*		*Required for administration purposes*		*Missions*		*Total*	
	Number	*Area*	*Number*	*Area*	*Number*	*Area*	*Number*	*Area*	*Number*	*Area*
Agriculture	33	495	16	6,288	2	256	...	...	51	7,039
Pastoral	...	...	1	270	...	...	...	...	1	270
Residence and Business	24	8	90	46	40	43	...	...	154	97
Special[a]	14	35	53	1,125	42	966	...	...	109	2,126
Special Leases to Missions[b]	...	...	...	...	...	...	27	1,328	27	1,328
Mission[c]	...	...	...	...	...	...	41	144	41	144
TOTAL	71	538	160	7,729	84	1.265	68	1,472	383	11,004

[a], [b], [c]—*see* footnotes [a], [b], [c] for table above.

Holdings of alienated land of 1 acre or more used for Agricultural or pastoral purposes in each district at 31 March, 1960

District	Area of district	Number of holdings[a]	Land tenure			Land utilization			
			Owned by administration	Alienated in fee simple	Total area of holdings	Land under crop excluding retired	Established pastures	Other cleared land	Balance of holdings
	Acres		Acres	Acres	Acres	Acres	Acres	Acres	Acres
Western Highlands	6,144,000	66	29,636	1,301	30,937	3,568	2,459	2,559	22,351
Eastern Highlands	4,416,000	72	16,592	1,741	18,333	4,444	682	2,105	11,102
Sepik	19.328,000	21	1,270	19,553	20.823	2,350	71	2,204	16,198
Madang	6,912,000	69	31,979	58,177	90,156	34,010	260	7,150	48,736
Morobe	8,128,000	76	74,929	8,390	83,319	9,834	1,459	3,179	68,847
New Britain	9,024,000	176	56,395	142,601	198,996	80,306	180	8,878	109,632
New Ireland	2,432,000	137	40,862	67,276	108.138	60,794	69	6,768	40.507
Bougainville	2,624,000	73	18,114	41,641	59,755	30,328	88	1,757	27,582
Manus	512,000	23	2,558	15,988	18,546	9,880	57	1,897	6.712
TOTAL	59,520.000	713	272,335	356,668	629,003	235,514	5,325	36,497	351,667

[a] Where two or more holdings are operated conjointly they are enumerated as a single holding.

ii. *Land distribution and utilization*

238. New Guinea has a total area of 59,520,000 acres, of which, at 30 June 1960, 58,084,171 acres were classified as unalienated land. Land held under freehold titles amounted to 541,253 acres, these grants originally having been made before the First World War. The remainder, 896,576 acres were classified as Administration land. Land on lease totalled 329,974 acres, of which 2,619 acres were held by indigenous persons. Native Reserves stood at 26,936 acres, and 537,666 acres of other land, including that reserved for public purposes and land available for leasing, were held by the Administration. New leases granted during 1959-1960 amounted to 11,004 acres. Indigenously owned land may not be alienated except to the Administration, which may buy land only after establishing that the owners were willing to sell and that the land would not be needed by the indigenous people in the foreseeable future. It may also acquire land by proclamation after establishing that it was ownerless. The land ordinance made provision for the granting of land in fee simple, but it was the policy of the Administration to grant only leasehold tenures.

239. The Administering Authority stated that customary forms of land tenure did not provide a satisfactory basis for advanced economic development. It had adopted a number of broad principles as the basis of its land policy. Among these, the long-term and ultimate objective was to introduce throughout the Territory a single system of land holding regulated by the territorial Government by statute, administered by the Department of Lands, Surveys and Mines of the territorial Government, and providing for secure individual registered titles after the pattern of the Australian system. Plans for giving effect to these principles were being worked out in detail, and in their implementation there was to be no lessening of respect for indigenous ownership of land. The steps being taken were designed to facilitate the better use of the available land by the indigenous people and the more orderly handling of all land transactions, and to promote generally the more effective use of the natural resources of the Territory.[163]

240. According to the report of the Committee on Rural Economic Development of the Trust Territories prepared in 1958,[164] the exploitation of natural resources by the indigenous and non-indigenous population respectively shows the following distribution:

	Acres	Total
Total land areas		59,520,000
Total forested area		42,000,000
Agriculture		
(i) Indigenous farming:		
Subsistence production	—	1,500,000[a]
Commercial production	61,000	61,000[b]
(ii) Non-indigenous farming (606 holdings in use):		
Under crops	230,450	
Established pastures	3,370	
Cleared only	26,941	
Non-utilized remainder of holdings	249,726	510,487
Forestry		
Exploited under licence[c]	261,941	261,941
Mining		
Indigenous claims and leases	960	
Non-indigenous	17,323	18,283
Other Administration land		
For forestry purposes	248,019	
For public purposes and leasing	534,524	
Native reserve lands[d]	26,926	809,469
Approximate total utilized area (alienated, leased or otherwise in use)		3,161,180

[a] It is difficult to estimate the total area being utilized by the indigenous population for subsistence agriculture. Practically all of the 1,297.174 indigenous population practise shifting cultivation subsistence agriculture. On a conservative estimate of 1/6th of an acre per head of population in use annually, with an average seven-year fallow cycle, the total area utilized for the subsistence needs of the present indigenous population may be estimated to be in the vicinity of 1.5 million acres.

[b] Derived from annual report for 1956-1957, appendix VIII, p. 174.

[c] All licences are at present held by non-indigenous persons.

[d] Alienated lands which are held by the Administration for use of the indigenes on a more or less customary basis.

iii. *Mining legislation*

241. The laws in operation governing mining are the Mining Ordinance 1928-1958, the Mines and Works Regulation Ordinance 1935-1956, the Petroleum (Prospecting and Mining) Ordinance 1951-1958, and the Mining Development Ordinance 1955, as well as regulations under these ordinances. The Mining Ordinance governs prospecting and mining for minerals generally, including the granting of mining rights and specified mining tenements, and provides also for the registration of agreements and the payment of royalty and

[163] A/4818, pp. 50-51.

[164] TCOR, 22nd session, Annexes, a.i. 9, T/1399, para. 11.

other fees. In addition it provides for the appointment of officers to administer the Ordinance, confers powers and duties on wardens and wardens' courts, and provides for the general administration of mining.

242. Restrictions are imposed upon mining on native-owned land and alienated land; mining operations are permitted on these classes of land only after a deposit of money has been lodged with the warden to be paid as compensation to the owner of the land for any damage done. In the case of native-owned land, the consent of the owners must be given where substantial damage is likely to be caused by mining operations.

243. The Ordinance provides for the free entry by the holder of a miner's right for prospecting purposes on native-owned land and for the entry upon alienated land by the holder of an authority issued by the warden.

244. Under the provisions of the Ordinance, all minerals are reserved to the Administration, and royalties and other receipts derived from mining and prospecting are paid into the general revenue of the Territory for the benefit of its inhabitants as a whole.

245. The Petroleum (Prospecting and Mining) Ordinance deals with the issue of permits and the granting of licences and leases for the exploration of oil fields. Permits must not exceed 10,000 square miles, except with the authority of the Governor-General, and the area must be reduced progressively to a maximum of 2,500 and 500 square miles at the licence and lease stages respectively.

246. Indigenous producers of minerals are not, at present, required to pay royalty. This concession has been continued in order to encourage the development of a healthy indigenous mining industry and may be reviewed at any time if it becomes apparent that the industry will support this impost. The scale of royalty payable on gold produced remained at 5 per cent until October 1957. Since that date non-indigenous producers are required to pay 1-1/4 per cent of the value of minerals produced (less certain refining and realizing charges). Royalty is also payable on petroleum production at the rate of 10 per cent of the gross value of production at the well head. There has been no commercial production of petroleum to date. Total royalty collected during 1959-60 was £8,191

iv. *Economic information on mining*

247. Production of gold for the year 1959-60 was 45,132 fine ounces, valued at £705,181. The corresponding figures for the previous year were 45,293 fine ounces and £707,703. Of the total production for the year under review, 39 per cent (by value) was obtained from dredging operations, 32 per cent from other alluvial operations, and 29 per cent from lode mining.

248. Large-scale gold production dates from the discovery of rich alluvial deposits in the Morobe District in 1920. Production was greatly increased in 1930 by the installation of dredges, and by 1940 the gold output of the Territory reached 270,000 fine ounces.

249. The decline in production over the past few years was due to paying areas being worked out and the progressive abandonment of areas of marginal value under the influence of rising costs. Only one of the original eight dredges is now operating.

250. Lode mining was carried out on a small scale by two organizations. The treatment plants recovered 13,003 fine ounces, compared with 11,596 fine ounces in the previous year.

251. Production of gold by indigenous miners was maintained at a level comparable with that of the previous year and the value of gold and associated silver produced was £57,983 compared with £57,120 for the previous year.

252. A total of 36,164 fine ounces of silver valued at £14,269 was produced in association with the production of gold.[165]

253. Statistical data on mining, as included in the annual report of the Administering Authority for 1959-60[166] are as follows:

[165] Annual Report for 1959-60, *op. cit.*, p. 85.
[166] *Op. cit.*, pp. 214 and 215.

Mineral areas held at 30 June, 1960

Section of population	*Claims (acres)*	*Mining leases (acres)*	*Total (acres)*
Indigenous[a]	1,096	10	1,106
Non-indigenous	5,332	4,755	10,087
TOTAL	6,428	4,765	11,193

[a] Additional natural drainage areas without demarcation boundaries have been pegged by groups of indigenes for alluvial mining. Statistics of these areas are not available.

Number of mines according to principal mineral extracted and ownership at 30 June, 1960

Nationality of owner or operator	*Principal mineral extracted*	*Number of mines*
Non-indigenous mining incorporated companies—		
New Guinean registered	Gold	1
Australian registered	Gold	5
Canadian registered	Gold	1
Unincorporated operators[a]	Gold	15
Indigenous mining (registered claims)[b]	Gold	229
TOTAL	...	251

[a] Particulars of nationality not available.
[b] A further 489 individual indigenous producers operated unregistered claims. Approximately 3,000 indigenes are estimated to have been engaged in these operations at the end of the year. 1,878 separate parcels were declared by indigenes.

Mint returns of actual quantity and value of minerals produced during the years 1955-1956 to 1959-1960

Year	Gold		Platinum		Silver	
	Fine oz	Value	Fine oz	Value	Fine oz	Value
		£		£		£
1955-56*	71,519	1,117,483	7.71	292	42,950	17,169
1956-57	78,856	1,232,128	10.65	419	41,354	16,219
1957-58	49,859	779,043	31.20	855	30,285	11,679
1958-59	45,293	707,703	16.36	256	28,674	11,039
1959-60	45,132	705,181	7.16	195	36,164	14,269

* In addition, 7 tons of copper ore (value £255) were produced.

Exclusive prospecting licences held at 30 June, 1960

Mineral	Number of licences	Area
Gold	3	8,000 acres

Note: No oil prospecting licences were held in 1959-1960.

c. NAURU[167]

254. The only important economic resource of the Trust Territory of Nauru consists of extensive deposits of phosphates; approximately 75 per cent of the total land area (6.43 square miles) is classified as phosphate-bearing. At the present rate of extraction, it has been estimated by the Administering Authority that these deposits may be exhausted in roughly forty years, at which time it is believed that the remaining resources of the Territory will be insufficient to maintain the inhabitants at their accustomed standard of living. To meet this eventuality, the Administering Authority has been requested to make all possible efforts to find a suitable area elsewhere for the planned and progressive resettlement of the Nauruans if and when this is decided upon.

255. According to the Administering Authority, of the 5,263 acres comprising the area of the island, 5,049 are owned by individual Nauruans who acquired their land rights by inheritance in accordance with Nauruan customs. Of the remaining area of 214 acres, 207 acres are owned by the Administration, 2 acres are owned by the British Phosphate Commissioners and 5 acres are owned by the two religious missions on the island, ownership having been granted to these missions by the Nauruan landowners. Titles to the land owned by the Administration and the British Phosphate Commissioners date from the former administration of the Territory and were continued in force by the Laws Repeal and Adopting Ordinance 1922-1957.

256. Any disputes regarding land ownership are dealt with by the Nauru Lands Committee, established under the provisions of the Nauru Lands Committee Ordinance 1956. The Ordinance, which came into effect in August 1956 provides for a Committee of not less than five or more than nine members, all of whom shall be Nauruans appointed by the Administrator from persons recommended by the Nauru Local Government Council.

257. The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise between Nauruans or Pacific Islanders or between Nauruans and Pacific Islanders. Appeals against decisions of the Committee may be heard and determined by the Central Court, sitting in its civil jurisdiction. A judgement of the Central Court given on such an appeal is final.

258. In accordance with these provisions and on the recommendation of the Council, nine members have been appointed to the reconstituted Committee and all members are employed full time.

259. The Trusteeship Council's recommendation that fees be charged to persons who submit questions of ownership or rights in respect of land to Nauru Lands Committee for settlement was also adopted, and was welcomed as an acceptance of the principle that payment should be made by the public for services rendered. The fees charged are nominal.

260. The rights and interests of the Nauruan people in respect of their lands are protected by the Lands Ordinance 1921-1956, section 3 of which provides that:

> "Any person, firm or company who, without the consent in writing of the Administrator, or a person duly authorized by the Administrator to give such consent, transfers, sells or leases, or enters into any contract or agreement for the sale, or lease of, or for the granting of any estate or interest in any land shall be liable to a penalty not exceeding £10 (Ten Pounds), or in default imprisonment for a period not exceeding two months.
>
> "Any transfer, sale, lease, contract or agreement, made or entered into, in contravention of this section, shall be absolutely void and of no effect."

261. An agreement concluded at Nauru on 1 August 1927 between the landowners and the British Phosphate Commissioners, and signed by representatives of the two parties and witnessed and approved by the Administrator, provided for the conditions under which phosphate-bearing land and non-phosphate-bearing land may be leased to the British Phosphate Commissioners, and the payments to be made by the Commissioners to landowners, and to the Administration for investment on behalf of the landowners and the Nauru community generally. This agreement was incorporated into the Land Ordinance 1921-1927.

262. By agreement between the landowners and the Commissioners, and with the approval of the Administrator, the terms of the agreement have been modified from time to time and on each occasion the Land Ordinance has been suitably amended.

263. Under this Agreement, the British Phosphate Commissioners have the right to lease any phosphate-

[167] A/3822, p. 94 and *Report of the Government of Australia and on the Administration of the Territory of Nauru for the Year 1957-58*, T/1446, pp. 19-22, and Statistical Appendix, p. 66, and *Report for the Year 1958-59*, T/1509, pp. 19-24, and Statistical Appendix, p. 69.

bearing land on the island of Nauru, to mine the phosphate thereon to any depth desired and to use or export such phosphate; to remove any trees on any phosphate-bearing land leased for mining purposes; to remove, subject to the approval of the Administrator and the owner—which approval shall not be unreasonably withheld—any trees on any other phospate-bearing land required by the Commissioners to be cleared for use in connexion with the operations of the Commissioners; and a right of way over any unworked, partly worked, or worked-out phosphate-bearing land required by the Commissioners for or in connexion with the operations of the Commissioners, subject to the approval of the Administrator and the owner, which approval shall not be unreasonably withheld.

264. The Administrator determines what lands shall be classed as phosphate-bearing lands. The Commissioners may, subject to the approval of the Administrator and the owners—which approval shall not be unreasonably withheld—lease such non-phosphate bearing lands on the island as may be required by the Commissioners for, or in connexion with, their operations and to remove any trees from the land so leased.

265. The Commissioners make the following direct payments to the landowners:

(a) *Phosphate-bearing land:*

(i) A lump sum at the rate of £60 per acre (with a minimum payment of £10 for any smaller area) for any phosphate-bearing land leased; and

(ii) A royalty of 1s.4d.: of this sum 1s.1d. per ton is paid to the landowner immediately and 3d. per ton is invested on his account by the Administrator.

(b) *Non-phosphate-bearing land:*

(i) A rental at the rate of £7 per acre per annum with a minimum rental of £2.6s.8d. for blocks with an area of from one-third to one-fifth acre, for blocks with an area less than one-fifth acre at a rate proportionate to the rate of £2 6s.8d. for a block having an area of one-fifth acre. Double the above rates are paid for short-term leases;

(ii) Compensation ranging from 3s. to 37s.6d. for any coconut palms, pandanus palms, tomano trees or almond trees removed during mining operations. These rates also apply to non-phosphate land leased by the Administration.[168]

266. The Administrator has the power to fix special rates for leasing of non-phosphate-bearing lands in exceptional cases where he considers that the rates specified in the Ordinance are not equitable. Land for Administration purposes is acquired by negotiation between the Administration and the Nauru landowner. The foregoing rates, relating to non-phosphate land, also apply to land leased by the Administration.

267. At 30 June 1960, the distribution of land was as follows:

	Acres (to nearest acre)		
	Phosphate bearing	*Non-Phosphate bearing*	*Total*
Freehold-owned by			
Administration	106	101	207
British Phosphate Commissioners	...	2	2
Missions	...	5	5
Unalienated (owned by Nauruans)	4,010	1,039	5.049
TOTAL	4,116	1,147	5,263

The distribution of non-phosphate land held under lease from Nauruan owners was as follows:

	Acres
Administration	33,401
British Phosphate Commissioners	142,438
Nauruan Co-operative Society	1,208
London Missionary Society	74
Nauru Local Government Council	5,169
	182,290

268. The phosphate-bearing land owned by the Administration included the land in the old German wireless station area. Demands of the Nauru Local Government Council for the return of the land to the rightful owners and for payment to these of all royalties accruing therefrom to date had created a problem dealt with by the Trusteeship Council. The Administering Authority reported to the Council that it had, after intensive investigation, established that the land was the rightful property of the Administration, but had decided as an act of grace to distribute to the persons who would have been entitled to claim it had the land remained the property of the original owners, a sum of money equal to the Administration's royalty and surface-right payment receipts from the working of the land. A committee had been established to investigate claims and any sums remaining unclaimed will be paid to the Nauruan community in general. The British Phosphate Commissioners had agreed to make available for distribution on this basis during the years 1961-1962 and 1962-1963 a sum of £54,836.

269. At its twenty-seventh session, the Council commended[169] the Administering Authority for making the settlement in question.

270. The British Phosphate Commissioners hold under lease approximately 1,606 acres of phosphate-bearing land and the Administration holds 12 acres. The agreement regarding phosphate lands provides that all worked-out land not required for the operations of the Commissioners shall revert to the owners. At 30 June 1960, 557 acres had reverted to the owners.

ECONOMIC INFORMATION ON MINING

Distribution of land and natural resources[170]

	Acres
Unworked phosphate land	2,453
Coconut land, coastal belt	998
Rocky land	585
Lagoon area	154
Worked and partly worked lands	516
Worked out phosphate land surrendered to owners	535
Unworked land surrendered to landowners	22
TOTAL AREA OF THE ISLAND	5,263

d. TRUST TERRITORY OF THE PACIFIC ISLANDS[171]

271. The customs of land tenure and utilization vary greatly throughout the Territory. A handbook on customary land tenure and land law studies compiled by district anthropologists serves as a preliminary guide for use of administrative and judicial personnel concerned with land matters. Because of the variations involved, it is not anticipated that a codification of customary land laws of the Trust Territory can be accomplished for a number of years.

[168] Report for 1959-1960, *op. cit.*, p. 20.

[169] A/4818, p. 70.

[170] Report for 1959-60, *op. cit.*, p. 68.

[171] S/3636, p. 47; S/4076, p. 26; S/4206, p. 37; *Report of the Government of the United States of America on the Administration of the Trust Territory of the Pacific Islands 1959*, T/1513, pp. 55-66 and Statistical Appendices, pp. 219-222; *Report for the year 1960*, T/1574.

272. Existing land tenure and utilization practices have been undergoing gradual change under the influence of the various foreign administrations and the increasing contact with other cultures. Former kinship control patterns of ownership and utilization in some areas are changing in favour of individual ownership and direct inheritance. This development has not, however, as yet exerted any wide influence on traditional land control patterns and these continue to remain fundamental to contemporary systems throughout the Territory.

273. Section 900 of the Code of the Trust Territory prohibits alienation of land titles to aliens, and the Administration's continuing policy of not allowing alien interests to compete with indigenous enterprise effectively restricts alienation of land by leasehold.

274. Traditional land control systems in the past have restricted indigenous population movements in the Trust Territory. Normally, it is difficult in Micronesia for persons or groups to migrate to islands or communities where no land is controlled by the kinship group to which they belong, since they would have no land rights. Where such moves have occurred in the past, as in Ponape District, they have been accomplished mainly by the intercession of the Administering Authority in making land available for the migrant group or by persuading the host people to accept them. Currently, considerable areas of public domain land exist on a number of the larger islands, and settlement on this type of public domain is feasible. Relief of future population pressures by migration is largely a question of influencing sections of the population to leave their crowded homelands for such homestead areas.

275. An appreciable proportion of the Territory's land area of 687 square miles falls within the category of public domain land, and in certain districts, such as Palau and Ponape, the proportion may run as high as 60 per cent or over. In these two districts, however, a substantial area of the public domain land is unsuitable for any productive cultivation. In the Palau Islands, for example, there are hundreds of tiny islands which are nothing but limestone caps covered with scrub vegetation. These make up close to 20 per cent of the total public domain. In addition, on Babelthuap and other islands where public domain land is found, a large proportion consists of steep slopes and rock outcroppings which are non-productive. Of the approximately 86,000 acres of public domain land in Palau, only some 20,000 acres are estimated at the present time to be suitable for homesteading in the form of individual plots to be used for a combination of subsistence and cash crops. A sizable area of the remaining public domain land is suitable for grazing purposes or for forest land, but it is doubtful whether public domain land of this category can be homesteaded in the form of individual farms. In some districts, a separate homestead procedure for this type of public domain land is being considered by the Land Advisory Boards.

276. According to the Administering Authority's annual report for 1958-59, much of the public domain land will remain in that category for the foreseeable future because it is uninhabitable. Land suitable for homesteading will be placed in the hands of Micronesians who do not have land and who need it. Homesteading programmes have been started and are being implemented as rapidly as suitable land can be surveyed and homesteading procedures initiated. These programmes are of major significance in Palau, Ponape, Rota and Saipan districts, where sizable areas of public domain lands are found. In Ponape District there are currently three homestead projects under way and some 3,803 acres already have been homesteaded.

277. During 1959, the Ponape Land Advisory Board took under consideration a recommendation that an additional 14,000 acres of land in four of the municipalities of Ponape Island be made available for homesteading. Moreover, much of the land shown in the tables as public domain was actually being used by Micronesians. Many of the people already were on the land and would receive homestead grants to the land they presently tilled.

278. The Government homesteading programme in those areas where land was available continued to show progress in 1959. In Ponape District, the 180 families from heavily populated atolls were now well established on homesteads in the former Government coconut plantation. It had been found that the programme had not only provided more land and the opportunity for adequate subsistence, but had also resulted in a per capita increase in the amount af available subsistence food and copra produced in the vacated areas.

279. In Palau, some 500 acres were homesteaded in 1959. Saipan District had issued some 589 homestead permits covering both urban and rural areas. In this district some 12,900 acres of farmland on Saipan and Tinian had been designated as available for homestead plots.

280. In 1960, there was no Territorial legislation controlling the transfer of land among the indigenous inhabitants or interests. In a few districts, local legislative bodies were beginning to take an interest in the matter of land control and transfer. In 1957, the Ponape Island Congress passed two resolutions dealing with land matters which became law for the island upon approval of the High Commissioner. One law dealt with the transfer of land by inheritence. The other specified certain requirements that must be followed in the willing of land. Procedures had been established for the registration of title to real property in the Trust Territory. Persons living on islands where district centres were located had in particular been encouraged to have titles registered and recorded with their respective district clerks of court.

281. Section 900 of the Code of the Trust Territory which prohibits the transfer of land to non-citizens of the Trust Territory was designed to protect the indigenous inhabitants against the loss of their land. This section applies equally to alien individuals, corporations, or missions. The Code[172] sets out the procedure to be followed by the Government of the Trust Territory in exercising the right of eminent domain. Previous administrations had claimed as public domain all lands not then in actual use by the inhabitants and, in addition, had acquired title to various parcels of land. Title to lands claimed by previous administrations was considered to have devolved to the present Government of the Trust Territory. Much of this land will be allocated for homesteading to the various island inhabitants in need of land. Some of it was reserved for land claim payments still to be made, while other portions have been, or are to be, returned to the original owners in

[172] Chap. 20.

cases where it was established that inequities had existed. As a result of land claim settlements, disputed public domain land continually was being returned to former indigenous owners. In 1957, for example, some 1,380 acres of public domain land were returned to the municipality of Melekeiok in Palau. In 1959, some 313 acres of land were returned to the 8 clans of Arakabesan in Palau. These clans had owned the land traditionally but lost it through seizure by the Japanese Government as public domain land. Additional public domain land also was returned to indigenous ownership in Palau as a result of land claim settlements. Thus, in the past several years, some 1,700 acres of Government held land in the District of Palau had been returned to indigenous ownership.

282. The relinquishment of title to land through sale was a new concept to most Micronesians and was seldom practiced. Micronesians, however, generally recognized the equity of previous title transfers and accepted the need of the Government for land for official use and to care for local needs. The Administrator's policy was not to purchase land, but rather to give payments for usufruct rights with residual rights vested in the original owner or to exchange land for land on an equitable basis.[173]

283. Land payments to inhabitants for occupation or use of property had required painstaking effort to resolve land title determinations and to ascertain proper payments and validity of claims.

284. Work continued in 1960 toward the settlement of remaining land claims. The only remaining area of land claim settlement of appreciable significance was in the Kwajalein area of the Marshall Islands District. Money had been set aside for settlement of the greater proportion of these claims, but agreement had not yet been reached on acceptable terms to the owners and to the Trust Territory Government.

i. *Economic information on land ownership and utilization*

285. The figures on land ownership and utilization as shown in the annual report of the Administering Authority for 1960[174] are set forth in the tables below.

[173] Report for the year 1960, T/1574, pp. 62-63.
[174] Report for the year 1960, T/1574, pp. 214-216.

Table IV-24

Trust Territory of the Pacific Islands: land ownership and utilization

Land held by	Total acreage	Percentage of total land area	Breakdown by land classification: Productive	Meadows and pastures	Wood and forest	All other
MARSHALLS DISTRICT						
Indigenous Inhabitants:						
Private ownership	38,417	85.68	30,527	—	—	7,890
Homesteads	159	.36	—	—	—	159
Religious missions	100[a]	.23	—	—	—	100
Trust Territory Government:						
In use by Administering Authority	3,817	8.51	—	—	—	3,817
Public domain	2,352	5.24	1,430	—	922	—
U.S. nationals	—	—	—	—	—	—
Nationals of other countries	—	—	—	—	—	—
TOTAL	44,845	100	31,957	—	922	11,966
PALAU DISTRICT						
Indigenous Inhabitants:						
Private ownership	36,495	29.08	11,587	6,597	7,176	11,144
Homesteads	2,732	2.18	2,726	—	—	7
Immigrant inhabitants	191	.15	—	—	—	—
Religious missions	15	.01	6	—	—	9
Trust Territory Government:						
In use by Administering Authority	3,538	2.82	2,158	850	146	384
Public domain	82,534	65.76	15,913	15,531	21,970	28,996
U.S. nationals	—	—	—	—	—	—
Nationals of other countries	—	—	—	—	—	—
TOTAL	125,505	100	32,390	22,978	29,292	40,540
PONAPE DISTRICT						
Indigenous Inhabitants:						
Private ownership	30,917	27.8	15,851	718	12,902	1,446
Homesteads	3,803	3.4	2,364	—	850	589
Religious missions	692	.6	553	54	35	50
Trust Territory Government:						
In use by Administering Authority	1.029	.9	619	—	—	409
Public domain	72,298	65.0	6,939	8,485	40,383	16,492
U.S. nationals	1,225[b]	1.1	800	—	300	125
Nationals of other countries	1,292[b]	1.2	649	100	286	257
TOTAL	111,255	100	27,775	9,357	54,756	19,368

[a] Majority of mission land, over 80 per cent, is held by an indigenous church organization.
[b] Land obtained under previous administrations. Under present code all aliens, including nationals of Administering Authority, are prohibited from owning land.

Table IV-24 (continued)

Land held by	*Total acreage*	*Percentage of total land area*	*Breakdown by land classification*			
			Productive	*Meadows and pastures*	*Wood and forest*	*All other*
ROTA DISTRICT						
Indigenous Inhabitants:						
Private ownership	—	—	—[c]	—	—	—
Homesteads and leases[d]	8,970	42.5	8,970	—	—	—
Immigrants	—	—	—	—	—	—
Religious missions	14	.01[e]	12	—	1	1
Trust Territory Government:						
In use by Administering Authority	95[f]	—	30	30	27	8
Public domain	12,045	—	7,979	2,970	973	123
U.S. nationals	—	—	—	—	—	—
Nationals of other countries	—	—	—	—	—	—
TOTAL	21,124	100	16,991	3,000	1,001	132
TRUK DISTRICT						
Indigenous Inhabitants:						
Private ownership	29,208	93	26,330	—	—	2,857
Homesteads	—	—	—	—	—	—
Immigrants	—	—	—	—	—	—
Religious missions	68	0.22	48	—	—	20
Trust Territory Government:						
In use by Administering Authority	41	0.13	36	—	—	5
Public domain	2,158	7	1,942	—	—	237
U.S. nationals	—	—	—	—	—	—
Nationals of other countries	—	—	—	—	—	—
TOTAL	31,475	100	28,356	—	—	3.119
YAP DISTRICT						
Indigenous Inhabitants:						
Private ownership	21,777	88	11,747	30	9,500	500
Homesteads	—	—	—	—	—	—
Immigrants	—	—	—	—	—	—
Religious missions	2,451	9	—	—	—	2,451
Trust Territory Government:						
In use by Administering Authority	562	2	—	—	—	562
Public domain	—	—	—	—	—	—
U.S. nationals	—	—	—	—	—	—
Nationals of other countries	—	—	—	—	—	—
TOTAL	24,790	100	11,747	30	9,500	3,513
SAIPAN DISTRICT						
Indigenous Inhabitants:						
Private ownership	6,790	7	5,952	247	125	466
Homesteads	1,422[g]	—	1,422	—	—	—
Leases	36,324[h]	38	33,839	1,850	245	390
Religious missions	24	.0082	—	—	—	24
Trust Territory Government:						
In use by Administering Authority	34,581	36	13,320	12,613	2,500	6,148
Public domain	15,909	17	14,330	500	1,079	—
U.S. nationals	5	.0081	—	—	—	5
Nationals of other countries	—	—	—	—	—	—
TOTAL	95,055	100	68,863	15,210	3,949	7,033

[c] "Productive" land includes all land currently being cultivated by Micronesians plus uncultivated areas believed to be productive.

[d] Estimated amount of land currently held by Micronesians under preliminary lease and homestead agreements. Official homestead permits are being issued as surveying and other processing are completed. Final title to homestead land is given after an applicant successfully meets for a specified number of years requirements for agricultural development of the land.

[e] Actually less than .01 per cent.

[f] Increase from 15 acres reported in 1957 annual report due to expansion of the District Agricultural Center, the Administration field demonstration farm, and the establishment of a game reserve.

[g] Several additional thousand acres in the public domain have been applied for also under homestead regulations.

[h] Of the 36,324 acres of land presently held under lease agreements by Saipanese, approximately 23,000 acres are from land formerly under public domain land and approximately 13,000 acres are from the area retained by the Administering Authority but leased to the people of Saipan for agriculture and grazing purposes.

286. In the annual report for the year 1960, the Administering Authority provided information on the estimated acreage of agricultural products in each Trust Territory district for the period July 1959-June 1960:[175]

Agricultural products	Districts							
	Marshalls	Palau	Ponape	Rota	Truk	Yap	Saipan	Total
Coconut	33,506	1,794	18,993	790	14,619	5,740	11,640	87,082
Cacao	—	29	432	3	300	17	5	786
Vegetables	13	9	460	100	56	130	273	1,041
Citrus fruits	24	12	225	20	36	50	111	478
Breadfruit	185	48	2,081	25	6,392	374	88	9,193
Banana	148	98	2,260	35	2,795	382	161	5,879
Taro	24	194	1,128	6	4,023	756	28	6,159
Yams, Sweet potato, Tapioca	8	482	1,513	20	106	289	31	2,449
All others	329	29,724	683	31	29	3,986	45,290	80,072
TOTAL	34,237	32,390	27,775	1,030	28,356	11,724	57,627	193,139

ii. *Mineral resources*

287. The mineral resources of the Territory are extremely meagre. Limited quantities of phosphate, bauxite and manganese are found and all three formerly were exploited commercially by the Japanese. Phosphate mining in Angaur by a Japanese firm under contract to the Trust Territory was resumed after the war and continued until April 1955. No phosphate was mined during the fiscal year 1960. Small quantities of commercially valuable phosphate ore still remained on such islands as Fais, but their removal would further hurt the island economy. Fais Island, for example, suffered from the removal of phosphate-rich topsoil through past Japanese mining operations, and in 1955 the people of Fais recommended that no further phosphate mining be conducted there. Their wishes have been complied with.

288. Bauxite is the largest single remaining natural mineral resource in the entire area. The biggest deposits are located in the northern section of Babelthuap Island, Palau District, where a Japanese mining operation under heavy government subsidy was conducted at one time. The supply and quality of this bauxite deposit were studied by an independent mining engineer in 1956, but no negotiations have as yet resulted from this investigation. The bauxite is of very poor quality due to a high iron content, and its processing would entail considerable subsidization.[176]

289. Reserves of "proved" bauxite ore equivalent to approximately 3 million metric tons of washed ore (50 per cent alumina), are found on Babelthuap in the Palau District. In addition 2 million metric tons of washed ore were estimated to be recoverable from the "possible" ore deposits on Babelthuap.[177]

[175] Report for the year 1960, T/1574, p. 216.
[176] Report for the year 1960, T/1574, pp. 73-74.
[177] *Ibid.*, p. 218.

D. The Mandated Territory of South West Africa

290. The International Court of Justice, in its advisory opinion of 11 July 1950 on the international status of South West Africa,[178] stated that:

> "South West Africa is a territory under the international Mandate assumed by the Union of South Africa on December 17th, 1920;".[179]

291. By resolution 749A (VIII), the General Assembly established, until such time as an agreement was reached between the United Nations and the Union of South Africa, with respect to the submission of reports on the Territory in question, a Committee on South West Africa to examine such information and documentation as might be available in respect of the Territory as well as reports and petitions which might be submitted to the Committee or to the Secretary-General. By the same resolution the Committee was also empowered to transmit to the General Assembly reports concerning conditions in the Territory. Since then, the Committee has submitted a number of reports[180] to the General Assembly which contain information bearing on the sovereignty over natural resources in the Territory.

[178] International status of South-West Africa, Advisory Opinion: ICJ *Reports*, 1950, p. 128.
[179] *Ibid.*, p. 143.
[180] A/2666 and Add.1 and Corr.1, A/2913 and Add.1-2, A/3151, A/3626, A/3906 and Add.1, A/4191, A/4364.

1. Land questions

292. The question of land allocation and alienation[181] is dealt with in detail in the report of the Committee to the General Assembly at its fifteenth session in 1960.[182] In the conclusions the Committee in 1959[183] considered, *inter alia*, that the land settlement programme of the Union of South Africa, the Mandatory Power, was contrary to Article 22 of the Covenant of the League of Nations and the Mandate, in that it has resulted in the transfer of the major portion of the Mandated Territory to "European" citizens

[181] For a full summary of land legislation, see Doc. A/AC.73/L.7, pp. 280-344.
[182] A/4364, paras. 250-272. Details regarding land questions may be also found in the previous reports of the Committee to the General Assembly (see note 119 above) and the report for 1961, A/4957. The General Assembly, at its eleventh session, having considered the land situation in South West Africa as reported on to the Committee on South West Africa, drew the attention of the Government of the Union of South Africa to the appropriate recommendation, in particular, in respect of the need to review and revise the land settlement policy [Resolution 1054 (XI), 4(*e*)].
[183] A/4191, paras. 116-143.

of the Union of South Africa and in the removal of groups of "Native" inhabitants, without due regard for their well-being, from place to place within the Territory and possibly even beyond the boundaries of the Territory, depriving the indigenous peoples not only of their traditional lands, but of security of tenure and unmolested residence on the limited lands allocated to them by the Union Government.

293. The Committee accordingly urged the Union Government, in consultation with the territorial administration and representatives of the indigenous inhabitants of South West Africa, to ensure a more equitable distribution of land for the "Native" majority in the Territory and to afford them security of tenure on the lands they now occupied.

294. In 1960, the Committee recommended that the Mandatory Power undertake a programme for the improvement of the Economic status of the "Non-European" population, that it avail itself for this purpose of the facilities that could be provided by the United Nations and the specialized agencies, and, as a matter of urgency, that it seek emergency assistance from the United Nations Children's Fund for the relief of distress caused by the drought.

295. According to the information available by 1961,[184] the total area of the Territory, including the Namib and the Kalahari desert areas, covered 82,347,841 hectares. On the assumption of the Mandate, the South African Government had declared all unallocated land in the Territory to be government land and exercised control over this land until 1949 when it delegated this authority to the European Legislative Assembly of the Territory. The South African Government and the territorial Administration have exercised their authority to transfer the major portion of the land areas of the Territory to Europeans for permanent settlement.

296. At the end of 1955, a total of 5,050 farms in the Territory, measuring 37,868,124 hectares, had been set aside for Europeans and all except 40 of the farms had been allocated. Between 1956 and 1958, 184 farms were offered and in 1959, 24 farms. After a provisional probationary period, the farmers had the option to purchase the farms.

297. On the other hand, a total of 20,424,489 hectares of land in the Territory had been set aside as permanent Native reserves. The bulk of this Native reserve land, 14,583,489 hectares, was on the northern borders of the Territory. Within the Police Zone, there were seventeen permanent Native reserves covering a total area of 5,841,166 hectares. Land in any of the reserves other than Hoachanas, which was regarded as "temporary" rather than "permanent", might be alienated subject to the approval of the South African Parliament and subject also, since 1955, to the reservation for Natives of alternate land equivalent in pastoral and agricultural value. Natives were not permitted to own land in the reserves.

2. Mining legislation

298. South West Africa's principal industry in terms of value of production is mining. The main minerals produced in the Territory are diamonds, lead, zinc, manganese ore, salt, tin ore, beryllium, lithium, tungsten and copper. Since the end of the Second World War, the industry has developed enormously, total mineral sales expanding from £1.5 million in 1946 to a peak figure of £34.8 million in 1956. During 1957, however, total sales dropped off to £29.9 million—slightly above the recent yearly average of £28 million.

299. The main provisions of the legislation relating to mining are those enacted under the Mines, Works and Minerals Ordinance, 1954 [SWAG, No. 1847 and amendments thereto (Ord. No. 4 of 1955, sec. 105c, Ord. No. 17 of 1955 and No. 31 of 1957)] and the Mining Regulations which were enacted in 1956 (SWAG No. 1965) and amended by Government Notice No. 200 of 1958.

Under the Mines, Works and Minerals Ordinance all rights, powers and jurisdiction relating to mines are vested in the Administration only. Control over the mineral industry is performed through the Mines Division which is subject to the direction and authority of the Administrator through the Secretary for the Territory (paragraph 5).

Prospecting in the Territory is encouraged. No person may prospect unless he is the holder of a prospecting licence issued by the Inspector of Mines (paragraph 17).

Prospecting licences may be issued exclusively to Europeans of the age of eighteen years or more, to companies registered under the Companies Ordinance 1928, or to foreign companies which have complied with the requirements of the same Companies Ordinance (paragraph 22).

The greater portion of the Territory is open for prospecting, but various areas such as grounds below highwater mark are excluded from prospecting and pegging (paragraph 60). In particular, no person may prospect or mine in any native reserve (other than a native lawfully resident therein), any game reserve or in the area beyond the Police Zone, unless a special permit called the Prospecting Grant is issued by the Administrator under such conditions or circumstances as the Administrator may direct (paragraphs 58 and 61).

300. Diamond mining is governed by the Diamond Industry Protection Proclamation, 1939 (P. No. 17 of 1939) and amendments thereto (No. 25 of 1939, No. 17 of 1941, No. 40 of 1949, No. 7 of 1950 and Ord. No. 30 of 1955, No. 43 of 1957, No. 13 of 1958 and No. 25 of 1958).

Under this Proclamation, a Diamond Board for South West Africa has been established (paragraph 3). All diamonds produced or found in the Territory are to be deliverd to the Board, which may export or deliver them only in pursuance of a contract of sale entered into by the Administrator, who has the sole authority to market and sell these diamonds. No persons may possess, buy or receive, sell or deal in import or export of any diamonds unless duly licensed or authorized by the Board (paragraphs 7 and 9).

Special restrictions apply to the native and coloured persons in the diamond area. In particular, no native or coloured employee may leave the field or working section on which he is employed save in the company and under the control of a European, unless he is in possession of a permit, approved by the Board, signed by his employer. Any native or coloured person found without such permit on any field or working section other than the one on which he is employed may be arrested and searched by the claim holder of such field or by any white person duly authorized by him (paragraph 35).

301. According to the report of the Committee on South West Africa submitted to the General Assembly at its fifteenth session,[185] industry in South West Africa, of which mining is by far the most important, is wholly in the hands of "European" interests and management except for a few modest craft activities in the "Native" areas. This appeared to be not only the result of historical development, arising from the

[184] A/4957, p. 18.

[185] A/4464, paras. 273-276.

lack of capital and skills on the part of the "Non-Europeans", but also a matter of policy, which in certain respects had now been more clearly defined than previously.

302. The Union Department of Bantu Administration and Development, which is responsible for administering "Native" affairs in South West Africa, had recently stated the general conditions under which the Government envisaged further industrial and mining development in or near "Bantu" areas.

303. Regarding industrial development, it was stated to be the Government's policy "that the development of industries owned by Europeans, but requiring considerable Bantu labour, and situated in suitable European areas, but in close proximity to Bantu areas (so-called marginal areas), was regarded as of paramount importance to the sound socio-economic development of the Bantu areas". Marginal areas were defined as "areas in which industrial development in European areas might take place through European initiative and investment and which were situated so close to the Bantu areas that families of Bantu employees employed by these concerns might be settled in Bantu areas in such a manner that the employees would be able to live as a full family unit and on their own property in Bantu areas". Within the "Bantu" areas, it was the Government's policy "that Bantu entrepreneurs, unhampered by European competition, should be able to develop their own industries—with or without assistance—within Bantu areas and, therefore, that private European entrepreneurs should not be allowed there". The Government had accepted the principle that Government departments should guide and help the "Bantu" entrepreneurs.

304. With respect to mining in "Native" areas, the Government's policy was described as follows:

(a) Prospecting and mining are permitted with due regard to topographical and agricultural interests, on conditions which are most favourable to the Bantu areas, the South African Native Trust and the Bantu concerned.

(b) Owing to the risk factor and the fact that mining requires considerable capital and technical staff, it is still the aim of the policy that mining should not be undertaken in the near future by the Trust or by the Natives themselves; this, therefore, is a matter for private European initiative and particularly for suitable and well-equipped mining companies.

(c) Development of permanent white spots is avoided and the European mining public is not allowed to acquire vested interests in the Bantu areas. In view of the latter requirement the period of mining lease rights is restricted and consequently elements which prove to be undesirable in Bantu areas can be removed.

3. Factual information on mining concessions[186]

305. Oil prospecting on a large scale was being carried out in the Territory during 1959. The Trans-American Corporation Ltd., which was given exclusive prospecting rights for oil and gases on the west coast in 1959, a grant valid until 1985, had already made magnetometric surveys of Diamond Area No. 2 and the analysis of the results and preparation of data was expected to be completed in 1960.

306. Another large oil prospecting concession, covering the entire southwestern portion of the Territory south of 23° longitude and west of 17° longitude, but excluding seventeen existing special grant areas in the region, was granted for eighteen months to Mr. J. P. du P. Basson, Mr. M. S. Druker and P. C. Roux (Pty.) Ltd. This grant was later extended to include the right to prospect for prescribed materials. Other oil prospecting grants were made during the year in other areas of the Territory, including one grant, to Mr. P. M. H. du Plessis, which included oil prospecting rights in the Gibeon, Berseba, Tses and Soromas reserves in the southern part of the Territory.

307. During 1959 additional mineral prospecting rights were granted in defined portions of the Rehoboth area, for oil prospecting, as well as prospecting for all minerals, and for all minerals excluding oil.

308. Elsewhere, Industrial Minerals Exploration (Pty.) Ltd. received exclusive prospecting and mining rights for two years in a defined area of the Karibib District.

309. Exclusive prospecting rights for all minerals, valid to 30 June 1962, were given to Mr. J. L. Levinson over an area between the Hoanib and Unjab Rivers west of the Police Zone boundary to the area of another grant along the coast.

310. The grant given in 1957 to Suidwest Afrika Prospekteerders (Eidoms) Beperk, which reportedly made a remarkable off-shore diamond strike in 1958, was substituted by a new grant in 1959 giving the company the right to prospect and mine for all mineral along Diamond Area No. 1 from the low-water mark to three miles into the ocean, subject to existing rights. The grant is valid until the end of 1997.

311. In a large area outside of the Police Zone, the exclusive right to prospect for diamonds was granted to Mr. S. W. W. Strzelicke. The area defined included roughly 2,500 or more square miles within the Okavango Native reserve.

312. Diamond prospecting rights were also granted in specified areas of the Gibeon District, including the Gibeon Native reserve, to Mr. A. J. Smith.

313. Among other prospecting and mining rights granted during 1959 were rights to prospect and mine for prescribed materials, salt, and ilmenite-bearing sands.

314. A large portion of the eastern part of South West Africa was withdrawn from pegging on 1 July 1959. Specified areas in the Otjiwarongo, Rehoboth and Warmbad Districts were also withdrawn from pegging during the year.

315. According to the report for 1960[187] there have been new developments in oil prospecting in the Territory. In July 1960, it was reported that an aeromagnetic survey for oil and natural gas had revealed a sedimentary basin in South West Africa. The survey was conducted, at a cost of £70,000 to £80,000, by the Trans-American Corporation in the coastal region known as "Diamond Area No. 2" and along the Skeleton Coast.

316. It was announced in 1960 that a lead smelter and refinery would be built by Tsumeb Corp. at an estimated cost of £4,300,000 alongside the copper smelter which was being built at Tsumeb and which was expected to be completed by January 1962. Production would start towards the middle of 1963 at a rate of 80-90,000 tons of refined lead a year. There would also be facilities for the recovery of silver, cadmium

[186] A/AC.73/L.14 (Information and Documentation in respect of the Territory of South West Africa), pp. 79 *et seq.*

[187] A/4957, p. 17.

and arsenic. The corporation was to invest £7,200,000 in the metallurgical plants being built at Tsumeb and in mine development. It was reported in February 1961 that Rio Tinto, a British mining and finance company, had started to prospect for copper by sinking shafts in Okahandja. Other copper exploration was being carried on in the Rehoboth Gebiet by Tsumeb Corp. and Rand Mines, Ltd.

317. In his 1961 budget speech, the Administrator of South West Africa, after noting the plans under construction at Tsumeb was reported to have stated that the exports of concentrates (lead, copper, zinc) had decreased in 1960, amounting in value to 15,403,842 rands, compared with 18,296,134 rands in the previous year. The gross sales of diamonds, mainly from the Consolidated Diamonds of South West Africa, had also diminished in value from 36,394,764 rands in 1959 to 33,787,564 rands in 1960.[188]

[188] A/4957, p. 17.

Chapter V

ECONOMIC DATA PERTAINING TO THE STATUS OF SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES IN VARIOUS COUNTRIES

1. The present chapter covers factual data relating to sovereignty over natural wealth and resources. In its first part, it deals with certain aspects of economic development and questions peculiar to under-developed areas. In its second part, it deals, in broad outline, with the international flow of private capital among the main capital exporting and importing areas of the world. The third part is devoted to a survey of data on foreign concessions relating to major natural resources: (1) minerals other than petroleum; (2) petroleum; (3) water; and (4) certain aspects of concession contracts with agricultural companies. The fourth part contains statements submitted by Governments regarding the effects of nationalization in respect of natural wealth and resources in their countries, while the fifth part consists of an analytical listing of resolutions of the General Assembly and the Economic and Social Council bearing upon the subject of this study.

2. Although the section dealing with data on foreign concessions is closely related to the study as a whole, there is a dearth of information from official sources in this area. As a result, that section comprises a selective and limited review of such pertinent data as were available, and while every effort was made to be as representative as possible—in terms of both economic and geographical areas—it has not always been feasible to achieve that goal.

A. Economic development and questions peculiar to under-developed areas

3. For the purpose of the present discussion, the common denominators of the countries and territories to be considered are the degree of economic development, regional peculiarities and position in the overall world economic picture. While considerations of political status have an obvious bearing on the questions to be discussed here, it would appear that there is a sufficient similarity among the other factors noted above to warrant a unified discussion of independent States, Non-Self-Governing Territories and Trust Territories, and predicating any breakdown on essentially regional considerations.[1]

4. Much of the ensuing discussion deals with Africa —not only because that continent contains the majority of newly-independent States and of the remaining larger Non-Self-Governing and Trust Territories, but also because its economic configuration shows wide divergences in terms of both actual development and of development potential. Lastly, a comparatively wide range of material on Africa was available to the Secretariat within the scope of the terms of reference set forth by the Commission on Permanent Sovereignty over Natural Resources at its second session.[2] Attention is drawn to the fact that the bulk of the material presented here relates to the years prior to 1959 and 1960, when a great number of African countries attained independence. The geographical nomenclature used is therefore that relating to the former Non-Self-Governing Territories which existed at the time to which the material relates. As a point of information, however, the names of the new African States and the related former territorial appellations are set forth in tabular form below.

Former territorial names	*Names of independent State(s)*
Belgian Congo	Republic of the Congo (Leopoldville)
French Equatorial Africa	Republics of Chad, the Congo (Brazzaville) and Gabon, and the Central African Republic.
French West Africa	Republics of Dahomey, Guinea, Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta.
Madagascar	Malagasy Republic.

5. As regards the general development of the discussion, attention will be given, in turn, to such questions as the degree of economic diversification, direction of trade, balance of payments and transfer of profits, capital formation, data on the flow of capital, the effect of economic associations, and finally, financing of economic development by international agencies.[3]

6. The bearing of some of these topics on the general subject of permanent sovereignty over natural resources may, in certain instances, call for some amplification. Essentially, the various factors represent the international element in what is otherwise basically a national question; that is to say, any or all of these

[1] A detailed discussion, on a world-wide basis, of the general topics dealt with here is to be found in the *World Economic Survey, 1958*, and in the same publication's 1959 edition (United Nations publications, Sales Nos.: 1959.II.C.1 and 1960.II.C.1). The World Economic Surveys, however, deal with the topics in question at a level of considerable economic and statistical sophistication and could not be condensed or quoted selectively without impairing the usefulness of the analysis. Since the present chapter is conceived as a factual economic supplement to a study that is essentially legal in character, it was felt that the adoption of a regional approach and the avoidance of material of great statistical complexity would best comply with the Secretariat's terms of reference.

For similar reasons, the Secretariat has not here drawn upon the wealth of relevant material contained in the United Nations *Yearbook of National Accounts Statistics, 1959*, United Nations publication, Sales No.: 60.XVII.3.

[2] E/3334; A/AC.97/7.

[3] For a current review of action taken and proposals made with respect to international co-operation in the field of economic development of under-developed countries, see *Analytical Summary of Various Suggested Means of Accelerating Economic Growth in Less Developed Countries through International Action, Report by the Secretary-General*, E/3259, and *Report by the Secretary-General on measures taken by the Governments of Member States to further the economic development of under-developed countries in accordance with General Assembly resolution 1316 (XIII)*, A/4220 and Add.1-6. See also *Opportunities for International Co-operation on Behalf of Former Trust Territories and other Newly Independent States, Note by the Secretary-General*, E/3338; and *The Capital Development Needs of the Less Developed Countries (Report of the Secretary-General)*, A/AC.102/5.

factors play a major part in determining the practical extent of "sovereignty" over resources, quite independently of the legal position, in so far as there is any dependence or reliance upon outside markets or suppliers.

7. Given the fact that there is fluctuation in demand, in production, and therefore in prices in respect of most commodities—and especially those commodities with which this study is primarily concerned—a country's economy will be greatly affected by the extent to which it can successfully outride both short-term fluctuations relating to any one of its products and long-term changes in demand, such as the obsolescence of a certain material. Similar considerations apply to the number of markets available, so that the direction of trade is also a relevant factor.[4] The factors relating to balance of payments, transfer of profits, capital formation and flow of capital bear even more directly on economic "sovereignty" since they represent a basic element of exploitation control and/or the extent of national or local benefit from such exploitation.

8. The effect of economic associations is, again, closely linked to the factor of direction of trade, especially with respect to States and territories outside the economic association in question.

9. Attention must be drawn to the fact that the materials contained in this chapter should be read in conjunction with chapter IV, dealing with newly-independent States and with Non-Self-Governing and Trust Territories, but largely predicated on legislative data and factual information on local participation in the exploitation of natural resources.

10. The bulk of the material on which the ensuing discussion is based is drawn from a variety of United Nations documents; additional information has been drawn from information provided by Governments under Article 73 e of the Charter in the form of supplementary reports and other documentation.

1. Africa

a. Economic diversification

11. One of the basic problems affecting a majority of the under-developed countries and territories continues to be the lack of economic diversification. Reliance upon exports of a small number of crops or other products—notably minerals—has resulted in making the countries concerned highly susceptible to world market fluctuations in the price of either a single commodity or the prices of a fairly narrow range of commodities. While the extent of fluctuation in commodity prices is clearly outside the terms of reference of this study, a brief example showing the range of such fluctuation in the prices of basic non-ferrous metals over the period 1947 to 1958 may be helpful in order to illustrate the actual magnitudes involved when the subject is discussed.[5]

Table V-1

Average yearly prices per long ton of copper, lead and zinc, 1947-1958[c]

(£ sterling)

	Copper[a] (electrolytic)	*Lead[b]*	*Zinc[c]*
1947	130.6	85.0	70.0
1948	134.0	95.5	80.0
1949	133.0	103.2	87.5
1950	179.0	106.5	119.4
1951	220.7	162.2	171.8
1952	259.5	136.8	149.4
1953	256.3	91.5	74.7
1954	249.3	96.4	78.3
1955	353.3	105.9	90.7
1956	329.1	116.3	97.7
1957	219.7	96.7	81.6
1958	197.6	72.8	65.9

[a] Copper: 1947-1952, official control prices; 1953, averages of official control prices, January-September and London Metal Exchange cash prices October-December; 1954-1958, London Metal Exchange cash prices.

[b] Lead: 1947-1951, official control prices; 1952, averages, official control prices, January-September and London Metal Exchange prices, October-December; 1953-1958, London Metal Exchange mean prices.

[c] Zinc: 1947-1952, official control prices; 1953-1958, London Metal Exchange mean prices.

12. A review of the extent to which given countries and territories are dependent upon specific export commodities, as well as the trend of evolution in this respect, is contained in table V-2 below.

[a] It should be noted in passing that, over the decades, traditional central markets have developed for certain basic commodities where these commodities are not only traded but are, in some cases, also physically concentrated for onward shipment to final purchasers. Such practices do, in some cases, distort the data on direction of trade by suggesting a greater concentration of markets than is actually the case.

[5] For a discussion of international commodity arrangements designed, *inter alia*, to bring about greater stability in the prices of basic commodities, see section 5 below.

[6] Northern Rhodesia, Chamber of Mines, *Year Book, 1958*, p. 28.

Table V-2

Africa: Exports of principal export commodities as percentage of total export value[7]

Country	*Commodity*	*1938*	*1950*	*1955*	*1957*	*1960*
Non-diversified economies						
Egypt (UAR)	Raw cotton	74.1	86.6	78.4	72.9	70.3
Ethiopia	Coffee	...	51.5(1951)	56.5	67.5	55.4
Gambia	Ground-nuts	...	97.2	95.3	93.0	
Ghana	Cocoa	40.2	71.7	68.5	56.0	58.1
Sudan	Raw cotton	63.7	71.3	62.2	46.6	54.6[a]
Semi-diversified economies				*1950-1957 average*		
Liberia	Rubber	50.8(1937)	88.8(1951)	76.3(1951-1956)	67.9(1956)	47.3
	Iron ore	...	1.4(1951)	13.2(1951-1956)	18.3(1956)	41.9
	Palm kernels	23.3(1937)	7.7(1951)	4.3(1951-1956)	2.3(1956)	2.4

[7] Sources: For data to 1958: *Economic Survey of Africa Since 1950*, United Nations publication, Sales No.: 59.II.K.1., tables 3-25 to 3-27, pp. 167-170; for 1960 figures: *Economic Bulletin for Africa*, vol. II, No. 1, Jan. 1962, pp. A 9-39.

Table V-2 (continued)

Country	Commodity	1938	1950	1950-1957 average	1957	1960
French Equatorial Africa	Coffee	4.6	7.3	5.4	4.0	
	Raw cotton	21.4	43.2	36.9	28.9	
	Wood, wood products	41.5	25.0	32.9	41.2	
	Diamonds	0.8	2.8	3.4	2.8	
Federation of Rhodesia and Nyasaland	Copper	...	46.2	54.1(1950-1958)	47.3(1958)	59.8
	Tobacco	...	22.8	16.9(1950-1958)	19.5(1958)	18.5
Sierra Leone	Palm kernels	21.4	34.3	34.5	20.7	
	Iron ore	30.2	19.4	27.8	33.0	
	Diamonds, uncut, unworked	40.2	23.5	14.4	15.1	
Multi-commodity economies						
Belgian Congo and Ruanda-Urundi	Coffee	7.0	10.0	9.5	12.9	
	Raw cotton	14.6	13.9	9.1	5.5	
	Palm oil	7.9	10.4	7.5	6.5	
	Copper	33.3	25.0	32.4	32.1	
	Cobalt	...	5.7	7.7	6.3	
	Tin	11.3	10.6	7.9	6.0	
British East Africa[b]	Coffee beans	12.9	22.5	28.6	35.4	
	Tea	4.6	2.3	2.8	4.0	
	Hides, skins, undressed furs	4.6	6.0	4.0	2.9	
	Oil seeds, oil nuts, oil kernels	4.4	3.2	3.6	4.3	
	Raw cotton	35.7	27.1	25.9	21.9	
	Sisal	17.2	25.1	17.5	10.4	
	Diamonds	...	2.0	2.5	2.9	
Morocco	Calcium phosphate	18.9	19.9	19.5(1950-1956)	19.8(1958)	
	Manganese ore	0.8	3.6	4.7(1950-1956)	4.0(1958)	
	Lead ore	1.7	3.3	3.7(1950-1956)	4.0(1958)	
	Tomatoes, fresh	...	2.5	2.3(1950-1956)	3.3(1958)	
	Citrus fruit	1.4	5.9	4.9(1950-1956)	5.7(1958)	
	Wheat	13.0	1.5	3.1(1950-1956)	5.2(1958)	
	Barley	2.1	7.2	7.9(1950-1956)	6.8(1958)	
	Maize	...	...	1.5(1951-1956)	2.9(1958)	
	Fish, preserved	...	15.0	8.4	6.7(1958)	
Tunisia	Alfa	3.7	4.5	4.5	2.1	2.6
	Olive oil	22.8	31.0	13.3	16.4	12.0
	Wine	11.2	3.9	5.8	13.9	14.4
	Phosphates	9.8	10.7	13.8	12.2	12.6
	Iron ore	7.9	3.1	7.9	8.4	6.6
	Lead and lead alloys	4.7	5.1	6.5	5.6	2.8
Angola	Raw cotton	4.3	3.8	3.0	3.7	4.1
	Sisal	3.1	8.5	7.0	5.7	10.5
	Wood	0.3	1.1	1.8	2.1	2.7
	Palm oil	1.4	3.9	2.0	1.5	2.0
	Diamonds	29.4	8.5	10.3	11.8	13.9
	Fish, dried and preserved	4.0	3.8	3.2	3.1	...
	Fish meal	...	2.5	5.8	11.5	3.0
	Sugar, crude	11.0	4.2	2.8	3.1	2.6
	Coffee beans	10.6	31.7	38.7	42.7	35.5
French West Africa	Bananas	5.5	3.2	3.0	3.0	
	Cocoa beans	13.3	15.2	15.3	10.5	
	Coffee, raw	6.0	23.0	26.3	25.7	
	Oilcake	3.2	2.9	3.3	2.9	
	Ground-nuts, shelled	17.8	18.7	18.0	24.2	
	Ground-nuts oil	1.8	17.0	14.4	14.1	
	Tropical wood	1.6	2.0	2.3	3.2	
	Palm kernels	8.1	7.2	4.4	3.0	
Mozambique	Raw cotton	15.7	25.2	28.1	25.5	32.5
	Sisal, incl. waste[c]	15.2	20.0	9.5	6.4	3.0
	Wood, rough	0.9	3.0	2.5	2.3	1.4
	Coconut oil	0.1	1.6	2.4	2.8	0.6
	Cashew nuts	5.3	7.1	9.5	11.9	9.5
	Copra	14.7	18.1	11.2	9.2	9.3
	Crude sugar	30.5	7.2	12.4	16.9	13.3
	Tea	1.5	4.9	6.6	6.3	7.5
Nigeria	Cocoa beans	16.6	21.5	21.8(1950-1958)	19.7(1958)	21.8
	Cotton	2.6	3.4	5.1(1950-1958)	5.8(1958)	3.7
	Ground-nuts	13.8	17.2	17.5(1950-1958)	19.9(1958)	13.6
	Palm kernels	22.9	18.9	16.3(1950-1958)	15.1(1958)	15.6
	Rubber	1.4	3.2	4.2(1950-1958)	5.6(1958)	8.9

Table V-2 (continued)

Country	Commodity	1938	1950	1950-1957 average	1957	1960
Nigeria (*continued*) ...	Timber	1.1	1.1	2.2(1950-1958)	3.9(1958)	4.4
	Tin	15.2	6.8	5.3(1950-1958)	2.9(1958)	3.8
	Ground-nut oil	...	0.3	2.0(1950-1958)	2.8(1958)	3.3
	Palm oil	10.4	13.6	11.0(1950-1958)	9.3(1958)	8.2

[a] Ginned cotton.
[b] For years prior to 1954, figures relate to totals for the two separate administrative units, Kenya-Uganda and Tanganyika.
[c] Excluding waste for 1956 and 1957.

13. While the figures shown in table V-2 above suggest, on the whole, a series of quite dynamic changes in the direction of lesser dependence on one or a small number of commodities, it is impossible to analyse the pattern of such changes without a detailed discussion of price/demand relationships. Attention may, however, briefly be drawn to the impact of technical change: generally speaking, the African *robusta* coffee bean lends itself particularly well to the production of powdered (instant) coffee. The manufacturing process involved here is a relatively recent one, and the growing popularity of the product is reflected in the rising figures of coffee exports from African countries during the period under review.

14. The element of new mineral discoveries —spurred by progressive exhaustion of deposits in other, old-established mining areas of the world—has also contributed to developments reflected in the table, and here an even more pronounced trend toward export diversification is to be expected as new producing areas —particularly with respect to iron ore, manganese and bauxite—come into full activity:

Table V-3

Ratio of exports to national product in selected African countries[a]

	Base year	Ratio	Highest year	Ratio	Lowest year	Ratio	Latest year	Ratio
Belgian Congo (gross domestic product)	1950	37.9	1951	42.9	1954	35.3	1957	36.9
Kenya (net domestic product)	1947	18.1	1952	24.1	1949	15.4	1957	15.8
Uganda (net domestic product)	1950	40.3	1951	53.7	1953	35.3	1957	37.6
Gold Coast (gross domestic product)	1950	41.3	1954	43.7	1952	37.9	1955	38.1
French African Territories[a] (gross national product)	1948	19.7	1954	19.6	1952	15.9	1955	17.6

[a] French West Africa and French Equatorial Africa, including the Trust Territories of the Cameroons and Togoland under French administration.

15. The question of economic diversification and the relative importance of export production in the Non-Self-Governing Territories is discussed in the Secretariat's review of progress of the Non-Self-Governing Territories under the Charter in the following terms:[9]

A reduction in the relative importance of primary production such as agriculture and mining, and an increase in secondary and tertiary activities, e.g., manufacturing, trade and transport, are considered a favourable change in the structure of the economy. Such diversification refl cts a higher degree of development and a trend towards a more balanced economy. As a general rule, productivity tends also to be higher in secondary than in primary production, particularly in agriculture. Information on the distribution of domestic product is available for only a few Territories, so that no general conclusions can be drawn from the data given in table V-4 on the progress of diversification and the decline in the preponderance of primary production. A significant reduction in the share of primary production has occurred in... Kenya... [where] this change was due to a decline in African agriculture from 33.8 to 22.6 per cent while the share of non-African agriculture increased slightly from 13.6 to 15 per cent, and of manufacturing from 8.5 to 13.7 per cent; ... In the then Belgian Congo, the reduction in the share of agriculture was nearly compensated by an increase for mining.

16. For a specific opinion on the importance of diversification in the then Trust Territory of Tanganyika, attention may be drawn to the following statement by a recent Visiting Mission:[10]

An important feature of recent growth has been the increasing diversification of the economy. Whereas, ten years ago, the economy was dominated by the sisal industry, there are now seven major export crops and mineral production contributes more than 6 per cent of the total value of domestic exports. Nevertheless, the Mission wishes to stress that the Territory is still in the early stages of economic development and further substantial capital investment will be required, particularly for the improvement of communications, provision of water supplies and development of agriculture, if the present rate of expansion is to be maintained.

b. Direction of trade

17. In the context of the present study, any discussion of the direction of trade of the countries and territories under consideration here must centre largely on the extent to which such trade is concentrated in the direction of a single major industrialized country and/or metropolitan or administering countries in the case of present or former Non-Self-Governing or Trust Territories.

18. The pattern of the various statistical tables presented below suggests an increasing diversification

[9] From: *Progress of the Non-Self-Governing Territories under the Charter*, United Nations publication, Sales No.: 60.VI.B.1, Vol. 2, table 3, p. 12.
[9] *Ibid.*, p. 12.

[10] *Report of the United Nations Visiting Mission to Trust Territories in East Africa 1960, on Tanganyika*, T/1532 and Add.1, para. 116.

Table V-4

Changes in distribution of domestic product in selected African countries and territories[11]

(Per cent)

		Primary sector		Secondary sector		Tertiary sector		
		Agriculture	Mining	Manufacturing	Construction	Trade	Transport	Services
Belgian Congo[a]	1950	36.3	19.9	5.5	5.0	9.5	7.3	12.1
	1956	30.0	23.5	7.5	6.3	7.9	10.2	15.6
Kenya[b]	1947	47.4	1.3	8.5	2.8	16.4	7.9	12.2
Mauritius[a]	1950	31.1	—	22.9	4.1	10.1	11.0	10.4
	1956	30.3	—	23.0	4.3	9.2	13.0	10.6

[a] Gross domestic product.

[b] Net domestic product.

of trade in terms of individual extra-African countries or currency areas (such as the sterling, dollar or French franc areas), especially as far as United Kingdom territories and the (Belgian) Congo are concerned. It should, however, be noted that the figures available to this study do not cover the past two or three years, when some highly significant developments took place. First of all, a number of African Non-Self-Governing and Trust Territories achieved their independence and were thus able to pursue their own national trade policies. Secondly, increased convertibility of currencies outside the dollar area tended to promote a greater exchange of goods across currency area lines.

19. In reviewing developments in the realm of the direction of the trade of Non-Self-Governing Territories as a whole up to 1956 or 1957, a recent study[12] of the United Nations Secretariat noted that a general trend in the destination of exports from Non-Self-Governing Territories during the period under consideration was a gradual reduction in the proportion of exports to the respective metropolitan countries.

20. During the period 1949-1956, exports from the United Kingdom territories (table V-5 below) to the United Kingdom noticeably declined, while those to other territories under United Kingdom administration representing trade between the different Non-Self-Governing Territories, increased. Exports to the dollar area, which reached their maximum during the Korean hostilities when the United States was stockpiling primary products, returned to their previous level. The greatest increase to be noted throughout the period took place in exports to non-sterling member countries of the OEEC in Western Europe.

21. The destination of exports from French Overseas Territories (table V-6 below) did not change appreciably. By the end of the period 1950-1957, the share of exports to France, which had considerably declined from 1950 to 1955, returned to some extent towards its traditional relatively high level. Exports to the dollar area and to other countries including member countries of the Organization of European Economic Co-operation (OEEC) other than France which had substantially increased by 1955, have declined since then. These trends reflect mainly the efforts to market export products such as coffee and cocoa outside of the franc area, a practice which in the earlier part of the period promised to be quite successful. The decline of world prices for these products since 1955, however, has increased the attraction to exporters of the protected French market, where prices remained more stable, so that the share of exports to foreign markets declined slightly and to a greater extent in value.

22. In the case of the Belgian Congo (table V-7 below), the share of exports to Belgium declined by about one third from 1949 to 1957, as did also the share of exports to the United Kingdom. Exports to the United States increased. Marked progress was made in exports to France, the share of which more than doubled, and some progress in expanding exports to other countries of Western Europe was also achieved.[13]

[11] Source: *Progress of the Non-Self-Governing Territories, op. cit.*, table 4.

[12] *Ibid.*, p. 86.

[13] *Ibid.*, pp. 86-88.

Table V-5

Destination of exports from United Kingdom Territories[14] (excluding Hong Kong, Northern Rhodesia and Nyasaland)

(Per cent)

Year	United Kingdom	Other Non-Self-governing Territories	Other sterling countries	Dollar area	Non-sterling OEEC countries	Other non-sterling countries	Unclassified
1949	34.8	10.2	10.5	14.4	9.7	13.5	6.9
1950	26.4	13.7	9.0	17.8	11.2	14.7	8.2
1951	26.2	12.3	10.0	16.6	12.7	15.6	6.6
1952	30.5	12.2	9.8	12.8	12.4	15.7	6.6
1953	32.4	13.6	9.9	12.4	12.2	12.5	9.0
1954	32.6	12.2	10.4	12.5	15.7	10.1	6.3
1955	29.2	12.3	9.6	13.2	17.1	12.5	6.6
1956	27.6	13.1	9.2	12.6	17.8	13.6	6.1

[14] *Ibid.*, table 6, p. 87. For figures on Northern Rhodesia, see table V-8 below.

Table V-6

Destination of exports of French Overseas Territories[15]

Year	France	Other Territories of the franc area	Whole franc area	Sterling area	Dollar area	Others	EEC member countries other than France
1950	68.25	6.95	75.2	5.45	3.15	14.75	
1952	68.10	9.20	77.3	5.05	3.67	13.95	
1954	65.25	8.45	73.7	4.30	8.50	13.50	
1955	60.40	8.20	68.6	4.10	9.70	17.60	12.70
1956	64.30	9.30	73.6	4.30	8.80	13.30	8.40
1957	65.00	9.00	74.0	5.00	8.00	14.00	8.60

Table V-7

Belgian Congo: Destination of exports[16]

(Percentage of total value of exports)

Year	Belgium	United States	United Kingdom	France	Italy	Federal Republic of Germany	Other countries
1949	34.2	18.5	13.2	6.1	3.8	8.2	16.0
1950	38.5	19.4	9.3	7.9	2.0	4.1	18.0
1951	43.6	18.6	8.2	7.8	0.9	5.7	25.2
1952	35.4	19.2	6.8	10.9	4.0	8.6	15.1
1953	23.7	24.9	8.4	12.2	—	11.1	19.7
1954	24.3	22.2	9.1	12.0	4.9	9.7	17.8
1955	25.6	22.5	8.4	14.5	4.3	7.3	17.4
1956	25.4	21.4	7.2	15.4	5.1	7.3	18.2
1957	23.3	22.2	8.4	13.4	5.3	8.3	19.1

Table V-8

Northern Rhodesia: Direction of trade[17]

	Percentage of value	
	1947	1953
Origin of imports:		
United Kingdom	25.3	36.5
Union of South Africa	28.5	29.9
Southern Rhodesia	18.7	14.8
United States of America	12.9	5.7
Destination of exports:		
United Kingdom	66.6	61.0
Union of South Africa	8.8	3.9
United States of America	—	19.0
Belgium	1.2	3.6
Federal Republic of Germany	—	2.4

23. As regards sources of imports, the United Nations report cited above characterizes the general trend as a reduction in the share of imports from the respective metropolitan countries and particularly in the share from the dollar area—the latter during the early post-war period was an important source for imports not readily available elsewhere—and an increase in purchases from other countries of Western Europe.

In the United Kingdom Territories during the period 1949-1957 there was a slight decline in imports from the United Kingdom, as well as from the dollar area. There was a marked increase in the share of imports from non-sterling OEEC countries of Western Europe. The share of other non-sterling countries increased slightly. This category includes Japan, whose sales increased between 1954 and 1957 from 3.0 to 5.1 per cent of the total imports of United Kingdom Territories excluding Hong Kong.

In the French Territories, the share of imports from France, while remaining relatively large, gradually declined during the period 1950-1957; imports from the dollar area were also reduced. There was an appreciable increase in imports from other sources, mainly countries of continental Western Europe.

In the Belgian Congo, changes in the pattern of imports from 1949 to 1957 were of a similar nature, the reduction in the share of purchases from the United States having been even greater than in the United Kingdom and French Territories, while imports from Belgium declined only moderately. The main increases were in imports from Western Europe, particularly from the Federal Republic of Germany.[18]

c. Balance of payments; transfer of profits

24. In the absence of an itemized breakdown of balance of payments figures, the present section can serve as little more than a general indicator of current trends in the development of the over-all payments picture. The figures shown in table V-9 below show the balance of trade and the balance of payments (on account of goods, services and payments) of selected countries.

25. While it will be noted that the figures shown here do include certain elements of the category "profits" —without, however, identifying them as such—great caution should be exercised in drawing any inferences as to the extent of such profit transfers from these figures. In only one instance has it been possible to obtain figures for actual profit and royalty transfers for an African country; these figures, for Northern Rhodesia, are shown separately in tables V-10 and 11 below.

[15] *Ibid.*, table 7, p. 87.

[16] *Ibid.*, table 8, p. 88.

[17] *Information from Non-Self-Governing Territories: Summary and Analysis of Information Transmitted under Article 73 e of the Charter. Report of the Secretary-General. Central African Territories, Northern Rhodesia*, A/4081/Add.1. Commerce and trade became a federal responsibility of the Federation of Rhodesia and Nyasaland in July 1954; 1953 was the last year in which separate trade statistics were prepared for Northern Rhodesia.

[18] *Progress of the Non-Self-Governing Territories, op. cit.*, p. 89. For relevant statistical data, see *Progress of the Non-Self-Governing Territories, op. cit.*, tables 11-13 (p. 90), and *Economic Survey of Africa since 1950* (Sales No. 59.II.K.1), tables 3-II - 3-V and 3-VII to 3-X, pp. 176-179.

Table V-9

Balance of trade and payments, selected African countries[19]

Country and unit	*1955*	*1956*	*1957*
Belgian Congo and Ruanda-Urundi (billion Belgian Congo francs)			
Balance of Trade	3.82	6.03	1.81
Payments	— 2.04	— 3.86	..
British East Africa[a] (million pounds Sterling)			
Balance of Trade	—12	—14	—22
Payments	—56	—50	—46
Egypt (UAR) (million Egyptian pounds)			
Balance of Trade	—45	—44	—11
Payments	—34.0	—39.2	—30.1
Ethiopia[b] (million Ethiopian pounds)			
Balance of Trade	— 9	—12	15
Payments	9.6	1.5	24.2
Ghana (million pounds Sterling)			
Balance of Trade	— 1	—10	—15
Payments	1.8	—13.3	—14.4
Morocco (billion francs)			
Balance of Trade	—59	—42	—31
Payments	4.98	42.94	..
Federation of Rhodesia and Nyasaland (Million Rhodesian pounds)			
Balance of Trade	34	22	21
Payments	—11.2	—33.7	—69.9

[a] Balance of trade: Kenya, Uganda, Tanganyika. Balance of payments: Kenya, Uganda, Tanganyika, Aden, former British Somaliland, Zanzibar, Pemba.

[b] Prior to 15 September 1952, excluding Eritrea.

Table V-10

Northern Rhodesia: Account of Mining Industry[20]

(Millions of Rhodesian pounds; indices, 1949 = 100)

Year	*Index of volume of production*	*Index of prices of metals produced*	*Value of mineral production*	*Wages and salaries*		*Current operating expenditure*	*Total royalties*	*Gross profits after royalty payments*	*Direct taxes*	*Profits after taxes*	*Gross investments*	*Dividends paid abroad*	*Additions to reserves and domestic dividends*
				African	*European*								
1939.....	95	33	11.5										
1945.....	82	44	13.0	1.4	3.1	2.7	0.3	5.5	1.2	4.3	0.9	1.7	1.7
1946.....	71	56	14.5	1.4	3.1	2.9	0.6	6.5	1.1	5.4	0.9	2.8	1.7
1947.....	68	95	23.5	1.5	4.0	3.9	1.6	12 5	1.2	11.3	2.4	8.6	0.3
1948.....	82	99	29.8	1.7	4.7	4.0	2.3	17.1	2.8	14.3	4.9	9.3	0.1
1949.....	100	100	36.6	2.2	5.4	3.7	3.0	22.3	5.0	17.3	6.6	11.1	— 0.4
1950.....	102	133	49.3	2.4	6.4	6 3	4.5	29.7	5.7	24.0	8.5	18.6	— 3.1
1951.....	135	146	72.1	3.4	8.6	7.0	7.3	45.8	7.6	38.2	11.4	22.0	4.8
1952.....	115	187	78.9	3.9	9.6	8.4	8.8	48.2	15.0	33.2	15.2	20.3	— 2.3
1953.....	151	171	95.0	5.2	11.3	13.6	10.5	54.4	16.8	37.6	16.5	17.9	3.2
1954.....	159	168	97.7	5.5	10.8	14.5[c]	11.0	55.9	17.0[b]	38.9	14.9	18.3	5.7
1955.....	141	232	120.3	5.5	12.7	15.0[a]	13.6	73.5	19.0[b]	54.5	21.4	20.8	12.3
1956.....	160	219	129.3	6.4	12.9	16.0[a]	13.8	80.2	22.5[c]	57.7	18.0	25.5	14.2

[a] Extrapolation.

[b] Interpolation.

[c] Northern Rhodesia Chamber of Mines, *Yearbook* 1956.

[19] *Economic Survey of Africa Since 1950, op. cit.*, table 3-I, p. 150.

[20] *Structure and Growth of Selected African Economies*, United Nations publication, Sales No.: 58.II.C.4, table 12, p. 26.

Table V-11

Northern Rhodesia: Expenditure pattern of mining companies[21]

Year	Wages and salaries	Operating expenditure	Gross investments	Payments to Governments: royalties and taxes	Payments abroad: royalties and dividends[22]	Wages and salaries	Operating expenditure	Gross investments	Payments to Governments: royalties and taxes	Payments abroad: royalties and dividends
	(Millions of Rhodesian pounds)					(In percentage of value of gross output)				
1945....	4.5	2.7	0.9	1.3	1.9	34.6	20.8	6.9	10.0	14.6
1946....	4.5	2.9	0.9	1.2	3.3	31.0	20.0	6.2	8.3	22.8
1947....	5.5	3.9	2.4	1.4	10.0	23.4	16.6	10.2	6.0	42.6
1948....	6.4	4.0	4.9	3.2	11.2	21.5	13.4	16.4	10.7	37.6
1949....	7.6	3.7	6.6	5.9	13.2	20.8	10.1	18.0	16.1	36.1
1950....	8.8	6.3	8.5	7.3	21.5	17.8	12.8	17.2	14.8	43.6
1951....	12.0	7.0	11.4	10.1	26.8	16.6	9.7	15.8	14.0	37.2
1952....	13.5	8.4	15.2	18.8	25.3	17.1	10.6	19.3	23.8	32.1
1953....	16.5	13.6	16.5	21.3	23.9	17.4	14.3	17.4	22.4	25.2
1954....	16.3	14.5[a]	14.9	22.7[b]	23.6	16.7	14.8	15.3	23.0	24.2
1955....	18.2	15.0[a]	21.4	25.9[b]	27.5	15.1	12.5	17.8	22.0	22.9
1956....	19.3	16.0[a]	18.0	29.1[c]	32.7	14.9	12.4	13.9	22.5	25.3

[a] See note *a* to table 12.
[b] See note *b* to table 12
[c] See note *c* to table 12.

26. While the flow of capital—a two-way traffic when withdrawals of profits are taken into account—will be considered in detail in sub-section e below, it is of immediate relevance to the present discussion and certain figures may be cited here.

Table V-12

Net average annual inflow of long-term private capital into selected African countries, 1951-1955 and 1956-1959[23]

	Millions of dollars per annum 1951-1955	1956-1959
Congo (Leopoldville)	4	—24
Ethiopia	4	2
Liberia[a]	8	7
Morocco[b]	46	8
Rhodesia & Nyasaland	29	60
Sudan	— 1	— 1

[a] Beginning period, 1953-1955.
[b] Beginning period, 1952-1955.

[21] *Ibid.*, table 13, p. 27.
[22] Royalties are payable to the British South Africa Company, Ltd. on the copper content of cupreous materials produced each month, the rate per long ton (2,240 lbs.) being 13.5 per cent of the average of London Metal Exchange quotations for the month, less £8. (Northern Rhodesia Chamber of Mines, *Year Book 1956*).
[23] From: *International Flow of Long-term Capital and Official Donations, 1951-1959*, United Nations publication, Sales No.: 62.II.D.1, table 8.

27. Some information on the profit picture of companies operating in the Belgian Congo is contained in a document submitted to the Economic and Social Council at its twenty-sixth session in the summer of 1958.

28. The document in question notes[24] that companies operating in the Belgian Congo in recent years have shown a high rate of profitability and have ploughed back substantial proportions of earnings. Reinvestment between 1952 and 1956 amounted to 54.3 per cent of gross assets of these companies in 1956. The following table illustrates rates of profits and dividend payments in the Congo:

Table V-13

Belgium-Luxembourg: Net profit and dividend payments of companies operating in the Belgian Congo, 1954-1956
(In percentage of capital)

	1954		1955		1956	
	Net profit	Dividend payments	Net profit	Dividend payments	Net profit	Dividend payments
All companies ..	22.82		26.42	13.00	21.2	12.6
Mining.....					30.4	19.0
Manufacturing.					17.2	11.1

[24] ESC OR, 26th sess., Annexes, agenda item 4, E/3128, paras. 82-83, and table 29.

Table V-14

Belgian Congo: Major elements of balance of payments on current transactions[25]
(Million Belgian Congo francs)

Year	Merchandise trade				Freight and insurance		Income from investments		Gifts and remittances	
	Total	Belgium	Dollar Area	Sterling Area	Total	Belgium	Total	Belgium	Total	Belgium
1951.....	5,852	2,128	1,192	851	—1,184	— 994	—1,316	—1,303	— 538	— 540
1952.....	4,022	— 794	705	501	—2,831	—1,267	—1,778	—1,717	— 396	— 368
1953.....	5,109	—2,772	1,998	1,153	—3,596	—2,698	—2,212	—1,803	— 566	— 363
1954.....	6,931	—1,564	2.592	1,609	—4,584	—3,469	—2,460	—2,140	— 611	— 488
1955.....	10,537	— 873	3,389	1,153	—5,327	—4,100	—3,266	—2,610	— 712	— 615
1956.....	11,365	— 899	3,200	1,209	—6,409	—4,862	—4.411	—3,510	—1,006	— 886
1957.....	7,750	—2,416	3,226	931	—6,873	—4,966	—3,569	—3,019	—1,353	—1,737
1958[26].....	8,389	—2,333	...	...	—5,447	—3,952	—3.476	—2,847	—1,404	—1,256

[25] From: *Progress of the Non-Self-Governing Territories, op. cit.*, table 25, p. 97.
[26] From: *Special Study on Economic Conditions in Non-Self-Governing Territories*, United Nations publication, Sales No.: 60.VI.B.3, table 9, p. 33.

29. Between 1952 and 1956, the document goes on to state, net profits as well as total assets of these companies rose by 45 per cent. Manufacturing registered the greatest progress and was most active in 1956 as regards new company formation and increased investment, particularly in the sugar, cement, brewing and food processing industries.

30. Attention may also be drawn to the item "income from investments" in table V-14 (see p. 171), which shows the major elements of the balance of payments on current transactions of the Belgian Congo up to 1958.

31. A consolidated review of the balance of long-term capital movements between 1951 and 1955 is shown in table V-15 below.

Table V-15

Belgian Congo: Balance of long-term capital movements[27]

(Million Belgian Congo francs)

Year	Private capital		Public capital	
	Total	Belgium	Total	Belgium
1951.....	931	960	— 164	— 244
1952.....	763	803	2,461	35
1953.....	125	— 51	2,602	785
1954.....	—326	—365	2,515	2,126
1955.....	136	199	2,836	2,841
1956.....	—624	—425	4,326	3,687
1957.....	365	217	76	210
1958.....	—179	— 69	5,465	3,833
	891	1,269	20,117	13,273

32. The report cited above notes that[28]

Long-term capital movements during the period (1951-1958) have nearly compensated for the deficit in the balance of current transactions of the Territory.

The net influx of private capital was quite small, amounting to only 891 million francs. There was even a net disinvestment of foreign capital of 378 million francs. Net investment by Belgian capital amounted to 1,269 million francs. A comparison of these very limited amounts of net capital inflow, with the substantial expansion of mining, industrial and agricultural production in the Territory, demonstrates that this expansion could be effected owing to the considerable growth of domestic capital formation in the Territory and in particular to the reinvestment of nondistributed earnings by the mining companies.

Net influx of public capital in the Territory was on a considerably larger scale and amounted to 20,117 million francs, the maximum having been reached in 1958 with 5,465 million francs. About two-thirds of these funds (13,173 million francs) originated in Belgium, which thus made a significant contribution to the provision of external resources required for the financing of the development plan of the Territory. It should be pointed out, however, that with only a few minor exceptions, no public grants have been made until now to the Territory[29] from public Belgian funds. The public funds supplied by Belgium were made available to the Territory in the form of loans floated on the capital market. These loans enjoyed, however, the guarantee of the Belgian Government. The rest of the net inflow of public capital consisted mainly of loans obtained from the International Bank for Reconstruction and Development or raised in foreign capital markets.

[27] *Ibid.*, table 10, p. 34.

[28] *Ibid.*, p. 34.

[29] Assistance in the form of grants was provided by Belgium to the Trust Territory of Ruanda-Urundi; data relating to the latter are included in the balance of payments of the Belgian Congo.

d. Capital formation

33. The rate of capital formation provides not only an indicator of economic growth but, in so far as domestic capital formation is concerned, provides a rough guide to the extent to which the proceeds from the domestic product are used to further capital growth in the country or territory concerned.

34. The initial data shown in table V-16 below are designed to provide an over-all survey of the gross domestic capital formation rate in various African countries and territories in terms of percentages of both the gross domestic product and the gross national product, which includes receipts of income from abroad.

Table V-16

Gross domestic capital formation[30]

(As percentages of gross domestic product at current market prices and of gross national product)

Country and year	Gross domestic capital formation	
	Percentage of	
	Gross domestic product	Gross national product
Belgian Congo		
1950.....	21.3	22.9
1953.....	29.2	30.6
1957.....	29.5	31.4
Algeria		
1950.....	...	31.6
1953.....	...	25.7
1956.....	...	25.4
Cameroons (French)		
1956.....	...	12.0
Ethiopia		
1955.....	1.8	...
1956.....	1.8	...
1957.....	1.8	...
French Equatorial Africa		
1956.....	...	15.9
French West Africa		
1956.....	...	14.2
Ghana		
1950.....	8.5	11.4
1953.....	10 2	10.4
1957.....	12.3	10.2
1958.....	11.1	...
Madagascar		
1956.....	...	8.7
Mauritius		
1950.....	14.7	14.3
1953.....	14.2	14.1
1957.....	12.8	12.7
Morocco		
1950.....	20.7	(1951) 23.6
1953.....	12.2	21.1
1956.....	...	11.6
Rhodesia and Nyasaland		
1950.....	37.6	44.2
1953.....	31.5	35.4
1957.....	39.1	42.7
Sudan		
1955/1956.....	...	7.0
Tanganyika		
1954.....	13.2	16.2
1957.....	...	15.0
Tunisia		
1957.....	...	8.3
Uganda		
1950.....	...	13.8
1953.....	...	20.7
1957.....	...	18.9

[30] *Economic Survey of Africa Since 1950, op. cit.*, tables 4-I and 4-II, pp. 204-205.

Table V-16 (continued)

Country and year	Gross domestic capital formation: Percentage of Gross domestic product	Gross domestic capital formation: Percentage of Gross national product
Union of South Africa		
1950	21.7	22 2
1953	28.9	26.1
1957	23.3	23.4
UAR (Egypt)		
1950	...	10.2
1953	...	10.2
1956	...	8.4

35. A better perspective of the respective growth rates of the gross national product on the one hand and of gross capital formation on the other, may be gained from table V-17 below.

36. The figures cited so far have dealt entirely with relative rates of capital formation from purely local resources. When review is expanded to actual monetary magnitudes and the relationship between domestic and outside (that is to say, foreign and metropolitan) capital, it appears that, in large portions of Africa there is a virtual absence of domestic capital formation and economic operations—whether public or private—are dependent upon transfers from abroad and upon reinvestment of profits from foreign capital, usually from the metropolitan country concerned.

Table V-17

Changes in gross national product and gross capital formation[31]

Country	Period	Gross national product: Total increase	Gross national product: Average yearly increase	Gross national product: Annual rate of growth[a]	Gross capital formation: Total increase	Gross capital formation: Average yearly increase	Gross capital formation: Annual rate of growth
Belgian Congo	1950-1957	78.7	11.2	8.64	145.4	20.8	13.68
Morocco	1951-1956	49 5	9.9	8.38	—	—	—
Nigeria	1950-1956	39.8	6.6	5.74	114.1[b]	19.0[b]	13.53[b]
Rhodesia and Nyasaland (Federation of)	1950-1957	138.5	19.8	13.22	130.4[b]	18 6[b]	12.67[b]
Union of South Africa	1950-1957	84.5	12.1	9.14	94 4	13.5	9.97
Ghana	1950-1957	48.6	6.9	5.82	32.6	4.7	4.11
Mauritius	1950-1957	57.6	8 2	6.72	40.0	5.7	4.92
Kenya[c]	1950-1957	107.4	15.3	10.98	...	...	...
Tanganyika[d]	1954-1957	16.9	5.6	5.33	8.0	2.4	—
Uganda[b]	1950-1957	70.2	10.0	7.90	...	...	...
	1950-1956	63.5	10.6	8.53	121.2[b]	20.2[b]	14.15[b]
Egypt (UAR)	1950-1956	16.3	2.7	2.56	—	—	—

[a] Cumulative rate.
[b] Not including capital formation in peasant agriculture.
[c] Net domestic product.
[d] Gross domestic product.

37. In territories where there is a relative lack of economic diversification, internal capital formation is subject to quite considerable fluctuations, depending upon changes in world market conditions for the principal product or products in question. This point is illustrated by the position of the Federation of Rhodesia and Nyasaland, whose economy relies to a considerable extent on exports of copper. Here capital formation in the form of undistributed profits of companies and statutory bodies—in other words, reinvestment—amounted to 37.1 million pounds sterling in 1955 (out of total domestic savings of 104.7 million pounds), against only 2.3 million pounds in 1958 (out of total domestic savings of 73.5 million pounds). The impact of these fluctuations was, in this instance, offset by increased borrowing abroad (including net drawings on external reserves and balances), which rose from 9.7 million pounds in 1955 to 54.8 million pounds in 1958.[32]

Table V-18

Selected African countries: Composition of gross fixed investment by type of asset and by sector[33]

(Millions of national currencies, unless otherwise stated; percentage)

Country, currency and year	By sector: Total	By sector: Private	By sector: Public	By type of asset: Building and construction (As percentage of total)	By type of asset: Transport equipment and machinery (As percentage of total)	By type of asset: Other (As percentage of total)
Belgian Congo (Belgian francs)						
1950	8	70	30	...	...	...
1953	16	58	42	...	...	...
1956	16	58	42	...	...	...
1957	16	56	44	...	...	...
Ghana (pounds sterling)						
1950	17	64	36	48	42	10
1953	30	36	48	56	38	6
1956	38	49	51	57	38	5
1957	37	52	48	59	36	5

[31] *Ibid.*, table 4-IV, p. 208.
[32] *Ibid.*, tables 4-23, p. 214.
[33] *Ibid.*, table 4-III, p. 207.

Table V-18 (continued)

Country, currency and year	By sector			By type of asset		
	Total	Private	Public	Building and construction	Transport equipment and machinery	Other
				(As percentage of total)		
Morocco (billions of Moroccan francs)						
1951	99	78[a]	22[b]	53	49	—2[c]
1953	117	78	22	65	43	—8
1955	96	70	30	60	48	—8
Nigeria (pounds sterling)						
1950	37	67	33	61	39	—
1953	52	57	43	60	40	—
1956	88	50	50	60	40	—
Tanganyika (pounds sterling)[d]						
1954	21	52	48	57	43	—
1956	22	58	42	55	45	—
1957	23	58	42	60	40	—
Uganda (pounds sterling)						
1950	9	61	39	54	46	—
1953	18	58	42	57	43	—
1956	19	58	42	47	53	—
Egypt (UAR) (Egyptian pounds)						
1951	132	78	22	...	...	...
1953	98	65	35	...	...	...
1956	105	37	63	...	...	...
Rhodesia and Nyasaland (Federation of) (pounds sterling)						
1954	84	59	41	...	...	...
1955	113	64	36	...	...	...
1956	144	66	34	...	...	...
1957	152	63	37	...	...	...
French Equatorial Africa (billions of French francs)						
1956	34	72	28	37.1	62.9	...
French West Africa (billions of French francs)						
1956	74	44	56	60.8	39.2	...

[a] Includes investment from private and semi-public enterprises (public corporations and parastatal institutions).
[b] Government only.
[c] Investments in United States bases.
[d] Gross domestic product.

38. A review of the distribution of capital function between, on the one hand, the public and private economic sectors and, on the other hand, various types of assets and, in certain instances, industries, is provided by tables V-18 (above) to 23 below.

Table V-19

Africa: Selected Sterling area countries—composition of fixed capital formation by type of asset[34]
(As percentage of total)

Country and item	Average 1950-1957	1950	1957
Ghana			
Building and construction	58	48	59
Vehicles, plant and machinery..	36	42	36
Other (investment in industry and agriculture)	6	10	5
	Average 1953-1957	1953/54	1957/58
Nigeria[a]			
Building and construction	33	45	59
Residential buildings	14	14	14
Plant, machinery and equipment	17	22	13
Vehicles	7	12	8

[34] *Ibid.*, tables 4-3, p. 190.

Table V-19 (continued)

Country and item	Average 1950-1957	1950	1957
Uganda			
Building and construction	54	54	54
Plant and equipment	36	34	36
Vehicles	10	12	10
	Average 1954-1957	1954	1957
Tanganyika			
Building and construction	38	40	41
Residential buildings	17	18	19
Equipment	45	43	41

[a] Fiscal years; figures do not add up to 100 since they include only main sectors.

39. For the French African territories, as constituted in 1956, the United Nations study cited here, assumes[35] certain fixed percentages for the distribution of over-all capital formation between economic sectors, as follows: building and construction: public investment, 70 per cent; private investment, 30 per cent; equipment and machinery: public investment, 30 per cent; private investment, 70 per cent. Over-all distribution of capital formation is estimated as follows:

[35] *Ibid.*, 198 and 199.

Table V-20

French African territories: public and private capital formation[36]

	1954		1956	
	Billion French francs	Per cent	Billion French francs	Per cent
Building and construction	104	40	134	51
Equipment and machinery	56	26	74	28
Studies and research	7	3	7	3
Traditional economic sectors	48	22	49	18
TOTAL	215	100	264	100

40. As regards the distribution of private capital formation in the French African territories between African and non-African sources, the *Economic Survey of Africa Since 1950* estimates that the participation of African investment between 1954 and 1957 was 40 per cent of the total, the remainder being of non-African —chiefly French—origin.[37] (See table V-21.)

41. According to the Economic Survey of Africa since 1950:

Estimates, based on data pertaining to the establishment of new corporations and capital increases of operating companies

[36] *Ibid.*, table 4-10, p. 199.
[37] *Ibid.*, p. 200.

Table V-21

French African Territories: estimated private capital formation[38]

(Billion French francs)

	1954	1955	1956	1957
Estimated total private investment	110	120	154	191
African (40 per cent of total)	45	48	62	76
Non-African (60 per cent of total)	65	72	94	114

(in the French African Territories as constituted in 1956), put the amount of private new investment at 92 billion French francs for the period 1949 to 1954 inclusive, or at 15 billion French francs yearly. Reinvestment has been estimated at double this amount, or at 30 billion French francs yearly; thus, French gross private investment at 45 billion French francs would have been roughly half of the public capital formation in the years 1949-1954. The distribution of private investment by economic sectors for the same period showed a decisive shift towards investment in industry and transport, while the capital flow into trade seemed to have been declining. This may have been the direct result of public investment policy, which was to promote the expansion of industry in particular.[39]

[38] *Ibid.*, table 4-13, p. 200.
[39] *Ibid.*, p. 199.

Table V-22

French West Africa: distribution of private corporate investment by economic sectors 1949-1954[40]

(As percentage of yearly totals)

Sector	1949	1950	1951	1952	1953	1954
Trade	31.2	35.7	48.0	33.9	32.3	31.1
Industry	18.5	18.6	20.0	17.0	22.1	30.0
Agriculture and forestry	8.9	14.2	9.6	6.5	4.8	3.6
Energy and mining	8.7	14.2	9.3	23.9	21.5	15.6
Transport equipment	5.8	6.2	3.5	5.5	4.6	4.3
Transport (other)	2.9	5.0	5.2	7.2	9.0	10.5
Miscellaneous	24.0	6.1	4.4	6.0	5.7	4.9
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

Table V-23

Belgian Congo: contribution of main branches of industry to national product 1950-1957[41]

(Per cent of gross national product)

	Processing of agric. products	Mining and metal industries	Mfg. industries	Building materials and construction	Total percentage	Value (Million Belgian Congo francs)	Gross national product (Million Belgian Congo francs)	Gross domestic capital formation (Million Belgian Congo francs)
1950.....	5.9	19.9	5.5	5.0	36.2	12,200	33,700	7,710
1951.....	7.9	19.5	5.7	5.4	38.5	17,360	44,850	13,300
1952.....	5.9	23.3	6.1	6.4	41.7	20,650	49,390	16,670
1953.....	4.5	22.3	6.3	6.4	39.5	20,290	51,250	15,700
1954.....	4.7	22.4	6.6	6.5	40.2	21,810	54,110	16,250
1955.....	4.9	23.2	6.7	6.7	41.5	23,990	57,790	17,090
1956.....	4.7	23.5	7.5	6.3	42.0	25,700	61,150	18,420
1957.....	4.8	19.4	8.0	6.3	38.5	23,160	60,210	18,920

e. FOREIGN INVESTMENT

42. The present section is concerned solely with the economic aspects of the flow of capital, while legal considerations and a review of conditions for, and restrictions upon, the entry of foreign capital are dealt with in Chapter I of this study.

43. While a wealth of statistical and other material on the subject under discussion is available from United Nations sources, there is some difficulty in reconciling varying figures, based on different original sources and different bases of calculation. Where alternative figures

[40] *Ibid.*, table 4-11, p. 199.
[41] *Ibid.*, table 4-19, p. 203, and table 4-II, p. 205.

to those used in the present study are available, the fact is noted in the relevant foot-notes. In general, the most positive figures, that is to say, those based directly on the original data rather than on estimates, calculations, etc., have been used here.

44. The present section deals almost exclusively with private foreign investment in Africa; a broad review of the financing of economic development by the International Bank for Reconstruction and Development will be found in paragraphs 63 to 65 below.

45. A general review of long-term private investment in Africa is contained in the United Nations *Economic Survey of Africa Since 1950.*

46. The report in question notes, *inter alia,* that countries with rich natural resources—especially oil and non-ferrous metals, or a combination of both—such as the Belgian Congo and the Federation of Rhodesia and Nyasaland, have attracted the largest amounts of foreign private capital. Where natural resources were the main attraction for such capital, investments were made by large international companies and were concentrated in developing these resources. Instances cited related to the Saharan area, the Republic of Guinea, the Federation of Rhodesia and Nyasaland, and the Belgian Congo, to which may be added the present Republics of Gabon and Congo (Brazzaville).[42]

47. The report then discusses details of external private financing in the following terms:[43]

Nevertheless, an increasing part of new foreign investment seems to have been earmarked for production for the local market, judging by the composition of new industries established in French West Africa, Kenya, the Belgian Congo and North Africa. The construction industry (cement, bricks, glass, tiles) and light processing industries (flour-milling, extraction of edible oil, meat processing, packaging, manufacture of textiles, rope, plastics, foam rubber production, and the like) being the main recipients of such investment. Chemical industries—producing products needed in connexion with the processing of ores and other raw materials and fertilizers for agriculture—were among the most important new industries established with foreign capital in South Africa and the Belgian Congo.

The book value of outstanding United States *direct* investments in Africa has increased fourfold since 1950. However, it was still less than 5 per cent of all United States direct foreign investment in 1957. Also, the rise in book values reflects, in part, appreciation of stock values and not real additions to capital. The figures include reinvestments of profits, ...

Table V-24

Book value of United States outstanding direct investments in Africa (excluding Egypt (UAR))

(Millions of dollars)

Item	*1950*	*1952*	*1955*	*1957*
In Africa	313	458	793	1,200[a]
Total in all areas ...	11,788	14,819	19,313	25,252

[a] Estimated. It should be noted that the figures in this table include United States investments in the Union of South Africa, estimated at 125.2 million South African pounds (of which 54.0 million pounds in mining) as of the end of 1956. (*The International Flow of Private Capital, 1956-1958,* United Nations publication, Sales No.: 59.II.D.2).

In the case of African countries having special links with European Powers, private foreign investment was financed predominantly by capital of metropolitan origin. The exact amount of such capital is difficult to assess, since capital movements are free within each monetary zone and are only partly recorded.

[42] *Op. cit.,* p. 222.

[43] *Ibid.,* pp. 228-230 and tables 4-37 and 4-XIX.

Estimates of United Kingdom private investment in the British African territories during the three years 1955-1957 have put such investment at £90 million (net). Of these £90 million, an estimated £40 million went into West Africa and £50 million into East Africa. These figures comprise ploughed-back profits of subsidiary companies operating in the territories as well as other new investment in fixed assets, but they may also contain some short-term capital transfers, since the figure for private capital transfers has been obtained as a residual.

French private capital in North Africa (Algeria, Morocco and Tunisia) and in tropical Africa, including Madagascar, seems to have accounted for more than 90 per cent of private external investment in these countries. Official estimates of the value of private funds are presented in table V-25.

Table V-25

Estimated French private investment in the overseas franc area, 1954-1957[a]

(Billions of French francs)

	1954	*1955*	*1956*	*1957[b]*
Total	160.0	158.0	171.0	190.0
Algeria	52.8	51.5	53.4	54.0
Morocco	37.4	32.4	21.3	21.5
Tunisia	3.1	2.4	2.8	...
Overseas territories, Togoland and Cameroons, French administration.	66.7	71.8	93.5	114.4

[a] Data derived from estimates of gross private capital formation; it is assumed that 60 per cent of the latter is attributable to non-African capital. The figures, therefore, include also capital inflows from countries other than France, which are thought not to be significant. They may also include some financing by French semi-public institutions not having been recorded as such.

[b] Provisional.

In North Africa, private non-domestic investment was running at a level of about 75 billion francs a year for the period 1954-1957. Of this, Algeria accounted for nearly two-thirds of the total. The search for oil has attracted private capital, both foreign and metropolitan, to Algeria, where French enterprises spent some 14 billion francs on oil exploration in 1956, and foreign investments in oil increased by a further 2 billion francs. In 1958, 177.7 billion francs were invested in oil development in the Sahara, in the Gabon Republic and in the Republic of the Congo (Brazzaville); of this amount, 43.2 million francs were provided by the French Government, and French private capital appears to account for some 80 per cent of the remaining 134.5 billion francs.

Estimates for Morocco show a sharply declining trend, having dropped by nearly 40 per cent from 1954 to 1957. Investments in Morocco by foreign companies (other than French) holding concessions — presumably oil and mining companies — amounted to 1.55 billion francs and 2.84 billion francs in 1957. Investment in Tunisia, at 2 billion francs a year, seems to have been of rather limited significance.

In the French tropical African territories and Madagascar, the upward trend in foreign investments is partly accounted for by increasing prices and, towards the end of the period, by rising investments connected with the exploitation of manganese and iron ore resources in French West Africa[44] and French Equatorial Africa; the latter has also received sizable sums for oil development in the Gabon Republic and the Republic of the Congo (Brazzaville). The trend of imports of capital equipment by volume, however, usually reflecting the trend of private foreign investment in under-developed countries, has been declining, beginning 1954, for all French tropical African territories, except for the Cameroons. This would confirm the impression that, with few exceptions, there has been a net

[44] Capital expenditure made on the development of iron ore and bauxite deposits in Guinea by a consortium of international corporations (Fria) and Bauxites du Midi is included in the figures given above, since Guinea did not become independent until Oct. 1958.

outflow of private French capital from tropical Africa during recent years[45]. In general, it was considered that private investment was much less than public investment in the French territories, and the failure of metropolitan private capital to invest in French tropical Africa has been a constant problem to the authorities.

The very fragmentary information available as to the industrial distribution of French private investment in the tropical territories indicates the following sectors as main recipients of funds for the period under review: mechanical and manufacturing industries, 25 per cent; trade and related services, 16 per cent; transport, 10 per cent. In comparison with former years, there seems to have been a shift from trade and related services to manufacturing industries.

Of all African countries, the Federation of Rhodesia and Nyasaland received probably the largest volume of foreign capital in relation to its gross domestic product during the period under review. Net private capital inflow averaged nearly £17 million yearly from 1950 to 1957, increasing from 1955 on. From 1955 to 1957, the inflow of long-term capital was remarkably stable, as is shown in table V-26.

Table V-26

Federation of Rhodesia and Nyasaland: flow of long-term private capital,[a] 1955-1957

(Millions of pounds sterling)

Item	*1955*	*1956*	*1957*
Direct investment	3.4	2.5	2.9
New issues abroad[a]	21.1	19.0	20.0
Amortization of equity shares	—3.9	—1.1	—3.5
Investment by insurance companies.	0.5	1.0	2.0
TOTAL	21.1	21.4	21.4

Note: Minus sign indicates an outflow of funds.

[a] Excluding issues on government account; including funds obtained for investment in the Federation by Rhodesian financial enterprises.

Because of such massive imports of capital, payments abroad for interest and dividends have been heavy and increasing: in 1956 they amounted to about 20 per cent of all current payments abroad.

The sterling area, particularly the United Kingdom, was the major source of capital for the Federation, providing about 80 per cent of private funds.[46] A small part of this amount came from the Union of South Africa.[47] Mining continues to be the largest recipient of foreign private funds: these have financed the expansion and mechanization of established copper mines as well as the development of new mines in Northern Rhodesia. Foreign investment in manufacturing, however, has shown in post-war years the highest rate of relative growth, stimulated by a rapidly expanding market, due to boom conditions in the primary industries and the growth of population. The average yearly increase in gross production for all manufacturing industries in Southern Rhodesia — for which alone data are available — was 20 per cent between 1948 and 1955.

The Belgian Congo, with its rich natural resources, attracted a steady flow of private long-term capital from 1950-1957, although the amounts transferred varied greatly from year to year. Also movements of capital in the opposite direction largely offset (in 1953 and 1955) and sometimes outstripped (in 1954 and 1956) capital receipts. On balance, there was an average net inflow of approximately 200 million Belgian francs per year from 1950 to 1956, the equivalent of slightly more than 2 per cent of fixed capital formation in the private sector.[48]

About 90 per cent of this capital, considering the period as a whole, came from Belgium.[49] From 1953 to 1956 private capital from the sterling area entered in sizable amounts; capital outflows nearly balanced capital inflows from the United States during the period under review.

The fragmentary information on the distribution of private foreign investment among economic sectors in the Belgian Congo points to heavy investments for the mechanization of mining operations, for the establishment of ore-processing facilities and the expansion of hydroelectric installations by the large copper producers. Investment in the manufacturing industries, chiefly in chemicals and in the building industries, has also been substantial, although retained profits, undistributed dividends and depreciation allowances seem to have furnished here by far the greater part of funds. However, if the allocation among industries of new corporate capital (both equity and bond issues) is also indicative of the pattern of distribution of foreign investment in the Belgian Congo, then results are slightly different. In the total amount issued during 1950-1956, banking, trade and insurance corporations accounted for 42 per cent, manufacturing for 21 per cent and mining for 16 per cent.

48. Additional data on the investment picture in the Congo were submitted to the Economic and Social Council at its 26th session in 1958. Approaching the topic from the point of view of capital outflow from the Belgium-Luxembourg Economic Union, the report in question notes that

Belgian investment abroad has traditionally been oriented substantially, but not exclusively, towards the Congo ...

Between 1953 and 1956 the annual net outflow of long-term private capital from the Belgium-Luxembourg Economic Union (B.L.E.U.) increased substantially each year, reaching a total of $180 million in 1956. Most of this increase appears to have gone to countries other than the Congo, thus reversing the long-term trend. The statistical breakdown is as follows:

[45] Unofficial estimates put the value of new French private investment at 92 billion francs for the six years 1949-1954, representing annual new investment of about 15 billion francs a year.

[46] The nominal value of British-owned securities invested in the Federation of Rhodesia and Nyasaland at the end of 1956 was £44.8 million, according to the Bank of England. Of these, £24.6 million was in overseas-registered companies and £20.2 million in United Kingdom-registered companies operating overseas.

[47] The share of United States private capital seems to have declined since 1955, and the net contribution of OEEC countries in the total is not significant.

[48] Gross receipts of private long-term capital averaged 1,720 million Belgian francs per year. The bulk of the inflow served apparently to finance interest and dividend payments and unilateral transfers abroad (the latter consisting largely of remittances of migrant workers to their countries of origin).

[49] The Banque centrale du Congo belge et du Ruanda-Urundi estimated the value of Belgian interests in the Congo roughly at 175 billion Belgian francs at the end of 1958. Fixed investment was valued at 142 billion Belgian francs (allowing for amortization), stocks at 21 billion Belgian francs and liquid assets of enterprises at 12 billion Belgian francs.

Table V-27

Belgium-Luxembourg: net outflow of long-term private capital, 1954-1957

(Millions of Belgian francs)

	1953	*1954*	*1955*	*1956*	*1956 first six months*	*1957 first six months*
Total outflow	2,482	3,986	8,353	9,200	5,130	5,900
Of which to:						
Belgian Congo	—404	1,336	2,393	1,200	...	...
Other countries	2,886	2,650	5,960	8,000	...	...

These figures are indicative of broad trends only and cannot be regarded as even an approximate guide to the net flow of capital for investment purposes. For example, the statistics relating to the Congo minimize the real net outflow of investment funds from B.L.E.U., as the inflow from the Congo includes remittances by colonists, not only for investment but also to cover current expenses.[50]

49. In reviewing the same subject in terms of capital inflow into the Congo, the above-quoted report states that:

Between 1952 and 1954, the share and reserve capital of Belgian and Congolese corporations operating mainly in the Congo rose sharply from $554 million to $730 million.

As much as 95-96 per cent of total private long-term capital investment has been furnished from sources within the Belgian Congo itself or from Belgium-Luxembourg. About half of the remaining 4-5 per cent has been supplied from the United Kingdom, and a rather smaller share from the Netherlands.

The relative share of private capital investment supplied for the Belgium Congo itself reached 58.24 per cent at the end of 1953 and shows a tendency to increase in 1954 and reached 68.74 per cent in 1955. Belgium-Luxembourg supplied 37.39 per cent up to the end of 1953, 34 per cent in 1954 and 29.17 per cent in 1955. In 1956, the main sources of foreign capital were France and Switzerland.

Private Belgian investors have also subscribed substantially in recent years to loans floated in Brussels by the Government of the Belgian Congo in connexion with their ten-year plan.

...

In the meantime the Belgian Congo — not withstanding the substantial diversification of its economy in recent years — is still to a large extent dependent on the mining and extractive industries and is thus subject to fairly wide fluctuations in prosperity, in keeping with the trend of world metal prices. The steady increase in local purchasing power has, however, been of particular benefit to manufacturing, especially the textile, brewing and cigarette-making industries, owing especially to the definite trend towards a better standard of living.[51]

f. The impact of economic associations

50. In the context of the discussion of African economic development and permanent sovereignty over natural resources, the subject of the impact of economic associations or blocs relates in practice to the impact of the European Economic Community (EEC); the Treaty of Rome (25 March 1957) by which this association was established makes specific provisions for the associated (overseas) territories of the parties.[52]

51. As regards the European Free Trade Association (EFTA), the relevant agreement makes no provision with respect to overseas territories—in practice, United Kingdom territories—and in only one major instance is there an over p in terms of commodities with EEC associated territories. This instance concerns iron ore, of which Sweden is a principal European exporter. As regards markets for Swedish iron ore, the principal areas which are relevant to the present discussion are the United Kingdom—like Sweden, a member of EFTA—and the Federal Republic of Germany, a member of EEC (and also of the European Coal and Steel Community).

52. As regards the proposed Latin American Regional Market, it would be, in African terms, largely non-competitive—a situation far different from the considerable impact of the African aspects of EEC on the Latin American economy.[53]

53. Perhaps one of the potentially most important developments concerning the African economy in the context of this study and of the subject discussed in this section arises from the activities of the European Coal and Steel Community (ECSC). In 1957, the High Authority of ECSC advocated concerted action to develop the production of iron ore not only in the Community itself, but also in the overseas territories, and more particularly, in Africa.

54. With this end in view, it took a first definite step in 1958 by setting aside for purposes of technical research the sum of 5 million units of account (equal to US dollars), to be used by the Bureau Minier de la France d'Outre-Mer (now known as the Bureau des Recherches Géologiques et Minières) to carry out a five-year programme of prospecting for iron and manganese ore in certain African States and territories.

55. This grant was made available in the form of financial participation in a number of prospecting syndicates specially formed for the purpose, representing the Bureau des Recherches, the High Authority and various outside bodies and companies interested.

56. Syndicates had, by 1958, been formed in: Upper Guinea; the Ivory Coast; Cameroons; Northern Gabon; Gabon (Tchibanga ore fields); the Middle Congo.

57. The object of the syndicates is to conduct:

(*a*) A general exploration of areas as yet to a great extent unknown, but considered likely to contain deposits of iron or manganese ore;

(*b*) A detailed survey of deposits already discovered, to ascertain how far they are economically workable.

58. Operations under the prospecting programme, which was drawn up following consultations with a committee of experts appointed by the High Authority, are now entering on their second year. Deposits which appear worth investigating have been located in the Ivory Coast, at Kribi, Cameroons, and at Tchibanga, Gabon and survey work is now in progress.

59. If the findings should be positive, the High Authority's rights in respect of the deposits, acquired by virtue of its participation in the prospecting work, will be transferred to Community iron and steel enterprises in order that they may start development operations should they so decide.[54]

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[50] ECOSAC, 26th sess., Annexes, agenda item 4, E/3128, paras. 44-46 and table 20.

[51] *Ibid.*, paras. 78-81 and 85.

[52] Annex IV to the Treaty lists the overseas countries and territories as shown below (the present names of newly independent States are here shown in brackets).

French West Africa: Senegal (Republic of Senegal), the Sudan (Republic of Mali), Guinea (Republic of Guinea), the Ivory Coast (Republic of Ivory Coast), Dahomey (Republic of Dahomey), Mauritania (Republic of Mauritania), the Niger (Republic of Niger) and the Upper Volta (Republic of Upper Volta);

French Equatorial Africa: the Middle Congo (Republic of the Congo (Brazzaville)), Ubangi-Shari (Central African Republic), Chad (Republic of Chad) and Gabon (Republic of Gabon);

St. Pierre and Miquelon, the Comoro Archipelago, Madagascar (Malagasy Republic) and dependencies, the French Somali Coast, New Caledonia and dependencies, the French Settlements in Oceania, the Southern and Antarctic Territories;

The Autonomous Republic of Togoland (Togolese Republic); the French Trust Territory of the Cameroons (Republic of Cameroun); the Belgian Congo (Republic of the Congo (Leopoldville)) and Ruanda-Urundi; the Italian Trust Territory of Somaliland (Republic of Somalia); and Netherlands New Guinea.

[53] For the relevant discussion, see paras. 72-74 below.

[54] European Coal and Steel Community, High Authority, *Eighth General Report on the Activities of the Community (1 Feb. 1959-31 Jan. 1960)* pp. 246-247, para. 125.

60. The development described in the preceding paragraphs has received little attention in the standard documentation on the effects of EEC, largely because ECSC is jurisdictionally separate from EEC, though identical in membership.

61. The question of the effects of EEC, and, to a lesser extent, of EFTA, on the African economy has been the subject of considerable discussion in United Nations documentation, particularly in that of the Economic Commission for Africa.[55] Much of that material has, however, dealt with, on the one hand, the probable tenor of a new agreement of association to take the place of the Implementing Convention relating to the association of overseas countries and territories which expires at the end of 1962,[56] and, on the other hand, with the desiderata of the associated countries and territories with respect to the trade and tariff policies of the EEC member States.

62. The most recent over-all review of the topic under discussion is contained in the report entitled *The Impact of Western European Integration on African Trade and Development*,[57] submitted to the third session of the Economic Commission for Africa. The salient points of this paper are reviewed below.

i The European Common Market

(1) General legal aspects

(a) African associate membership in EEC and independence[58]

It seems clear that the Implementing Convention of the Treaty of Rome was not drawn up to deal with a situation — such as it exists at present or will exist in the near future — in which the associated African countries would have acquired autonomy in their political and economic policies. The African countries derived their membership from their special ties with the metropolitan powers.

On the other hand, there is no provision in any of the Treaty documents whereby the associate membership of dependent territories would cease when they gained independence.[59]

The position taken by the EEC authorities was that newly independent countries remain associated with the EEC as long as they have not explicitly announced their desire to discontinue such association. None of the newly independent African States had made any announcement to this effect up to December 1960.[60] Some of them have been reported as anxious to see the EEC propose revisions in the Treaty and Convention to take account of the changed political situation. After consultations with the Governments of the newly independent countries, the EEC authorities have apparently decided against any such revisions for the time being.

At its meeting of 18-19 October 1960, the Council of Ministers discussed the problems relating to the associated membership of African territories and countries having attained independence. The Ministers reached agreement on the following points: (i) Member States agreed to maintain, for the time being and until such time as new provisions were made, the association of countries and territories which so desired. Formal requests to that effect have been addressed to the Community by Togo, the Ivory Coast, the Central African Republic, the Congo (Brazzaville), Gabon, the Malagasy Republic, Chad and Upper Volta: (ii) the Council recognized that practical arrangements for the relations between the Community and countries and territories having attained independence should be established.

(b) Establishment rights[61]

The position in respect of the provisions on establishment rights is also far from clear. From the formal provisions of the Treaty of Rome and the Implementing Convention, it seems clear that associated overseas countries are to eliminate progressively existing restrictions on the freedom of establishment of nationals and companies of the six member States. It is worth noting that, whereas up to four years are allowed under Article 54 of the Treaty for laying down the general programme for the abolition of restrictions in EEC countries on freedom of establishment, the Council is charged under Article 8 of the Implementing Convention with determining the particulars of the extension of such rights to the EEC members in the associated overseas territories in the course of the first year. The urgency attached to the provisions on the abolition of restrictions in associated countries contrasts with the absence of any provision, whether in the Treaty or in the Implementing Convention, for the extension of reciprocal benefits to the associated countries.[62]

Directives for the extension of establishment rights by associated countries were laid down by the EEC Commission late in 1958. When considering these directives the EEC Economic and Social Committee and the interested member States in consultation with the central and local authorities of the associated countries expressed a desire for the elaboration of directives for the extension of establishment rights by EEC member States to nationals and companies of associated countries and territories. The Commission declared that it has taken account of this in the last paragraph of the preamble to the directives proper.[63]

(2) Changes in tariffs and quotas[64]

The provisions the Treaty of Rome dealing with tariffs and quotas are relatively clear and leave little room for differences in interpretation. However, they suffer from the fact that they

[55] Mention may be made of the following documents: *The Impact of the European Economic Community on African Trade*, E/CN.14/29, 20 Nov. 1959; *Association of Non-Self-Governing Territories with the European Economic Community: Report of the Secretary-General*, G.A., 13th sess. Annexes, a.i. 36 (A/3916/Rev.1); *Information Paper on Recent Developments Concerning Western European Economic Groupings*, E/CN.14/72/Add.1, 21 Jan. 1961; *Report of the Ad Hoc Committee of Government Representatives on the Impact of Western European Economic Groupings on African Economies*, E/CN.14/100 and Add.1, 1/2 Feb. 1961; *Recent Developments in Western European Economic Groupings as far as they Concern African Countries*, E/CN.14/139 and Add.2, 15 Nov. 1961; *Information Paper on Recent Developments in Western European Economic Groupings*, E/CN.14/139/Add.1, 6 Feb. 1962. It may also be noted that trade associations in Latin America, and in particular the Latin American Free Trade Area (LAFTA), have been the subject of study by ECA; see, for instance, *The Significance of Recent Common Market Developments in Latin America*, E/CN.14/64, 2 Dec. 1960.

[56] See chapter II, fn. 207 above.

[57] E/CN.14/72, 7 Dec. 1960.

[58] *Ibid.*, paras. 9-11.

[59] If this had been the objective of the Treaty, the inclusion of the Trust territories of the Cameroons and Togo among the associated countries and territories would have had little meaning, since it was known at the time the Treaty was signed that the particular relations these countries had with France would cease to exist in 1960. In another case—that of the Italian Trust Territory in Somaliland—it was recognized that the particular links with Italy would be discontinued in December 1960; and the authorities then in charge in the country were given the opportunity through a "declaration of intention" to *ratify* association of the country with the EEC, implying that association could be maintained after independence had been acquired.

[60] The Government of Cameroun informed EEC in January 1960 that it wished to remain associated under Part IV of the Treaty pending other arrangements. As regards Guinea, EEC authorities reported early in 1960 that they were studying forms of collaboration with that country. See *Journal officiel des Communautés Européennes*, 29 Feb. 1960, p. 507.

[61] *Ibid.*, paras. 20-21.

[62] The details of the arrangements contemplated do not as yet appear to have been worked out, since the Commission was recently reported to be examining problems relating in particular to the conditions of entry, stay and expulsion of nationals and companies of the member States in countries and territories having special relations with France. See *Troisième Rapport général sur l'activité de la Communauté*, May 1960, chap. V, para. 332.

[63] *Ibid.*

[64] ECA, *op. cit.*, paras. 22-34.

were conceived with a view to a passive association of overseas territories and do not take the changes in their political status into account.

As far as custom tariffs are concerned, the provisions implementing the principle that each associated country shall "apply to its commercial exchanges with member States and with the other (associated) countries and territories the same rules which are applied in respect of the European state with which it has special relations" (Article 132.2) are included in the Treaty itself, whereas those referring to quantitative restrictions are only considered in the Implementing Convention. This distinction may be of relevance when it comes to the re-negotiation of the Convention.

Article 133.2 of the Treaty stipulates the abolition of duties on imports from the other EEC member countries according to the same rhythm and modalities as between member countries. This provision is, however, accompanied by two qualifications:

(1) Associated overseas countries have the right to levy custom duties designed to promote their economic and industrial development and they may also levy duties of a fiscal nature;

(2) The reduction of duties envisaged applies in principle to the difference between the duty applicable to products imported from the member State with which the associated country has special relations and that applied to other member States. This qualification also implies (and this is explicitly stated in the next article), that non-discriminatory tariffs remain unchanged.

It appears, therefore, that the Treaty does not call for a complete dismantling of tariffs on imports of associated countries from the EEC members. The importance of the obligations accepted on behalf of the associated countries and territories by the former metropolitan country depends largely on the status enjoyed by the latter on their markets. In practice, development requirements and financial needs of the associated countries and territories are also taken into account.

It is only in the case of former French West Africa that existing régimes of associated countries involve tariff discrimination between EEC member countries. Imports from France enter duty-free, while those from the other member States are subject to a customs duty which ranges from 5 to 10 per cent for engineering products, with the notable exception of automobiles and parts, where the tariff is of the order of 20-25 per cent. On textiles and clothing, substantial preferences (15-20 per cent) are also accorded to France. On other products, the customs duties applied in these areas are generally low—on the average some 5 per cent.[65]

The remaining associated African countries and territories having special relations with France apply non-discriminatory customs duties or no customs duties at all and the question of discrimination among the Six in this field therefore does not arise.[66] In some of the areas (including former French West Africa), duties exist which are formally fiscal but are closely similar in nature to customs duties by virtue of the manner in which they are applied in practice. Since such duties are, in any case, not discriminatory among the EEC member States, the associated countries are under no Treaty obligation to adjust them. Finally, the Congo (Leopoldville) and Ruanda-Urundi apply a customs tariff which is entirely non-discriminatory.

All the associated African countries affected by the Treaty provisions relating to customs tariffs proceeded with the 10 per cent reduction in January 1959 without resorting to the special provisions concerning development needs, and agreement has been reached between the EEC authorities and the associated countries and territories for a further 10 per cent reduction in July 1960, again without exception.[67]

As regards quantitative restrictions, these are applied extensively in the associated African countries, save the Congo (Leopoldville) and Ruanda-Urandi. Of the associated countries having special relations with France, only those that formerly constituted French West Africa have liberalized imports from sources other than the Franc zone.

In respect of quota arrangements for the associated countries, Article 11 of the Implementing Convention provides that: (1) existing bilateral quotas are to be converted into global quotas open to all member States of EEC and are to be increased annually by not less than 20 per cent in their total value; (2) where the global quota for a non-liberalized products does not reach 3 per cent of national production, a quota of not less than 3 per cent of such output shall be established by the end of the first year of the entry into force of the Treaty and shall be raised to 4 and 5 per cent by the end of the second and third year respectively; thereafter the quota shall be increased by not less than 15 per cent annually. These provisions apply equally to EEC member States; with respect to the second provision, however, the Convention notes that where the global quota for a non-liberalized product represents less than 7 per cent of total imports into an associated country or territory, a quota equal to 7 per cent of such imports shall be established by the end of the first year of the entry into force of the Convention, to be increased annually in accordance with the provisions of the Treaty as set forth above.

In implementing these Treaty provisions, the authorities of the French Community have found it difficult to apply the provision on national production and have based implementation on the provisions relating to total imports, even in cases where there is a significant national production. In all, quota increases in the countries in special relationship with France introduced in January 1959 increased export opportunities for EEC members other than France from $34 million to $46 million, with a further increase to $56 million under the second quota increase in January 1960.[68]

Whatever the exact degree of compliance with the Treaty provisions achieved so far by the associated countries and territories, it appears that in the long run, substantial additional export opportunities for the EEC members other than France will arise in these areas if the Treaty provisions are fully implemented. The shift at the expense of French exports could be considerable, although less marked in terms of price relationships existing prior to the devaluation of the franc in 1958. To the extent that they would involve reduction in import costs, such shifts may be welcomed by African importers. Whether these measures are likely to hamper African industrialization efforts will be considered below.

While associated countries are clearly authorized to maintain tariffs on imports from EEC members in the interests of their economic development, no similarly specific authorization is given for quantitative restrictions; on the other hand the Treaty does not explicitly forbid the associated countries to apply quantitative restrictions on their imports from EEC countries. It may have been considered unlikely that the associated countries would resort to such restrictions while their commercial policies were under the direction of the metropolitan powers.

Again, there is no provision in the Treaty precluding the associated countries from discriminating against EEC members in favour of third countries. Such discrimination was, however, ruled out for other reasons. In the case of the French territories which applied customs duties on imports from countries other

[65] *L'Usine Nouvelle*, 16 June 1960.

[66] Discrimination is precluded by special international obligations: trusteeship agreements in the case of Togo and the Cameroons, the Congo Basin Treaty in the case of the four countries of former French Equatorial Africa. (This Treaty formally concerns only part of this area, but in practice, France had extended it to the whole of French Equatorial Africa). The Malagasy tariff, which was suspended during the Second World War has not since been re-introduced and in the case of the French Somali Coast, tariffs have, by unilateral French decision, not been applied.

[67] According to information available at the time of writing, it would seem that all countries, except Guinea, have actually implemented the reduction.

[68] *Troisième rapport général sur l'activité de la Communauté*, May 1960, chap. V, para. 322.

than France, the obligation not to discriminate *among* EEC members involved extension of duty-free treatment to the other EEC members, and thus indirectly safeguarded them against discrimination in favour of third countries. Special international obligations had the same effect in the other French territories, as well as in the Belgian dependencies. The considerations are, however, subject to change with the accession of the associated countries to independence.

List "G" tariffs[69]

Under an agreement of the EEC members concluded in March 1960 regarding the common external tariffs to be applied to imports of commodities contained in List "G"[70] of the Treaty of Rome, the arithmetic average of the agreed tariffs amounts to 10 per cent as against an arithmetic average of 11 per cent for the national EEC tariffs relating to these commodities in January 1959. For the commodities of most direct interest to African producers — vegetable oils, tropical woods, cocoa products and metals — the external tariff tends, metals apart, to exceed somewhat the arithmetic average of national tariffs actually applied. Of the seventeen protocols established in the agreement, authorizing the EEC Commission to allow quotas for imports from third countries at reduced or zero duties, seven relate to products of some importance to African countries (tropical woods, cork, aluminium, magnesium, lead, zinc and ferro alloys). These quotas are officially to be considered as temporary measures designed to facilitate adjustments during the transitional period and are to be periodically reviewed by the EEC Commission.

Accelerated implementation of tariff and quota reductions[71]

On 1 January 1962, the EEC members reduced their internal tariffs by 10 per cent, thus bringing the total of their reductions since the Rome Treaty came into force to 40 per cent for manufactures, 35 per cent for non-liberalized agricultural products and 30 per cent for liberalized agricultural products. France did not make any tariff reductions on 1 January 1962 as it had unilaterally effected the necessary cut in two stages of approximately 5 per cent each on 30 March and 12 September 1961.

No further acceleration tariff cut of 10 per cent like the one at the beginning of 1961 was made. It is possible that this step may be taken sometime in 1962, since the next scheduled reduction will not be made until mid-1963. The following associated countries carried out the acceleration of 10 per cent which took place in EEC countries in January 1961: Niger and Dahomey (1 January 1961) and Ivory Coast (1 May 1961).

The first of the three moves towards the erection of the common external tariff of EEC was completed by the end of 1961. For industrial goods the first harmonization took place 1 January 1961, on the basis of the common external tariff, less 20 per cent (with a few exceptions). The harmonization taking effect from 1 January 1962 therefore only concerned agricultural products. It was based on the common external tariff, without reductions. At the same time, the Federal Republic of Germany also raised its external tariff on manufactures vis-à-vis non-community countries by the same amount as it had done at the end of 1960.[72] This represented the second step by that country to implement the acceleration programme of May 1960.

In accordance with the acceleration decision, all quantitative restrictions on imports of industrial goods from other Community countries were abolished as from 1 January 1962, unless an escape clause is invoked.

[69] ECA, *op. cit.*, para. 39.

[70] List "G" is one of the lists in Annex I to the Treaty of Rome and refers to tariff headings in respect of which duties under the common customs tariff were negotiated between member States.

[71] *Information Paper on Recent Developments in Western European Economic Groupings*, E/CN.14/139/Add.1, 6 Feb. 1962, paras. 5-8.

[72] As a result of the large German tariff reduction in 1957, the country was permitted to implement the acceleration programme in two stages.

(3) The impact of EEC on African overseas trade[73]

As noted earlier, some of the most important policy decisions affecting the position of African countries have yet to be taken by the EEC authorities. In fact, it is only in respect of the customs union part of the Treaty (and the provisions for the Development Fund) that practical policy has been laid down clearly and in detail. Furthermore, the existing provisions governing the association of overseas countries and territories expire at the end of 1962 and will then be subject to renegotiation which is bound to be affected by the transition of these countries to independence.

Any analysis of the impact of the EEC on the African economies must thus, for the time being, be based chiefly, on a consideration of the consequences for African trade of the customs union arrangements as they exist at present. It will be recognized, however, that other provisions, such as, for example, these relating to managed marketing arrangements, long-term contracts, etc., could mean a great deal more to the export economies of the associated African countries than the simple preferential treatment accorded in the field of tariffs. Nor is it possible for the present discussion to take into account such intangible effects as those which might result from the establishment of new commercial contacts in a large and dynamic market, or any stimulus to a greater inflow of private foreign capital, that might develop as an indirect result of the common market arrangements.

It is also important not to lose sight of the fact that an underlying objective of the EEC is to accelerate the growth of incomes in the area; and any such acceleration, if not accompanied by excessive protectionism, should lead to an expansion in exports of associated African countries, and offset, at least in part, any adverse effects of discriminations upon the non-associated countries.

The effects to be traced in the following discussion are those arising from the gradual elimination, during a transitional period of some 12 to 15 years, — or possibly less — starting from the entry into force of the Treaty of Rome in January 1958, of quantitative import restrictions and import duties applied by the EEC members in trade with each other and with the associated countries and territories and the dismantling by the latter of discriminatory quantitative restrictions applied to imports from the EEC area and of any practices discriminating among the EEC members in the field of tariff policy.

Discrimination and the pattern of EEC imports

The elimination of customs duties in trade among EEC countries will provide an incentive to importers in the member States to give priority to purchases from within the area and from associated countries rather than from other sources. This tendency could be reinforced by the discriminatory eliminations of quantitative import restrictions. However, except in France, such restrictions are not applied in the EEC countries to the principal African export commodities, but largely to temperate-zone agricultural products, for which special arrangements in accordance with the EEC common agricultural policy will, in any case, be the decisive factor. The quantitative restrictions applied by France to imports from outside the Franc zone cover most of the commodities of importance to overseas producers within this zone with the notable exception of metals and minerals, cocoa, palm kernels, copra, cotton and sisal. If these restrictions were to be dismantled under the Treaty of Rome, gains in the French market might well accrue to the Congo (Leopoldville), Ruanda Urundi and other associated countries outside the Franc zone, as well as to non-

[73] *The Impact of Western European Integration on African Trade and Development*, E/CN.14/72, 7 Dec. 1960, paras. 55-67; 108-114. This review, the latest available in United Nations documentation at the time of writing, antedates the January 1962 EEC tariff and quota reductions discussed above by one year. The review thus analyzes the impact of developments which were only anticipated at the time it was written.

Table V-28

The EEC External Tariff and National Tariffs in the EEC Member Countries as of 1 January 1957 for Selected Commodities[74]

(Percentages)

	National Tariffs as of 1 January 1957[a]											
	Benelux			*Fed. Rep. of Germany*		*France*			*Italy*			
		In force[b]					*In force*[b]			*In force*[b]		*EEC*
	Legal	*A*	*B*	*Legal*	*In force*	*Legal*	*A*	*B*	*Legal*	*A*	*B*	*Tariff*
Cocoa beans	10	0	0	10	10	25	0	0	5	0	0	9
Coffee, raw	8[b]	0	0	26	26	20	0	20	50	10.4	10.4	16
Tea	15	10	10	52*	52*	30	0	30	80	0*	50*	18
Bananas	15*	0*	15*	5*	0*	20	0	20	40	0	36*	20
Sugar, raw	57	57	57	65	—	110	0	0	105	—	105	80
Tobacco leaf	8*	8*	8*	32*	32*	State Monopoly						30*
Groundnuts	0*	0*	0*	0*	0*	10	0	0	8	0	8	0
Copra	0	0	0	0	0	10	0	10	0	0	0	0
Palm nuts and kernels	0	0	0	0	0	10	0	10	0	0	0	0
Groundnut oil, crude	5	5	5	6 0 i.u.	5 0 i.u.	18	0	18	25	0	18	10 5 i.u.
Palm oil, crude	0	0	0	6 0 i.u.	5 0 i.u.	15	0	0	0	0	0	9 5 i.u.
Palm Kernel oil, crude	5	5	5	6 0 i.u.	5 0 i.u.	15	0	0	10	0	9	9 or 10 5 i.u.
Cocoa mass and paste			10		35			25			21	25
Cocoa butter			6		35			25			25	22
Cocoa powder, unsweetened			10		30			25			22	27
Idem, containing 60 per cent or less sugar			18		30			30			30	30
Cotton, wool, jute, sisal, hemp —raw	0	0	0	0	0	0	0	0	5–6	0	4–6	0
Common wood (other than coniferous)—rough	0	0	0	0	0	10	0	0	10	0	7	5
Idem, sawn, sliced or peeled	0	0	0	0	0	18–20	0	0	12–18	0	11	10
Veneer sheets and sheets for plywood	6	3	6	4	3	15–25	0	15–25	25	0	16	10
Copper—unwrought	0	0	0	0.5	0	0–20		0–20	3.5		1	0
Lead "	0	0	0	5	0	8	0	8	20	0	13	6*
Zinc "	0	0	0	5	0	12	0	0	15	0	4	4*
Tin "	0	0	0	0	0	0	0	0	0–2	0	4	0
Cobalt "	0	0	0	0	0	12		12	0	0	3	0
Tungsten "	0	0	0	5	0	20–35	0	0	8	0	0	6
Aluminium "	0	0	0	12	0–10	20	0	20	35	0	25	10
Idem, wire, plates and sheets	6	6	6	18	14	20	0	20	40	0	27	15, wire 19
Manganese—wire, plates and sheets	6			0		22			20			10

Sources: GATT, *Report of the Working Party on the Association of Overseas Territories with the European Economic Community, including Commodity Trade Studies*, Geneva, 1958, and information obtained from the GATT Secretariat.

[a] For cocoa products data relate to duties in force on 31 December 1958.

[b] A—tariffs effectively applied to imports from former overseas territories.
B—tariffs applied to imports from other sources.

[c] But not less than 29 Accounting Units (US dollars) and not more than 42 Accounting Units per 100 kgs. net.

* *Ad valorem* equivalent of specific duty based on import data for 1958.

i.u. Industrial uses.

associated countries. Such gains would, of course, be at the expense of producers in the Franc zone.

The trade diversion effects of relevance to African countries can be expected to result largely from the association of overseas countries and territories rather than from the creation of a common market among the EEC members, since most of the primary commodities which are important items of African exports to the EEC area are either not produced in the latter, or if so produced, are either admitted free of duty or are not likely to be affected greatly by the EEC tariff arrangements. The latter is true of temperature-zone agricultural commodities exported to the EEC market in substantial quantities by a few African countries—mainly Morocco and Tunisia. The position of producers in these countries as against that of domestic producers in the EEC area will be determined chiefly by arrangements made in connexion with the common agricultural policy rather than by the EEC tariff régime. As regards primary commodities subjected to some degree of processing, on the other hand, current trade flows and the future export potential of African countries will be affected not only by the association of overseas countries with the EEC but also by changes in the competitive position in the EEC market of industries like oil-crushing, coffee and cocoa handling and metal processing in the six member countries.

The external EEC tariffs are shown in table V-28, together with the national tariffs existing prior to the establishment of EEC, for the principal products of interest to African countries. As already mentioned, these tariffs cannot be considered as

[74] *Ibid.*, table 3.

final, but may be reduced by up to one-fifth or possibly more, depending on the outcome of the 1960-1961 GATT negotiations. Nor can anything definite be said about the exact length of the transition period preceding the full implementation of the EEC tariff régime and the position of associated African countries during this period. The decision taken in May 1960 to accelerate implementation of the Treaty, may be followed by similar steps in the future. The consequences for African trade may, on the other hand, be delayed if steps similar to those taken in 1959 to extend reductions in internal tariffs to all GATT members were to accompany future adjustments in internal tariffs.

It can be seen from table V-28 that oilseeds and kernels, textile fibres and most metals — all commodities which are fairly important in African exports — are to be admitted duty-free into the EEC market. The main impact of the external tariff established for manganese, aluminium and cocoa products lies in the future, since these commodities are not, as yet, exported in significant quantities by African countries. The same is true of tea, and, the Federation of Rhodesia and Nyasaland apart, to a lesser extent also of tobacco. Africa accounts for a substantial proportion of world exports of the remaining commodities shown in table V-28 ranging from one-fifth or more in coffee and citrus to from one-half to two-thirds in the cases of cocoa, tropical wood, groundnut oil, palm oil and palm kernel oil.[75] As can be seen from table V-29, Africa depends heavily on the EEC market for such exports. This dependence is marked among the African countries associated with the EEC; of the commodities mentioned above it is, in fact, only in the case of palm kernel oil and tropical wood that the EEC takes less than two-thirds of their total exports. The EEC is also an important market for other African products, such as tropical woods, cocoa and coffee.

[75] For detailed data on the statistical position of African production and exports see *International Action for Commodity Stabilization and the role of Africa* (E/CN.14/68).

Table V-29[76]

The Importance of EEC Countries and of Africa in Trade of Selected Commodities
(Percentages)

	Share of Africa in world exports	Share of EEC			Share in EEC imports of		Share of commodities specified in global exports of	
		In world imports	In total exports of					
			Associated Africa	Non-Associated Africa	Associated Africa	Non-Associated Africa	Associated Africa	Non-Associated Africa
Coffee	22	23	54	24	29	8	19	14
Cocoa	70	35	73	40	33	42	5	14
Groundnut oil ...	64	60	85		62	3	4	
Palm kernel oil.	73	38	29	10[a]	56	0	1	4[a]
Palm oil	64	41	78		61	9	5	
Bananas	12	22	73	0	26	0	2	1
Tropical woods .	..	..	73	36	35	18	2	3
Tobacco	11	24	86	..	3	4	1	..
Tea	5	3	4	..	0.4	2	0.1	..

Source: Economic Commission for Africa.
Note: The shares given above are orders of magnitude, generally referring to the 1956-58 period. The first six columns have been calculated from quantities, the last two from values. "Non-associated Africa" excludes North African countries (except Sudan), the Federation of Rhodesia and Nyasaland, the Union of South Africa and the islands adjacent to Africa.
[a] All vegetable oils.

The position regarding sugar, citrus fruits and other temperate-zone agricultural commodities cannot be analysed adequately at present since the details of the EEC common agricultural policy which will be the determining factor for these commodities are not as yet known. There is every reason to expect, however, that such policy will be directed towards a higher degree of self-sufficiency in the EEC market and that important consequences may ensue for the exports of temperate-zone agricultural commodities—notable grains and wine—by the North African countries depending greatly on such exports.

Recent changes in EEC trade patterns

Between 1957 and 1959 inter-EEC imports rose from 28.2 to 33.3 per cent of the Community's total imports and from 42.3 to 48.8 per cent of its imports from all the industrialized countries. Over the same period, the share of African countries associated with the EEC in imports by the Community from non-industrialized countries as a whole fell slightly, whereas there was a rise in the share in such imports of the remaining African countries and territories as a group. It should be noted, however, that these percentages are affected by the devaluation of the French franc zone currencies in 1958, which decreased the dollar value of French imports from overseas associated countries, without significantly increasing the latter's exports to other EEC countries. It is particularly in the markets of the Netherlands, Italy and the Federal Republic of Germany that the non-associated African countries did better in terms of the dollar value of exports than the associated African countries as can be seen from the data in the table on p. 184 relating to imports into EEC countries in 1957 and 1959 (millions of dollars and percentages).

Available data on the dollar value of trade in individual commodities suggest that the EEC associates in Africa have not fared better in the EEC market recently than have other African countries. In cocoa, there has been a clear shift away from the former to the latter group of exporters, particularly in the Netherlands and Italian markets; and the community as a group took a bigger share of its total cocoa imports from non-associated Africa in 1959 than in 1957 (50 per cent as compared with 45 per cent). In coffee, associated African countries increased their share in the Italian, French and Benelux markets. Except in the Benelux area, however, these shifts in imports have thus far been at the expense of Latin America rather than of the non-associated African countries, and there has been little change in the relative position of the two groups of African coffee producers in the EEC market in recent years. Nor has the general pattern of trade changed much in tobacco or bananas. Bananas are the only commodity in which the associated countries in Africa have made some advance in the West German market.

Since the Treaty of Rome has only been in operation for a limited period, the developments described above cannot be considered as a suitable guide to the future of such trade. The evaluation of the impact of the EEC on African trade must therefore still be based upon general considerations regarding the modifications which are proposed in the tariff régimes of the EEC countries.

[76] *Ibid.*, table 4.

		Value of imports		Imports from	
		Total	From non-industrialized countries[a]	EEC associated African countries	Other African countries
		(Million dollars)		(As percentage of imports from non-industrialized[a] countries)	
Belgium-Luxembourg ...	1957	3,432	913	21.6	13.0
	1959	3,445	905	23.1	13.2
France	1957	6,170	3,299	28.2	15.1
	1959	5,087	2,718	31.0	14.3
Germany Fed. Rep. of ..	1957	7,549	2,638	3.5	13.9
	1959	8,477	2,832	3.4	15.2
Italy	1957	3,674	1,495	3.6	13.4
	1959	3,347	1,385	4.8	15.8
Netherlands	1957	4,105	1,152	3.0	10.2
	1959	3,939	1,116	4.0	14.0
Total EEC	1957	24,930	9,497	14.1	13.7
	1959	24,295	8,957	14.0	14.7

[a] Total less OEEC countries, North America and Japan.
Sources: 1957: *Direction of International Trade*, Vol. X, No. 8. 1959: OEEC. Trade by commodities Series C, Vol. II, 1959.

The combined effect on the pattern of EEC imports of the various relevant factors is difficult to assess. There is no reason to expect that the EEC tariff régime will have important consequences for consumer prices and consumption in the EEC market. For none of the commodities prominent in current exports of countries associated with EEC and likely to be affected by the tariff régime (rather than by arrangements made in connexion with the common agricultural policy) does the external EEC tariff exceed 20 per cent. In most of these countries, national tariffs are already levied on these commodities, but even in the cases where the national tariff was formerly nil or suspended it is unlikely that the EEC tariff will be reflected in any important change in consumer prices.

As regards the position of African producers, substantial preferences of a tariff and non-tariff nature were already enjoyed in the past in one or another of the EEC countries by all the African countries associated with the EEC other than the Congo (Leopoldville) and Ruanda Urundi: and these preferences applied to most of their principal export commodities other than cocoa. The exports of these countries have been developed under heavy protection in the markets of the former metropolitan power concerned and have not in the past been in a position to compete elsewhere in the EEC market. The preferences accorded under the EEC tariff régime may not be sufficient to offset the effect on producers of any gradual abolition of the special arrangements operated in their favour by France and Italy. In that case the over-all effect of the changes brought about by EEC would not be to provide any additional stimulus to an expansion of production in the associated countries; these changes might, on balance, benefit the non-associated countries as well as the Congo (Leopoldville) and Ruanda-Urundi.

The role played in the consumption by EEC countries of certain varieties and types of agricultural commodities which cannot easily be grown on a considerable scale in African countries associated with EEC may not reflect a basic difference in consumer tastes so much as the varying incidence of taxation in these countries and differences in availability. Shifts in consumption in favour of the varieties which the associated countries are in a position to supply may therefore occur, given the necessary modifications in taxation and inducements to importers to turn to new sources of supply.

The problem of the cultivation of special varieties and types of tropical crops not presently grown on an extensive scale in associated African countries may possibly be overcome with adequate investment and the extensive adoption of new techniques of soil and plant treatment, but the process will needs require considerable time. Difficulties in effecting rapid increases in the production of traditional crops in the African countries associated with EEC and the gradual implementation of the provisions of the Treaty of Rome will help to prevent any large and immediate disturbances to existing trade patterns. On the other hand, the price margin needed for EEC importers to shift their purchases of given varieties and qualities from one source to another may be very small, and possibly no higher than that provided in the early stages of implementation of the tariff provisions of the Rome Treaty.

Some trade diversion may therefore be expected even in the short run. To the extent that such diversion involved merely a shift in exports of the associated countries away from third markets to the EEC market, non-associated suppliers in Africa may be adversely affected chiefly through a decline in prices, while total quantities may not change much since losses suffered in the latter market could be largely compensated by gains in the former. Their position would clearly be more serious if the associated countries were able to increase their share in the EEC market while maintaining their exports to other markets. The probable substantial increase in coffee production in associated countries in the near future may give rise to a situation of this type.

In the long run, it would appear reasonable to expect that the basic objective of the EEC tariffs for tropical commodities —to enable the associated countries to increase their share in the EEC market — will be realized. Trade diversion would of course be checked if duty-free or duty-reduced quotas were to be established or retained, or arrangements with similar effects were to be instituted in response to influential commercial interests in EEC member countries which may be anxious to maintain imports from third countries providing traditional markets for their industrial exports.

It should be stressed that the analysis shown above has been based largely on the effects of the EEC tariff régime, without taking into account the market growth within the Community that may result from the general economic development of the area as a result of other aspects of the Treaty of Rome.

(4) The position of individual African countries[77]

The effects of EEC, even if they cannot be assessed with precision and certainty at this stage, are bound to differ considerably from one country to another. These differences do not depend simply upon whether particular countries are associated with the EEC or not, but also result from other factors.

It will be seen from table V-30 below that the countries associated with EEC under the Treaty of Rome or having special links with one of the EEC countries are also the countries recording the largest shares of exports to the Community in the period 1955-1958.[78] These exports were, however, heavily concentrated on the European country with which the African country or territory concerned had special links.[79]

[77] ECA, *op. cit.*, paras. 115-121.
[78] It must, however, be stressed, that the figures shown include re-exports.
[79] The concentration would be even greater than shown in table V-31 if exports to the whole franc area were taken into account and not only exports to France.

Table V-30

Trade of African Countries with the European Economic Community[80]

(Percentages, 1955-1958 average)

	Share of EEC in exports[a]	*Share of EEC in imports*[a]	*Balance of trade with EEC*[a b]
Mozambique	11	20	—201
Federation of Rhodesia and Nyasaland	14	7	+116
Liberia	16	20	+10
United Arab Republic (Egypt)	17	30	—131
Sierra Leone	18	13	— 15
Ethiopia	22	33	— 54
Nigeria	24	18	+ 17
Sudan	27	17	+ 52
British East Africa:	24	17	+ 31
Tanganyika	27	17	+ 99
Kenya	28	17	— 52
Uganda	21	18	+173
Angola	28	20	+ 41
Ghana	30	19	+ 71
Gambia[c]	50	9	+310
Libya	52	46	—334
Malagasy Republic	64	77	+ 76
Morocco	67	60	— 18
Congo and Ruanda-Urundi	69	54	+ 52
Tunisia	71	79	— 50
Former French West Africa	75	74	— 20
Guinea[d]	73	79	—189
Ivory Coast[d]	67	77	+ 72
Senegal, Mali and Mauritania[e]	84	71	— 40
Somalia	77	49	+ 13
Cameroons	78	71	— 2
Togoland	78	53	+ 35
Former French Equatorial Africa	79	68	— 29

Source: Economic Commission for Africa.

[a] Excluding special categories.

[b] Export surplus as percentage of imports (+) or import surplus as percentage of exports (—).

[c] 1955-57.

[d] 1958.

[e] 1957.

As will be see from table V-31, the trade of the associated countries and territories with members of EEC other than the metropolitan power was relatively smaller than that of a number of countries not associated with the EEC. Among the latter, only the Federation of Rhodesia and Nyasaland, Liberia, Mozambique and, in the most recent years, the UAR (Egypt) consider EEC as a market of relatively secondary importance. On the other hand, the Federal Republic of Germany, Italy and the Netherlands have much larger markets in a number of the nonassociated countries such as the United Arab Republic, Ghana, Morocco and Nigeria, as well as in the Republic of South Africa. In addition, the demand of the non-associated countries for imports from the Community have recently been rising more rapidly than the corresponding demand of the associated countries, other than the Republic of the Congo (Leopoldville). These trends, however, are not necessarily relevant for the future; the very fact that the Benelux countries, the Federal Republic of Germany and Italy account for only a very small share of exports to the former French dependencies means that there is considerable scope for expansion once the area of preference is broadened and this, in turn, might provide an inducement to avoid any erosion of the preferences granted under the Treaty of Rome. It should, however, be borne in mind that within EEC the most dynamic market is the Federal Republic of Germany and that the most important export markets in the under-

[80] *Ibid.*, table 5.

Table V-31

Share of EEC in exports of selected African countries and territories[81]

(Percentages, 1955-58 average)[a]

	Total	*Total, excluding metropolitan country*[b]
Countries having special links with EEC countries		
Former French Equatorial Africa	79	15.1
Somalia	77	0.0
Former French West Africa	75	7.8
Tunisia	71	12.5
Congo and Ruanda-Urundi	69	17.2
Morocco	67	16.8
Malagasy Republic	64	3.7

	Total	*Total excluding:*		
		Belgium	*France*	*Italy*
Countries having special links with EEC countries				
Ghana	30	29.3	29.3	27.0
Angola	28	24.0	24.7	27.3
Kenya	28	25.6	25.6	24.5
Nigeria	24	22.6	21.3	18.9
Uganda	21	19.6	19.6	16.6

Source: Economic Commission for Africa.

[a] See footnote in table V-30.

[b] I.e., excluding the country with which the African country or territory has or had special links: Belgium for the Belgian Congo, Italy for Somalia and France for all others.

developed areas for that country are in Latin America and Asia.[82]

The over-all geographic distribution of trade of the various African countries and territories is, however, a very deficient indicator of their respective position vis-à-vis EEC, since both the common external tariff and the presently envisaged common agricultural policy of EEC apply only to a relatively limited range of products. Since, as mentioned above, most industrial raw materials will enter EEC duty-free and without quantitative restrictions, the immediate impact of the Common Market is likely to be insignificant or even nil for countries specializing mainly or entirely in such products. This is the case for the United Arab Republic, Liberia, Sudan and, to a lesser extent, the Federation of Rhodesia and Nyasaland and the Republic of South Africa.

ii. The European Free Trade Association[83]

The establishment of the European Free Trade Association (EFTA) as envisaged at the time of writing does not appear to have any immediate direct consequences of major importance for African trade. In contrast to the Treaty of Rome, the Stockholm Convention instituting EFTA provides for no association of African or other overseas countries or territories and no preferential treatment in the field of tariffs, investment or marketing arrangements in respect of any such area, over and above that which already exists. Secondly, the Stockholm Convention calls for no changes in tariffs borne by African countries or any other third countries in the markets of the seven member States. Thirdly, trade barriers within EFTA are to be abolished only for industrial goods. Some special agreements apart,[84] the only obligation undertaken by the EFTA countries in the agricultural field is consultation on ways and means to expand trade in agricultural products.

[81] *Ibid.*, table 6.

[82] However, only a few Asian exporters compete directly with African countries in the West German market.

[83] *Ibid.*, paras. 52-54. It must be stressed that the report on which this sub-section is based was written before negotiations regarding United Kingdom membership in EEC began.

[84] Such agreements, which have, for example, been signed by Denmark with the United Kingdom, Austria, Switzerland and Sweden, set out the measures to be taken, including the elimination of customs duties in some cases, to facilitate the expansion of trade in agricultural products.

While the direct and immediate impact of EFTA upon African countries in therefore likely to be small, there is no doubt that some adverse consequences may ensue indirectly and in the longer term. The fear has been expressed in GATT that the establishment of EFTA might lead to an extension of the area of effectiveness of the preferences prevailing within the British Commonwealth and between Portugal and its overseas territories. The members of EFTA considered that any such development was likely to be of small consequence, especially since they all imported a wide range of raw materials free of duty. An indirect extension of preferences might, however, occur, though this must arise inevitably in any free trade area or customs union which includes a country granting preferences to territories outside that area or union.[85]

The member countries have also agreed that EFTA may have an adverse effect on the industries of third countries, but that this likewise is an unavoidable result of any customs union or free-trade area. The complexity of certain provisions in the Stockholm Convention makes it difficult at present to determine to what extent EFTA may tend to discourage the import of processed primary products in favour of the raw products. However, the EFTA countries have given an assurance to GATT that it is their intention to administer the rules on as liberal a basis as possible.[86]

iii. The General Agreement on Tariffs and Trade (GATT)

While current African membership of GATT is currently limited to Ghana, the Federation of Rhodesia and Nyasaland, Tunisia (provisional accession) and the Union of South Africa, attention may be drawn here to the publication *Information Paper on the Procedures for Accession to the General Agreement on Tariffs and Trade and the Advantages for Less Developed Countries,*[87] prepared for the Economic Commission for Africa by the Executive Secretary to the Contracting Parties of GATT.

g. Financing of economic development by international agencies

63. The subject of international co-operation in economic development is not only one of very considerable scope, but existing United Nations documentation thereon is most extensive.[88] It is therefore felt that a review of the subject in the context of the present study should be confined to certain specific aspects which have immediate bearing on the question of permanent sovereignty over natural resources. The aspects to be dealt with here will thus be limited to actual financial development assistance provided by international agencies—practice, in other words, assistance provided by the International Bank for Reconstruction and Development. In adopting a highly selective approach, it is realized that certain areas of great importance must be passed over in the discussion; on the other hand, while technical assistance and help in the creation of the social infrastructure which is essential to economic development are of the greatest importance, and while they may aid in the achievement of sovereignty over natural resources, they are ancillary to the actual resources exploitation aspect of the question.

64. The information set forth here, then, is confined to the provision of loan capital for economic development by the International Bank.

65. The Bank's Statement of Loans as of 30 September 1961 included the following development loans to African countries and territories (other than the Union of South Africa).

Country or Territory *Purpose*	*Amount of loan* *(Millions of U.S. dollars)*
Algeria	
Electricity, gas	10.0
Congo (Leopoldville)	
Development equipment	40.0
Transport	40.0
Agriculture	7.0
Transport	28.0
Transport (OTRACO)	5.0
Ethiopia	
Roads	5.0
Industry	2.0
Communications	1.5
Roads	15.0
Gabon	
Industry (COMILOG)	35.0
Kenya	
Agriculture	5.6
Mauritania	
Mining (MIFERMA)	66.0
Nigeria	
Railways	28.0
Northern Rhodesia	
Railways	14.0
Rhodesia and Nyasaland, Federation of	
Railways	19.0
Power Board	80.0
Agriculture	5.6
Ruanda-Urundi	
Transport	4.8
Southern Rhodesia	
Power	28.0
Sudan	
Transport	39.0
Irrigation	15.5
Irrigation	19.5
Uganda	
Electric power	8.4
United Arab Republic	
Suez Canal Authority	56.5
East Africa High Commission	
Railways	24.0

2. Latin America

66. If the material on the questions discussed in the present chapter with respect to Latin America is briefer than that presented in the preceding section on Africa, a principal reason may be ascribed to the fact that United Nations efforts—as reflected in published documentation—in the latter area have evolved from fact-finding to a further stage of development efforts. As a result, the great bulk of recent material other than the annual *Economic Survey of Latin America* is concerned with the actual, immediate and—from the point

[85] See *Report of the Working Party on the European Free Trade Association*, GATT document L/1235, Geneva, 4 June 1960.

[86] GATT, *op. cit.*, p. 3. It was also suggested at the GATT meetings that the need under the original rules for EFTA manufacturers to keep two inventories, one for materials qualifying for area treatment and the other for materials which do not qualify, might induce them, for reasons of convenience, storage space and so on, to dispense with the second category of materials. This could affect purchases of materials from third countries, not only for the production of goods to be exported to other member States but also of those to be exported to the outside world. It should, however, be noted that most of the primary products of direct interest to African countries (coffee, cocoa beans, spices, unmanufactured tobacco, oilseeds, hides and skins, wood, cotton, wool and most non-processed metals and minerals) are included in Schedule III of the Convention, and, as such, circulate freely within EFTA, irrespective of their origin.

[87] E/CN.14/61, 30 Sept. 1960.

[88] Particular attention is drawn to the Report of the Secretary-General entitled *Economic Development of Under-developed Countries. International Economic Assistance to the Less Developed Countries* (E/3395, 4 July 1960), which constitutes an exhaustive and up-to-date study of the subject, and to the Note by the Secretary-General entitled *Opportunities for International Co-operation on Behalf of Former Trust Territories and Other Newly Independent States* (E/3338, 23 March 1960).

of view of this study—narrow questions of development planning and related technical aspects.

67. With a few very minor exceptions, all of Latin and Central America is composed of sovereign States, and virtually all of these have been independent for well over 100 to 150 years. They have thus had at their disposal the full range of mechanisms of control over wealth and resources dealt with elsewhere in this study. On the other hand, however, the region has attracted a very substantial influx of foreign capital from the early days of its independent political evolution which, chronologically, coincided with the early days of the industrial revolution. Foreign interest in the region initially focussed on it as a potential market and rapidly developed in the direction of its potential as a supplier of commodities—first, agricultural, and then, mineral. Ancillary industries, transport and public utility services followed as sectors for foreign investment.

68. The present account is based largely on the *Economic Survey of Latin America* for the years: 1957, 1958, 1959 and 1960;[89] the publication entitled *Foreign Private Investment in the Latin American Free-Trade Area*[90] has been drawn upon for certain specific tables on the movement of profits and dividends in selected countries.

a. Movements of private capital

69. Quantitative information on various aspects of movements of private capital is set forth in tables V-32 to 35 below.

Table V-32

Latin America: Net movements of foreign private capital[91]

(Millions of dollars)

	1957	*1958*	*1959*
Argentina	61	—12	55
Bolivia	10	15	19
Brazil	352	231	212
Chile	49	42	59
Colombia	—79	—13	20
Costa Rica	3	0	7
Cuba	49	—13	...
Dominican Republic	11	33	— 9
Ecuador	3	4	3
El Salvador	— 4	1	— 6
Guatemala	17	18	24
Haiti	—13	— 4	— 8
Honduras	1	— 6	— 4
Mexico	143	86	117
Nicaragua	9	3	3
Panama	9	11	12
Paraguay	0	6	— 2
Peru	64	57	24
Uruguay	23	11	—10
TOTAL	708	470	516
Venezuela	1,005	27	136
TOTAL	1,713	497	652

[89] United Nations publications, Sales Nos.: 58.II.G.1 (1957 Survey); 59.II.G.1 (1958 Survey); E/CN.12/541 (1959 Survey, preliminary edition); E/CN.12/565 (1960 Survey, preliminary edition). The latter two Surveys had not appeared in printed form at the time this study entered the production process.

[90] United Nations publication, Sales No. 60.II.G.5. This publication contains not only a detailed analysis of the topic of its title, but also includes the findings and conclusions of its authors, a consultant group jointly organized by the Economic Commission for Latin America and the Organization of American States.

[91] *Economic Survey of Latin America*, 1960, table III-8, p. 76.

Table V-33

Latin America: Gross outflow of capital and its major components, 1947-57[92]

(Millions of dollars)

Year	*Long-term private capital[a]*	*Amortization and repayment of official debts*	*Net short-term private capital outflow[b]*	*Total gross outflow*
1947	18	93	—	231[c]
1948	24	96	9	838[d]
1949	5	84	87	177
1950	29	165	—	194
1951	15	105	—	120
1952	15	85	—	100
1953	21	180	139	340
1954	47	253	70	370
1955	32	318	—	350
1956	40	450	—	490
1957	—	—	—	(580)

Note: Statistics of capital movements are defective, especially those relating to short-term private capital.

[a] Including mainly the purchase of United States securities by Latin Americans.

[b] See table 51, note c.

[c] Including 120 million dollars for purchases of foreign-owned investments in the area.

[d] Including 670 million dollars for purchases of foreign-owned investments in the area.

Table V-34

Latin America: Distribution by sources of net inflow of capital excluding direct investment in the petroleum industry[93]

(Millions of dollars)

Source	*1955*	*1956*	*1957*
United States	550	390	635
Western Europe	75	80	330
International Bank	65	80	45
TOTAL[a]	690	550	1,010

[a] Including inflow from areas other than those shown.

Table V-35

Latin America: United States investment by industries (excluding re-investment) 1954-57[94]

(Millions of dollars)

Industry	*1954*	*1955*	*1956*	*1957*
Petroleum				
Total for Latin America	—22[a]	49	365	580
Venezuela	(7)	(24)	(333)	(480)
Mining and smelting	17	6	50	75
Manufacturing	24	60	76	185
Other	68	26	121	160
TOTAL	88	141[b]	612	1,000

[a] Local profits exceeded investment and made some outward remittances of capital possible.

[b] The total figure for 1955 has been revised to 193 million dollars in the August 1957 *Survey of Current Business*. New figures on investment by industry are not yet available.

70. Most of the high net inflow of foreign private capital into Latin America in 1957 went to Venezuela as a result of the new petroleum concessions which it had granted to foreign capital in that year. The suspen-

[92] *Economic Survey of Latin America*, 1957, table 52, p. 52.

[93] *Ibid.*, table 60, p. 63.

[94] *Ibid.*, table 54, p. 53.

sion of investment in the Venezuelan petroleum industry in the next two years meant that the net inflow of foreign capital into that country came almost to a total standstill. This, together with the reduction in the net private capital entering Brazil, Mexico and Peru led to a sharp cut in Latin America's total net receipts. Moreover, although the movements of capital largely consisted of private direct investment, they also included—especially in certain countries such as Brazil—trade credit from foreign suppliers.

[95] *Ibid.*, pp. 74 and 77.

b. The outflow of long-term private capital[96]

If amortization payments, which are responsible for the bulk of the outflow on capital account, are excluded, the export of long-term capital from Latin America is at present relatively small. Shortly after the war, several large privately-owned assets, for example, the Argentine railways, were bought by Latin American republics, but since then such payments have become insignificant. Gross disinvestment by foreign individuals or corporations also appears to have been a good deal less important in the past few years than in 1952-54, no doubt for the same reasons that gross investment increased.

[96] *Ibid.*, p. 56.

c. Balance of payments

Table V-36

Latin America: Balance-of-payments situation and Compensatory Financing[97]
(Millions of dollars)

Country	Balance-of-payments situation			Compensatory financing: Gold and foreign exchange reserves			Compensatory financing: International Monetary Fund credits			Compensatory financing: Other compensatory credits		
	1958	1959	1960[a]	1958	1959	1960[a]	1958	1959	1960[a]	1958	1959	1960
Argentina	—244	25	37	—157	220	278	0	—40	—46	—87	—155	—195
Bolivia	—1	7	—5	1	6	—5	—2	1	0	0	0	...
Brazil	—253	—154	—199	—11	—27	—12	—38	20	—15	—204	—147	—172
Chile	—11	73	—26	13	71	—32	—11	6	6	—13	—4	...
Colombia	—62	8	—30	15	52	—49	—5	21	19	—72	—65	...
Costa Rica	8	—7	1	8	—7	1	0	0	0	0	0	...
Cuba	—68	—116	29	—68	—116	29	0	0	0	0	0	...
Dominican Republic	—1	—6	—2	—1	—7	7	0	1	—9	0	0	...
Ecuador	1	6	4	—4	5	4	5	1	0	0	0	...
El Salvador	—2	—10	1	—2	0	—4	0	—4	5	0	—6	...
Guatemala	—26	—8	6	—26	—8	6	0	0	0	0	0	...
Haiti	—6	0	0	—1	1	1	—2	—1	—1	—3	0	...
Honduras	—4	0	3	—8	4	2	4	—4	1	0	0	...
Mexico	—81	64	—45	— 81	41	—45	0	23	0	0	0	...
Nicaragua	—4	4	—1	—3	1	—1	2	3	0	—3	0	...
Panama	19	—8	...	19	—8	...	0	0	...	0	0	...
Paraguay	0	—2	—4	1	—4	—4	—1	2	0	0	0	...
Peru	—13	16	7	—3	21	6	—10	11	1	0	—16	...
Uruguay	—8	—23	7	—3	7	7	0	0	0	—5	—30	...
TOTAL	—756	—131	—217	—311	252	189	—58	40	—39	—387	—423	—367
Venezuela	—396	—349	—126	—396	—349	—126	0	0	0	0	0	...
GRAND TOTAL	—1,152	—480	—343	—707	—97	63	—58	40	—39	—387	—423	—367

[a] Provisional figures for the first nine months of the year.

d. Gross domestic product

Table V-37

Latin America: Total and per capita gross domestic product, indices in 1959 and annual percentage variation, 1955-59[98] [a]

Country	Total product: 1959 index (1955=100)	Total product: Annual percentage variation with respect to previous year					Per capita product: 1959 index (1955=100)	Per capita product: Annual percentage variation with respect to previous year				
		1955	1956	1957	1958	1959		1955	1956	1957	1958	1959
Argentina	102	5.3	—0.2	4.0	2.4	—4.5	94	3.2	—2.3	2.0	0.4	—6.3
Brazil	134	4.0	5.1	9.0	9.3	6.6	121	1.8	2.2	6.5	6.9	3.8
Chile[b]	112	1.4	0.5	3.6	3.2	...	103	—1.2	—1.5	1.6	0.9	1.5
Mexico	120	8.0	7.7	5.3	4.1	4.0	108	5.2	4.9	2.4	1.1	1.1
Venezuela	136	11.5	10.6	15.7	—0.1	6.2	121	8.2	7.3	12.2	—3.0	3.1
TOTAL: 5 COUNTRIES	*121*	*6.3*	*4.1*	*7.5*	*4.9*	*3.0*	*109*	*3.5*	*1.6*	*4.9*	*2.3*	*0.3*
Colombia	111	6.5	2.9	1.2	2.2	4.3	101	4.1	0.8	—1.6	—	1.6
Ecuador	117	2.6	3.7	5.1	2.7	4.5	104	—0.7	0.7	2.1	—	1.4
El Salvador	118	3.5	8.5	6.6	2.7	—1.9	104	—	5.0	3.6	—0.6	—5.2
Guatemala	131	11.3	12.7	6.4	6.0	2.8	116	7.4	9.7	3.1	3.0	—0.6
Peru	105	3.5	2.6	2.9	—0.4	0.7	97	1.9	0.6	0.6	—3.0	—1.3
TOTAL: 10 COUNTRIES	*120*	*6.2*	*4.1*	*6.9*	*4.5*	*3.0*	*108*	*3.5*	*1.4*	*4.3*	*1.9*	*0.3*
Other countries	113	3.7	5.6	7.5	—1.8	1.7	104	1.4	3.6	5.2	—4.1	—0.4
TOTAL: LATIN AMERICA	*119*	*5.9*	*4.2*	*6.9*	*3.8*	*2.9*	*108*	*3.6*	*1.8*	*4.1*	*1.3*	*0.3*

[a] The figures for 1959 should be considered very tentative.
[b] In the case of Chile, there are certain discrepancies—attributable to differences of method—which are being analysed.

[97] *Economic Survey of Latin America*, 1960, table III-11, p. 82.

[98] *Ibid.*, table II-1, p. 57.

Table V-38

Five Latin American countries: gross domestic product by selected sectors. Indices in 1959 and annual percentage variation, 1955-59[99] [a]

Country	Agriculture[b]	Mining[c]	Manufacturing industry	Construction	Total
I. *1959 indices* (1955=100)					
Argentina	99	134	92	107	102
Brazil	117	180	185	111	134
Chile	99	117	122	55	112
Mexico	118	105	124	125	120
Venezuela	125	132	146	130	136
TOTAL: 5 COUNTRIES	113	131	137	111	121
II. Annual percentage variation					
Argentina					
1955	3.8	3.4	9.1	4.4	5.3
1956	—1.9	4.1	—1.6	—4.7	—0.2
1957	1.7	4.5	3.5	18.6	4.0
1958	1.5	6.5	4.7	2.3	2.4
1959	—2.5	16.0	—13.5	—7.2	—4.5
Brazil					
1955	5.7	7.3	5.9	—8.4	4.0
1956	—1.4	11.2	14.4	—	5.1
1957	10.2	18.6	14.3	4.1	9.0
1958	1.1	18.7	22.1	4.2	9.3
1959	6.6	15.0	16.1	2.0	6.6
Chile					
1955	4.7	11.3	—1.9	—0.6	1.4
1956	2.8	3.4	0.7	—38.1	0.5
1957	—1.1	2.6	2.2	—23.0	3.6
1958	9.4	—2.8	4.4	0.7	3.2
1959	—10.8	14.0	13.3	20.2	...
Mexico					
1955	7.9		10.7	8.0	—8.0
1956	6.2		8.0	7.4	7.7
1957	6.7	6.5	4.7	11.7	5.3
1958	9.6	—2.0	3.0	—1.9	4.1
1959	1.0	2.2	6.5	6.3	4.0
Venezuela					
1955	4.8		15.4	19.4	11.5
1956	9.5		7.7	13.1	10.6
1957	4.0	13.5	13.4	17.9	15.7
1958	5.6	—5.5	8.7	—2.0	—0.1
1959	3.9	6.8	10.0	—	6.2
Total: 5 countries					
1955	5.5	13.9	7.8	3.0	6.3
1956	0.7	12.2	6.8	—1.4	4.1
1957	6.7	12.1	8.4	13.1	7.5
1958	3.5	—3.4	11.9	1.6	4.9
1959	2.4	7.5	5.7	—2.3	3.0

[a] The figures for 1959 should be considered very tentative.
[b] Including livestock and fisheries.
[c] Including petroleum.

e. PROFIT AND INTEREST REMITTANCES[100]

The net payments made by Latin America under this head are almost equal to gross payments. According to the data available, gross receipts were very small. During the past three years they did not exceed $20 to $30 million on the average and hardly represented 2 per cent of the gross outlay. The annual yield from Latin American investments in foreign countries, mainly securities, was almost certainly larger. But it seems that a high proportion of the dividends was added to the principal or used directly by the owners to pay for various expenditures abroad (travel, purchases, etc.).

As can be seen in table V-39, the gross outflow of exchange to finance remittances of profits and interest almost doubled between 1947 and 1957. The significance of this trend is clearly illustrated by the following fact: whereas remittances absorbed 10 per cent of export earnings in the immediate post-war period, this proportion reached 14 per cent during the years 1955-1957. It must also be stressed that, between 1947 and 1955, payments for financial services were on the average twice as much as the net inflow of capital. In this connexion a complete change took place in 1957, since capital receipts exceeded the transfers abroad of profits and interest. But this situation was entirely the result of an unusual expansion in the net inflow of capital and it is unlikely to continue in the near future.

The increase of approximately $660 million in remittances of profits and interest between 1947 and 1957 was due in the proportion of about 70 per cent to the rise in income transfers made by the foreign petroleum companies established in Venezuela. Venezuela received more foreign private capital during the past decade than any other Latin American republic,

[99] *Ibid., table* II-3, p. 61.
[100] *Economic Survey of Latin America, 1957,* pp. 66-67 and tables 61 and 62. A detailed review of this topic with data up to 1953 is contained in *Foreign Capital in Latin America* (United Nations publication, Sales No.: 54.II.G.4). Special reference is made to tables XXI-XXIII, p. 162, dealing with profits and the reinvestment of profits.

and its disbursement of foreign exchange in payment of dividends abroad now accounts for about 50 per cent of the total Latin American outlay under the head of remittances of profits and interest.

As a result of an active reinvestment policy and the high productivity of the petroleum wells, the net earnings of the United States petroleum producers in Venezuela grew steadily, and represented, in 1956, approximately 40 per cent of the book value of total United States investment in the Venezuelan petroleum industry.[101] For these reasons transfers of profits showed the considerable increase mentioned above. By contrast, it became progressively less necessary to resort to new capital, and the net inflow of funds from abroad declined, except in cases where extraordinary development expenses were incurred, for example, in purchasing concessions, as occurred in 1956 and 1957. Yet actual remittances of income in payment of dividends to shareholders did not decline in the last two years. On the contrary, they were increased somewhat due to the rise in the output and market price of petroleum products.

Although in order of magnitude they hold second place within the Latin American total, profits on capital invested in mining have so far been much smaller than those deriving from the petroleum industry (see table V-40). Transfers to the United States under this head amounted in 1956 to $120 million, no more than 13 per cent of the Latin American total. Likewise the financial yield in this sector was considerably less than in the petroleum industry. For example, the annual earnings recorded in 1956 represented approximately 8 per cent of the book value of total investment in Latin America. It is very likely that this rate, as well as the amount in absolute terms of the transfers abroad, fell in 1957 owing to the drop in world prices for many metals, especially copper. Just as in the case of the petroleum industry, remittances of profits from mining were concentrated in a few republics: Mexico, Peru and especially Chile. In Chile, remittances usually exceeded net capital receipts by a large amount. In 1957, remittances and receipts appear to have been approximately equal, because of smaller earnings and of the expansion in the investment made by the copper companies.

Table V-39

Latin America: Gross remittances of profits and interest[a]

(Millions of dollars)

	1947	1951	1955	1956[b]	1957[b]
Latin America, excluding Venezuela..	—390	—490	—500	—560	—595
Venezuela	—290	—450	—530	—690	—750
TOTAL, LATIN AMERICA	—680	—940	—1030	—1250	—1345

[a] Excluding reinvestment of profits.
[b] ECLA estimates.

Table V-40

Latin America: Remittances of income by United States companies, by industries, 1955-56

(Millions of dollars)

	1955	1956
All industries	680	840
Petroleum	438	530
Mining and smelting	103	120
Manufacturing	59	53
Other industries[a]	79	137

[a] Including agriculture and public utilities.

[101] It must, however, be emphasized that as a rule the book value is lower than the replacement value. The real rate of net profit is therefore correspondingly over-estimated. Apart from the United States companies, there are also European petroleum companies in Venezuela, including one very large one. Still, the United States corporations taken together are responsible for the great majority of output. Remittances made by those corporations in 1956 represented approximately 73 per cent of the total transfers by all foreign petroleum producers in Venezuela.

Foreign exchange outlays in respect of the transfer of profits accruing from investment in manufacturing are distributed more evenly among the individual countries of Latin America, and so far they have been of little importance to any of them. In Brazil and Mexico, whose payments were the largest within the area, they amounted during the past three years to no more than an annual average of 14 million dollars. The main reason was not the low financial yield of the activities concerned but the high rate of reinvestment. As was already pointed out, a great expansion in foreign manufacturing industry in Latin America occurred in recent years, which was financed not only by means of fresh funds received from outside but also by reinvesting a large proportion of earnings.

Before the Second World War, foreign investment in public utilities — especially railways and power — accounted for rather a large part of the Latin American total. Remittances of profits under this head were therefore relatively small. Since then the repurchase of railways in Argentina, together with special circumstances such as inflationary pressures and the application of a rather restrictive tariff policy in various Latin American republics, have changed the picture considerably. In Latin America, the share of direct foreign investment in public utilities has tended to shrink, and in several countries the rate of earnings in the economic sectors concerned has become smaller than in any other industry. Besides, in those republics where the annual yield did not decline, reinvestment was sizeable in the past two years, so that the transfer of profits abroad did not reach high figures. Thus in Cuba, where investments in public utilities are larger than in any other Latin American republic, remittances by the foreign companies concerned did not exceed 20 million dollars in 1956, a figure which represents a little less than 6 per cent of the book value of the total investment.

The great majority of the profits from direct foreign investments in Latin America was transferred to the United States and almost all the rest to Western Europe. There are two reasons for this uneven distribution. Firstly, United States direct investments were and continue to be much larger than those of other capital-exporting countries. Secondly, private investment by Western Europe in Latin America is concentrated mainly in those industries (manufacturing and public utilities) in which remittances of profits were relatively small during the past few years due to the various circumstances already mentioned.

As regards the payment of interest, the picture is rather different from that of the transfer of profits. A higher proportion of those payments went to Western Europe, although here too the United States received the biggest share. As a result of the increasing amount of credit granted to Latin America, remittances of interest have grown steadily in the recent past and, in 1957, accounted for about 20 to 25 per cent of the total service of interest and profits on the external debt. Some outlay has still to be made for the servicing of old bond debts, but the heaviest expenditure arises from the loans obtained during the last eight years. The rate of interest of long-term official loans rose somewhat in 1956 and 1957. As an average it has now reached 5 per cent as against 4.25 and 4.5 per cent some years ago. The rate of interest for medium-term equipment credit is a little higher, varying between 5 and 6 per cent, in spite of the shorter period of redemption, probably because such credit does not always benefit from special guarantees and financing from official sources. On the other hand, the loans funding trade debts usually have a low yield — for example, no more than 3.5 per cent in the case of the 10-year consolidation credit granted by some European countries to Argentina — doubtless reflecting a general recognition of the limited capacity of countries in such difficulties to pay high rates of interest.

Brazil is the Latin American country which pays the largest amount of interest abroad annually; it reached about 75 million dollars in 1957, i.e., approximately 28 per cent of the total for Latin America. The Brazilian foreign debt, excluding direct investment and including recent loans for development and balace-of-payments purposes together with old bond issues, totalled about 1,700 to 1,800 million dollars at the beginning of 1957. Therefore its average yield in the last year was 4.4 per cent. The corresponding outlay of foreign exchange absorbed 7 per cent of the capacity to import.

In Argentina, remittances of interest were half those of Brazil. In 1957 they amounted to 35 million dollars, or 3 per cent of the total supply of foreign exchange. In this country, however, there is an unfavourable aspect, quite unrelated to the relative or absolute magnitude of the expenditure involved: for the time being, payments of interest are chiefly for the servicing of refunding loans. In this respect, the experience of Mexico, Peru and other Latin American republics is quite different; there, most transfers of interest derive from medium-term and long-term development loans.

Even if amortization annuities are included, there is little doubt that the servicing of loans resulted in smaller loss of foreign exchange in the long run than the transfer of profits from direct investment (average figures only being taken into account here). Under present circumstances, the total interest and amortization on foreign loans range during the period of reimbursement from a maximum of 15 per cent to a minimum of 10.5 per cent annually, over a term of 10 years. During the period immediately following the placing of a direct investment, the annual yield on it is likely to be lower. Moreover, there are cases in which direct private investment is unsuccessful, and the result is a net loss for the private investor. But the experience of Latin America shows that assets and earnings usually grow at a swift pace and the yearly remittances of profits tend to exceed the original amount of invested capital in some cases. Again, there is no time-limit to the process of self-expansion of a direct investment, since this kind of financial venture is usually of indefinite or very long duration. Another fact which is closely linked to those mentioned above, is that remittances of profits tend to be larger than the amount of fresh capital received from outside.

Data for the three most recent years are shown in table V-41 below in terms of foreign investment yield.

71. An analytical account of the topic of profit and interest remittances with respect to selected countries of Latin America, with supporting statistical material, is offered by the Report of the Consultant Group jointly appointed by ECLA and the Organization of American States[103] in the terms set forth below.

The belief that the remittance of profits and dividends on direct capital investment constitutes an excessive drain on a country's economy has undoubtedly influenced the granting of priority exchange and guarantees in the case of suppliers' credits and other lending operations and thus indirectly promoted loan versus capital investment. The validity of this belief is open to question. In the first place, the importance of profit and dividend remittances in often exaggerated because of the lack of statistical data, the usual form of balance-of-payments statement lumping together all forms of investment income.[104] In those countries where profit and dividend remit-

Table V-41

Latin America: Net balances in the foreign investment yield account[102]

(Millions of dollars)

	1957	1958	1959[a]
Argentina	—15.8	—31.0	—40.0
Brazil	—128.0	—107.0	—120.0
Chile	—56.8	—64.1	—70.0
Colombia	—25.9	—62.2	—65.0
Cuba	—65.6	—47.9	—50.0
Ecuador	—21.6	—21.8	—26.0
Mexico	—134.4	—141.2	—150.0
Peru	—33.1	—32.3	—30.0
Venezuela	—1,010.3	—633.6	—786.0
Other countries	—52.3	—52.1	—50.0
TOTAL	—1,543.8	—1,193.2	—1,407.0

[a] Provisional estimates based on direct information.

[102] *Economic Survey of Latin America, 1959*, table I-5, p. 38.

[103] *Foreign Private Investments in the Latin American Free-Trade Area*, United Nations publication, Sales No.: 60.II.G.5, pp. 11-14.

[104] Some exaggerated ideas as to the level of earnings abroad from investment in under-developed countries are current. High rates of return are undoubtedly present in export industries (mining, for instance), particularly when raw material prices are favourable and for some industries producing for the domestic market during periods of abnormal inflationary disequilibrium not compensated by exchange devaluation. In most instances, however, the high rate of profit reinvestment that usually takes place in fast growing under-developed countries substantially reduces income actually remitted abroad. J. F. Rippy, in his book *British Investment in Latin America, 1822-1949* (University of Minnesota Press, Minneapolis, 1959), states that the average income received by United Kingdom investors in manufacturing industries in relation to the par value of stock on direct investment rarely exceeded 5 or 6 per cent during that one-hundred-year plus period. Average return on direct investment in Mexico (compared with its book value) also average about 7 per cent during the twenty-year period 1939-58.

Table V-42[105]

Brazil and Mexico: Profit and dividends as compared with total investment income remittances in the balance of payments, 1949-58

(Millions of dollars)

	Investment income				*Profits and dividends*				*Profits actually remitted as percentage of income remittances*	
	Brazil		*Mexico*		*Brazil*		*Mexico*			
Year	*Total*	*Actually remitted*	*Total*	*Actually remitted*	*Total*	*Actually remitted*	*Total*	*Actually remitted*	*Brazil*	*Mexico*
1949 ..	101	62	54	34	80	41	51	32	66.1	94.1
1950 ..	110	74	77	62	83	47	58	43	63.5	69.4
1951 ..	157	90	111	84	137	70	88	61	77.8	72.6
1952 ..	121	36	117	82	100	15	83	48	41.7	58.5
1953 ..	165	127	94	58	132	94	60	24	74.0	41.4
1954 ..	137	97	86	62	93	53	51	27	54.6	43.5
1955 ..	114	78	93	72	80	44	37	18	56.4	25.0
1956 ..	141	91	135	103	74	24	86	54	26.4	52.4
1957 ..	128	93	134	105	61	26	77	48	28.0	45.7
1958[a] .	...	85	144	118	(71)	31	73	47	36.5	39.8
1949-58	(1 299)	833	1 045	780	(911)	445	664	402	53.4	51.5

Sources: Department of Currency and Credit (*Superintendencia da Moeda e Crédito*). *Boletín*, Rio de Janeiro, August 1959, Vol. V, No. 8, p. 78; *Banco de México*. Department of Economic Studies (*Departamento de Estudios Económicos*).

[a] Provisional.

[105] *Ibid.*, table 5.

tances are shown separatly from other forms of investment income,[106] the importance of the former is brought into better focus (see table V-42). In Brazil, for instance, where total direct foreign investments had an estimated book value of 3 billion dollars in 1956, profit and dividend remittances during the ten-year period 1949-58 (445 million dollars) represented only 53 per cent of total investment income remittances (833 million dollars) and less than two per cent of total current exchange proceeds, while in Mexico, with an estimated foreign direct investment total of 1.1 billion dollars in 1956, profit and dividend remittances for the same ten-year period (402 million dollars) represent 52 per cent of total remittances of investment income (780 million dollars).

[106] Royalties and payments for designs, patents and technical assistance, as well as specialized licensing and management or consultant contracts, tend to be important items in investment remittances in under-developed countries, since these are the principal means of securing know-how and increasing the average productivity of invested capital, foreign and domestic alike. Also, interest on loans and particularly on balance-of-payments credits in recent years have grown greatly in importance.

Table V-43[107]

Brazil: Direct investment flow and its income in the balance of payments, 1950-58

(Millions of dollars)

Year	Direct investment inflow[a]			Profits and dividends			Balance (1-2)
	New investment	Reinvested profits	Total (1)	Remitted	Reinvested	Total (2)	
1950	3	36	39	47	36	83	—44
1951	4	67	71	70	67	137	—66
1952	9	85	94	15[b]	85	100	— 6
1953	22	38	60	94	38	132	—72
1954	11	40	51	53	40	93	—42
1955	43	36	79	44	36	80	— 1
1956	89	50	139	24	50	74	65
1957	143	35	178	26	35	61	117
1958[c]	110	(40)	(150)	31	(40)	(71)	79
1950-58	434	427	861	404	427	831	30

Source: Conjuntura Económica, June 1959, pp. 61-68 (Portuguese edition), and table III for reinvested profits.

[a] There are no figures for direct foreign investment repatriation; they are probably included, where they exist, under "Profits and dividends remitted".

[b] Profit remittances were limited owing to exchange restrictions.

[c] Provisional.

[107] *Ibid.*, table 6.

Brazil offers an excellent example of the interplay of exchange and investment policies. From 1951 to 1953, the cruzeiro was over-valued in terms of foreign currencies, while prior to 1955 direct foreign investments were subject to close scrutiny by a government committee. The institution of a free floating rate of exchange for financial transactions in 1953 was followed in early 1955 by the abolition of the Foreign Investment Committee and the simplification of previous procedures. The contrast between the periods prior to and following those actions, as shown in table 6, is remarkable. The profit rate (in terms of dollars) which had been abnormally high during 1951-53 owing to the overvaluation of the cruzeiro, fell to more normal levels thereafter, the proportion of profits ploughed back rose from 51 to 53 per cent (in spite of exchange restrictions having made reinvestments in the earlier period artificially high) and profit remittances fell even though all restrictions had been lifted. Of greater importance was the increase in new direct foreign investments, which rose from an average of less than 10 million dollars a year during 1950-54 to an average of almost 100 million dollars a year during 1955-58. The extremely high rate of increase in new investment should not be credited solely to the simplification and liberalization of Brazilian new investment procedures, since the incentive given to the automobile industry, especially from

Table V-44[108]

Mexico: Direct investment inflow and its income in the balance of payments, 1950-59

(Millions of dollars)

Year	Direct investment inflow[a]			Profits and dividends			Balance (1-2)
	New investment	Reinvested profits	Total (1)	Remitted	Reinvested	Total (2)	
1950	38	15	53	43	15	58	— 5
1951	50	27	77	61	27	88	—11
1952	36	35	71	48	35	83	—12
1953	37	36	73	24	36	60	13
1954	78	24	102	27	24	51	51
1955	85	19	104	(18)	19	(37)	67
1956	83	32	115	(54)	32	(86)	29
1957	101	29	130	48	29	77	53
1958	63	26	89	47	26	73	16
1959[b]	90	40	130	50	40	90	40
1950-59	661	283	944	420	283	703	241

Source: Banco de México, Department of Economic Studies.

[a] Does not include inter-company accounts.

[b] Provisional.

[108] *Ibid.*, table 7.

1957 on, brought very large sums of capital into Brazil. However, there is ample evidence that the exchange and investment procedure reforms greatly stimulated the flow of new direct foreign investments. The adverse balance between direct investment inflow and profit and dividend outflow, which characterized the period prior to 1955, has been turned into a handsome favourable balance for Brazil in every year since 1955.

The case of Mexico, as statistically presented in table V-44, provides equally convincing, though less striking evidence, since there have been no restrictions on remittances, the apparent overvaluation of the peso prior to the 1954 devaluation was substantially less than that of the cruzeiro before 1953, and Mexico has had no formal investment committee passing on new direct foreign investments. Nevertheless, it will be noted in table 8 that the 1951-52 profit rates of foreign direct investments (in terms of dollars) reached the highest levels of the last 20 years — more than 12 per cent — as compared with just over 7 per cent, the average for the twenty-year period 1939-58. After the 1954 devaluation, profits fell to normal levels, the rate of investment increased slightly (from 36 to 40 per cent), and average profit remittances fell from 55 million dollars annually during 1951-52 to 41 million dollars annually during 1954-58, at the same time that the yearly average of direct capital inflow increased from 42 million dollars during the four-year period preceding devaluation to 83 million dollars in the following six-year period. Similarly the adverse balance between direct investment inflow and profit outflow which was present during 1950-52 was reversed in every year since that time.

It may be objected that the ten-year periods covered in the two foregoing cases are too short to be conclusive and that the statistics presented are unduly influenced by the resumption of capital exports by Europe and the investment boom which both Brazil and Mexico have been enjoying in recent years. However valid such objections may be as concerns the examples cited, the conclusion that profit and dividend remittances are more than compensated over any extended period rests on broader grounds than a comparison between current new investments and profit and divident remittances on all existing investments (old and new alike). Indeed, such a comparison has very limited meaning in terms of the balance of payments of a country, since foreign investment affects a country's balance of payments in several ways, and not only through income remittances. Such investment increases a country's capacity to import in the year of inflow and either creates additional sources of foreign exchange or saves exchange previously used for imports. The argument that foreign investments in addition to profit and dividend remittances, create indirect exchange demands through their effect on national income is perfectly true. However, the effects of domestic investments are the same if the enterprises so financed are equally efficient. The only way these indirect effects can be avoided is for there to be no economic progress.

In any case, income remittances in a dynamic economy, except in some comparatively rare instances, tend to constitute only a small proportion of the additional exchange proceeds (or exchange savings) created by the investment. Unless it is the case of some extractive industries where the proportion of proceeds going to labour is abnormally low, or industries producing for the domestic market with an unduly high import component or, as the cases of Brazil and Mexico seem to prove, when the rate of return on investment is exaggerated (in terms of foreign currencies) due to exchange overvaluation[110] there tends always to be a net foreign exchange saving in almost any foreign investment.

Finally, profits, dividends and interest earned by foreign investments as well as other out-payments for royalties, for the use of trade-marks, designs and patents and for technical assistance payments are costs paid by developing countries for the means of increasing the productivity of invested capital.

f. The impact of economic associations

72. The Economic Commission for Latin America has reviewed the topic of the impact of the European Common Market on the Latin American economies in two detailed but relatively early studies.[111] In sum-

[109] *Ibid.*, table 8.

[110] Perhaps it should be added that exaggerated profits can and sometimes do result from the monopolistic atmosphere which is not uncommon in Latin America, and from excessively liberal special concessions which some underdeveloped countries grant to foreign enterprises.

[111] *Note by the Secretariat on the Possible Repercussions of the European Common Market on Latin American Exports*, E/CN.12/449 and Add.1, 20 Apr. 1957; and "Latin America's Trade with the Common Market Countries of Europe", *Economic Bulletin for Latin America*, vol. III, No. 1, Mar. 1958, p. 9.

Table V-45[109]

Mexico: Average rate of return on direct foreign investment: 1939-58

(Millions of dollars)

Year	Book value of direct foreign investment				Net profits				Rate of return (percentage)			
	Total	Mining[a]	Manufacturing	Public utilities	Total	Mining[a]	Manufacturing	Public utilities	Total	Mining[a]	Manufacturing	Public utilities
1939	401.2	98.6	25.1	123.4	15.5	9.1	3.4	0.3	3.9	9.2	13.5	0.2
1940	449.1	107.5	32.0	141.3	15.4	8.1	3.4	0.7	3.4	7.5	10.6	0.5
1941	452.9	114.4	38.6	136.2	22.6	11.5	5.2	1.6	5.0	10.1	13.5	1.2
1942	477.4	118.1	46.3	139.7	26.5	11.9	7.3	1.8	5.6	10.1	15.8	1.3
1943	491.2	122.4	57.5	134.6	33.3	13.0	10.7	1.5	6.8	10.6	18.6	1.1
1944	531.8	133.5	70.1	138.1	27.7	7.8	11.5	1.3	5.2	5.8	16.4	0.9
1945	568.7	134.9	99.8	136.2	39.6	12.6	15.6	1.8	7.0	9.3	15.6	1.3
1946	575.4	129.2	140.5	136.5	48.9	14.1	22.4	1.9	8.5	10.9	15.9	1.4
1947	618.6	124.7	168.5	141.0	59.5	22.8	22.2	2.1	9.6	18.3	13.2	1.5
1948	608.8	105.8	174.3	130.0	61.3	28.0	21.6	1.6	10.1	26.5	12.4	1.2
1949	518.6	100.6	148.0	108.3	47.9	22.3	17.1	0.8	9.2	22.2	11.6	0.7
1950	566.0	111.8	147.9	136.8	57.9	24.7	20.3	1.8	10.2	22.1	13.7	1.3
1951	675.2	158.7	180.9	151.7	88.5	38.0	29.3	2.5	13.1	23.9	16.2	1.6
1952	728.6	160.2	225.5	160.4	83.4	29.4	34.0	3.6	11.4	18.4	15.1	2.2
1953	789.5	164.5	258.1	173.4	60.5	12.0	28.9	5.6	7.7	7.3	11.2	3.2
1954	834.3	163.0	278.3	189.2	50.9	10.2	24.8	3.7	6.1	6.3	8.9	2.0
1955	952.8	174.5	331.5	191.4	73.4	16.8	35.3	4.8	7.7	9.6	10.6	2.5
1956	1,091.4	194.8	386.1	220.8	93.4	18.5	41.6	5.6	8.6	9.5	10.8	2.5
1957	1,165.1	179.4	468.1	215.1	76.8	13.6	46.1	2.7	6.6	7.6	9.8	1.3
1958	1,169.5	176.3	497.0	226.2	73.2	9.1	43.6	6.5	6.3	5.2	8.8	2.9

Source: Banco de México, Department of Economic Studies.

[a] Excluding petroleum.

mary, the discussion centres essentially on the potentially improved competitive position of the African areas then associated territories of the members of the European Economic Community (EEC) in relation to certain major Latin American exports, notably coffee, cotton, sugar, cacao and copper. Some fear is expressed that sustained investment in African production of these commodities might, if Latin American production maintains its current expansion, lead to over-supply, especially as regards coffee and cotton.

73. It is similarly feared that such a situation of over-supply will lead to a fall in international prices for the commodities in question, especially if there is a substantial diversion of Latin American exports to the United States. At the same time, the view is expressed that European capital, which tends to follow the direction of trade, may flow on an increasing scale to Africa and result in a diversion of the capital inflow into Latin America. On the other hand, attention is drawn to the fact that African production is, in general, still on a fairly modest scale; furthermore, Africa does not yet offer the opportunities for industrial investment which are present in Latin America.

74. Finally, it is believed that rising income levels in EEC countries will stimulate the demand for the commodities under discussion, though the then associated territories in Africa would tend to benefit more from that increased demand than would Latin American exporters. It is, however, noted that the increased demand resulting from the establishment of the Common Market as such is likely to lead to a higher level of imports from Latin America—in absolute terms—than if there had been no such Common Market.

g. Financing of economic development by international agencies

75. The latest available information on development loans made by the International Bank for Reconstruction and Development to countries in Latin and Central America is set forth below in tabular form.[112]

Country and purpose of loan	*Amount of loan (Million U.S. dollars)*
Brazil	
Railways (total)	25.0
Power (total)	239.1
Chile	
Power (total)	61.0
Industry (total)	41.8
Agriculture	2.5
Water exploration	1.3
Colombia	
Roads (total)	66.8
Railways (total)	46.3
Power (total)	97.0
Agriculture (total)	10.0
Costa Rica	
Agriculture and industry (total)	6.5
Industry (total)	5.0
Electric power	8.8
Ecuador	
Roads (total)	23.0
Power (total)	10.0
Port	13.0
Railways	14.5
El Salvador	
Roads (total)	16.1
Power (total)	19.4
Guatemala	
Roads (totals)	18.2
Honduras	
Power (total)	10.2
Highways (total)	9.7
Mexico	
Power (total)	124.8
Railways	61.0
Roads	25.0
Irrigation	15.0
Nicaragua	
Power (total)	21.2
Roads (total)	7.0
Agriculture (total)	2.0
Port	3.2
Paraguay	
Agriculture and transport	5.0
Peru	
Agriculture (total)	34.7
Ports (total)	9.1
Roads	5.0
Industry	2.5
Power	24.0
Uruguay	
Power, communications (total)	64.0
Agriculture	7.0

[112] International Bank for Reconstruction and Development, *Statement of Loans*, 30 Sept. 1961.

3. Asia and the Far East

76. The region of Asia and the Far East with which the appropriate regional economic commission (ECAFE) of the United Nations is concerned[113] is again one where, with few exceptions, sovereign Governments exercise full legislative control over resources development, exploitation and disposition. As in the case of Latin America, the region's problems lie at the economic and financial rather than at the political and legal levels.

77. In very broad terms, it may be said that the region's principal concern lies in the direction of industrialization and the development of sources of fuel and power; a parallel concern is the control of production of certain basic commodities, such as tin, rubber and sugar, which are in a state of almost chronic oversupply. In the case of both tin and sugar, production restrictions are in effect under international agreements, so that some stress is laid on a voluntary abandonment of certain sovereign rights for the mutual benefit of all concerned.

78. While the exploitation of the mineral and plantation resources which form the backbone of the region's export economy remains largely in foreign hands, it follows from the foregoing considerations, that this exploitation is one of limited profitability. In addition, the exploitation of the resources in question has been going on for a very considerable period of time, so that plant obsolescence, exhaustion of mineral deposits or soil, not to mention extensive war damage, have combined to reduce the profitability of current operations. While prices have risen, such price rises are partly offset by higher taxes, royalty rates, etc.; they are, in addition, limited by the competitive pressure of the newer producers in more recently-developed areas where more economical operations are possible.

79. These considerations bear not only on the question of the transfer of profits, but are also reflected in

[113] Data on Japan have been excluded from this section by virtue of that country's high degree of economic development.

the picture of domestic capital formation. In the absence of other data from United Nations sources, the present section will be largely devoted to a brief review of that topic, as well as of the inflow of foreign capital.

a. Capital formation[114]

80. With respect to capital formation in the various ECAFE countries, the *Economic Survey of Asia and the Far East, 1958,* states, *inter alia,* that:

Direct estimates of capital formation are available for only a few countries and, even for them, the variations in the scope of national estimates and price differences between countries make accurate assessment difficult. It is, however, clear that a fairly high annual rate of capital formation has been achieved and sustained in several countries in the region during the last decade. This capital formation enabled the expansion of industrial output to take place, although the relationship is indeterminate and there is no theoretical justification for expecting a very close correlation. In most ECAFE countries, the growth of industrial output does not correspond to the expansion in total capital formation because a high proportion of development expenditure has to be devoted to infrastructure. Also, as a result of technological progress, new capital investments are more productive than old ones; the yield thus varies from one country to another according to the degree of technical advance and the time-lag in the application of the latest techniques.

The following statistics show the rates of gross fixed capital formation[115] in selected ECAFE countries and in some countries outside the region:

Table V-46

ECAFE countries: Gross fixed capital formation[a] as percentage of gross domestic product, and per capita gross fixed capital formation, 1950-1956

Country	*Percentage ratio of gross fixed capital formation to gross domestic product*	*Per capita gross fixed capital formation (US$)[b]*
Burma	15.8	7.4
Ceylon	9.8	12.1
China: Taiwan (1951-1955)...	12.2	18.9
Federation of Malaya and Singapore (1950-1953)	8.2	30.7
Hong Kong (1954-1955)	8.0	22.5
India (1950-1953)	9.8	6.1
Philippines	7.0	13.3

[a] Excluding changes in stocks.
[b] Generally, national currencies are converted into US dollars at the official rates of exchange.

[114] United Nations publication, Sales No.: 59.II.F.1., pp. 91-93 and tables 27 and 28.
[115] Most countries in the region for which gross fixed capital formation data are available do not provide information on depreciation: it is therefore difficult to indicate the rate of net capital formation.

Most countries in the region are estimated to have a low rate of gross fixed capital formation (below 10 per cent). Countries with a moderate rate (10-15 per cent) are Ceylon, China: Taiwan, and India ... China: Taiwan ... [was] faced with the problem of reconstruction and [has] received substantial amounts of foreign aid. Burma in this period had a rate of more than 15 per cent because of a rapid expansion in construction. ... In mainland China, the rate of net capital formation in the five-year period 1952-1956 is reported to have reached 19 per cent of net domestic product; this high rate appears to have been achieved by exercising rigorous control over consumption and by a vigorous expansion of fixed capital formation in the public sector.

In China, the net total investment in Taiwan is expected to be 15.4 per cent of the net national income during the second four-year plan period (1957-1960; on the mainland, the Chairman of the State Economic Commission stated in 1956 that "for a number of years to come it will be fairly safe to fix the proportion of national income *going to accumulation* at no less than 20 per cent or possibly a little higher".[116] In India, it is assumed that the rate of net investment will go up from 7 per cent to 11 per cent during the second five-year plan period (1956/57-1960/61). The Indonesian five year plan (1956-1960) gives a net rate of 7.3 per cent in 1960 as compared with an estimated 5 per cent rate before 1956. These figures are, however, largely in the nature of estimates.

b. The composition of investment

81. The available data on the composition of gross capital formation are very incomplete, as the limited tabulation in table V-47 will suggest.

c. Capital account transactions and foreign aid

82. Discussing capital account transactions and foreign aid, the *Economic Survey of Asia and the Far East, 1959,* notes,[117] that

Capital movements had a chequered history between 1928 and 1955-1957. During this period, the net private capital inflow (excluding reinvestment by existing foreign enterprises) into the primary producing countries of the world decreased only slightly in 1955-1957 value (from 2.0 billion dollars in 1928 to 1.9 billion dollars in 1955-1957), but it has greatly lagged behind the expansion, in real terms, of exports.

There have also been some shifts in the capital-exporting countries in the fields of investment and in areas of investment. Although the western European countries are still significant capital exporters to the primary exporting countries, they have tended to repatriate their already invested and reinvested capital from their former colonies. The desire of domestic entrepreneurs

[116] *Eighth National Congress of the Communist Party of China* (Foreign Language Press, Peking 1956), vol. II: speeches, p. 52.
[117] United Nations publication, Sales No.: 60.II.F.1., pp. 86 and 87, and table 36.

Table V-47

ECAFE countries: Composition of gross capital formation, 1950-1956
(In percentages)

	Dwellings	*Other construction*	*Total construction*	*Transport equipment machinery and other equipment*	*Increase in stocks*
Burma	—	—	64.1	23.8	12.1
Ceylon	44.6[a]	23.5	68.1	23.7	8.2
China: Taiwan (1951-56)	—	—	35.4	35.2	29.4
Federation of Malaya and Singapore (1950-53)	26.7[a]	22.9	49.6	50.4	—
Hong Kong (1950-54)	—	—	35.1	44.9	...
Philippines	17.3	33.7	51.0	32.7	16.3

[a] Including non-residential buildings.

in these countries to participate, to an increasing extent, in "going" concerns, has also, in several cases, led to inflated values being paid for these foreign enterprises and, this, in addition to political uncertainty, has further stimulated an outward capital flow. The United States, on the other hand, has emerged as the major capital exporter to the primary exporting countries, but its private capital exports have mostly been directed towards petroleum-producing countries and to Latin America.

In the primary exporting countries of the region, the net private capital inflow has been negligible in recent years, except in the Philippines and, to a lesser extent, in the Federation of Malaya and Singapore...

A new item, donations and official loans, has made its appearance in post-war balance of payments as a compensating item. Private and official donations, and loans from Governments and international agencies, have acquired considerable importance in the post-war balances of payments of the primary exporting countries of the world. The ratio of foreign aid and capital inflow to exports during 1955-1957 was considerably larger than in 1928 [see table V-48]. This inflow into ten countries of the ECAFE region (excluding migrants' remittances) amounted to an annual average of 1.1 billion dollars during the three years from 1955 to 1957, or a quarter of the purchasing power derived from merchandise exports alone, a ratio which is higher than that for the primary producing countries of the world as a whole. Thus it would appear that, although the position on private capital account by itself deteriorated between 1928 and 1955-1957, it improved, when taken together with inter-governmental grants and loans and private donations.

Table V-48

ECAFE primary exporting countries: Foreign aid[a] and capital inflow in relation to commodity exports, 1955-1957

Country	Exports	Foreign aid[a] and capital inflow	Ratio of foreign aid[a] and capital inflow to exports (per cent)
Burma	706	82	12
Ceylon	1,120	—72	—6
China: Taiwan	400	272	68
India	4,156	570	14
Indonesia	2,567	—8	—
Pakistan	1,138	269	24
Philippines	1,257	328	26
Thailand	1,090	108	10
TOTAL, ABOVE COUNTRIES	12,684	3,210	25

[a] Including public and private donations other than migrants' transfers and public and priivate long-term loans.

This aggregate advantage, however, was very unevenly distributed within the region. Countries such as China: Taiwan ... [and] ... Laos received large amounts of defence-support and economic aid from the United States. In several of these countries, the import surplus in the trade accounts is the reflection of this aid; the aid financed budget deficits in addition to import needs. On the other hand, Ceylon and Indonesia experienced a capital outflow which was not compensated by the relatively small amounts of foreign assistance.

d. THE REGIONAL SHARE OF THE WORLD MARKET

83. A brief summary of the evolution of the ECAFE region's share of the world market for its principal export products is set forth in table V-49 below.

84. An analysis of developments relating to some of the principal products which come within the purview of this study, i.e. petroleum and metals, is set forth below.[118]

[118] *Ibid.*, pp. 61 and 62.

Table V-49

Regional shares in the volume of pre-war and post-war world exports of primary products, 1934-1938 and 1955-1957[119]

(Per cent of gross world exports)

Commodity and period	ECAFE primary exporting countries
Rice:	
1934-1938	92.0
1955-1957	61.9
Sugar (raw basis):	
1934-1938	30.7
1955-1957	13.0
Tea:	
1934-1938	75.9
1955-1957	80.5
Copra:	
1934-1938	78.9
1955-1957	82.2
Natural rubber:	
1934-1938	92.8
1955-1957	90.8
Jute:	
1934-1938	95.0
1955-1957	96.5
Abaca, sisal, and other hard fibres:	
1934-1938	48.8
1955-1957	23.3
Tobacco:	
1934-1938	16.4
1955-1957	8.9
Coffee:	
1934-1938	6.0
1955-1957	3.7
Tin:[a]	
1936-1938	63.2
1955-1957	58.1

[a] Figures relate to production, as trade figures are not available.

i. *Petroleum*

Although output of *crude petroleum* in the ECAFE primary exporting countries has more than doubled since 1934-1938, their share in world production declined. The share of the industrial countries as a whole, mainly North America, has declined substantially, but still accounts for nearly half of total world output. The 8 per cent pre-war share of ECAFE countries has declined to about 6 per cent of world production, as output increase was relatively smaller in the principal producers of the region, namely Iran, Indonesia and Brunei. Production in Iran is again rising rapidly, following the settlement of the dispute with the foreign-owned company. Iran's gains, however, are less striking than neighbouring Iraq, or the newly developed sources like Saudi Arabia and Kuwait, each of which, starting from scratch, produced more oil than Iran or Iraq in 1957. These shifts in production, combined with different rates of expansion of consumption, have caused even greater changes in the export pattern. North America has become a large net importer from a small net exporter before the war. Net exports from the Near East have risen tremendously, both absolutely and relatively, while the relative share of Latin America has decreased. Consumption in the ECAFE countries has grown rapidly, and the region is now a small net importer of petroleum.

ii. *Metals*

The share of ECAFE primary exporting countries has also declined in the *metals* group. On the basis of the value of the metal content of the ores produced, their production nearly doubled between 1936-1938 and 1953-1955. This gain, however,

[119] *Ibid.*, table 20, p. 59.

was much less striking than that of the other primary producing countries, which increased their share in the value of world metal production from 39 per cent to 51 per cent between these periods, whereas the share of ECAFE region was halved to 7 per cent. Of the metals, *tin* is the most important for the ECAFE region. World production of tin concentrates has increased only a little over the pre-war level; partly owing to war devastation, output in the ECAFE region has declined slightly in spite of a rise in real prices. However, the stagnation in world trade in tin is really the result of technological advances leading to economy in the use of tin, as well as to competition from other materials which have held back the growth in demand. The ECAFE primary exporting countries, as a group, are losing their share to Africa, owing to a rapid increase in production in the Congo. The declining share is due to reduced output in the smaller producers, Burma, Laos [and] Thailand ... The major producers, Indonesia and the Federation of Malaya, maintained, or even somewhat increased, their shares. Latin America—the other major producer—has slightly increased its share as a result of gains made by the large producer, Bolivia, although the smaller output of Argentina has declined. Mainland China, with its very small production, has also increased its share in world output; the Soviet Union's output has risen from an almost negligible level to more than 5 per cent of world production. Despite an increase in Indian iron ore production and exports, the ECAFE primary exporting countries have lost their position in the buoyant metals group.

e. Financing of economic development by international agencies

85. The latest available information on development loans made by the International Bank for Reconstruction and Development to countries of the ECAFE region (excluding Japan) is set forth below in tabular form.[120]

Country and purpose of loan	*Amount of loan (Million U.S. dollars)*
Burma	
Railways (total)	19.3
Rangoon Port	14.0
Ceylon	
Power (total)	41.5
India	
Railways (total)	329.0
Power (total)	68.5
Multi-Purpose Project	19.5
Ports (total)	64.0
Industry (total)	300.0
Airlines	5.6
Mining	35.0
Malaya	
Power	35.6
Pakistan	
Railways (total)	70.7
Power (total)	30.2
Industry (total)	33.4
Ports	14.8
Gas transmission	14.0
Indus Basin development	90.0
Philippines	
Power	21.0
Dredging project	8.5
Thailand	
Railways (total)	37.0
Ports (total)	7.8
Multi-Purpose Project	66.0
Irrigation project	18.0

[120] International Bank for Reconstruction and Development, Statement of Loans, Sept. 30, 1961.

4. The Middle East[121]

86. In over-all terms, the economy of the Middle East is largely based on the exploitation of petroleum and on allied industries, chiefly petroleum refining. While there is some exploitation of other minerals, chiefly coal and non-ferrous metals, such exploitation is largely domestically-owned and for domestic consumption, though Turkey is an exporter of certain important metals (notably chrome) which are, however, produced on a quantitatively limited scale.

87. Industrialization in the region is proceeding rapidly and has, in recent years, attracted foreign private capital on a substantial scale, though foreign public capital has played and is playing an increasingly important part in large-scale development schemes.

a. Foreign trade and balance of payments[122]

Data pertaining to 1958 and part of 1959 point to a temporary trend of deterioration in the external payments position of several countries of the Middle East. The main exceptions are Lebanon and Iraq, where a sustained tendency towards increased gold and foreign exchange reserves is noticeable. Both countries show heavy structural deficits in the balance of goods and services, in the case of Lebanon offset by private capital movements, while in the case of Iraq development expenditures have not so far kept pace with a growing oil income.[123]

Oil income in Iran, though continuously increasing, has not been adequate to defray that country's rapidly increasing development expenditures, and international credits have been filling the gap. Jordan and Israel, with structural deficits in their goods and services accounts, continued to show large negative balances, offset by various loans and grants, though some improvement was registered in Israel in 1958 and 1959. Turkey has, to a large extent, relied on foreign grants and loans to balance her deteriorating external accounts.

As to the oil producing countries of the Arabian Peninsula —especially Kuwait and Saudi Arabia, for which balance of payments data are not available—increases in gold and foreign assets registered in 1958 and 1959 point to surpluses in the goods and services accounts, a trend particularly conspicuous in Kuwait.

In the United Arab Republic, Syria has been experiencing external payments difficulties as a consequence of two crop failures in a row. Egypt embarked upon large-scale development programmes and, having been in recent years a net importer of foodstuffs, is experiencing deficits in its goods and services account and is relying to a great extent on foreign credits, secured in substantial amounts in the past few years, to balance its accounts. Table V-50 shows the balances in the goods and services accounts of selected countries.

[121] Based upon *Economic Developments in the Middle East, 1958-1959*, United Nations publication, Sales No.: 60.II.c.2.

[122] Information on Lebanon's balance of payments is not included in table V-50 because it is not available on a base comparable with those of the other countries shown. The trend illustrated in Iraq was deviated from in 1956 and 1957 because of interruptions in the oil flow in connexion with the Suez events.

[123] *Op. cit.*, p. 32.

Table V-50

Middle East: Balance of payments, selected countries[124]

(Millions of indicated currency units)

Country, currency and year	Goods and services				Donations, official and private	Capital and monetary gold			Net errors and omissions
	Merchandise and non-monetary gold	Transactions of oil sector	Services	Total		Private capital	Official and banking capital	Total	
Iran (US dollars)[a]									
1954	— 40.3	37.5	1.3	— 1.5	57.1	...	3.4	3.4	—59.0
1955	—212.2	133.3	—10.7	— 89.6	29.9	...	43.5	43.5	16.2
1956	—191.9	167.3	—24.1	— 48.7	43.0	...	48.4	48.4	—42.7
1957	—256.0	228.4	—36.3	— 63.9	27.7	0.1	32.3	32.4	3.8
1958[b]	—387.9	316.2	—26.2	— 97.9	20.1	0.6	81.4	82.0	— 4.2
Iraq (Iraqi dinars):									
1954	— 48.02	79.39	0.37	31.74	0.57	1.05	—23.24	—22.19	—10.12
1955	— 74.71	93.72	1.16	20.17	1.03	1.44	—22.43	—20.99	— 0.21
1956	— 93.51	79.91	3.38	— 10.22	1.01	4.87	— 6.89	— 2.02	11.23
1957	— 97.36	62.21	— 3.07	— 38.22	0.34	5.77	33.60	39.37	— 1.49
1958[b]	— 84.14	96.75	3.50	16.11	0.28	1.63	—13.29	—11.66	— 4.73
Israel (US dolllars)									
1954	—204.8	—	—31.3	—236.1	262.6	11.2	—10.2	1.0	—27.5
1955	—244.5	—	—38.2	—282.7	210.4	9.3	65.6	74.9	— 2.6
1956	—257.1	—	—99.4	—356.5	240.6	8.7	92.5	101.2	14.7
1957	—292.6	—	—44.7	—337.3	242.2	20.2	63.5	83.7	11.4
1958[b]	—282.3	—	—51.1	—333.4	251.0	27.4	41.2	68.6	13.8
Jordan (Jordanian dinars):									
1954	— 15.54	—	2.66	— 12.88	14.27	...	— 1.55	— 1.55	0.16
1955	— 21.69	—	4.39	— 17.30	17.09	—	— 0.36	— 0.36	0.57
1956	— 19.55	—	3.10	— 16.45	18.42	0.25	— 2.20	— 1.95	— 0.02
1957	— 24.39	—	1.17	— 23.22	16.89	0.30	1.59	1.89	4.44
1958[b]	— 30.51	—	5.65	— 24.86	23.91	0.58	— 2.85	— 2.27	3.22
Turkey (US dollars):									
1954	— 86.5	—	—72.6	—159.1	45.3[c]	75.7	27.8	103.5	10.3
1955	—124.6	—	— 5.7	—130.3	50.6[c]	12.4	112.6	125.0	—45.3
1956	— 53.5	—	31.2	— 22.3	89.2	—28.6	25.6	— 3.0	—63.9
1957	— 15.0	—	—19.1	— 34.1	66.7	—61.0	99.6	38.6	—71.2
1958[b]	— 36.4	—	—27.5	— 63.9	90.6	54.6	— 6.6	48.0	—74.7
UAR (Egypt) (Egyptian pounds):									
1954[d]	— 12.0	—	14.2	2.2	1.4	— 5.2	1.8	— 3.4	— 0.2
1955[d]	— 62.2	—	—18.5	— 43.7	10.1	2.0	31.6	33.6	—
1956[d]	— 73.8	—	23.5	— 50.3	11.1	—	39.3	39.3	— 0.1
1957	— 51.8	—	18.3	— 33.5	3.6	— 1.2	30.2	29.0	0.9
1958	— 53.2	—	31.6	— 21.6	0.6	1.5	21.8	23.3	— 2.3
UAR (Syria) (US dollars):									
1954	— 35.1	—	4.0	— 31.1	4.1	6.2	10.9	17.1	9.9
1955	— 57.3	—	23.0	34.3	3.9	24.2	— 7.9	16.3	14.1
1956	— 59.3	—	43.7	— 15.6	4.3	— 1.4	1.7	0.3	11.0
1957	— 16.9	—	19.5	2.6	4.5	— 2.8	6.1	3.3	—10.4
1958	— 73.7	—	39.4	— 34.3	7.5	— 4.2	11.5	7.3	19.5

[a] Twelve months beginning 20 to 22 March of year stated.

[b] Provisional.

[c] Official donations only.

[d] Excluding transactions with the Sudan.

[124] *Op. cit.*, table XXVII, p. 90.

b. Direction of trade

Table V-51

Direction of crude petroleum exports from the Middle East, by country[125]

(Thousands of tons)

Region and Year	Iran	Iraq	Kuwait[a]	Qatar	Saudi Arabia	Total, Middle East
North America:						
1955	420	1,020	8,760	710	4,570	15,470
1956	830	1,390	8,840	780	4,640	16,470
1957	700	750	10,330	290	2,440	14,520
1958	800	1,150	13,540	1,170	4,630	21,290
Other America:						
1955	—	—	2,500	130	670	3,300
1956	—	—	3,060	—	890	3,950
1957	—	—	3,440	—	870	4,310
1958	—	—	3,370	—	1,580	4,990
Western Europe:						
1955	3,950	27,460	35,250	3,410	16,410	86,700
1956	7,900	23,480	33,920	3,820	17,190	86,410
1957	9,100	13,510	35,670	4,210	20,600	83,210
1958	15,680	27,000	42,700	4,100	19,300	109,900
Middle East:						
1955	180	670	4,300	400	9,340	14,900
1956	800	1,270	3,800	300	8,520	14,700
1957	3,210	1,730	2,030	300	7,270	14,550
1958	2,300	2,270	1,230	500	7,320	13,630
Far East:						
1955	1,890	2,930	2,000	330	4,930	12,100
1956	2,580	3,450	3,270	160	6,040	15,500
1957	4,030	4,160	5,320	510	6,410	20,440
1958	2,300	3,230	5,390	270	7,100	18,300
Oceania and Africa:						
1955	1,780	10	1,000	350	1,340	4,480
1956	2,040	10	2,190	670	1,490	6,400
1957	1,660	10	1,860	1,250	1,490	6,310
1958	3,060	10	840	2,000	1,800	7,700
World total:						
1955	8,330	32,150	54,030	5,350	37,470	137,600
1956	14,320	29,630	55,080	5,760	38,760	143,750
1957	19,200	20,250	58,660	6,560	39,130	144,100
1958	24,200	33,740	67,180	8,150	41,740	176,210

Source: United Nations, *World Energy Supplies, 1955-1958.*

[a] Includes exports of the Neutral Zone.

c. Foreign investment

Petroleum industry[126]

Progress in the development of petroleum operations in the Middle East... resulted mainly from large-scale investments by the oil companies. The total cumulative gross investment in the petroleum industry of the region rose from $2,750 million to $3,725 million between the end of 1955 and 1958[127]; and the cumulative net investment increased from $1,625 million to $2,100 million, during the same period. The share of the United States petroleum companies in the gross investment in the region rose from 46.9 per cent to 48.3 per cent between 1955 and 1958.[128] These investment figures do not include capital expenditures in tankers, and distribution and research facilities outside the region, which have been necessary to put the Middle East oil at the disposal of consumers. Again, these data do not refer to the "net worth" of the Middle East petroleum industry which has to take into account, among other things, the proven petroleum reserves.

Table V-52

Investments in the Middle East petroleum industry[129]

(Millions of dollars, unless otherwise specified)

Item	1946	1955	1958
Gross cumulative investment (end of period):			
Production	350	950	1,500
Pipelines	115	590	...
Refineries	300	655	...
Marketing and others	135	555	...
Total gross cumulative investment	900	2,750	3,725
Net cumulative investment (end of period):			
Production	265	575	...
Pipelines	60	310	...
Refineries	125	355	...
Marketing and others	75	385	...
Total net cumulative investment	525	1,625	2,100

[125] *Op. cit.*, table XVIII, p. 80.

[126] *Op. cit.*, pp. 30 and 31.

[127] Gross investment in production facilities rose from $950 million to $1,500 million in the corresponding period.

[128] The Chase Manhattan Bank, *Investment Patterns in the World Petroleum Industry* (New York, 1956), and *Capital Investments by the World Petroleum Industry* (New York, 1959).

[129] *Op. cit.*, table XIV, p. 76.

Table V-53

Direct payments by petroleum companies to Governments of some Middle East States[130]
(In millions of dollars)

Year	*Iran*	*Iraq*	*Kuwait*	*Saudi Arabia*
1953.....	—	144	169	286
1954.....	9	191	194	281
1955.....	91	206	282	275
1956.....	153	193	293	283
1957.....	213	144	308	303
1958.....	272	237	354	302
1959.....	263	242	460[a]	308
1960.....	286	266	450[a]	330[b]

Source: Economic Developments in the Middle East, 1958-1959 op. cit., for years 1953-1958.

[a] Including payments by the American Independent Oil Company operating in the Neutral Zone (Kuwait).

[b] Including payments by the Pacific Western Oil Corporation operating in the Neutral Zone (Saudi Arabia).

Petroleum royalties represent 27 per cent of national income in Iran, 47 per cent in Iraq, 60 per cent in Venezuela and 81 per cent in Saudi Arabia.

d. Financing of economic development by international agencies

88. Loans granted to countries of the Middle East by the International Bank for Reconstruction and Development as at 30 September 1961 are set forth below in tabular form.

Country and purpose of loan	*Amount of loan (Million U.S. dollars)*
Iran	
Equipment for development	75.0
Roads	72.0
Multi-Purpose Project	42.0
Industry	5.2
Iraq	
Flood control	12.8
Israel	
Port contruction	27.5
Potash production	25.0
Lebanon	
Power and agriculture	27.0
Turkey	
Agriculture	3.9
Ports (total)	16.3
Multi-Purpose Project	25.2
Industry (total)	18.0
United Arab Republic	
Suez Canal Authority	56.5

[130] *Capital Requirements of Petroleum Exploration and Methods of Financing*, E/3580, 15 Mar. 1962, table 14.

5. International commodity arrangements

89. The present section is devoted to a consideration of the practical implications of a specific aspect of sovereignty over natural resources, namely, the voluntary transfer of control over production or exports of special minerals and other commodities to international control organs.[131]

90. Tin is the principal mineral commodity subject to international arrangements and is thus perhaps the commodity most germane to the present study. As a result, the bulk of this section will be devoted to a discussion of the economic implications of the international control of tin exports, bearing in mind that all producing countries parties to the international arrangement in question are usually classified as under-developed countries.

91. The International Tin Agreement of 1953, renewed by the Second International Tin Agreement concluded in 1960,[132] covers the Belgian Congo and Ruanda-Urundi, Bolivia, the Federation of Malaya, Indonesia, the Federation of Nigeria, and Thailand. Tin plays an especially important part in the economies of Bolivia, Indonesia and the Federation of Malaya. Among the objectives of the agreements, special attention may be drawn to Article I of the Agreement of 24 June 1960 which reads, in part, as follows:[133]

"The objectives of this Agreement are:

"(*a*) to prevent or alleviate wide-spread unemployment or under-employment and other serious difficulties which are likely to result from maladjustments between the supply of and the demand for tin;

"(*b*) to prevent excessive fluctuations in the price of tin and to achieve a reasonable degree of stability of price on a basis which will secure long-term equilibrium between supply and demand;"

92. The export figures cited in table V-54 below show very wide fluctuations which must, however, be considered against a background of very substantial price stability achieved, in part also, by the use of a buffer stock (see table V-55 below).

[131] Particular attention is drawn to a detailed discussion of the economic basis and implications of international commodity agreements contained in Chap. 3 of the *World Economic Survey 1958*, United Nations publication, Sales No.: 59.II.C.1. See also *International Commodity Problems, Interim Co-ordinating Committee for International Commodity Agreements, 1960 Review of International Commodity Problems*, E/3374, 1 June 1960.

[132] E/CONF.32/4; came into force on 1 July 1961.

[133] *Ibid.*, p. 3.

Table V-54

Tin: Permissible export amounts determined pursuant to article VII of the International Tin Agreement[134]
(Figures in long tons)

	15 Dec. 1957 to 31 Mar. 1958[a]	*Second quarter of 1958*	*Third quarter of 1958 and second quarter of 1959*	*Fourth quarter of 1958 and first quarter of 1959*	*Third quarter of 1959*	*Fourth quarter of 1959*	*First quarter of 1960*	*Second quarter of 1960*	*Third quarter of 1960*
Belgian Congo and Ruanda-Urundi..	2,417	2,059	2,052	1,784	2,263	2,715	3,258	3,394	3,439
Bolivia	5,516	4,699	4,582	3,984	4,850	5,820	6,984	7,275	6,911
Federation of Malaya	10,125	8,625	8,625	7,500	9,438	11,325	13,590	14,156	14,325
Federation of Nigeria	1,442	1,228	1,357	1,180	1,525	1,830	2,196	2,287	2,325
Indonesia	5,516	4,699	4,464	3,882	4,725	5,670	6,804	7,088	7,125
Thailand	1,985	1,691	1,921	1,670	2,200	2,640	3,168	3,300	3,375
TOTAL	27,000	23,000	23,000	20,000	25,000	30,000	36,000	37,500	37,500

[a] The rates per quarter for this period are approximately the same as for the second quarter of 1958.

[134] *International Commodity Problems, Interim Co-ordinating Committee for International Commodity Arrangements, 1960 Review of International Commodity Problems*, E/3374, table 7, p. 54.

Table V-55

Tin metal in the buffer stock, 1957-1960[135]

		Long tons
1957:	30 June	3,916
	30 September	4,315
	31 December	15,300
1958:	31 March	22,440
	30 June	23,300
	30 September	23,350
	31 December	23,325
1959:	31 March	21,020
	30 June	13,990
	30 September	11,150
	31 December	10,050

93. The export quantities cited in table V-55 above are determined on the basis of distribution quotas. The quotas under the 1953 Agreement are set forth in table V-56 below.

Table V-56

Percentages determining the distribution of total permissible exports among the six participating producing countries[136]

	March 1957 to October 1957	*October 1957 to June 1958*	*July 1958 to June 1959*	*July 1959 to June 1960*	*July 1960 to June 1961*
Belgian Congo and Ruanda-Urundi	8.72	8.95	9.92	9.05	9.17
Bolivia	21.50	20.43	19.92	19.40	18.43
Indonesia	21.50	20.43	19.41	18.90	19.00
Federation of Malaya	36.61	37.50	37.50	37.75	38.20
Federation of Nigeria	5.38	5.34	5.90	6.10	6.20
Thailand	6.29	7.35	8.35	8.80	9.00

94. The method of establishing such quotas is set forth as follows under the terms of article VII (4), (6) and (7) of the Second International Tin Agreement of 1960:[137]

"4. The total permissible export amount for any control period shall be divided among producing countries in proportion to their percentages in annex A (see below) or in proportion to their percentages in any revised table of percentages which may be published in accordance with this Agreement, and the quantity of tin so computed in respect of any country for any control period shall be the permissible export amount of that country for that control period.

"...

"6. (*a*) The Council shall review the percentages of the producing countries and redetermine them in accordance with the rules set out in annex G to this Agreement, provided that the percentage of a producing country shall not, during any period of twelve months, be reduced by more than one-tenth of its percentage at the commencement of that period.

"...

"7. (*a*) Notwithstanding the provisions of paragraph 4 of this article, the Council may, with the consent of a producing country, reduce its share in the total permissible export amount and redistribute the amount of the reduction among the other producing countries in proportion to the percentages of those countries or, if circumstances so require, in some other manner.

"(*b*) The quantity of tin determined according to sub-paragraph (*a*) of this paragraph for any producing country for any control period shall for the purposes of this article be deemed to be the permissible export amount of that country for that control period.

"ANNEX A

	Percentage
Belgian Congo / Ruanda-Urundi	9.25
Bolivia	18.00
Indonesia	19.50
Federation of Malaya	38.00
Federation of Nigeria	6.25
Thailand	9.00
TOTAL	100.00

"The percentage attributed to the Belgian Congo and Ruanda-Urundi may be divided between those two countries after notification made to the Council by the Government of Belgium.

"The votes in the Annex shall thereupon be adjusted accordingly."

95. The various considerations which enter into the determination of quota allocations thus appear to have led, over the years, to a shift towards higher percentage allocations for the African exporters as well as for the Federation of Malaya and Thailand.

96. The apparent satisfaction of the parties to the tin agreements with the results obtained under the control arrangement has also prompted exploratory moves regarding similar arrangements for other minerals which are subject to wide market fluctuations. Thus in September 1958, acting upon the request of the Interim Co-ordinating Committee for International

[135] *Ibid.*, table 6, p. 53.
[136] *Ibid.*, table 8, p. 55.
[137] *Loc. cit.*, pp. 16-17 and annex A.

Commodity Arrangements and after consultation with the Governments of the principal exporting and importing countries the Secretary-General of the United Nations convened an Exploratory Meeting on Copper. The Meeting was held in London in September 1958 and was attended by delegations from thirty-four countries. Attention was drawn to the sharp fluctuations in copper prices in recent years and to their harmful effects on all countries interested in the production and consumption of copper. Particular reference was made to the difficulties experienced by countries which are dependent to a high degree upon export markets for the sale of their copper. With regard to further intergovernmental consideration the Meeting agreed that no action was required at that time inasmuch as the copper situation was improving and accordingly it was not necessary to establish inter-governmental machinery.[138]

97. It may be noted that, over the period of four years preceding the meeting in question, copper prices had fluctuated over a range of about 100 per cent, with clearly serious economic implications for the major producing countries.

[138] E/3269, para. 29.

B. Extent of foreign investment and data relating to the international flow of private capital[139]

1. Sources of private capital exports

98. The outflow of private long-term capital from the main capital-supplying countries (including, in most instances, reinvested profits) declined from $6.2 billion in 1957 to about $5.3 billion in 1958. It appears that the outflow may have decreased further in 1959, though it was still above the rate of $3-3.5 billion in 1954-55 (see table V-57).

Table V-57

Outflow of private long-term capital from the main capital-supplying countries 1956-59*[140]

(Millions of dollars)

	1956	1957	1958	1959
United States	3,420	3,934	3,293	2,049[b]
United Kingdom	1,205	1,120	840	552[c]
Continental Western Europe				
Belgium-Luxembourg[a]	160	150	100	
France	540	582	504	
Germany (Federal Republic)	75	185	225	530
Netherlands	59	104	245	
Switzerland	321	130	93	200[d]
TOTAL, CONTINENTAL WESTERN EUROPE	1,155	1,171	1,167	
GRAND TOTAL	5,780	6,225	5,300	

[a] Net long-term and short-term private capital.
[b] Excluding reinvested profits of subsidiaries, for which data are not yet available.
[c] Net figure.
[d] New issues of $110 million (SF 479 million) plus an estimate of foreign security purchases.

99. The decline between 1957 and 1958 was mainly due to a fall in direct investments by the United States. Other long-term investments by the United States were slightly higher in 1958 than in 1957. The outflow of funds from Western Europe continued at a high rate. In 1958 as in previous years France was the largest source of funds. Capital exports from the Federal Republic of Germany increased sharply in 1959, all the increase being in portfolio investment in other high-income countries. The outflow of long-term private capital from the United States in 1959 (excluding reinvested profits) was $2,049 million, about $0.5 billion less than in 1958 and nearly $1 billion below the outflow in the peak year 1957. Despite this decline, the rate of outflow in 1959 was still more than twice the rate achieved in the years before 1956.

100. The decline in the rate of outflow of *direct* investments between 1957 and 1958 can be attributed mainly to the fall in investments by the petroleum industry in Venezuela. Petroleum investment in other areas fell less sharply, from $596 million in 1957 to $487 million in 1958.

101. The outflow of new funds for direct investment in manufacturing industry was also considerably lower in 1958 ($175 million) than in 1957 ($370 million), with investments in Canada recording the sharpest decline. It should, however, be observed that both total earnings and reinvested earnings in the manufacturing sector rose slightly, total earnings from $852 million to $873 million and reinvested earnings from $391 million to $402 million.

102. An estimate of the foreign direct investments (including reinvested profits) of the main capital-exporting countries indicates that such investments appear to have increased by $3.6 billion in 1958, compared with an increase of about $4.7 billion in 1957, as the following table shows:

Millions of dollars

	1957	1958
United States		
New Funds	2,050	1,100
Reinvested profits	1,000	750
United Kingdom (including reinvested profits)	850	850
France (including reinvested profits)	600	500
Germay (Federal Republic)	150	100
Netherlands	30	250
Sweden	30	70
TOTAL	4,710	3,520

103. These data are subject to a considerable margin of error, particularly in the case of the United Kingdom, for which no data on the outflow of new funds as opposed to reinvested profits are available. For the same reasons it is difficult to form a precise estimate of direct investment in the under-developed areas, which was probably of the order of $2.5 billion in 1957 and about $1 billion lower in 1958. This drop, as already indicated is mainly attributable to a lower rate of investment by United States petroleum companies in Venezuela.

2. The capital-importing countries

104. About two-fifths of foreign entrepreneurial capital is invested in the development of natural resources. Most of the rest is invested in manufacturing industry, mainly in the advanced industrial countries, which offer large markets and investment opportunities in the

* Including reinvested profits unless otherwise noted.

[139] The principal source for the present section is *International Flow of Private Capital 1958-1959*, E/3369, 13 May 1960.

[140] *Op. cit.*, table 1, p. 12.

manufacturing sector, and in developing countries, including Australia, Brazil, Canada, Mexico and the Union of South Africa, where manufacturing activities are expanding. Foreign investments in resources development are concentrated on low-income countries rich in mineral deposits, chiefly petroleum and nonferrous metals; these investments expand as foreign mining and petroleum companies extend their prospecting and producing activities to new areas, such as North Africa (oil and natural gas), West Africa and the Caribbean (bauxite).

105. As table V-58 below shows, the net inflow of long-term private capital to under-developed countries in 1958 was only half of the total net inflow in 1957. This drop can be accounted for by a fall of $1 billion in net foreign investment in Venezuela. If the net flow of funds to Venezuela is subtracted from the total, the net inflow of foreign capital to the other under-developed countries included in table V-58 below is seen to have been constant at about $1 billion annually in the period 1956-1958. This figure of course still includes some petroleum investment, notably in other Latin American countries and in the United Kingdom dependent territories.

Table V-58

Under-developed countries: Balance of payments on capital account, by country, cumulative totals for 1951-1959[111]

(Long-term private and official and banking capital only)[a]

(Millions of dollars)

Country	Net long-term capital: Total	Official and banking	Private
Africa:			
Congo (Leopoldville)	344	423	—79
Ethiopia	20	—9	29
Liberia[b]	74	21	53
Libya	...	...	...
Morocco[c]	482	268	214
Rhodesia and Nyasaland	720	332	388
Sudan	—20	—12	—8
Tunisia[d]	21	19	2
Union of South Africa[e]	691[e]	165	526[e]
Franc area other than Morocco and Tunisia[f]	(1,532)	(1,532)	— (—)
Latin America:			
Argentina	579	144	435
Bolivia	30	—21	51
Brazil	1,625	422	1,203
Chile	296	11	285
Colombia	283	175	108
Costa Rica	38	9	29
Cuba	376	—13	389
Dominican Republic	20	—11	31
Ecuador	68	24	44
El Salvador	—17	3	—20
Guatemala	82	9	73
Haiti[g]	39	19	20
Honduras	34	—	34
Mexico	1,077	233	844
Nicaragua	24	2	22
Panama	86	11	75
Paraguay	15	6	9
Peru	415	73	342
Puerto Rico[h]	717	196	521
Surinam	43	10	33
Uruguay	...	14	...
Venezuela	1,967	—9	1,976
Middle East:			
Iran[i]	354	205	149
Iraq	180	67	119
Israel[e]	629	467	162
Jordan	47[e]	42	5[e]
Lebanon[j]	—1[e]	6	—7[e]
Turkey	245	168	77
United Arab Republic (Egypt)	82	94	—12
United Arab Republic (Syria)	41[e]	—1	42[e]
South-East Asia:			
Burma	—19	—23	4
Ceylon	—34	22	—56
China (Taiwan)	108	64	44
India	830	953	—123
Indonesia	—76[e]	—72	—4[e]
Pakistan	91	50	41
Philippines	362	20	342
Republic of Korea	...	—8	...
Republic of Viet-Nam[k]	...	42	...
Thailand	...	43	...
Other:			
Greece	275[e]	—30	305[e]
Iceland	36[l]	25	11[l]
Ireland	262[e]	36	226[e]
Portugal (escudo area)	91	76	15
Spain[m]	92	—9	101
Federation of Malaya-Singapore, Ghana and United Kingdom Colonial Territories[b n]	2,139	543	1,596
TOTAL, ALL COUNTRIES AND ITEMS	7,492	6,826	10,666

[111] Source: *International Flow of Long-term Capital and Official Donations, 1951-1959*, United Nations publication, Sales No.: 62.II.D.1, table 7.

Source: Division of General Economic Research and Policies of the United Nations Secretariat, based on data from Statistical Office of the United Nations, *Statistical Yearbook;* from International Monetary Fund, *Balance of Payments Yearbook* (Washington, D.C.); and from Organization for European Economic Co-operation, *The Flow of Financial Resources to Countries in Course of Economic Development, 1956-1959* (Paris, 1961).

[a] No sign indicates net inflow of funds; minus sign indicates net outflow.
[b] 1953-1959.
[c] 1952-1959.
[d] 1957-1959.
[e] Short-term private capital included with long-term private capital.
[f] Data refer to estimates of assistance by the Government of France to the franc area countries in Africa other than Morocco and Tunisia.
[g] Fiscal years ending 30 September.
[h] Fiscal years ending 30 June.
[i] Fiscal years beginning 21 March.
[j] 1951-1957.
[k] 1956-1959.
[l] Private capital flow refers to changes in liabilities only.
[m] 1954-1959.
[n] Data for Federation of Malaya-Singapore and Ghana have had to be included with those for United Kingdom Colonial Territories owing to the absence of separate data for the earlier years. The cumulative totals for these countries for the period 1956-1959 are as follows (private capital includes both long-term and short-term capital):

	Federation of Malaya-Singapore	Ghana
	(Millions of dollars)	
Net long-term capital and official donations	114	43
Official donations	37	2
Long-term capital	77	1
Official and banking	11	76
Private	66	—35

106. It should be emphasized that table V-58 above is only a first approximation of the net flow of long-term private capital to under-developed countries. The geographical coverage is not complete and the data for individual countries are not wholly comparable. Gross

foreign private investment in the under-developed countries was undoubtedly larger. French private investments in the franc area were $580 million in 1957 and $500 million in 1958. There was an inflow of new foreign funds into India in 1957 of rupees 162 million ($34 million) which was however offset by large capital repatriations and a decrease in India's foreign private assets.

107. The uneven distribution of foreign private capital in the under-developed world persists. Latin America is the main recipient of funds, which are chiefly derived from the United States. Foreign investments in the Middle East and Africa, although still relatively low, appear to have risen during the 1958 recession. In Africa, in particular, the rise is understated in the table as the figure does not include investment in large new mining developments in West Africa, nor does it include petroleum in the Sahara or investments in the franc area.

a. Western hemisphere

108. Foreign investment in both the mining and petroleum industries in *Canada* originates mainly in the United States, as shown in the following table:

Table V-59

Canada: Book value of foreign direct investment in natural resources, end 1958*

(Millions of Canadian dollars)

	United States	*United Kingdom*	*Other Countries*	*Total*
Mining and smelting	1,033	77	9	1,119
Petroleum and natural gas..	2,603	90	127	2,820
Total	3,636	167	136	3,939

Source: Canada, Dominion Bureau of Statistics, *The Canadian Balance of International Payments, 1959,* and *International Investment Position.*

109. The flow of foreign direct investment to *Latin America* declined sharply in 1958 and, again, more moderately in 1959. A disproportionately large share of the 1958 decline, however, stemmed from the fall by 90 per cent in oil investment in Venezuela, which had reached exceptionally high figures in 1956 and 1957, when large new leases were auctioned among petroleum companies by the Government after an interval of many years. New foreign direct investment in 1958 declined moderately in a number of countries, including Brazil and Mexico, and sharply in Cuba. On the other hand, there was a large increase in Argentina, and small increases occurred in some other countries. The available figures are summarized in table V-60 below.

110. The inflow of new United States direct investments to Latin America in 1959 was $193 million, against $325 million in 1958 and an exceptional $1,086 million in 1957. Reinvested earnings of United States companies in Latin America were $135 million in 1958, against $199 million in 1957. No estimate is as yet available for 1959.

111. After some uncertainties connected chiefly with the effects of the international recession of 1957-1958, *Mexico* resumed its vigorous expansion in 1959 in a climate of financial and monetary stability. Mexico

* Information provided by the Government of Canada.

Table V-60

Latin America: Direct investment capital inflow by selected countries, 1957-1958[142]

(Millions of dollars)

	1957	*1958*
Argentina	69.6	120.1
Brazil	178.0	128.0
Chile	51.8[a]	56.5[a]
Colombia	4.9	0.4
Costa Rica	0.2	0.9
Cuba	61.0	20.0
Guatemala	16.1	7.7
Haiti	—4.0	—2.4
Honduras	2.9	—4.9
Mexico	142.1	105.5
Panama	8.0[a]	12.0[a]
Peru	69.2	65.8
Sub-total	599.8	509.6
Venezuela	1,004.6	86.0
Total	1,604.4	595.6

[a] Covers U.S. private direct investment only, as reported by the U.S. Department of Commerce.

normally enjoys a high inflow of foreign exchange, due to the diversified nature of its exports and to large earnings from tourism. In addition, foreign direct investment plays an important part in the continued economic growth of the nation, and it is increasingly being provided through joint ventures or other forms of close co-operation with local institutions (such as Nacional Financiera) and enterprises. In 1958, the increase in foreign direct investment (including undistributed earnings) was $105.5 million, against $142.1 million in 1957. The decline was very marked for United States investment, which dropped from $75 million to $15 million in 1958. The gap was partly filled by an increase in direct foreign investment from other sources, chiefly Western Europe.

112. Changes in book value of direct foreign investments in Mexico during the period 1955-1957, by sectors of activity, are shown in table V-61.

Table V-61

Mexico: Value of direct foreign investments in Mexico by industry, 1955-1957[143]

(Millions of dollars)

	1955	*1956*	*1957*
Petroleum	16.5	16.9	18.4
Mining	171.0	189.1	211.2
Manufacturing	314.9	363.2	413.3
Utilities	203.8	212.7	230.7
Trade	118.5	179.8	218.3
Others	94.4	98.9	108.1
Total	919.1	1,050.6	1,200.0

113. *Venezuela* entered a period of readjustment in 1958-1959. The new Government was faced with serious problems, stemming among other things from the heavy financial commitments inherited from previous years and from the conditions of the international oil industry. In 1958, the net inflow of foreign direct investments in Venezuela amounted to $86 million. This

[142] *Op. cit.* (note 143), table 14, p. 37.
[143] *Ibid.*, table 15, p. 38.

reflected chiefly new foreign investment in oil and in iron ore mining, which was offset to some extent by disinvestment in manufacturing, trade and services.

Table V-62

Venezuela: Net foreign capital inflow for direct investment in Venezuela, by industry, 1956-1958[144]

(Millions of dollars)

	1956	1957	1958
Petroleum	384.7	802.9	68.6
Mining		49.1	55.8
Trade		72.7	6.6
Manufacturing		30.6	—23.6
Construction	*	24.0	5.9
Banking		12.6	4.0
Utilities		5.1	—2.8
Insurance		4.3	—4.2
Others	46.2	3.3	—24.3
TOTAL	430.9	1,004.6	86.0

* Included in "others".

114. *Argentina* is engaged in a new drive for foreign investments which has been highlighted by its 1958 laws on industrial development and the treatment of foreign investment and by the new pattern of co-operation developed between the national oil agency and the foreign oil groups. In 1958, the net inflow of foreign direct investment was twice as large as in 1957, totalling $120.1 million against $69.6 million in 1957. In 1959, total direct foreign investments in industries approved by the Ministry of Economy were estimated at $148.2 million, of which $100.2 million represented investments by United States companies. The balance came from European countries, of which the Netherlands, Switzerland, and the Federal Republic of Germany were the most important. Foreign industrial investment was attracted chiefly into manufacturing and chemical or pharmaceutical plants. During the first quarter of 1960, the total amount of direct foreign industrial investments approved by the Ministry of Economy reached some $23.4 million, of which $13 million represented investment by a Swiss company through a local subsidiary for the installation of a plant in Patagonia.

Table V-63

Chile: Net foreign direct investments in Chile by industry, 1957-1958[145]

(Millions of dollars)

	1957		1958	
Mining	22.0		40.7	
Copper		22.5		34.9
Iron		0.2		0.5
Nitrate and Iodine		0.7		5.3
Other	29.8		15.8	
TOTAL	51.8		56.5	

115. In *Chile*, the net increase in foreign direct investments was $56.5 million in 1958, compared with $51.8 million in 1957. While foreign direct investments in mining doubled, mainly due to a large-scale expansion in copper mining activities, investments in manufacturing and other activities declined to $14 million from $24.8 million in 1957. This drop, which probably was an effect of the over-all contraction in investment induced by anti-inflation policies, resulted in lower levels of production in capital goods industries, while the output of consumer goods was on the whole well maintained. Foreign investment in manufacturing industries picked up in 1959. It was represented partly by credits, which were extended from the Federal Republic of Germany and other countries to facilitate the modernization of industries.

b. The Middle East

116. Large amounts of direct investment continue to be attracted to the development of Middle Eastern petroleum resources. It is notable that United States direct investments in the Middle East (heavily concentrated in the petroleum industry) were almost as high in 1958 as in 1957, although petroleum investments in other producing areas declined sharply. The flow of new funds for direct investment from the United States to the area in 1958 was $114 million ($109 million to the petroleum industry), but outward remittances of undistributed subsidiary earnings of earlier years reduced the net inflow to $107 million. The book value of United States direct investments in the Middle East at the end of 1958 was $1,315 million, of which $1,218 million was invested in the petroleum industry. At the same time the aggregate book value of investment in Middle Eastern oil by foreign companies was estimated at $2,100 million.

c. Africa

117. Public and semi-public expenditures on economic and social overhead facilities account for a large proportion of total investment in Africa, which is estimated to be between $4 and $5 billion a year. In 1956 such investments accounted for 44 per cent total investment in the Belgian Congo, 51 per cent in Ghana, 56 per cent in former French West Africa and 42 per cent in the Union of South Africa. The proportion appears to have been rising in recent years.

118. Until recently only the [Belgian] Congo, the Federation of Rhodesia and Nyasaland and the Union (now Republic) of South Africa have attracted substantial amounts of foreign private capital, most of it for investment in mining development, although in the Union of South Africa there has been also considerable foreign investment in manufacturing industry. Within the last few years, however, increasing amounts of private capital have flowed to North and West Africa for investment in the development of petroleum and mineral resources.

119. Private foreign investments in *North Africa* and in the countries formerly part of the French community are predominantly of French origin, despite some recent repatriations.

120. Petroleum investments in the *Sahara* in 1958 totalled Ffr. 74 billion of which Ffr. 65 billion was French private and public capital and Ffr. 9 million Netherlands, United Kingdom, United States, Italian and Canadian capital. In 1959 over Ffr. 112 billion was invested in oil development in the Sahara. Of the concessions granted, 76 per cent involve French interests and 24 per cent other European, United States and Canadian interests, with European interests predominating.

121. Repatriation of French capital from *Morocco* virtually stopped in 1957, after an outflow of Ffr. 100

[144] *Op. cit.*, table 16, p. 40.
[145] *Ibid.*, table 18, p. 45.

billion in 1956. Of gross investments in 1957 of Moroccan francs 5.3 billion it is estimated that 26 per cent (1.38 billion) were of French origin, 44 per cent (2.33 billion) of Moroccan origin and 30 per cent (1.57 billion) of other origin.

122. Petroleum development in *Libya* has also attracted substantial amounts of foreign capital. Net oil company transactions in 1957 and 1958, including exploration costs, amounted to £ Libyan 9.3 million and £ Libyan 19.7 million respectively.

123. The book value of United States direct investments in Northern Africa was $145 million at the end of 1958, of which $111 million was invested in the petroleum sector. The inflow of funds in 1958 (including reinvested profits) was $13 million, compared with $7 million in 1957.

124. Private foreign investments in *Togo* and former *French West Africa* increased sharply in 1958 to francs CFA 7.8 billion from francs CFA 2.6 billion in 1957. Investment in large mineral development projects, including the Fria, Boké and Taiba projects, accounts for most of this increase, although private investment in petroleum development also rose to francs CFA 1.2 billion in 1958 from CFA 800 million in 1957 and francs CFA 55 million in 1956.

125. In the *Federation of Nigeria,* private foreign investments have averaged nearly £20 million annually since 1956, compared with an annual average of about £8.5 million in the year 1953-1955. Much of this investment is in petroleum exploration and development.

126. Foreign private investments in *Liberia* are mostly of United States origin. At the end of 1957 United States investments in Liberia were valued at $380 million, but this figure includes large amounts of capital invested in shipping companies operating under the Liberian flag. It is reported that substantial investments in Liberia have been made by German, Swiss, Spanish and other foreign companies in recent years and that if this trend continues European investments in Liberia may soon equal United States investments (excluding the shipping companies).

127. Total United States investments in Western Africa (including Liberia but excluding investments in shipping companies) totalled $179 million at the end of 1958.

128. There was a small net outflow of almost B.fr. 300 million of private capital from the Belgian Congo in 1958, compared with a net inflow of B.fr. 400 million in 1957. The outflow of long-term capital was 179 million and that of short-term capital 114 million. An aggregate net inflow of B.fr. 216 million from the United States and Canada was more than offset by an outflow of 38 million to Belgium-Luxembourg and of 478 million to other OEEC countries. During the first quarter of 1959 the net outflow increased sharply to B.fr. 1.2 billion, and the trend reportedly continued through the year and early in 1960. The outflow of Belgian and other European investment from the Congo, reflecting anticipated changes in the status of the area, which became independent on 30 June 1960, appears to have coincided during the past two years with a continued inflow of United States investment in mining, trading and other activities.

129. The increase in foreign private direct investments in the Republics of the Congo (Brazzaville), Gabon and Chad, and the Central African Republic totalled francs CFA 51 billion between 1948 and 1958 (58.4 billion in terms of 1959 francs CFA). The increase in 1958, including reinvested profits, is estimated at francs CFA 5 billion, compared with francs CFA 8.3 billion in 1957. Most of this capital came from France, but investments from other sources increased from francs CFA 430 million in 1957 to francs CFA 912.3 million in 1958, mainly due to a larger inflow of funds from the United States. Development of mineral resources, particularly in the Republics of Gabon and the Congo,[146] is expected to attract increasingly significant amounts of United States capital during the next decade. Tentative proposals call for an expansion of present United States investments of $US62 million to approximately $US95 million by 1965 and to about $US345 million by 1970. The $345 million represents investments planned by United States firms participating with other foreign firms in a number of mineral projects, including the development of manganese ore deposits at Franceville and iron ore deposits near Metzambo in the Republic of Gabon, and exploration for petroleum along the Congo and Gabon coasts.

130. The increase in foreign private direct investments in *Cameroun* declined from francs CFA 1.6 billion in 1957 to 273 million in 1958. Foreign investments other than French were only francs CFA 90 million in 1958 against 480 million in 1957 and are mainly concentrated in the trading of petroleum products. From 1947 to 1957, it is estimated that private investments in Cameroun totalled francs CFA 21 billion. About two-thirds of this total have been invested in the Edéa project.

131. Large amounts of private foreign capital have been invested in the *Federation of Rhodesia and Nyasaland* in recent years. The increase in foreign private direct investments in the Federation in 1958 was £24.7 million, compared with £22.2 million in 1957 and £21.2 million in 1956. Preliminary estimates for 1959 indicate that the inflow fell sharply, to between £12 and £15 million. The bulk of foreign private capital invested in the Federation comes from the United Kingdom and the Union of South Africa.

d. Asia and the Far East

132. Net foreign private investments in the underdeveloped countries of Asia and the Far East have declined in recent years, mainly on account of a lower level of investment in the Philippines and increasing repatriations of capital from India.

133. The net inflow of foreign long-term direct investment into *India* in 1957 was 168 million rupees, compared with 247 million in 1956. Preliminary data indicate that the inflow in 1958 was only about 100 million rupees, mainly on account of a much lower level of investment by the petroleum industry.

134. The decline in the net investment in 1957 was due to a fall in reinvested profits from 194 million rupees in 1956 to 96 million in 1957, and an increase in repatriations of capital from 63 million rupees in 1956 to 91 million in 1957.

135. Total earnings on foreign investments fell by rather over 100 million rupees in 1957. Profits of foreign controlled tea companies fell most sharply, but earnings in the petroleum sector also fell, mainly as a result of the surrender of a protective duty, and earnings in the manufacturing sector appear to have been

[146] See also chap. IV, A, paras. 17-24 above and section C of this chapter, para. 142 below.

affected by the shortage of imported raw materials resulting from severe import restrictions and possibly also by higher taxation.

136. Total private foreign investments in India at the end of 1957 amounted to 5,087 million rupees, of which nearly 90 per cent, 4,461 million, was in the form of investment in foreign-controlled enterprises. During the four years 1954-1957 reinvested profits accounted for as much as 70 per cent of net additions to the book value of direct business investments.

137. Although the United Kingdom is still by far the largest foreign investor in India in 1957 it was displaced by the United States as the main source of new funds, as table V-64 shows.

Table V-64

India: Net inflow of non-banking foreign business investments, in India, by country of origin, 1954-1957[147] and 1956-1959, annual averages[148]

(Millions of rupees)

	1954-55 (annual average)	1956	1957
United Kingdom	96	157	63
United States	49	71	104
Switzerland	3	15	—15
Germany, Federal Republic of	12	2	8
Others	2	1	9
TOTAL	162	247	168

138. The new *Pakistan* five-year development programme envisages large foreign investments and credits, apart from government aid. A new liberal policy regarding the admission of foreign private capital to Pakistan and the incentives offered to the foreign investor has been adopted by the Government.

139. In *Ceylon* the inflow of foreign private capital averaged 3.5 million rupees annually in 1957 and 1958.

Table V-65

Under-developed countries: Percentage distribution of net international flows of long-term capital, by type, 1951-1955 and 1956-1959, annual averages[145]

Period and region	Net long-term capital: Total[a]	Official and banking	Private
Under developed countries			
1951-1955	63	26	37
1956-1959	66	23	42
Africa			
1951-1955	74	53	20
1956-1959	50	37	13
Latin America			
1951-1955	87	21	65
1956-1959	86	11	76
Middle East			
1951-1955	31	18	12
1956-1959	46	32	14
South-East Asia			
1951-1955	17	2	15
1956-1959	44	41	3
Other			
1951-1955	62	19	43
1956-1959	75	13	62

[a] Balance (to 100 per cent) is constituted by official donations.

[147] *Ibid.*, table 21, p. 54.
[148] *Ibid.*, table 9.

Table V-66

Under-developed countries: Percentage distribution of net international flows of long-term capital, by region, 1951-1955 and 1956-1959, annual averages[149] [a]

Period and region	Population[b]	Net long-term capital: Total	Official and banking	Private
1951-1955:				
Under-developed countries	100	100	100	100
Africa	10	29	50	14
Latin America	15	39	23	51
Middle East	7	7	10	5
South-East Asia	56	2	1	4
Other	11	23	17	27
1956-1959:				
Under-developed countries	100	100	100	100
Africa	10	12	26	5
Latin America	16	48	16	66
Middle East	7	11	22	5
South-East Asia	55	11	27	1
Other	11	17	8	22

Source: Division of General Economic Research and Policies of the United Nations Secretariat and from *Statistical Yearbook 1959* (United Nations publication, Sales No.: 59.XVII.1).

[a] No sign indicates net inflow.

[b] Population totals are for 1953 and 1958, respectively. Data for Portugal refer to metropolitan Portugal only.

Table V-67

Under-developed countries: Percentage distribution of net international flows of long-term capital, by *per caput* income groups, 1951-1955 and 1956-1959, annual averages[150] [a]

Period and per caput income group[b]	Population[c]	Net long-term capital: Total	Official and banking	Private
1951-1955:				
Under-developed countries	100	100	100	100
Group I	61	5	10	3
Group II	25	40	49	35
Group III	6	13	5	16
Group IV	9	42	36	46
1956-1959:				
Under-developed countries	100	100	100	100
Group I	60	15	45	—1
Group II	26	28	25	29
Group III	6	13	11	14
Group IV	8	44	19	58

Source: See table V-66.

[a] No sign indicates net inflow; minus sign indicates net outflow.

[b] Countries have been grouped according to the annual average of their *per caput* national income in 1956-1958. *Group I.* Countries with *per caput* national income of less than $100: Bolivia, Burma, China (Taiwan), Congo (Leopoldville), Ethiopia, Haiti, India, Indonesia, Jordan, Liberia, Pakistan, Sudan; *Group II.* Countries with *per caput* national income of $100 to $199: Brazil, Ceylon, Colombia, Dominican Republic, Guatemala, Honduras, Iran, Iraq, Nicaragua, Paraguay, Peru, Philippines, Portugal (escudo area), Rhodesia and Nyasaland, United Arab Republic; *Group III.* Countries with *per caput* national income of $200 to $299: Costa Rica, El Salvador, Greece, Mexico, Panama, Turkey; *Group IV.* Countries with *per caput* national income of $300 or more: Argentina, Chile, Cuba, Ireland, Israel, Lebanon, Puerto Rico, Spain, Union of South Africa, Venezuela.

[c] Population totals are for 1953 and 1958, respectively. Data for Portugal refer to metropolitan Portugal only.

[149] *Ibid.*, table 10.
1951-1955:
[150] *Ibid.*, table 11.

140. Private foreign investments in South East Asia showed little sign of increase. In *Indonesia,* new investments by the petroleum companies amounted to 380 million rupiahs in 1958 compared with 434 million rupiahs in 1957. The outflow of private capital (mainly on account of depreciation of petroleum companies' assets) also declined to 320 million rupiahs in 1958 from 400 million in 1957. Since 1955 there has been a net inflow of foreign private capital into Burma. Net long-term foreign investment in Burma was 2.9 million kyats in 1957 and 6.5 million kyats in 1958.

e. REGIONAL ANALYSES

141. A somewhat more sophisticated analysis of the international flow of capital to the under-developed countries in terms of broad geographical distribution and in terms of per capita income groupings is shown in tables V-65 to 67, above.[151]

[151] Source: *International Flow of Long-term Capital and Official Donations, 1951-1959,* United Nations publication, Sales No.: 62.II.D.1.

C. Concessions and development agreements with foreign nationals and companies for the development of resources*

1. Mineral resources other than petroleum

a. AFRICA

Republic of Gabon[152]

142. In connexion with the exploitation of a major manganese ore deposit, a loan agreement in the amount of $35 million was concluded in June 1959 between the International Bank for Reconstruction and Development and the concessionaire; of this amount, $21 million were placed privately with various United States financial institutions. The concessionaire, the Compagnie Minière de l'Orgooué (COMILOG), incorporated in the Republic of Gabon, is owned by the Compagnie des Minerais de Fer Magnétique de Mokta-el-Hadid (French; 14 per cent); the Société Auxiliaire de Manganèse de Franceville (French; 15 per cent); The Bureau Minier (a French Government minerals development organ; 22 per cent); and the United States Steel Corporation and a subsidiary thereof (49 per cent).

b. LATIN AMERICA

i. *Brazil*[153]

143. Mining has, in the past, primarily attracted British and French capital; United States investment in mining has never been large, amounting to only $2.5 million in 1943. In the post-war years, however, important minority investments have been made by United States firms in manganese and iron ore mining.

ii. *Chile*[154]

144. In Chile, where mineral resources are open to both foreign and domestic private enterprises, foreign capital has played a very important role in the development of mineral production.

145. About 95 per cent of the country's output of copper is mined by three United States-controlled enterprises. One half of the output comes from the Chuquicamata deposits, worked by the Chile Exploration Company, a subsidiary of Anaconda Copper Company. Second in importance is the Braden Copper Company, a subsidiary of Kennecott Copper Corporation, accounting for about one third of production. Third in importance is the Andes Copper Mining Company (controlled by a subsidiary of Anaconda Copper Company).

146. More than 90 per cent of Chile's output of nitrates is produced by foreign enterprises. About 60 per cent is accounted for by the United States-controlled Anglo-Lautaro Nitrate Company, about 30 per cent by British-controlled enterprises, and the remaining 10 per cent by "independent" producers including Chilean and small foreign enterprises. The industry, however, is controlled by the Government through the Nitrate and Iodine Sales Corporation *(Corporación de Ventas de Solitre y Yado de Chile).*

147. Concession rights to the only important high-grade iron ore deposit exploited are held by a subsidiary of the United States-owned Bethlehem Steel Corporation. The current lease expires in 1973.

iii. *Colombia*[155]

148. Colombia's mining legislation is fairly liberal towards foreigners and foreign investments in this field have a long history. Foreign direct investments are largely in the mining of gold, silver and platinum ores of emeralds. British investment is principally in the production of gold, silver, platinum and emeralds. In recent years foreign-owned mines, mostly British, Canadian and United States-owned, have accounted for about 75 per cent of the output of gold.

iv. *Ecuador*[156]

149. A major foreign investment in mining is that of a United States-controlled company which in 1951 was granted a concession for the exploitation of sulphur.

v. *Peru*[157]

150. Foreign capital, primarily from the United States, is largely responsible for the development of the mining industry. Of about 29,000 persons employed in mining in 1950, approximately two-thirds worked in foreign-owned enterprises.

151. By far the largest United States mining concern in Peru is Cerro de Pasco Corporation, which mines and smelts copper. In 1950, the corporation accounted for about half of the copper and zinc ores produced in Peru, about one fourth of the lead and one third of the silver content. The liberal mining code of 1950 and high price of metals stimulated the corpora-

* It should be noted that the listing of concessions is not exhaustive and is designed to provide indicative information only.

[152] Information provided by the International Bank for Reconstruction and Development. See also "Impact of French Modernization Plan on Africa", African Affairs, No. 15, Oct. 1956, French Embassy, Press and Information Service, New York. See also chap. IV, section A, paras. 17-24 above.

[153] *Foreign Capital in Latin America,* United Nations publication, Sales No.: 54.II.G.4, p. 54.

[154] *Ibid.,* pp. 63 and 64.

[155] *Ibid.,* p. 70.

[156] *Ibid.,* p. 90

[157] *Ibid.,* pp. 134 and 135.

tion to make substantial new investments in concentrating and refining facilities for zinc and lead ores, the production of which has reached record levels.

152. A copper-mining subsidiary of the American Smelting and Refining Company and another United States-owned enterprise are engaged in the production of silver and lead.

153. In 1952, the American Smelting and Refining Company considerably expanded its activity in Peru. It placed a mine in operation near the northern coast (at Chilite) producing lead, zinc and silver ores, and carried out large-scale exploratory work on two concessions in southern Peru at a cost which totalled $7 million by the end of 1952. It ascertained that the copper deposits in one of these concessions (at Teguapala) contained about 400 million tons of ore and would yield about 100,000 tons of blister copper annually during the first ten years of exploitation. Operation of the mine at Teguepala, which will be one of the largest in the world, was estimated to require an investment of $200 million. A subsidiary was formed to develop the deposit, and a loan application was made to the Export-Import Bank to cover a substantial portion of the capital requirements.

154. Early in 1952, the Government of Peru approved a contract negotiated between one of its development agencies *(Corporación Peruana del Santa)* and a United States enterprise (Utah Construction Company) to work iron ore deposits at Marcoua. The enterprise is to export a minimum of 500,000 tons of ore per year, and to sell ore needed for an iron and steel mill being built at Chimbote by the *Corporación Peruana del Santa.* An expenditure of over $9 million is involved, mainly in mining and transport facilities.

155. A long established foreign corporation accounts for the entire output of Peruvian vanadium, which represents about one fourth of world production.

vi. *Venezuela*[158]

156. Major investments in iron ore mining have been undertaken by two large United States concerns: the Bethlehem Steel Company (at El Pao) and the United States Steel Corporation (at Cerro Bolívar).

c. Caribbean area

*Jamaica**

157. The three bauxite producing companies, Kaiser Bauxite Company; Reynolds Jamaica Mines, Ltd.; and Alumina Jamaica, Ltd., are subsidiaries of American and Canadian companies. In addition, the Aluminum Company of America recently carried out extensive prospecting in Jamaica prior to taking up a lease of over 50 square miles for bauxite. They propose to commence mining in about two years' time. Harvey Aluminum of America is also prospecting in Jamaica. All funds required for the exploration and development of bauxite are provided by the individual companies.

158. Gypsum mining is carried out by Jamaica Gypsum, Ltd., a subsidiary of the United States Gypsum Company which provides funds for the exploitation of the gypsum deposits.

d. Pacific Ocean area

*Fiji**

159. The largest companies active in the colony are both British—the Emperor Gold Mining Co. Ltd., which operates a large gold mine is a wholly owned subsidiary of an Australian company while the other, Aluminium Laboratories Ltd. is a Canadian company which is investigating the bauxite potential of the colony. Until recently, the Government of Australia was prospecting for phosphate in Fiji, but has surrendered its prospecting licence as it was found that the deposits were either too small or not sufficiently high in grade. Two of the three gold mines held by British companies are currently dormant.

160. The foreign companies engaged in prospecting and mining in Fiji are:

1. *Consolidated Manganese and Mining Co., Ltd.,* wholly owned by Metal Traders Inc., New York, which has been an active manganese ore producer in the past but which is now only operating one small mine. This company has a half share in three manganese mines in which venture it is associated with a syndicate of about five Fijian villages. The present company is also operating an ore-buying agency in Fiji. All local employees of this company are expatriate British subjects and local residents.

2. *Banne Brothers, Ltd.,* a Japanese firm which operates through three locally registered companies. When this firm first came back into Fiji after the Second World War it commenced operations as manganese ore buyers. It then engaged in mining copper, manganese and iron ores under contract or agreement with local citizens but has recently entered the prospecting field on its own account and has arranged to purchase mines from local citizens. On one of these, a copper mine, it is associated with the Nippon Mining Company of Tokyo, Japan, which is employed on a relatively large-scale drilling programme to prove the extent of the deposit.

This Japanese firm employs about eight Japanese on prospecting and mining while the rest of its employees are local, numbering about 100. The exact number of Japanese employed solely on this work is hard to determine as the firm is also engaged in trading in other commodities as well. If the abovementioned copper mining venture goes ahead as expected with the attendant erection of a concentration plant it is estimated that about twenty expatriate experts and something like 200 local labourers will be required for this mine alone.

161. All mining and prospecting ventures in the colony are financed by private capital either local or overseas as the case may be. Government participation to date has consisted of a subsidy of £2 per ounce on all gold produced by the Emperor Gold Mining Co., Ltd. up to a maximum of £150,000 per year for three years from 1958. Development capital for prospecting and mining purposes is also available from the Agricultural and Industrial Loans Board but to date no applicant has accepted an advance for a purely mining or prospecting venture.

162. The Fiji Government has not participated in mineral extraction other than common stone or limestone.

163. Extraction of limestone and common stone is not governed by a special Ordinance.

164. A British company is now embarking on large-scale digging of limestone for use in a local cement factory.

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* Information provided by the Government of the United Kingdom.

[158] *Ibid.*, p. 146.

Table V-68

Estimated crude petroleum production of international companies in 1960
(In millions of tons)

	ESSO N.J.	GULF	TEXACO	ESSO Calif.	MOBIL	SHELL	BP[a]	CFP[b]	Total of the eight	Others	Total production
North America	25.2	17.4	22.8	14.5	11.5	16.2	0.2	0.1	107.9	265.1	373.0
Latin America	65.9	10.6	10.5	3.5	7.9	49.0	1.6	—	149.0	48.5	197.5
TOTAL, WESTERN HEMISPHERE	91.1	28.0	33.3	18.0	19.4	65.2	1.8	0.1	256.9	313.6	570.5
Europe	2.1	1.7	—	—	1.1	1.3	0.1	—	6.3	8.4	14.7
Africa	—	—	—	—	0.2	1.6	1.0	3.2	6.0	4.4	10.4
Middle East[c]	28.8	43.5	22.9	22.9	16.6	21.0	74.0	17.0	246.7	15.9	262.6
Far East	2.1	—	4.1	4.1	2.0	11.3	—	—	23.6	2.3	25.9
TOTAL, EASTERN HEMISPHERE	33.0	45.2	27.0	27.0	19.9	35.2	75.1	20.2	282.6	31.0	313.6
TOTAL	124.1	73.2	60.3	45.0	39.3	100.4	76.9	20.3	539.5	344.6	884.1
Planned economy countries	—	—	—	—	—	—	—	—	—	167.2	167.2
WORLD TOTAL	124.1	73.2	60.3	45.0	39.3	100.4	76.9	20.3	539.5	511.8	1,051.3
Percentage of total production	11.8	7.0	5.8	4.3	3.8	9.6	7.3	2.0	51.6	48.4	100.0

[a] British Petroleum Company, Ltd.
[b] Compagnie française des pétroles.
[c] Breakdown of production according to financial participation; no account taken of supply contracts.

2. Petroleum resources

a. General scope of private international operations[159]

165. The data provided under this heading are designed to provide an over-all picture of the scope of private international operations in the exploitation of petroleum resources, including some recent data on related financing which have appeared in United Nations documentation.

166. Table V-68 above permits a comparison of the scope of activity of the major private petroleum companies engaged in international operations.

167. These eight international companies thus account for 51.6 per cent of total world output, over 61 per cent of world output outside mainland China and the European planned economy countries, and almost 85 per cent of output excluding mainland China, the European planned economy countries and North America.

Table V-69

Origin and use of the funds of the 32 major American petroleum companies, 1950-1960[160]
(Millions of dollars)

	Available profits	Dividends paid[a]	Funds available for investment	Capital expenditure[b]	External funds required
1950	3,080	724	2,356	1,971	—385
1951	3,706	884	2,822	2,620	—202
1952	3,902	939	2,963	3,233	270
1953	4,379	1,019	3,360	3,489	129
1954	4,592	1,041	3,551	3,760	209
1955	5,200	1,163	4,037	4,081	44
1956	5,866	1,324	4,542	5,347	805
1957	6,318	1,414	4,904	5,636	732
1958	5,531	1,419	4,112	4,526	414
1959	5,892	1,468	4,424	4,469	45
1960[c]	6,200	1,520	4,680	4,450	—230

[a] Including minority holdings.
[b] Including investments in non-consolidated companies.
[c] Estimates.

168. The operations of the international companies are not restricted to petroleum exploration and production. All have direct outlets to consumer markets of which they supply a very large part in many countries. The balance between their various branches of activity varies but all have a sufficient degree of "integration" to ensure the stability necessary to their development. The companies thus possess relatively complete experience on the technical and commercial level, and consequently on the economic level too.

169. On the financial level, moreover, they use a method which is worthy of analysis: the integrated companies have hitherto balanced their over-all opera-

[159] From: *Capital Requirements of Petroleum Exploration and Methods of Financing*, E/3580, 15 Mar. 1962, paras. 136-139 and tables 11 and 12.
[160] K. E. Hill, *The Changing Oil Industry*. Published by Eastman, Dillon Union Securities and Co., New York. Figures from the Chase Manhattan Bank, Feb. 1961.

tions in such a way as to permit the self-financing of a large part of the investment needed for the exceptionally rapid expansion of capacity required to meet demand. Very little call has been made on outside sources, compared with the situation in other sectors. The international companies can therefore be said to finance exploration from their own funds.

170. This conclusion also holds good for the majority of the private American companies, as table V-69 shows.

b. The Middle East

i. *Iran*

171. The private sector of the Iranian oil industry is governed by a number of agreements between the Government of Iran and the National Iranian Oil Company (NIOC) on the one hand, and various foreign private companies on the other hand. Certain salient facts of a number of major agreements will be discussed here, namely, the Consortium Agreement of 20 March 1954, and agreements concluded subsequent to the enactment of the Petroleum Act of 1957 with (1) AGIP Mineraria (Azienda Generale Italiana Petroli); (2) the Pan American Petroleum Corporation; and (3) Sapphire Petroleums, Ltd.

172. The foreign oil companies which signed the Consortium Agreement were: Gulf Oil Corporation; Socony-Vacuum Oil Company Inc. (now Socony-Mobil Oil Company Inc.); Standard Oil Company (New Jersey); Standard Oil Company of California; the Texas Company; Anglo-Iranian Oil Company, Ltd. (now the British Petroleum Company, Ltd. (BP)); N.V. de Bataafsche Petroleum Maatschappij and the Compangnie Française des Pétroles.

173. The rights of the Consortium members are transferable, with the consent of Iran, and transferees become members of the Consortium.

174. The area of operations to the south-west of Iran, is defined in a schedule to the Agreement.

175. The duration of the Agreement is twenty-five years. There is provision, however, for three extensions, at the option of the Consortium, for periods of five years each. With each extension there is to be a reduction in the area of operations to 80 per cent of the previous area.

176. Basically, the Agreement involves the production of natural gas, crude and refined oil, on behalf of Iran and NIOC, by "operating companies",[161] their sale by NIOC to "trading companies"[162] and their resale in Iran by the "trading companies", for export.

177. With respect to sales, NIOC is to recover from the trading companies a stipulated percentage[163] of the "posted price".[164] Payment of production costs and fees is made by the trading companies direct to the operating companies.

178. Profits made by the trading companies are subject to income tax in Iran. From the tax payable, however, the amount of the "posted price" paid to NIOC is deductible.

Agreements concluded since the enactment of the Petroleum Law (1957)

179. The Petroleum Law does not apply to the area covered by the Consortium Agreement. The Law provides for participation by NIOC with private companies either in a "joint structure" in which the parties join, without the creation of a new legal entity, or in a joint stock corporation whose shares would be owned in part by NIOC and in part by private companies.

180. *The NIOC-AGIP Mineraria Agreement.* The Agreement (effective 24 August 1957) relates to three zones. A zone of 5,600 square kilometres of the continental shelf located in the northern part of the Persian Gulf; a continental zone of 11,300 square kilometres located in the region of the eastern slopes of the central Zagros mountains and a zone of 6,000 square kilometres along the coast of the Gulf of Oman extending up to the continental shelf.

181. The Agreement provides for the creation of the Société Irano-Italienne des Pétroles (SIRIP), a joint-stock company whose capital (10 million rials) is to be subscribed equally by NIOC and AGIP Mineraria and which will, in the common interest, undertake operations for the exploration and production of crude oil and other natural hydrocarbons and the sale of by-products.

182. Exploration costs are to be met by AGIP Mineraria. A minimum exploration expenditure of $22 million is to be made by AGIP Mineraria over a period of twelve years. In the event of the discovery of commercially-exploitable deposits, 50 per cent of such costs are to be refunded by SIRIP to AGIP Mineraria and 50 per cent to NIOC. Thereafter, development activities and the completion of exploration are to be financed by SIRIP, supported by the equal contributions of both participants.

183. Exploration activities are limited to a period of 12 years. In the course of this period, there is to be a progressive reduction of the explorable area until, at the expiration of the 12th year, the area of operation is to be reduced to lands in which commercially exploitable fields have been discovered.

184. The Agreement is to continue in force for 25 years after the commencement of sales of oil. The point in time at which the sale of oil commences may vary as between fields and the duration of the Agreement may vary accordingly. The Agreement is renewable, without alteration in terms, at the option of AGIP Mineraria for a period of five years. Two further extensions of similar duration may be granted at the request of AGIP Mineraria, on such terms more favourable to Iran as may be included in current contracts between NIOC and other foreign oil companies.

[161] The Iraanse Aardolie Exploratie en Productie Maatschappij N.V. (Iranian Oil Exploration and Producing Company) and the Iraanse Aardoie Raffinage Maatschappij N.V. (Iranian Oil Refining Company). Both companies were formed by the Consortium and incorporated in the Netherlands. In terms of the Consortium Agreement, two of the seven members of each board of directors are nominated by NIOC.

[162] Subsidiaries nominated by a Consortium member to make purchases and resales. A Consortium member which itself makes purchases and resales is also considered to be a "trading company".

[163] 12.5 per cent of the "posted price" in the case of crude oil; NIOC may elect to take crude oil in lieu thereof.

[164] On crude oil, where loaded on board a tankship for export from Iran, the price f.o.b. tankship at seabord terminal; where delivered to refinery, the price of equivalent crude oil f.o.b. a tankship at the refinery, but less loading charges of crude oil at such port.

185. Of the net profits of SIRIP, 50 per cent go to the Government and the remainder is divided equally between NIOC and AGIP Mineraria.

186. *The NIOC-Pan American Agreement:** Under this Agreement, concluded in April 1958, the parties entered into a "joint structure" relationship in terms of the Petroleum Act (1957) without, however, the creation of a separate juridical personality.

187. The area of operations entrusted to the "joint structure" comprises two separate zones of 1,000 and 15,000 square kilometres respectively.

188. Duration of exploration activities, exploration costs, progressive reduction of explorable area and the duration of the Agreement are similar to those provided for under the AGIP Mineraria Agreement.

189. A non-profit joint-stock company, the Iran Pan American Oil Company (IPAC), with a capital of 7.5 million rials subscribed equally by both parties, is to be created to act as agent of the "joint structure" and, in certain cases, of Pan American alone, in the exploration, exploitation, transport and sale of petroleum.

190. A minimum expenditure of $82 million is to be made by Pan American over the initial twelve years. From the thirteenth year on, rental is to become payable by Pan American at the rate of $400 per square kilometre for each of the first five years; then at $480 for the next five years, and, thereafter, at $600. A cash bonus of $25 million is to be paid by Pan American within thirty days of the effective date of the Agreement.

191. Ownership in petroleum produced is to be vested equally in both parties to the "joint structure". Neither IPAC nor the "joint structure" attract tax. The tax liability of NIOC or Pan American shall not exceed 50 per cent of their respective profits.

192. *The NIOC-Sapphire Petroleums Agreement:* The Agreement, concluded in June 1958, relates to an area of 1,000 square kilometres described in a schedule to the Agreement.

193. In most respects, the Agreement is similar to that concluded with Pan American. Provision is made for a "joint structure" relationship and operations, as in the case of the Pan American Agreement, are to be conducted through the agency of a non-profit joint-stock company, Iran Canada Oil Company (IRCAN), whose capital (750,000 rials) is to be equally subscribed by both parties.

194. A minimum expenditure of $18 million is to be made by Sapphire Petroleums, Ltd.,[165] over the initial 12 years. No cash bonus is, however, payable.

ii. *Iraq*

195. Oil exploration is conducted principally by three companies: the Iraq Petroleum Co., Ltd. (originally the Turkish Petroleum Co., Ltd.), under an agreement of 14 March 1925; the Mosul Petroleum Co., Ltd., under an agreement of 20 April 1932 between the Government of Iraq and the British Oil Development Co., Ltd.; and the Basrah Petroleum Co., Ltd., under an agreement of 29 July 1938.

196. On 3 February 1952, an agreement[166] between the Government of Iraq on the one hand and the three companies on the other provided for a revision of the agreements involved with a view to the equal sharing of the profit resulting from the operations of the companies in Iraq.

197. Under the 1952 agreement, the Government is to receive each year a tax commutation payment of £20,000 from each of the companies, as well as the greater of the following sums: an amount equal to 50 per cent of the profit resulting from the operations of the companies in Iraq, or, an amount equal to the value at "posted prices"[167] of 25 per cent of the net production of the Iraq Petroleum Company and the Mosul Petroleum Company respectively in that year and of 33⅓ per cent of the net production of the Basrah Petroleum Company in that year, or, £25 million.

iii. *Saudi Arabia*

198. *The Arabian American Oil Company (Aramco)[168] concession:* The principal agreement was concluded on 29 May 1933 between the Government of Saudi Arabia and the Standard Oil Company of California (Socal). Under this agreement, Socal obtained exclusive rights over a defined area comprising the greater portion of Eastern Saudi Arabia from its eastern boundary, inclusive of islands and territorial waters, to the westerly edge of the Dahana and from the northern boundary of Saudi Arabia to its southern boundary.

199. In November 1933, Socal, in terms of the agreement, formed, for the purposes of the enterprise, the California-Arabian Standard Oil Company (Casoc) and assigned to it its rights and obligations under the agreement. A supplementary agreement, concluded on 31 May 1939, brought other areas, as well as the interests of the Government of Saudi Arabia in the Saudi Arabian-Kuwait Neutral Zone within Casoc's exclusive area of operations. In 1944, Casoc changed its name to Arabian American Oil Company (Aramco).

200. Under the Off-Shore Agreement of 10 October 1948, Aramco's exclusive rights were extended to the whole of the off-shore area of Saudi Arabia in the Persian Gulf, while Aramco relinquished its rights in the Saudi Arabian-Kuwait Neutral Zone.

201. Under the principal agreement of May 1933, the company undertook to make certain loans to the Government of Saudi Arabia, to pay to the Government a royalty on all the net crude oil produced, after the deduction of water, foreign substances, oil required for the customary operations of the company's installations within Saudi Arabia, as well as oil required for manufacturing certain quantities of gasoline and kerosene to be provided annually to the Government without charge.

202. An agreement of 30 December 1950 provided that the company would be subject to income tax which would, together with other payments to be made to the Government by Aramco, secure to the Government 50 per cent of the company's net income.

* Information provided by the Government of Iran.

[165] Effective 19 Jan. 1962, the title of this company became Cabol Enterprises, Ltd.

[166] For text see *Development of Mineral Resources in Asia and the Far East*, United Nations publication, Sales No.: 53.II.F.5., p. 82.

[167] *Ibid.*, art. 1.

[168] As of 1955, holdings in Aramco were as follows: Standard Oil Company of California (Socal), 30 per cent; the Texas Company, 30 per cent; Standard Oil Company (New Jersey), 30 per cent; and Socony Mobil Oil Company, 10 per cent.

iv. *United Arab Republic*[169]

203. Until 1956, petroleum exploration and exploitation in the United Arab Republic were entirely in the hands of foreign private companies. In 1956 the Government set up a public establishment, the General Petroleum Authority, empowered to engage in the whole range of petroleum operations and to have capital holdings in other organizations. In 1957, the General Petroleum Company was set up. Its capital is at present held by the Economic Institution and may only belong to Egyptians. The General Petroleum Company has three small fields, where production started in late 1959 and has been increasing regularly (135,000 tons per annum). The second Five-Year Development Plan, which came into force on 1 July 1960, places considerable emphasis on petroleum development. In mid-1960 the Government also invited bids for the exploration of the western desert where it hopes that oil will be found. The conditions provide for a 50:50 division of profits in the case of companies which accept domestic (not necessarily State) participation and a royalty higher than 50 per cent of the profits, payable to the State, if there is no participation by national capital.

204. No tender has yet been made under these conditions. During 1961, the State also tightened its hold over the economy. Foreign concerns now fall into three categories: those which are 100 per cent nationalized (banks, insurance, public transport); those in which the Government already has a holding, which it will ultimately increase to at least 50 per cent; and those in which the State takes over individual holdings exceeding £E10,000 ($US29,000). In all cases, 4 per cent 15-year Government bonds will be given in exchange for these holdings. For example, the Government's share in Anglo-Egyptian Oilfields was increased from 9.6 per cent to 55 per cent: all the other shareholders had to surrender half their shares. Compensation in the form of Government bonds is based on the Cairo Stock Exchange quotation before the promulgation of the nationalization decrees. The same procedure was applied to a small local importing and distributing concern, wholly Egyptian-owned, while individual holdings of more than £E10,000 in SERCOP will be acquired by the Government, which already holds more than 49.4 per cent of the shares.

205. No other oil companies have yet been affected by the decrees promulgated but the Government seems determined to keep private capital out of the key sectors of the economy. Reference should also be made to the agreement concluded in November 1961 by the Government of the United Arab Republic and the Italian concern, ENI. The first part of the agreement relates to the opening of a credit of £E50 million which will be used to found an Egyptian petrochemical industry and to import the equipment necessary for expanded petroleum exploration in Egypt. Under the terms of the second part of the agreement, the Government grants ENI an exploration permit and, if necessary, a concession of 26,200 square km in an area lying between the Nile delta, the Suez Canal and the Red Sea. This agreement is similar to that concluded by ENI in Iran, providing for a 50:50 division of profits, the assumption of exploration costs by ENI, and equal partnership with a State concern.

206. This new policy can undoubtedly be explained by historical or political motives, but the United Arab Republic has been trying for some years to develop petroleum exploration in its territory. To achieve this aim, many oil concerns have been incorporated in the public sector by an ingenious device closely resembling a forced loan.

207. The State has thus taken over control of a number of petroleum assets with no fresh capital outlay. The problem of financing the management, and particularly the growth, of these assets, mainly through exploration, remains to be solved. The agreement concluded with ENI is an initial step in this direction.

v. *The off-shore area of the Saudi Arabian-Kuwait Neutral Zone*

208. On 10 December 1957, an agreement with respect to the undivided one-half interest of Saudi Arabia in the off-shore area of the Neutral Zone was concluded between the Government of Saudi Arabia and the Japan Petroleum Trading Company, Ltd.

209. Initially, the Company obtained an exclusive exploration and prospecting licence for a period of two years, renewable by the Government for a further two years. On the expiration of the licence or earlier, on the company's application, but only after the discovery of oil in commercial quantities, a forty-year exploitation concession lease is to be granted the company. On the expiration of the concession, should the Government decide to grant a further concession, the company would have a preferential right over other applicants, not being wholly Saudi Arabian subjects, under equal conditions.

210. Payment is to be made by the company to the Government of an annual rental of $US 1.5 million from the effective date of the agreement, and of an annual sum of $US1 million from the effective date of the agreement to the date of the discovery of oil in commercial quantities. Commencing from the date of the production of oil in commercial quantities, royalties equal to 20 per cent of the crude oil, natural gas and natural asphalt produced from the Government's undivided one-half interest are to be paid. There is, in respect of royalties, a guaranteed minimum annual payment of $US2.5 million. The company is subject to income tax on all the operations both within and outside Saudi Arabia, including the sale of crude oil, refining, transportation and marketing. Should Government receipts from royalties and taxes not amount to 56 per cent of the company's net income from all the phases of operations of the company within and outside Saudi Arabia during the taxable year, the company is to pay an additional tax to make up the difference.

211. On 5 July 1958, an agreement was concluded between the Arabian Oil Company, Ltd. and the Government of Kuwait with respect to the undivided one-half interest of Kuwait in the off-shore area of the Neutral Zone. The agreement grants the company for a period of 44½ years from the effective date of the agreement exclusive exploration and exploitation rights, as well as rights of transportation, refining and sale. On the expiration of the concession, should the Government decide to grant a further concession, the company would have a preferential right over the applicants, not being the subjects of the Shaika, upon equal terms.

212. The provisions of the agreement with respect to Government receipts are complex, although essentially similar to the agreement with Saudi Arabia.

[169] *Capital Requirements of Petroleum Exploration and Methods of Financing, op. cit.*, paras. 165-168.

213. Provision is made for a review of the situation should future Middle Eastern oil agreements reserve to Governments a higher proportion of the profits of development, production and marketing than those specified in the agreement in question.

214. Under the terms of the contract, the Ruler of Kuwait reserves the right to participate in the company if oil is discovered. Under clause 12 of the agreement with the Arabian Oil Company the Ruler is guaranteed the right to take up 10 per cent of the company's capital at par value.[170]

215. A generally similar agreement was concluded on 15 January 1961 between Kuwait and Shell Petroleum Development, Ltd. in respect of an off-shore area. Under the terms of clause 12 of the contract, the Ruler of Kuwait may acquire 20 per cent of the company's capital on payment of a sum equal to 20 per cent of the expenses actually incurred up to the date of discovery.[171]

216. It may be noted that a Kuwait national oil company was established at the end of 1960, with a 60 per cent State capital participation, the remaining 40 per cent being held by Kuwait nations.[172]

vi. *Turkey*[173]

217. Since the entry into force of the present Petroleum Law, some 20 foreign companies have been granted concessions covering a total area of about 100,000 square kilometres. The State's former activities have been taken over by the Turkish National Petroleum Company (TPAO), a mixed company, 49 per cent of whose capital may be subscribed by private investors. The National Company enjoys no privileges except for those areas in which work had already been carried out by the Mining Prospection and Exploration Institute (MTA). As a result of the granting of concessions to foreign private companies, the Turkish Government received royalties amounting to 2.5 million Turkish liras in 1956 and 2.8 million Turkish liras in 1957. Under the 1954 Law,[174] Turkey was divided into 9 districts, districts III and IV in the north-east of the country being partially closed to exploration at the present time. In 1960, TPAO output was raised to 360,000 tons, all of it processed at its refinery at Patnan, the capacity of which has just been increased to 650,000 tons a year.

218. Although the results obtained by the Turkish monopoly in 20 years do not seem very impressive, it should be noted that in 8 years—from 1953 to 1961—the major companies have made only one new discovery (the Caltex Group at Kahta), while their exploration expenses from 1955 to 1959 are estimated at $US62.5 million, to which must be added $US6.5 million spent by TPAO. The largest group has given up after investing $US20 million and drilling 11 dry holes. However, investment is continuing at the rate of $US2 million a month. The work done by MTA between 1933 and 1954 enabled the Turkish Government to obtain a general picture of the country's oil potentialities. Those preliminary surveys made it possible for the private companies to start drilling very soon after the concessions were granted under the Law of 1954. Turkey's policy since 1954 appears to have enabled the State to retain a certain measure of control and activity in this field without forfeiting the assistance of the major groups and their capital.

c. Africa

Algeria

219. While there is foreign participation in oil exploitation concessions in various parts of Algeria, official information could only be obtained with respect to such participation in current exploration ventures.

220. Among the relevant permits issued in 1959 is one covering 20,600 square kilometres in the Erg oriental region of Algeria. The concessionaires are the Compagnie Esso saharienne S.A.F. (an associate of Esso Sahara, Inc., of Delaware), together with the Compagnie française des pétroles (Algérie) and the Société de participations pétrolières (Petropar). The concession provides for a minimum exploration expenditure of 5,000 million francs over a period of five years.[175]

221. Under an exploration concession also issued in 1959 and covering 600 square kilometres in the Hassi Chaambi region of Algeria, the Phillips Petroleum Company (France), together with the Compagnie des pétroles France-Afrique (COPEFA) and the Omnium de recherche et exploitation pétrolière (Omnirex) have undertaken an expenditure of a minimum of 170 million francs over a period of five years.[176]

222. Under an exploration permit issued in 1958 and covering an area of 4,400 square kilometres in the Erg-el-Agreb region of Algeria, the Phillips Petroleum Company (USA) and the Société nationale des pétroles d'Aquitaine, have undertaken a minimum exploration expenditure of 1,250 million francs over a period of five years.[177]

d. Latin America

i. *Argentina*

223. A few years after the discovery of petroleum in the first decade of the twentieth century, Argentina organized the *Yacimientos Petroliferos Fiscales* (YPF), a governmental petroleum agency, which has played a predominent role in the development of petroleum resources, although private corporations have been allowed areas for exploration or exploitation of deposits, usually outside areas of exclusive State reserve. Under a law enacted in 1935 the national or provincial governments could engage in any of the operations in the petroleum industry (exploration, exploitation, marketing, industrial utilization and transport). All these operations were also open to private companies, either directly or under joint corporations with the national or provincial governments. The joint corporation arrangement was not, however, used in practice.

224. In recent times, petroleum production was unable to keep pace with the increasing needs of the country. According to figures published by the United Nations Economic Commission for Latin America, petroleum production from the period 1935 to 1956

[170] From: *Capital Requirements of Petroleum Exploration and Methods of Financing, op. cit.*, para. 160.
[171] *Ibid.*
[172] *Ibid.*
[173] *Ibid.*, paras. 127 and 1282.
[174] Law No. 6326, 7 Mar. 1954.
[175] *Journal Officiel*, 4 June 1959, p. 5633.
[176] *Ibid.*, p. 5634.
[177] *Ibid.*, 24 February 1958, pp. 2288 and 2289.

registered a small increase, from 2,740,000 to 4,440,000 metric tons.[178]

225. In this twenty-one-year period, the percentage of petroleum produced by private companies (practically all of them foreign) in relation to the total production went down from 51 per cent in 1935-1939 to 16 per cent in 1956. Diminishing foreign exchange reserves (petroleum imports cost Argentina $281 million in 1957) and the insufficiency of domestic production (barely enough to cover 40 per cent of consumption)[179] caused the Government to permit foreign capital and companies to participate in the development of petroleum resources to a greater extent than in the past. A basic factor in this change of policy was the realization that proved reserves were of substance (400 million metric tons in 1957)[180] and that Argentina could hardly extract the hydrocarbons with the means at its disposal. This decision was related to the enactment of a new petroleum law[181] under which new concessions or other contracts on hydrocarbon deposits were prohibited if they were prejudicial to the economic independence of the country or to its self-determination. This law specifically left unchanged rights existing in favour of private persons as of 1 May 1958.

226. As a consequence of the Government policy to accelerate the development of petroleum resources, a number of contracts were concluded in 1958 and 1959 by YPF and foreign companies or Argentine subsidiaries of foreign companies. The most important of those concluded in 1958 were contracts with C. M. Loeb, Rhoades and Co., Pan American International Oil Co. (subsidiary of Standard Oil Co. of Indiana), Union Oil Co. of California, Esso Sociedad Anonima Petrolera Argentina (subsidiary of Standard Oil of New Jersey) and Shell Argentina, Ltd. (subsidiary of Shell Oil, Ltd. and Royal Dutch). The announced intention of these contracts is to treat the companies not as holders of a concession, but rather as suppliers of services under the supervision of YPF or as independent contractors. A summary of one of the most recent of these contracts follows.

227. *C. M. Loeb, Rhoades and Co.*, a banking house, and *YPF*: Duration: until completion of all development programmes and payments for them. The bank is to select from deposits at present in production with YPF reserves areas which offer maximum possibilities for substantial production. The bank will provide $100 million to meet expenses of operations, this sum to be repaid on the basis of stated percentages (of 50 and 20 per cent) of the value of foreign exchange saved as a result of production under contract, calculated over a period of twenty years after full development of the deposits in relation to the international price of petroleum. An operations committee of four members (two representing each party) is to be established; decisions are to be taken by majority, the chairman having a deciding vote in case of a tie. The chairman is to be appointed by the bank during periods of unreimbursed accounts. YPF will pay for all petroleum tendered—the bank will finance and direct construction of transportation facilities. Taxes are borne by YPF.

[178] ECLA, *El desarollo económico de la Argentina*, Segunda Parte, Los sectores de la producción, E/CN.12/429/Add.3, p. 100.

[179] ECLA, *op. cit.*, p. 95.

[180] ECLA, *op. cit.*, p. 97.

[181] Law No. 14.773, 10 Nov. 1958.

ii. *Colombia*

228. The principal foreign oil concessions in Colombia are held by the Royal Dutch-Shell group, the Texas Company, and the Socony-Vacuum Oil Company.[182] Of the total 1952 output of 38.7 million barrels, the production of the three above-mentioned companies amounted to 26.1 million barrels. By 1954, total output had increased to 40 million barrels, the bulk of the increase being produced by the foreign concessionaires.[183]

iii. *Peru*[184]

229. Foreign capital is largely responsible for the development of petroleum deposits in the country, although the Government, as well as Peruvian private investors have, during the past two decades, acquired some oil properties. In 1952, about 70 per cent of petroleum output came from the properties of the International Petroleum Company, a subsidiary of Standard Oil Company of New Jersey.

230. A British-owned concern, operating at Lobitos and El Alto accounted for about 28 per cent of the country's petroleum output in 1952. The Zarritas field, near the Ecuadorean border, purchased from Italian owners, is operated by the Government-owned *Empresa Petrolera Fiscal*. This enterprise and a joint United States-Peruvian private enterprise operating in the upper Ucayalli River area account each for less than one per cent of total output.

231. Since the adoption of the Petroleum Law No. 11,780 of 12 March 1952, seventeen companies (seven United States, five Peruvian, two Canadian, one United States-Argentine, one Argentine-Peruvian and one United States-Peruvian) have been granted exploration concessions for some 3.5 million hectares and exploitation concessions for some 2.3 million hectares.

iv. *Venezuela*

232. Total foreign investments in the Venezuelan petroleum industry in 1950 amounted to $2,649.5 million, of which 55.5 per cent were held by United States interests, while 29.2 per cent and 13.6 per cent were held by Netherlands and United Kingdom interests respectively.[185]

233. In 1951, the local currency expenditure of the petroleum companies represented 51 per cent of the value of their exports and accounted for 28 per cent of the country's national income.[186]

234. Under the Income Tax Law of 19 December 1958, the net income derived from the petroleum industries is subject to a basic profits tax of 2.5 per cent (article 15) and to a progressive complementary tax with rates ranging from 2 per cent on the first 8,000 bolivars to 45 per cent on the excess over 28,000,000 bolivars (article 38). Under the same Law, if the net income received by any taxpayer from the petroleum industry (including royalties or other shares in earnings from the same source), after deduction of the amount of the normal and surtaxes and any other taxes

[182] *Foreign Capital in Latin America*, United Nations publication, Sales No.: 54.II.G.4, p. 70.

[183] *The Economic Development of Colombia*, United Nations publication, Sales No.: 57.II.G.3, p. 384.

[184] *Foreign Capital in Latin America, op. cit.*, p. 135.

[185] *Ibid.*, pp. 144 and 145.

[186] *Ibid.*, p. 146.

paid to the Federal Government (including the 16⅔ per cent royalty tax but not the prospecting taxes and the initial exploitation tax), the States, and the municipalities is greater than the sum of the normal and surtaxes paid, the excess is subject to an additional tax of 50 per cent (article 42).[187] There are, however, two exceptions to the general rule based on a comparison of the excess with the amount of net assets used to produce the income. Thus, if the net taxable income (the excess) is less than 10 per cent of the net assets used to produce the income, the income is exempt from the additional tax. Further, if the net taxable income is greater than 10 per cent but less than 15 per cent of the value of net assets, the additional tax will apply to only one half of the income.

235. This increase in taxation, at a time when the world market was abundantly supplied, caused an abrupt slowing down of petroleum operations and an almost complete cessation of exploration. The number of wells drilled in Venezuela fell from 1,190 in 1958 to 440 in 1960. The number of exploratory wells included in this total fell from 190 to a little under 60 during the same period. The oil companies estimated net profits in 1960 were $390 million (as against $427 million in 1959 and $523 million in 1958). In 1960 new investments totalled only $377 million (compared with $391 million in 1959 and $579 million in 1958). Total revenue from the petroleum industry has fallen regularly since 1958-1959, when it was 3,381 million bolivars ($1,010 million). The figure for 1959-1960 was only 3,140 million bolivars ($935 million) and for 1960-1961 2,977 million bolivars ($890 million). In order to stimulate the petroleum exploration programmes of private companies the Ministry of Mines and Hydrocarbons accordingly decided in October 1961 to remove the restrictions hitherto imposed on private companies drilling in areas adjoining national reserves.[188]

e. Asia and the Far East

i. *India*[189]

236. India did not begin to develop its petroleum resources until the fifties and it was only in 1955 that the Indian Government decided to embark on a large-scale petroleum development programme designed to enable the country to meet its growing needs. Effort is required in all sectors of the petroleum industry but is particularly urgent in the field of exploration. Since 1955, substantial allocations of the order of $10 million for a 5-year period have been set aside to finance direct State operations and an oil and natural gas commission has been set up in the Ministry of Industry. At the same time, the Government has begun to participate in certain private exploration programmes. In 1956, on the eve of its second Five-Year Plan, the Indian Government took a step of major importance when it declared in its Industrial Policy Resolution that it was placing the petroleum industry in the public sector and decided to invest $61.6 million in petroleum exploration.

237. On the eve of the third Five-Year Plan, however, the Indian Government, considering that the effort which the State would have to make in order to balance resources and requirements in 1970 might be inconsistent with the accomplishment of other fundamental tasks, decided to turn to private companies and foreign sources and to associate them in its efforts, without losing the resulting benefits. It is planned to invest $242 million in the petroleum industry, out of a total investment of $14,700 million in the public sector. Numerous negotiations have been initiated with the object of creating new partnerships between the Oil and Natural Gas Commission (ONGC) and exploration companies (ENI and, in particular, Burmah Oil) or to secure the technical assistance required by the Indian Government in view of the multiplicity of the tasks undertaken simultaneously by the Oil and Natural Gas Commission (USSR technical assistance in some areas; the recent contract with the French Petroleum Institute for the Jaisalmer region). The agreement with the Burmah Oil Company is regarded by the Indian Government as a model which it hopes will be adopted by other enterprises.[190]

ii. *Indonesia*[191]

238. Until recently, the big international groups have been responsible for developing petroleum resources in Indonesia. After the achievement of independence in 1949, the granting of new concessions was suspended pending the enactment of new petroleum legislation, as the Government had not yet decided on the future status of the petroleum industry. The Presidential decree regulating the petroleum industry was not promulgated until 1960. Although existing concessions will remain in force for a limited but still indeterminate period, the exploitation of oil and gas in new areas will be undertaken only by the State. While all petroleum activities must be carried out by State undertakings, the latter may appoint private companies as contractors provided that the contracts are ratified by a law. Negotiations between the three main foreign companies and the Government for a new agreement having failed, the Government decided at the end of August 1961 that in future profits would be shared on a 60:40 basis. Three State enterprises are already active, but in view of the increase in the budgetary deficit and the amount of financial aid received from abroad for industrial development, they seem unlikely to obtain the funds necessary for petroleum exploration and development.

3. Water resources

239. A number of concessions to foreign companies with respect to rights to water power have been granted in *Norway*.*

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[187] This tax has been increased to 60 per cent. *Capital Requirements of Petroleum Exploration and Methods of Financing*, E/3580, 15 Mar. 1962, para. 154.

[188] From: *Capital Requirements of Petroleum Exploration and Methods of Financing, op. cit.*, para. 154.

[189] *Ibid.*, paras. 163 and 164.

* Information provided by the Government of Norway.

[190] By purchasing an additional 15.75 per cent of the shares of Oil India Ltd. at par value from the Burmah Oil Company for cash, the Government increased its holding in this company to 50 per cent, the same as that of Burmah Oil. In future, each financial partner will bear its share of the costs, the foreign currency being provided by the Burmah Oil Company. In calculating profits, a deduction will be made for the past and future exploration and development costs of Oil India. This is thus neither an agreement with the usual fifty-fifty sharing of profits nor an association such as ENI has entered into with foreign Governments.

[191] *Ibid.*, para. 169.

Company	Watercourse	Nationality of principal foreign capital participation	Date of concession
A/S Bjølvefossen	Bjølvo	British	3 Dec. 1915
A/S Bjørkasen Gruber	Børsvannsfossen and others	Swedish	12 July 1914
A/S Kinservik	Kinso	Canadian	17 Jan. 1907
A/S Meraker Smelteverk	Various	Canadian	24 May 1929 and 17 June 1937
Nordland Portland Cementfabrik A/S	Sørfjord	Danish	8 Apr. 1921
A/S Norsk Aluminium Co.	Various	Canadian	25 Sept. 1936
A/S Rjukanfoss	Various	French	
A/S Saudefaldene	Storelva (Saude)	Canadian	11 Apr. 1914 and 16 Apr. 1915
A/S Tyssefaldene	Tyssefaldene	British, Canadian, French	10 May 1906, cf. 3 Oct. 1924

4. Agricultural concessions

a. Extent of foreign land holdings

*Laos**

240. Agricultural land owned by foreigners constitutes only a negligible proportion of the total area of cultivated land. Foreign holdings are concentrated mainly in the areas of the Bolovens Plateau and the Xieng Khonang Plateau. Even in the Bolovens Plateau area—the most fertile region of Laos—foreign holdings amount only to some 3,300 hectares out of a total agricultural land area of 200,000 hectares. The land in question belongs to nationals of France or of Viet-Nam and was acquired under the French Protectorate, when land rights were allocated to French citizens, subjects and protected persons. A considerable part of these concessions has since been either abandoned or sold to Laotian nations.

b. Concession contracts with agricultural companies

241. Although as a rule foreign agricultural companies operate under the general laws of the country where they carry on business, they have, in a few cases, been subject to special treatment under contracts concluded by those companies with the Governments concerned. The main purpose of the contracts of this type concluded with Costa Rica, Guatemala and Honduras which are examined here, has been to provide for the construction and operation by the companies of a number of transport and communications facilities not otherwise available in the countries concerned. In return for permitting public or semi-public use of some of the facilities owned by them, the companies have obtained substantial tax benefits. Apart from the regulation of company-owned facilities, the contracts provide for obligations pertaining to the agricultural pursuits of the companies. Such obligations, including planting obligations, are somewhat separate from those regulating company-owned facilities as their fulfilment rarely constitutes an essential condition for the granting of concessionary rights.

242. The relevant provisions in contracts of this type concluded by foreign companies with Costa Rica, Guatemala and Honduras are set forth below.[192]

243. *Planting obligations.* Under some of the contracts, the companies have assumed the obligation to plant certain agricultural varieties or fruits on a given acreage, frequently in a specified area, and in a specified time. No technical requirements for the planting are established nor are, in general, minimum quantities of produce laid down. Planting is to be carried out either on the companies' lands or on the lands of local growers, who, under purchasing agreements with the companies, are to deliver the produce to them. The general area for planting is indicated, subject to the choice of the precise location by the companies. Where the obligation of the companies consists in contracting the cultivation of specified areas with local growers, the companies have reserved the right to select these persons and to have the planting obligation contingent upon the finding of qualified applicants and suitable lands acceptable to the companies.[193] As a rule, the obligation is to be discharged over periods ranging from three to five years.

244. The companies are exempted from planting obligations in the event of *force majeure,* act of God or other circumstances beyond the company's control. Exceptionally (as in a contract between Costa Rica and

* Information provided by the Government of Laos.

[192] This summary is based on approximately twenty contracts concluded with those countries. All texts are those published in the respective official gazettes. The basic contracts are referred to in the footnotes and text of this study.

[193] Unlike other arrangements of this type, a contract between Costa Rica and the United Fruit Company of 10 Dec. 1934 regulates in some detail the conditions for the contract to be entered into by the Company with the local growers. Thus, an applicant rejected by the Company may request a Government inspection of the land offered to the Company and, if the Government finds the land suitable for cultivation, the Company must abide by this decision and award a contract to the applicant; minimum prices for the produce (bananas) are fixed, as are the time and manner of its delivery to the Company; planting is subject to Government inspection and approval; loans are granted by the Company to the growers to finance the planting; contracts with the growers are for a 5-year period. Under an earlier arrangement concluded in 1920 to which the 1934 contract was supplementary, differences arising from the Company's rejection of bananas delivered by the contractor are subject to summary arbitration procedures.

the United Fruit Company and affiliated companies of 31 December 1949), these circumstances result, instead, only in an extension of the term of the obligation equal to the period during which the planting had become impossible; disputes in this connexion are subject to arbitration.

245. *Obligations to provide seeds to the Government and to buy produce from such seeds:* Contracts dealing with the planting of agricultural species newly introduced in the countries concerned provide for the sale by the companies to the Government of seeds of the species in question for the development of new plantations by private individuals. Thus, under Article II of the contract between Costa Rica and the United Fruit Company and affiliated companies of 31 December 1949, the companies agreed to sell to the Government at cost price seeds of banana, cacao and African palm of the same varieties used by the companies in their plantations, as soon as the companies had fulfilled their own needs, a circumstance which was regarded as arising three years after the date of the contract. Thereafter, the companies were, at the Government's request, to provide it for five years with such seeds as were sufficient to start cultivation of 200 hectares of each of the species. Under a similar provision in Article 9 of a contract between Honduras and the Tela Railroad Company (a subsidiary of the United Fruit Company) of 11 November 1949 for the planting of cacao, abaca (Manila hemp) and African oil palm, the company agreed to purchase, at a mutually agreed price, from the Honduran growers at least 50 per cent of the produce grown from the seeds received by them.

246. *Facilities owned by companies:* Contracts of from 25 to 60 years' duration, under which a fruit company initiates or substantially enlarges the scope of its operations in a given country, generally authorize the company to establish, purchase, operate, exploit and dispose of, a number of transport, communication and other facilities for the company's private use. A typical provision of this kind is found in Article 9 of a contract between Guatemala and the United Fruit Company of 7 November 1924 for the lease to the company of the banks of the Montagua River for a 25-year period (extended in 1936 to 1981) under which the company was authorized to acquire, build and operate as many private telephone, railway and tramway lines as might be necessary and convenient in connexion with the company's agricultural operations. The company was given a right of way over all national and municipal land for these purposes. On the other hand, the construction of transport and communication facilities of a public or semi-public character is usually provided for as an obligation of the companies in return for tax and other benefits.[194] Facilities that are provided for public use are usually ports and railways, although others, such as hospitals and radio stations, are occasionally mentioned. Some of these facilities, and especially railways, sometimes appear to be open to semi-public use in the sense that only a portion of the public at large, such as local banana growers, are the designated users.

247. *Treatment of company-owned facilities destined for public use:* Rates for public use of railways, hospitals and dock services are fixed by mutual agreement. In some cases, a revision of these rates is to take place at fixed intervals of 10 years, during which the companies may alter or modify the rates within the allowable maximum.

248. Under some of the contracts, the Government is entitled to use the facilities operated by the company in the event of public emergency, free of charge, but subject to payment to the company of whatever damages may have resulted to it from this use.

249. The companies may, at their discretion, select the location for a port within a specified area and also determine the tracing of a railway line between two agreed points. For instance, in regard to the plotting of railway lines for public use under Article III of a contract between Costa Rica and Compañía Bananera de Costa Rica of 23 July 1938, the company was to choose lands to be served by the railway on the basis of their suitability for banana cultivation.

250. In the case of facilities for public use which, under the relevant contract are to become Government property upon the expiry of that contract, Government consent is required for any changes pertaining to, or the removal of, such facilities. This is the case under Article III of the contract of 23 July 1938 between Costa Rica and the Compañía Bananera de Costa Rica with respect to railway lines.

251. Some of the contracts make provision for the transfer of facilities to the Government at no cost at the expiration of the contract. These facilities occasionally include those destined for the private use of the company. (For provisions on expropriation, see paragraph 256 below.)

242. *Non-exclusive concessions:* Virtually all contracts provide that the concessions granted thereunder do not constitute a monopoly or otherwise imply an exclusive benefit in favour of the company.

253. *Tax benefits:* Under early contracts, the companies were exempted from all national or municipal taxes, whatever their designation, which would otherwise apply to the banana industry, with the only exception of taxes on consular invoices, banana exports and real estate. Exemption from taxes on the importation of equipment and materials for the construction, maintenance and operation of specific facilities dealt with in a given contract was also often granted.[195] The companies later agreed to pay certain taxes from which they were exempted, such as social security taxes, and import duties on a number of items, and under contracts concluded in 1954 and 1955, to pay income tax at a rate not exceeding 30 per cent of their annual net income. For income tax purposes, the Governments concerned have agreed to accept the valuation of the fruit exported by the companies and the income derived from the companies' activities in the country if acceptable to the United States Bureau of Internal Revenue and certified by reputable United States public accountants.[196]

[194] A notable exception is the contract between Guatemala and the Compañía Agrícola de Guatemala of 3 Mar. 1936, by which the obligation of the company to construct a port for public service on the Pacific Coast under a contract of 9 Dec. 1930 was transformed into a right to carry out these works.

[195] These contracts are: *Honduras:* contracts approved by legislative decree No. 113 of 8 Apr. 1912; No. 93 of 7 Apr. 1918; No. 116 of 2 Apr. 1910; No. 74 of 5 Mar. 1918; and No. 83 of 13 Feb. 1935; *Guatemala:* contracts approved by legislative decrees No. 1736 of 9 Dec. 1930 and No. 2137 of 27 Mar. 1936; *Costa Rica:* contracts approved by legislative decrees No. 3 of 4 Sept. 1930; No. 2 of 4 Sept. 1930 and No. 37 of 12 Mar. 1942.

[196] Contract between *Guatemala* and the Compañía Agrícola de Guatemala of 27 Dec. 1954, Articles II and III; contracts between *Honduras* and the Tela Railroad Company of 5 Apr. 1955, Article I and the Standard Fruit and Steamship Company

254. Without prejudice to tax exemption and other benefits under previous contracts still in effect, the Governments concerned have agreed not to impose new taxes on the companies, or to increase the rates of existing taxes, or to establish any participation in the profits of the companies, or accord the companies treatment that is discriminatory in relation to that accorded to the majority of the enterprises operating in the country. No export or exchange restrictions are to be imposed on the companies, except by mutual agreement in case of emergency.

255. *Assignment of rights:* Assignment of all rights and concessions is permitted, except to foreign Governments. Assignment requires the consent of the Government, although, in a few cases, notice to the Government is sufficient.

256. *Expropriation:* The right of expropriation by the Government for the establishment of public services of unquestionable utility has been recognized by the companies under the most recent contracts. A condition for expropriation is just compensation paid in advance in United States dollars. Difficulties arising from the expropriation of properties of the Compañía Agrícola de Guatemala by the Government of Guatemala under a land reform law providing that uncultivated land was subject to expropriation were settled by a contract of 27 December 1954. This contract provided for the return of the properties to the company and recognized the company's right to hold reserve land for land rotation and protection against plant diseases.

257. *Jurisdiction:* Most of the contracts provide that any question arising from their interpretation and application shall be settled by the local courts. The companies have under virtually all contracts, agreed to renounce recourse to diplomatic intervention. Denial of justice is sometimes recognized as an exception to this rule with the proviso that a judgement unfavourable to the company is not to be regarded as a denial of justice. Submission of the companies to local law is provided for, especially in regard to hospital or port regulations and railway laws. Labour laws are occasionally stated to apply in so far as they do not conflict with contract provisions.[197]

258. *Arbitration:* Where arbitration procedures have been stipulated, the award is, in general, to be final and binding. Each party appoints one arbitrator and the arbitrators so appointed appoints a third. In case of disagreement, a third arbitrator may be appointed by the Supreme Court or other Court of the State concerned. The arbitration procedures are to be conducted under national law and on national territory.

and an affiliated company, of 31 Mar. 1955, Article I; contract between *Costa Rica* and the Compañía Bananera de Costa Rica and the Chiriqui Land Company of 24 Dec. 1954, Article IV.

[197] As for instance in Article IX of the contract between Costa Rica and the Compañía Bananera de Costa Rica, the Chiriqui Land Company and the United Fruit Company of 31 Dec. 1949.

D. Statements submitted by Governments regarding the effects of nationalization in respect of natural wealth and resources in their countries

259. Three Governments, the Union of Soviet Socialist Republics, the Ukrainian SSR and Czechoslovakia, have submitted statements to the Secretariat regarding the effects of nationalization measures in their countries in respect of natural wealth and resources. The constitutional provisions pertaining to these nationalization measures are referred to in chapter I, section D of the present report. In their submissions, the Governments state that the nationalization measures have created conditions for the effective utilization and exploitation of the country's natural wealth and resources in the interest of all the people. It is also stated by the USSR and the Ukrainian SSR that these nationalization measures, particularly in regard to land, mining, forests and waters, have resulted in greatly increased output as well as discovery of new deposits of mineral resources.

260. The statement submitted by the *USSR* includes the following data:

In 1958, the USSR's gross industrial output was thirty-six times as great as in 1913. In the same period, the output of consumer goods increased almost fourteen-fold. During the period of Soviet rule, the per capita national income, which reflects the over-all growth of the national economy and the rise in people's level of living, increased fifteen-fold.

In the course of the country's industrialization, extensive geological surveys were carried out. In a short space of time, scores, indeed hundreds, of new mineral deposits were discovered.

Before the October Revolution Russia's natural resources had been little studied. Nine-tenths of the country's territory had not been covered by geological surveys. All the minerals occurring in the earth's crust have now been discovered in the Soviet Union, and in quantities sufficient for the needs of the expanding national economy. Whereas, according to pre-revolutionary estimates, Russia possessed 3 per cent of the world's coal reserves, 4 per cent of its iron ore, and one per cent of its phosphorites, the USSR is now known to have 57 per cent of the world's known coal reserves, 41 per cent of its reserves of iron ore, 88 per cent of its reserves of manganese, 54 per cent of its reserves of potassium salts, nearly one-third of its reserves of its phosphate rock and 60 per cent of its reserves of peat. The USSR leads the world in reserves of copper, lead, tungsten, bauxite, nickel, mercury, sulphur, mica, zinc and apatites. Other Soviet natural resources, including water power, are being effectively exploited. During the years of Soviet rule, scores of hydroelectric power stations have been built and are supplying power to meet the growing needs of the Soviet Union's national economy and population.

The country's industrialization, and the efficient exploitation of natural wealth associated with it, have been of particular importance to the development of regions which, before the October Revolution, were the colonial borderlands of Russia. During the years of Soviet rule, the peoples of those regions, having become masters of their natural resources, have attained a high degree of industrial and economic development through the exploitation of local natural resources.

Azerbaijan can be regarded as a typical example. Before the Revolution it was economically one of the most backward countries in the world. At that time everything, from matches and lamp chimneys to all forms of machinery and equipment, was imported, whereas that Republic now exports more than 120 items of industrial manufacture and valuable equipment to countries outside the Soviet Union. During the years of Soviet rule, the volume of industrial production has increased 55-fold in Armenia, 50-fold in Kirghizia, 43-fold in Kazakhstan, and so on. As much coal is now mined in Kazakhstan as was produced in the whole of pre-revolutionary Russia. Kazakhstan now holds a leading position in the Soviet economy as a producer of lead, zinc, crude copper and other commodities. Natural resources are efficiently exploited in all the other national republics of the Soviet Union, which are the absolute owners of those resources.

261. The *Ukrainian SSR* in its statement included the following information:

Since the founding of the Soviet State, the Ukrainian SSR has been transformed from a backward, agrarian semi-colony of the former Russian Empire into one of the most advanced industrial countries of the world. In 1958, the Republic's gross industrial output was twenty-two times greater than in 1917. At present the Ukrainian SSR leads the world in per capita production of cast-iron, it is second in coal production and third in steel production.

Through the harnessing of the Republic's natural resources, great success has been achieved in developing the machine-building and metal-working industries, whose output was 145 times higher in 1958 than in 1913, and the electric power industry, whose output has increased eighty-fold. Today the Ukrainian SSR exports manufactured goods and primary commodities to fifty-five countries of the world.

As a result of major exploration projects, dozens of new mineral deposits are now being exploited in the Republic. Since the founding of the Soviet State, aside from the coal and iron-ore deposits which were exploited previously and which have now been considerably expanded, new deposits have been discovered and are being successfully worked, including deposits of coal and lignite, iron and manganese, petroleum, bauxite, mercury, titanium, phosphorites and potassium salts. The Ukraine possesses large resources of natural gas, construction stone and ashlar, fire-clay, various salts and so forth. A great system of power plants is being built along the Dnieper that will completely satisfy the Republic's power requirements.

262. The Government of *Czechoslovakia*, in its statement, included the information set forth below.

The liberation of Czechoslovakia in 1945 and the taking of power by the working people created conditions for the socialization of the means of production. The socialization of the economy was effected through nationalization.

The nationalization of the means of production and especially, of natural resources, for the first time created in the Czechoslovak economy the economic basis for the development of the national economy in accordance with the interests of the working people. At the same time, nationalization forever put an end to any possibility of exploitation of the Czechoslovak national economy by private capital and, particularly, its exploitation by foreign capital. Conditions were thus created for the full economic and, consequently, also political independence of the State.

The liquidation of foreign capital in Czechoslovakia was carried out with full respect for the relevant principles of international law and was regulated by a number of international agreements with the States whose enterprises had participated in the exploitation of the Czechoslovak national economy before the Second World War.[198]

Absolute sovereignty of the Czechoslovak people over natural wealth and its resources and over the entire national economy of the country is the keynote of the nationalization legislation enacted[199] and is the basis of the economic and political independence of the country. At the same time it enables Czechoslovakia, as well as the other socialist countries, to grant extensive economic assistance to a number of economically less developed countries on the basis of equality and mutually advantageous agreements with these countries, whereby this aid extended by Czechoslovakia is in no case linked to any political or economic conditions, especially as regards the exploitation of natural wealth and resources of the less developed countries.

[198] For a listing of examples of such agreements, see annex to section A of chapter II above.

[199] See section D of chapter I above.

E. Resolutions of the General Assembly and the Economic and Social Council bearing on the relationship between permanent sovereignty over natural wealth and resources and the need for international co-operation in the economic development of under-developed countries

263. A number of resolutions have been adopted by the General Assembly and the Economic and Social Council concerning international co-operation in the economic development of the under-developed countries. These resolutions cover a variety of subjects (e.g., industrialization, land reform, etc.) and many of them contain provisions falling within the scope of the present section in the following context: (1) recognition of sovereignty of peoples and nations over their natural wealth and resources; and (2) recommendations to Member States concerning their national economic or financial policies in relation to the economic development of under-developed countries.

264. A few examples of such resolutions are given below:

By resolution 523 (VI) of 12 February 1952, concerning economic development in general and commercial agreements in particular, the General Assembly, "considering that the under-developed countries have the right to determine freely the use of their natural resources and that they must utilize such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests, and to further the expansion of the world economy", recommended "that Members of the United Nations, within the framework of their general economic policy, should . . . consider the possibility of facilitating through commercial agreements . . . the development of natural resources which can be utilized for the domestic needs of the under-developed countries and also for the needs of international trade, provided that such commercial agreements shall not contain economic or political conditions violating the sovereign rights of the under-developed countries, including the right to determine their own plans for economic development".

By resolution 626 (VII) of 21 December 1952, on the right to exploit freely natural wealth and resources, the General Assembly, recognizing this right of peoples as inherent in their sovereignty, recommended that all Member States, in their exercise of this right, "have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic co-operation among nations", and further recommended to all Member States "to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any State over its natural resources".

By resolution 824 (IX) of 11 December 1954, on the international flow of private capital for the economic development of under-developed countries, the General Assembly, "recognizing that the international flow of private investment for productive activities contributes to the raising of living standards by assisting in the development of natural resources . . ." recommended continuing efforts (1) by countries seeking to attract private foreign capital to, *inter alia*, "re-examine, whenever necessary, domestic policies, legislation and administrative practices with a view to improving the investment climate; avoid unduly burdensome taxation; avoid discrimination against foreign investments; facilitate the import by investors of capital goods, machinery and component materials needed for new investment; make adequate provision for the remission of earnings and repatriation of capital"; and (2) by countries able to export capital to, *inter alia*, "re-examine, whenever necessary, domestic policies, legislation and administrative practices with a view to encouraging the flow of private capital to capital-importing countries".

By resolution 1515 (XV) of December 1960, entitled "Concerted action for economic development of economically less developed countries", the General Assembly, reiterated that it was a prime duty of the United Nations to accelerate the economic and social advancement of the less developed countries of the world and thus contributing to safeguarding their independence and helping to close the gap in standards of living between the more developed and the less developed countries; rcognized that this social and economic advancement required the development and diversification of economic activity: that is to say the improvement of conditions for the marketing and production of foodstuffs and industrialization of those economies which are largely dependent on subsistence agriculture or on the export of a small range of primary commodities; expressed the belief that in present circumstances the achievement of these ends demanded *inter alia:* (*a*) The maintenance of a high and expanding level of economic activity and of generally beneficial multilateral and bilateral trade free from artificial restrictions in order to enable the less developed countries and those dependent on the export of a small range of primary commodities to sell more of their products at stable and remunerative prices in expanding markets and so increasingly to finance their own economic development from the earnings of foreign exchange; (*b*) The increasing provision of public and private capital on acceptable terms from the more developed to the less developed countries notably through international organizations and through freely negotiated multilateral or bilateral arrangements; (*c*) The expansion of technical co-operation between countries at all stages of development, with the objective of aiding the people of under-developed countries to increase their knowledge of and capacity to apply modern techniques.

It is recommended with these objectives in view that: (*a*) Member countries and the international organs concerned should continue as a matter of urgency to seek and apply ways of eliminating both excessive fluctuations in primary commodity trade, and restrictive practices or measures which have unfavourable repercussions on the trade in basic products of the less developed countries and those dependent on the export of a small range of primary products and to expand trade in these products; (*b*) In particular, with this in mind, the Economic and Social Council should give close and serious attention to the problems of commodity trade and to the recommendations of the Commission on International Commodity Trade designed to deal with them, including those such as compensatory financing relating to off-setting the effects of large fluctuations; (*c*) Technical training, education and pre-investment assistance, whether undertaken by international organizations or by individual Governments, should be regarded as an important factor in the economic development of under-developed countries; in particular the fullest possible support should be given to the United Nations Expanded Programme of Technical Assistance, to the United Nations Special Fund and to the other voluntary programmes of the United Nations which are concerned with these ends; (*d*) Technical assistance and the supply of development capital which are increasing and should be increased further, whether provided through existing and future international organizations and institutions or otherwise, should be of a kind and in a form in accordance with the wishes of the recipients and should involve no unacceptable conditions for them; (*e*) Regional economic groupings should be designed to offer the opportunities of an expanding market to all trading nations taking into account the interests of third parties.

The Assembly recommended further "that the sovereign right of every State to dispose of its wealth and its natural resources should be respected in conformity with the rights and duties of States under international law".

265. As a convenient reference, a list of resolutions, including resolutions relating to measures to be taken on the international level for the development of under-developed countries is appended below. For further information regarding these and other relevant resolutions and suggestions, the compendium of resolutions (E/3202) prepared by the Secretary-General in pursuance of General Assembly resolution 1157 (XII) on the basis for international economic co-operation, and the latest report (E/3395) by the Secretary-General on the economic development of under-developed countries, may be consulted.

APPENDIX

List of resolutions

A. Sovereignty over natural wealth and resources

GA Res. 626 (VII) 21 Dec. 1952	Right to exploit freely wealth and natural resources
GA Res. 1314 (XIII) 12 Dec. 1958 [Cf. GA Res. 523 (VI)]	Recommendations concerning international respect for the right of peoples and nations to self-determination
GA Res. 1720 (XVI) 19 Dec. 1961	Report of the Commission on Permanent Sovereignty over Natural Resources
ESC Res. 754 (XXIX) 19 Apr. 1960	Report of the Commission on Permanent Sovereignty over Natural Resources
ESC Res. 847 (XXXII) 3 Aug. 1961	Report of the Commission on Permanent Sovereignty over Natural Resources

B. Economic development of natural wealth and resources

1. Full employment

GA Res. 308 (IV) 25 Nov. 1949	Full employment
ESC Res. 290 (XI) 15 Aug. 1950	Full employment
GA Res. 405 (V) 12 Dec. 1950	Full employment
ESC Res. 483 (XVI) 8 July 1953	Full employment
ESC Res. 531 B (XVIII) 4 Aug. 1954 [Endorsed by GA res. 829 (IX), 12 December 1954]	World Economic situation—Full employment

2. Land reform

GA Res. 401 (V) 20 Nov. 1950	Land reform
ESC Res. 370 (XIII) 7 Sept. 1951	Land reform
GA Res. 524 (VI) 12 Jan. 1952	Land reform
ESC Res. 512 C I (XVII) 30 April 1954	Economic development of under-developed countries—land reform
GA Res. 826 (IX) 11 Dec. 1954	Land reform
ESC Res. 649 B (XXIII) 2 May 1957	Economic development of under-developed countries—land reform
ESC Res. 712 (XXVII) 17 April 1959	Land reform
GA Res. 1426 (XIV) 5 Dec. 1959	Agrarian reform

3. Industrialization and productivity

GA Res. 521 (VI) 12 Jan. 1952	Integrated economic development
GA Res. 522 (VI) 12 Jan. 1952	Methods to increase world productivity
ESC Res. 416 E (XIV) 23 June 1952	Economic development of under-developed countries: methods to increase world productivity
ESC Res. 597 A (XXI) 4 May 1956	Economic development of under-developed countries: industrialization
ESC Res. 618 (XXII) 6 Aug. 1956	Economic development of under-developed countries: industrialization
GA Res. 1033 (XI) 26 Feb. 1957	Industrialization of under-developed countries
ESC Res. 674 (XXV) 1 May 1958	Economic development of under-developed countries: industrialization
ESC Res. 709 (XXVII) 17 April 1959	Economic development of under-developed countries: industrialization
GA Res. 1425 (XIV) 5 Dec. 1959	Possibilities of international co-operation in the field of the development of the petroleum industry in under-developed countries
ESC Res. 751 (XXIX) 12 April 1960	Establishment of a Committee for Industrial Development
ESC Res. 757 (XXIX) 21 April 1960	Economic development of under-developed countries: industrialization
ESC Res. 758 (XXIX) 21 April 1960	Economic development of under-developed countries: petroleum resources
ESC Res. 759 (XXIX) 21 April 1960	Economic development of under-developed countries: water resources

4. Primary commodities and international trade

ESC Res. 341 A (XII) 20 March 1951	World economic situation
ESC Res. 367 A (XIII) 13 Aug. 1951	World economic situation
GA Res. 523 (VI) 12 Jan. 1952	Integrated economic development and commercial agreements
GA Res. 623 (VII) 21 Dec. 1952	Financing of economic development through the establishment of fair and equitable international prices for primary commodities and through the execution of national programmes of integrated economic development
ESC Res. 512 A (XVII) 30 April 1954	Economic development of under-developed countries: international price relations
ESC Res. 531 C (XVIII) 4 Aug. 1954	World economic situation: removal of obstacles to international trade and means of developing international economic relations
ESC Res. 579 A (XX) 4 Aug. 1955	World economic situation: expansion of world trade
ESC Res. 614 B (XXII) 9 Aug. 1956	World economic situation: trade and production policies in relation to the economic development of under-developed countries
GA Res. 1027 (XI) 20 Feb. 1957	Development of international economic co-operation and the expansion of international trade

ESC Res. 654 A (XXIV) 30 July 1957	World economic situation: international machinery for trade co-operation
GA Res. 1156 (XII) 20 Nov. 1957	Expansion of international trade
GA Res. 1322 (XIII) 12 Dec. 1958	Promotion of international co-operation in the field of trade
GA Res. 1324 (XIII) 12 Dec. 1958	International commodity problems
ESC Res. 726 (XXVIII) 24 July 1959	International commodity problems
GA Res. 1421 (XIV) 5 Dec. 1959	Strengthening and development of the world market and the improvement of trade conditions of the economically less developed countries
GA Res. 1422 (XIV) 5 Dec. 1959	Development of international trade and international commodity problems
GA Res. 1423 (XIV) 5 Dec. 1959	International measures to assist in offsetting fluctuations in commodity prices
GA Res. 1428 (XIV) 5 Dec. 1959	World economic development
ESC Res. 778 (XXX) 3 Aug. 1960	Strengthening and development of the world market and improvement of the trade conditions of the economically less developed countries
ESC Res. 783 (XXX) 3 Aug. 1960	International commodity problems
ESC Res. 831 (XXXII) 2 Aug. 1961	International commodity problems

C. Financing of economic development

1. General

ESC Res. 294 (XI) 12 Aug. 1950	Methods of financing economic development of under-developed countries, including consideration of the report of the Sub-Commission on Economic Development (fourth session)
GA Res. 400 (V) 20 Nov. 1950	Financing of economic development of under-developed countries
ESC Res. 368 (XIII) 22 Aug. 1951	Methods of financing economic development of under-developed countries
GA Res. 1424 (XIV) 5 Dec. 1959	United Nations capital development fund
GA Res. 1427 (XIV) 5 Dec. 1959	Industrial development bank and development corporations
ESC Res. 780 (XXX) 3 Aug. 1960	International flow of capital
ECAFE Res. 36 (XVIII) 13 Mar. 1962	Investment promotion

2. Private capital

GA Res. 622 C (VII) 21 Dec. 1952	Financing of economic development of under-developed countries
GA Res. 724 C II (VII) 7 Dec. 1953	Economic development of under-developed countries
GA Res. 824 (IX) 11 Dec. 1954 [ESC Res. 512 B (XVII)] [See also GA Res. 1035 (XI)]	International flow of private capital for the economic development of under-developed countries
ESC Res. 619 B (XXII) 9 Aug. 1956	Financing of economic development: international flow of private capital
GA Res. 1318 (XIII) 12 Dec. 1958	Promotion of international flow of private capital
ESC Res. 762 (XXIX) 21 April 1960	International flow of private capital
ESC Res. 836 (XXXII) 3 Aug. 1961	Promotion of the flow of private capital

3. Public capital

GA Res. 520 (VI) 12 Jan. 1952	Financing of economic development of under-developed countries
GA Res. 622 A and B (VII) 21 Dec. 1952	Financing of economic development of under-developed countries
GA Res. 724 (VIII) 7 Dec. 1953	Economic development of under-developed countries
GA Res. 1240 (XIII)	Establishment of the Special Fund

[Cf. ESC Resolutions 532 (XVIII) and 583 (XX), GA Resolutions 822 (IX), 823 (IX), 923 (X), 1030 (XI), 1219 (XII) and 1317 (XIII)]

ANNEX

Listing of legislation, treaties, agreements, adjudication cases and official documents mentioned in the present study

1. National legislation concerning the exploitation of natural resources and the entry of foreign enterprises*

AFGHANISTAN
- Constitution
- Constitutional Addendum, 22 Feb. 1933 (Article 2)
- Law Encouraging the Investment of Private Foreign Capital, 13 May 1959

ARGENTINA
- Constitution (1949), (Article 40)
- Decree No. 110.790, 8 Jan. 1942 (control of monetary transfers abroad)
- Petroleum Law No. 14773, 10 Nov. 1958
- Law No. 14780, 22 Dec. 1958

AUSTRALIA

Victoria
- Petroleum Act, No. 4359, 1935

Western Australia
- Petroleum Act 1936/54

Nauru
- Land Ordinances, 1921, 1927, 1956
- Repeal and Adopting Ordinances, 1922, 1957
- Lands Committee Ordinance, 1956

New Guinea
- Mining Ordinances, 1928, 1958
- Mines and Works Regulation Ordinances, 1935, 1956
- Petroleum Ordinances, 1951, 1958
- Mining Development Ordinance, 1955

Papua
- Ordinance of 1907 on Mining Rights
- Petroleum Mining Ordinance, 1934

AUSTRIA
- Law on Limited Liability Companies, 1906, as amended
- First Federal Nationalization Law No. 168, 26 July 1946
- Second Federal Nationalization Law No. 81, 26 Mar. 1947
- First Federal Compensation Law No. 189, 7 July 1954
- Trade Regulations
- Mining Law (BGBL No. 7354)
- Bituminous Substances Law (GBIOE No. 375/1938)

BELGIUM
- Constitution
- Act of 21 April 1810

Ruanda-Urundi
- Decree of 24 Sept. 1937, as amended (Mining Law)
- Decree of 11 July 1960 (land tenure)

BOLIVIA
- Constitution (1945), (Articles 17, 18 and 111)
- Petroleum Code, 26 Oct. 1955
- Investment Promotion Law, 16 Dec. 1960

BRAZIL
- Constitution (1946), (Articles 141, 147, 153 and 180)
- Decree Law No. 6230, 1944
- Law No. 2004, Oct. 1953 (establishment of petroleum monopoly)
- Law No. 2597, 12 Sept. 1955

BULGARIA
- Constitution (Articles 7, 8, 10)
- Decree of 27 June 1946 (nationalization: tobacco, alcohol, major mining enterprises)
- Decree of 24 Dec. 1947 (nationalization: industrial undertakings, transport, communication, wholesale trade, hotels)
- Decree of 26 Dec. 1947 (nationalization: banking)
- Law of 15 Apr. 1948 (nationalization: urban real property)
- Law of 3 Nov. 1948 (nationalization: shipping, vessels)

BURMA
- Constitution (1947)
- Transfer of Immovable Property (Restriction) Act, 1947
- Union Mineral Resources (Grant of Right of Exploitation) Enabling Act, 1949
- Union of Burma Investment Act, 1959
- Union of Burma Investment Rules, 1960
- Government of the Union of Burma, *Statement on Government Assistance to Private Enterprise,* 15 Sept. 1961

CAMBODIA
- Constitution
- Foreign Investment Law, May 1956
- Kram No. 212-N.S. of 23 July 1957
- Kram No. 221-N.S. of 13 Sept. 1957

CAMEROUN
- Investment Code, 11 June 1960

CANADA
- Income Tax Act

CENTRAL AFRICAN REPUBLIC
- Constitution (1959)

CEYLON
- Salt Ordinance No. 6, 1890
- White Paper, 15 July 1955 (*Government Policy in Respect of Private Foreign Investment*)

CHAD
- Constitution (1959)

CHILE
- Constitution
- Decree Law No. 488, 24 Aug. 1932 (Mining Code)
- Decree No. 1080, 24 June 1936 (State coal deposits)
- Act No. 5922, 25 Sept. 1936 (Land holdings by aliens)
- Law No. 9705, 17 Oct. 1950
- Law No. 11828, May 1955 (Copper Law)
- Foreign Investment Statute, Decree Law No. 258, 30 Mar. 1960

CHINA (Taiwan)
- Constitution (1947)
- Mining Law, 26 May 1930, as amended to 30 July 1959
- Revised Statute for Investment by Foreign Nationals, 14 Dec. 1959

COLOMBIA
- Constitution (1945), (Article 30)
- Constitution (1886), (Article 10)
- Decree No. 1723, 25 July 1944 (sale of German property held in trust)
- Petroleum Code (Decree No. 1056, 20 Apr. 1953)

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* For national legislation for control over the exploitation of radio-active substances, see vol. I, pp. 41-45.

CONGO (Brazzaville)
Constitution (1958)

CONGO (Leopoldville)
Loi fondamentale (1960)
Decree of 30 May 1960

COSTA RICA
Constitution (1947), (Article 19)
Decree No. 2 of 4 Sept. 1930
Decree No. 3 of 4 Sept. 1930
Law on Combustible Minerals, 9 May 1938
Law on National Electrical Service, 18 Aug. 1941
Decree No. 37 of 12 Mar. 1942
Water Law, 28 Aug. 1942

CUBA
Constitution (1940), (Article 19 (*f*))
Agrarian Reform Law, 1959

CZECHOSLOVAKIA
Constitution (1948), (Article XII)
Constitution (1960), (Articles 7 and 8)
Presidential Decrees Nos. 100-103 of 1945 (nationalization decrees)
Law of 28 Apr. 1948 (nationalization law)

DAHOMEY
Constitution (1959)

DENMARK
Constitution
Act on the Exploration and Exploitation of Raw Materials in the Subsoil (No. 181, 8 May 1950)

DOMINICAN REPUBLIC
Constitution (1955)

ECUADOR
Constitution (1946)
Petroleum Law, 6 Aug. 1937, as amended

EL SALVADOR
Constitution (1950)
Industrial Encouragement Law (D.L. No. 661, 22 May 1952)

ETHIOPIA
Enemy Property Proclamation No. 14, 28 May 1942 (as amended)
Notice No. 10 of 1950, Statement of Policy for Encouragement of Foreign Capital Investment in Ethiopia

FEDERATION OF MALAYA
Mining Enactment No. 19, 1928 (as amended)

FINLAND
Act on the Right of Foreign Nationals and Foreign Corporations to Own and Possess Immovable Property and Shares, 28 July 1939
Mining Act of 24 Mar. 1943
Act on Atomic Energy, 25 Nov. 1957

FRANCE
Constitution (1958)
Constitution (1946)
Decree of 1 Sept. 1939 (trading with the enemy)
Law No. 46-628, 8 Apr. 1946 (nationalization of the electricity and gas industries)
Law No. 46-1027, 17 May 1946 (nationalization of the coal mining industry)
Decree No. 54-1110 of 13 Nov. 1954 (as amended by: decrees 55-638 of 20 May 1955; 57-242 of 24 Feb. 1957; 57-458 of 4 Apr. 1957; 57-460 of 4 Apr. 1957; and 57-859 of 30 July 1957)
Decree No. 55-581 of 20 May 1955 (land tenure; French Equatorial and West Africa)
Decree No. 55-638 concerning the exploitation of natural resources
Code Minier (Decree No. 56-838), 16 Aug. 1956
Decree 57-458, 4 April 1957 (French Equatorial and West Africa)
Decree No. 57-460 of 4 Apr. 1957 (French Equatorial and West Africa)
Decree No. 58-9 of 2 Jan. 1958
Regulation 669 of 21 Jan. 1959

Sahara
Ordinance No. 58-111, 22 Nov. 1958 (petroleum exploration and exploitation)

French West Africa
Decree of 15 Nov. 1935
Decree 55-580 of 20 May 1955

GABON
Constitution (1959)

GHANA
Constitution [Article 13 (1)]
Statement in Gold Coast Legislative Assembly, 1 March 1954

GREECE
Constitution (Article 17)
Emergency Law of 5 May 1935
Emergency Law No. 1366/1938 (immovable property in border areas and islands)
Legislative Decree No. 2687, 31 Oct. 1953 (Investment and Protection of Foreign Capital)
Petroleum Law No. 3948, 1959

GUATEMALA
Constitution (1956), (Articles 14, 59 and 127)
Decree No. 1736 of 9 Dec. 1930
Decree No. 2137 of 27 Mar. 1936
Decree No. 3134, 14 Aug. 1944
Industrial Development Law (Decree No. 459, 3 Dec. 1947)
Presidential Decree No. 202, 12 Jan. 1955
Petroleum Code (Decree No. 345, 7 July 1955)
Congressional Decree No. 1287, 17 June 1959 [establishment of the National Electrification Institute (INDE)]

HAITI
Constitution (1957), (Articles 13, 15)
Law of 19 Sept. 1952

HONDURAS
Constitution (1957)
Decree No. 116 of 2 Apr. 1910
Decree No. 113 of 8 Apr. 1912
Decree No. 93 of 7 Apr. 1918
Decree No. 74 of 5 Mar. 1918
Decree No. 83 of 18 Feb. 1935

HUNGARY
Constitution
Law No. VI, 1945 (nationalization: land)
Law No. XIII, 1946 (nationalization: coal mining)
Law No. XX, 1946 (nationalization: electric energy)
Law No. XXX, 1947 (nationalization: banks)
Law No. XIII, 1948 (nationalization: bauxite, aluminium production)
Law No. XXV, 1948 (nationalization: industrial enterprises)
Law-Decree No. 20, 1949 (nationalization: certain industrial and transport undertakings)
Law-Decree No. 4, 1952 (nationalization: certain housing property)

ICELAND
Constitution

INDIA
Constitution (1949)
Mines and Minerals (Regulation and Development), Act No. 53, 1948

INDIA (*continued*)
Industrial Policy Statement, 6 Apr. 1948
Industries (Development and Regulation), Act No. 65, 1951
Industrial Policy Resolution, 30 Apr. 1956
Companies Act, 1956
Mines and Minerals (Regulation and Development), Act No. 67, 1957
Petroleum Concession Rules
Mineral Concession Rules, 1960

INDONESIA
Constitution
Act of 23 May 1899, as amended (mining laws)
Policy Statement of 28 Dec. 1955
Cabinet Decision of 24 Oct. 1956
Act No. 78, 27 Oct. 1958, Concerning Foreign Capital Investment
Act No. 86, 1958 (nationalization of Netherlands-owned enterprises)
Government Ordinances Nos. 2 and 4 of 23 Feb. 1959
Ordinance No. 9 (Statutes 1959 No. 16) of 2 Apr. 1959

IRAN
Oil Nationalization Act, 1 May 1951
Mining Law, 18 May 1957
Petroleum Act, 31 July 1957
Regulations Governing Exploitation of Mines, 1957
Law Concerning the Attraction and Protection of Foreign Capital Investments, 29 Nov. 1955

IRAQ
Constitution
Industrial Undertakings Encouragement Law No. 43 of 1950
Law No. 72, 1955 for the Encouragement of Industrial Undertakings

IRELAND
White Paper, Nov. 1958, *Programme for Economic Expansion*
Industrial Development Act—1958
Memorandum of 26 Feb. 1959

ISRAEL
Companies Ordinance, 1929
Petroleum Law No. 5712, 1952, as amended
Law for the Encouragement of Capital Investments, No. 5719, 6 Aug. 1959

ITALY
Constitution (1947)
Law No. 136, 1953 [establishment of Ente Nazionale Idrocarburi (ENI)]
Regulations Concerning Foreign Capital Investments, Law No. 43, 7 Feb. 1956
Presidential Decree No. 758, 6 July 1956 (Foreign capital investments)
Petroleum Law (No. 6, 11 Jan. 1957)

Regional development legislation:
Law No. 1598, 14 Dec. 1947 (Regulations for the Industrialization of Southern and Insular Italy)
Law No. 1482, 29 Dec. 1948 (Additional regulations)
Law No. 646, 10 Aug. 1950 (Establishment of the Fund for Special Works of Public Interest in Southern Italy)
Law No. 298, 11 Apr. 1953 (Development of Credit Activities in the Industrial Sector in Southern and Insular Italy)
Law No. 634, 29 July 1957 (Provision for the South)
Law No. 555, 18 July 1959 (Supplementing and amending provisions)

IVORY COAST
Private Investment Law (Law No. 59-134), 3 Sept. 1959

JAPAN
Constitution (1946)
Alien Land Law No. 42, 1 Apr. 1925
Mining Law No. 289, 1950
Law Concerning Foreign Investment, May 1950

JORDAN
Constitution
Law No. 27, 21 Apr. 1955 on the encouragement and guidance of industry
Law No. 28, 21 Apr. 1955, on the encouragement of foreign capital investment

LAOS
Law of 8 Jan. 1957 (concessions of vacant rural land)
Law Ordinance No. 197, 20 June 1959 (land rights of aliens)
Law No. 42, 26 Jan. 1959 (mineral exploration and exploitation)
Law No. 238, 23 July 1959 (forestry concessions of aliens)

LEBANON
Constitution
Law Decree No. 304, 1942 (Commercial Code)

LIBERIA
Constitution (Article 5 (12))
Code of Laws, 1956
Title 24, Law of Mines
Title 15, General Business Law
Title 29, Property Law
Title 32, Public Lands Law
Sect. 171

LIBYA
Constitution
Petroleum Law No. 25, 1955, as amended
Law on the Investment of Foreign Capital, Royal Decree of 30 Jan. 1958

LUXEMBOURG
Constitution

MALAGASY REPUBLIC
Ordinance of 5 Sept. 1960 (mining)

MALI
Constitution (1959)

MEXICO
Constitution (Articles 27, 28, 29, 116, Sec. VI)
Mining Law of 1930, as amended
Water Law, 31 Aug. 1934
Expropriation Law, 23 Nov. 1936
Decree of 18 Mar. 1938 (oil companies expropriation)
Law of the Electric Industry, 31 Dec. 1938
Petroleum Law, 2 May 1941
Decree of 29 June 1944
Law on the Electric Industry, 31 Dec. 1951
Regulatory Law of Article 27 of the Mexican Constitution relating to the exploitation and utilization of mineral resources, 5 Feb. 1961
Petroleum Law, 29 Nov. 1958 [establishment of Petroleos Mexicanos (PEMEX)]

MOROCCO
Petroleum Law (Dahir No. 1-58-227, 21 July 1958)
Basic Investment Law (Dahir No. 1-58-263, Sept. 1958)
Decree No. 2-58-877
Office des Changes, Circular No. 886, 19 Sept. 1958

NETHERLANDS
Mining Act, 21 Apr. 1810
Mining Act, 27 Apr. 1904

Surinam
Investment Ordinance, 26 Feb. 1960, G.P. 1960, No. 17

Netherlands New Guinea
Netherlands New Guinea (Constitution) Act, 30 June 1960

NICARAGUA
Constitution (1950)
Law Decree No. 317 of 20 Mar. 1958

NIGERIA
Minerals Ordinance—1946

NORWAY
- General Concessions Act (Act of 14 Dec. 1917, No. 16, on the Acquisition of Waterfalls, Mineral Rights and Other Real Property)
- Forest Concessions Act (Act of 18 Sept. 1909, on the Acquisition of Forests)
- Storting Enactment, 18 Mar. 1952 (Northern Norway Development Fund)
- Law of 28 June 1952

PAKISTAN
- Capital Issues (Continuance of Control) Act, 1947
- Industrial Policy Statement, 2 Apr. 1948
- Regulation of Mines and Oilfields and Mineral Development Act, 1948
- Pakistan Petroleum (Production) Rules, 1949 (as amended)
- Pakistan Mining Concession Rules, 1949
- Development of Industries (Federal Control) Act, 1949 (as amended)
- Policy Statement of 2 April 1954 (Foreign capital investment)
- Mining Concession Rules, 1958 (West Pakistan)

PANAMA
- Constitution (Article 231)
- Production Development Law No. 25 of 7 Feb. 1957

PARAGUAY
- Constitution
- Law No. 1755, 8 June 1940
- Law No. 246, 25 Feb. 1955 (industrial encouragement law)

PERU
- Constitution (1933)
- Law of 11 Jan. 1896 (establishment of Government salt monopoly)
- Expropriation Law No. 9125 of 1949
- Mining Code (Decree Law No. 11357, 12 May 1950)
- Petroleum Law No. 11780, 12 March 1955
- Petroleum Regulations, 16 June 1952
- Law No. 12376, 8 July 1955 (petroleum concessions)
- Law No. 12378, 14 July 1955 (electricity supply)
- Industrial Promotion Law (Decree No. 13270, 30 Nov. 1959)

PHILIPPINES
- Constitution (1935), (Article XIII)
- Parity Amendment, 11 Mar. 1947
- Mining Act No. 137, 27 Nov. 1936 (as amended)
- Petroleum Act (Republic Act No. 387, 1949)
- Public Law Act (Commonwealth Act No. 141)
- Republic Act No. 1160 (acquisition of public agricultural land)
- Immigration Act (Commonwealth Act No. 613) as amended by Republic Act No. 503

POLAND
- Constitution
- Law of 3 June 1946 (nationalization: extractive industries and major plants)

PORTUGAL
- Constitution (Article 162)
- Law No. 1944, 13 Apr. 1943
- Law No. 2048, 11 June 1951
- Law No. 2066, 27 June 1953

ROMANIA
- Constitution (Article 7)
- Law of 11 June 1948 (nationalization: industrial establishments, mines, transport, banks, insurance)
- Decree of 20 April 1950 (nationalization: multiple dwellings, hotels)

SAUDI ARABIA
- Regulations for Investments of Foreign Capital, 23 May 1957

SENEGAL
- Constitution, 1959

SOMALIA
- Foreign Investment Law (Law No. 10), 18 Feb. 1960

REPUBLIC OF SOUTH AFRICA
- Precious Stones Act No. 44, 1927
- Companies Ordinance, 1928
- Native Trust and Land Act No. 18, 1936
- Natural Oil Act No. 46, 1942
- Atomic Energy Act No. 35, 1948

Province of Transvaal
- Precious and Base Metals Act No. 35, 1908, as amended

Province of Cape of Good Hope
- Precious Mineral Act No. 31, 1898 (as amended)
- Mineral Law Amendment Act No. 16, 1907

Province of Natal
- Natal Mines Act No. 43, 1899

Orange Free State
- Precious and Base Metals Act No. 35, 1908, as amended

South West Africa
- Diamond Industry Protection Proclamation P. No. 17 of 1939 (with amendments)
- Mines, Works and Minerals Ordinance of 1954 (SWAG No. 1847), and amendments Nos. 4 and 17 of 1955 and 31 of 1957
- Mining Regulations (SWAG No. 1965) of 1956 (amended by Government Notice No. 200 of 1958)

SPAIN
- Constitution
- Law on the Regulation and Protection of Industry, 1939, as amended July 1959
- Mining Law, 19 July 1944
- Petroleum Law, 29 Dec. 1958

SWEDEN
- Act of 30 May 1916, as amended (restrictions governing the acquisition of real property, mines or shares of certain companies)
- Mining Law of 3 June 1938, as amended by Law of 21 March 1952
- Decree of June 1943 (Crown crofts for cultivation)
- Decree of 25 May 1945 (transfer of Crown lands)
- Decree of 11 June 1948 (rural homesteads)
- Act of 21 Dec. 1949 (disposition of mining rights of foreigners)
- Act of 3 June 1955

SYRIA
- Law Decree No. 151, 2 Mar. 1952
- Mining Law, No. 7, 21 Dec. 1953
- Decree No. 2819, 2 Sept. 1956, on petroleum concessions

THAILAND
- Constitution (Sec. 29)
- Mining Law, B.E. 2461, 1919, as amended to 1950
- Law on the Rights of Aliens to Own Land in Siam, 1943, amended 1954
- Act for the Promotion of Industry, 4 Oct. 1954 (B.E. 2497)
- Land Code, 30 Nov. 1954 (B.E. 2497)
- Promotion of Industrial Investment Act, 17 Oct. 1960 (B.E. 2503)

TUNISIA
- Petroleum Law No. 58-36, 15 Mar. 1958

TURKEY
- Constitution
- Law for the Encouragement of Foreign Investment, No. 6224, 18 Jan. 1954
- Mining Law, No. 6309, 3 Mar. 1954
- Petroleum Law, No. 6326, 10 Mar. 1954, as amended
- Law No. 6558, 13 May 1955 (amending Law No. 6326)

UKRAINIAN SSR
- Constitution (1937), (Article 6)

UNION OF SOVIET SOCIALIST REPUBLICS
Constitution (1936), (Article 6)
Introductory Law to the Civil Code of the RSFSR (Article 8)

UNITED ARAB REPUBLIC
Decree No. 98 of 16 May 1959
Proclamation No. 158 of 15 July 1941 (commerce with German and Italian nationals)
Law No. 37, Mar. 1951
Law No. 66 of 1953 on Mines and Quarries
Law No. 156 of 2 Apr. 1953 (as amended)
Stock Company Law No. 26, 16 Jan. 1954
Proclamation No. 5 of 1 Nov. 1956 (commerce with British and French nationals)
Law No. 86, 1956
Law No. 285, 26 July 1956 (nationalization of Universal Company of the Suez Maritime Canal)
Law No. 20, 13 Jan. 1957
Law No. 138, 29 June 1957
Decree of 12 Aug. 1958
Decree No. 98 of 16 May 1959

UNITED KINGDOM
Petroleum (Production) Act, 1934
Coal Industry Nationalization Act, 1946
Bank of England Act, 1946
Cable and Wireless Act, 1946
Electricity Act, 1947
Transport Act, 1947
Companies Act, 1948
Gas Act, 1948
Iron and Steel Act, 1949
Iron and Steel Act, 1953
Atomic Energy Acts, 1946 and 1954
Transfer of Functions (Atomic Energy and Radioactive Substances) Order, 1957
United Kingdom Model Colonial (Oil Mining) Regulations (Misc. No. 484a, Nov. 1938)

Brunei
Oil Mining Enactment, 1955

Fiji
Mining Ordinance

Kenya
Land Titles Ordinance, 1908 (Cap. 159, 1948 Revised Laws of Kenya)
Registration of Titles Ordinance (Cap. 160, 1948 Revised Laws of Kenya)
Water Ordinance, 1951
Native Lands Trust Ordinance (Cap. 100, 1948 Rev. Laws of Kenya)
Mining Ordinance (Cap. 168, 1948 Rev. Laws of Kenya)
Mining Laws and Regulations (Cap. 168, 1948 Rev. Laws of Kenya)
Crown Lands Ordinance (Cap. 155, 1948 Rev. Laws of Kenya)
Crown Lands Ordinance, 1915 (Cap. 155, 1948 Rev. Laws of Kenya)
Native Lands Registration Ordinance No. 27, 1959
Land Control (Native Lands) Ordinance No. 28, 1959
Kenya (Highlands) Order in Council, 30 Nov. 1960, S.I. 1960, No. 2202

Nyasaland
Crown Lands Ordinance—30 April 1936
Order in Council—1950

Sarawak
Oil Mining Ordinance, 1958

Swaziland
Concessions Partition Proclamation of 1907
Native Area, Proclamation No. 10 of 1917

Trinidad
Oil Mining Regulations of 1939 and 1945

Uganda
Agreement of 1900 (in respect of the present Province of Buganda)
Order in Council of 1902 (regarding status of Crown Land)
Crown Land Ordinance of 1903
Crown Land Ascertainment Ordinance of 1912
Crown Land Declaration Ordinance of 1922

UNITED STATES OF AMERICA
Constitution (Fifth Amendment)
Trading with the Enemy Act—1917 (as amended)
Code of Federal Regulations, Title 31B, Chap. V (foreign assets control)
Mutual Security Act—1954
Mutual Security Act—1956
Public Law 665, 83rd Cong., Section 413 (*b*) (as amended)
Public Law 726, 84th Cong.
Executive Order No. 8389 (as amended)
16 USC, sec. 797 (*e*)
30 USC, secs. 22, 24, 181
42 USC sec. 2133 (*d*)

Pacific Islands
Code of the Trust Territory

URUGUAY
Constitution

VENEZUELA
Constitution (1953), (Articles 48, 49 and 60)
Law of Hydrocarbons of 13 Mar. 1943 (as amended)
Mining Law of 29 Dec. 1944 (as amended)
Income Tax Law of 21 July 1955
Law of Hydrocarbons, 13 Oct. 1955
Income Tax Law of 19 Dec. 1958

WESTERN SAMOA
Constitution

YUGOSLAVIA
Constitution
Law on Nationalization of Private Economic Enterprises, 5 Dec. 1946
Law on Amendments to the Law on Nationalization of Private Economic Enterprises, 28 April 1948
Law on the Nationalization of Dwelling Houses and Building Lots, 1958

2. Agreements affecting the right of foreign nationals to ownership and exploitation of natural resources[a]

A. *Bilateral Agreements*[b]

AFGHANISTAN
/India—Treaty of Commerce—4 Apr. 1950;
/Pakistan—Agreement on freedom of transit—1958;
/USSR—Agreement concerning transit traffic—28 June 1955.

BELGIUM
/Czechoslovakia—Agreement concerning Belgian property nationalized, etc., in Czechoslovakia—19 Mar. 1947;
/France—Convention on Conditions of Residence—6 Oct. 1927;
/France—Convention on compensation of Belgian interests in nationalized gas and electricity undertakings—18 Feb. 1949;
/Hungary—Agreement on compensation for nationalized Belgian and Luxembourg property in Hungary—1 Feb. 1955;
/Netherlands—Convention on Establishment and Labour—20 Feb. 1933;
/Netherlands—Treaty fixing a mining boundary between the coal mines situated along the Meuse on both sides of the frontier—23 Oct. 1950;
/Portugal—Convention on Katanga Traffic—1927;
/Siam (Thailand)—Convention of Establishment—5 Nov. 1937.

[a] Dates shown relate to date of signature.
[b] Agreements are shown under the heading of the party which is first in alphabetical order and are not repeated under the heading of the second party.

HUNGARY (*continued*)
/Switzerland—Agreement on the compensation of Swiss interests in Hungary—19 July 1950;
/United Kingdom—Agreement on the settlement of financial matters—27 June 1956.

INDIA
/Iran—Treaty of Commerce and Navigation—15 Dec. 1954;
/Japan—Agreement on Commerce—4 Feb. 1958;
/Muscat and Oman—Treaty of Friendship, Commerce and Navigation—15 Nov. 1953;
/Pakistan—Indus Waters Treaty—19 Sept. 1960;
/Switzerland—Treaty of Friendship, Commerce and Establishment—14 Aug. 1948;
/USA—Agreement relating to the guaranty of private investments—19 Sept. 1957.

INDONESIA
/Netherlands—Round-Table Conference Agreement, 1949.

IRAN
/USA—Treaty of Amity, Economic Relations and Consular Rights—15 Aug. 1955;
/United Kingdom—Treaty of 1959.

IRELAND
/USA—Treaty of Friendship, Commerce and Navigation—21 Jan. 1950.

ISRAEL
/USA—Treaty of Friendship, Commerce and Navigation—23 Aug. 1951.

ITALY
/Jordan—Treaty of Friendship—1952;
/Switzerland—Treaty on the Simplon Tunnel—1895;
/Switzerland—Convention on the regulation of Lake Lugano—17 Sept. 1955;
/USSR—Treaty of Commerce and Navigation—11 Dec. 1948;
/USA—Treaty of Friendship, Commerce and Navigation—2 Feb. 1948;
/Yugoslavia—Agreement regarding fishing by Italian fishermen in Yugoslav waters—13 Apr. 1949;
/Yugoslavia—Agreement on Italian property rights in Yugoslavia—23 May 1949.

JAPAN
/Norway—Treaty of Commerce and Navigation—28 Feb. 1957;
/USA—Treaty of Friendship, Commerce and Navigation—2 Apr. 1953.

JORDAN
/Syria—Agreement on the utilization of the Yarmuk waters—4 June 1953.

LAOS
/Thailand—Agreement on transit rights—22 July 1959;
/Viet-Nam—Agreement on transit rights—11 June 1959.

LEBANON
/Pakistan—Treaty of Friendship—16 Jan. 1953.

MEXICO
/Netherlands—Exchange of Notes on compensation in respect of expropriated petroleum industrial property—7 Feb. 1946;
/United Kingdom—Agreement on compensation in respect of expropriated petroleum industrial property—7 Feb. 1946;
/USA—Agreement on final settlement of claims of American nationals whose rights and interests in the oil industry of Mexico were affected by acts of the Government of Mexico subsequent to 17 Mar. 1938—23/29 Sept. 1943.

MUSCAT AND OMAN, SULTANATE OF
/United Kingdom—Treaty of Friendship, Commerce and Navigation—20 Dec. 1951.

NEPAL
/United Kingdom—Treaty (on Relations)—30 Oct. 1950.

NETHERLANDS
/USA—Treaty of Friendship, Commerce and Navigation—27 Mar. 1956.

NICARAGUA
/USA—Treaty of Friendship, Commerce and Navigation—21 Jan. 1956.

NORWAY
/Sweden—Convention regarding transit traffic—26 Oct. 1905;
/Sweden—Agreement concerning fishing in certain waters belonging to Norway and Sweden—20 Dec. 1950;
/USSR—Agreement on Frontiers—29 Dec. 1949;
/USSR—Agreement on the utilization of water power on the Pasvik (Paatso) River—18 Dec. 1957.

PHILIPPINES
/Switzerland—Treaty of Friendship—30 Aug. 1956;
/Thailand—Treaty of Friendship—14 June 1949;
/USA—Laurel/Langley Agreement, 15 Dec. 1954.

POLAND
/Sweden—Protocol of Negotiations on interests of Swedish physical or juridical persons in Poland—28 Feb. 1947;
/Sweden—Agreement on compensation of Swedish interests in Poland—16 Nov. 1949;
/Switzerland—Agreement on compensation of Swiss interests in Poland—25 June 1949;
/United Kingdom—Agreement on money and property subject to special measures since 1 Sept. 1939—14 Jan. 1949;
/United Kingdom—Trade and Finance Agreement—14 Jan. 1949;
/United Kingdom—Agreement concerning compensation for British interests affected by the Polish nationalization law of 3 Jan. 1946—24 Jan. 1948;
/United Kingdom—Agreement on settlement of financial matters—11 Nov. 1954;
/USA—Exchange of Notes in connexion with a loan to Poland——24 Apr. 1946.

ROMANIA
/Sweden—Convention of 1932;
/Switzerland—Agreement on the compensation of Swiss interests in Romania—3 Aug. 1951;
/USSR—Treaty on Trade and Navigation—20 Feb. 1947.

SWITZERLAND
/Yugoslavia—Agreement on the compensation of Swiss interests in Yugoslavia affected by measures of nationalization, expropriation and restriction—27 Sept. 1948.

UNION OF SOVIET SOCIALIST REPUBLICS
/United Kingdom—Agreement on fisheries—25 May 1956.

UNITED ARAB REPUBLIC
(Egypt)/United Kingdom—Agreement on Nile waters—7 May 1929;
(Egypt)/United Kingdom—Exchange of Notes regarding the Owen Falls Dam—31 May 1949/16 June 1952.

UNITED KINGDOM
/Yugoslavia—Agreement on compensation for British property, rights and interests affected by Yugoslav measures of nationalization, expropriation, dispossession and liquidation—23 Dec. 1948;
/Yugoslavia—Agreement regarding the terms and conditions of payment of the balance of such compensation—26 Dec. 1949.

UNITED STATES OF AMERICA
/Yugoslavia—Agreement on pecuniary claims of the United States and its nationals—19 July 1948.

B. *Multilateral Agreements*

Treaty concerning the Archipelago of Spitzbergen—9 Feb. 1920
Agreement on the Suppression of the Manufacture of, Internal Trade in and Use of Prepared Opium—11 Feb. 1925

Convention on Traffic in Opium and Drugs—19 Feb. 1925

Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs—13 July 1931

Agreement concerning the Suppression of Opium Smoking—17 Nov. 1931

Treaty of Peace with Italy—10 Feb. 1947

Economic Agreement of Bogotá—1948

Treaty Instituting the European Coal and Steel Community—18 April 1951

International Convention to facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail—10 Jan. 1952

International Convention to facilitate the Crossing of Frontiers for Goods carried by Rail—10 Jan. 1952

Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms—1952

International Tin Agreement—1954

Convention on sea and river navigation on the Mekong—1 Jan. 1955

European Convention on Establishment—13 Dec. 1955

Treaty Establishing the European Economic Community (EEC)—25 Mar. 1957

Treaty Establishing the European Atomic Energy Community (Euratom)—25 Mar. 1957

Convention relating to certain institutions common to the European Communities—25 Mar. 1957

Multilateral Treaty of Free Trade and Central American Economic Integration—June 1958

International Sugar Agreement—1958

International Coffee Agreement—1959

International Wheat Agreement—1959

Treaty of Economic Association (El Salvador, Guatemala, Honduras)—6 Feb. 1960

Treaty of Montevideo establishing the Latin American Free Trade Association—18 Feb. 1960

Second International Tin Agreement—24 June 1960

Convention instituting the definitive status of the Danube

Belgrade Convention regarding the navigation régime on the Danube

State Treaty for an Independent and Democratic Austria—15 May 1955

Agreement concerning the Regulation of Plaice and Flounder Fishing in the Baltic Sea

Agreements regarding the Preservation of Plaice and Plaice and Dab in the Skagerak, Kattegat and Sound

International Convention for the Northwest Atlantic Fisheries

Agreement for the establishment of a General Fisheries Council for the Mediterranean

Statute on the Régime of Navigable Waterways of International Concern

Statute on the International Régime of Maritime Ports

Geneva Convention on the Development of Hydraulic Power

Agreement concerning the Division of Waters of the Pilcomayo River

Convention on Construction of Pipelines

Agreement on the Régime for Central American Integration Industries

Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere

International Plant Protection Convention

Convention for Preservation of Fauna and Flora in their natural state

Peace Treaty with Bulgaria Recognizing Freedom of Navigation on the Danube

Peace Treaty with Hungary Recognizing Freedom of Navigation on the Danube

3. International adjudication relating to the responsibility of States in regard to the property and contracts of aliens

(a) *International Court of Justice*

Anglo-Iranian Oil Co. case (jurisdiction), United Kingdom *v.* Iran, 1952

(b) *Permanent Court of International Justice*

Certain German Interests in Polish Upper Silesia (Series A, No. 7)

Interpretation of Judgements Nos. 7 and 8 (Series A, No. 13)

Factory at Chorzów (Series A, No. 17)

Peter Pazmany University *v.* the State of Czechoslovakia (Series A/B, No. 61)

Oscar Chinn (Series A/B, No. 63)

Certain questions relating to settlers of German origin in the territory ceded by Germany to Poland (Series B, No. 6)

(c) *Other international arbitral tribunals*

Adams (UK) *v.* United States, 1871; American and British Claims Commission

Burt (USA) *v.* Great Britiain, 1923; Fijian Land Claims Commission

Canevaro Case, Italy and Peru, 1912

Chazen (USA) *v.* Mexico, 1930; US-Mexican General Claims Commission

Chemins de Fer du Nord *v.* German State, 1929; Franco-German Mixed Arbitral Tribunal

Compagnie d'Electricité de Varsovie, Affaire de la, 1932; France/Poland

Consonno (Italy) *v.* Persia, 1891

Cook (USA) *v.* Mexico, 1927; US-Mexican General Claims Commission

Coquitlam, Owners of the Cargo of the (Great Britain) *v.* USA, 1920; British-American Pecuniary Claims Commission

Delagoa Bay Railway, USA, Great Britain, Portugal, 1901

De Sabla, Marguerite de Joly (USA) *v.* Panama, 1933; General Claims Commission, United States and Panama

Deutz (USA) *v.* Mexico, 1929; US-Mexican General Claims Commission

Dickson Car and Wheel Company (U.S.A.) *v.* Mexico, 1931; US-Mexican General Claims Commission

El Triunfo Company, USA/El Salvador, 1902

Forests in Central Rhodopia, Arbitration concerning some, Greece/Bulgaria

Goldenberg, Affaire, Germany/Romania, 1928

Great Britain/Spain (Spanish Zone of Morocco), 1924

Hardman, William (Great Britain) *v.* United States, 1913; British-American Pecuniary Claims Commission

Hungarian Optants Case: see Kulin (Emeric) père *v.* Romania

Illinois Central Railroad Co., 1926; US-Mexican General Claims Commission

International Fisheries Co. (USA) *v.* Mexico, 1931; US-Mexican General Claims Commission

Jablonsky *v.* German Reich, 1936; Upper Silesian Arbitral Tribunal

Kemeny *c.* Etat serbe-croate-slovène, 1928; Hungarian-Yugoslav Arbitral Tribunal

Kügele *v.* Polish State, 1932; Upper Silesian Arbitral Tribunal

Kulin (Emeric) père *v.* Romania, 1927; Romano-Hungarian Mixed Arbitral Tribunal

Landreau Claim, USA/Peru, 1922

Lena Goldfields arbitration

Martini case; Italian-Venezuelan Claims Commission

May, Claim of Robert, Guatemala/USA, 1900

Norwegian Shipowners Claims, USA/Norway, 1921

Oliva case; Italian-Venezuelan Claims Commission

Orinoco, Company General of the; French-Venezuelan Claims Commission

Parsons, J. (Great Britiain) *v.* United States, 1925; British-American Pecuniary Claims Commission

Phares, Affaire des, France/Greece, 1956

Rio Grande Irrigation and Land Company (Great Britain *v.* USA), 1923

Rudloff; American-Venezuelan Claims Commission

Shufeldt Claim, USA/Guatemala, 1930

Smith, Walter Fletcher Case (Cuba/USA), 1929

Standard Oil Co., Claim to certain Tankers, 1926; Reparation Commission/USA

Turnbull *et al.;* American-Venezuelan Claims Commission

USA on behalf of the American Tobacco Company *v.* Turkey; Turkish-American claims

USA on behalf of Ina M. Hoffman and Dulcic H. Steinhardt *v.* Turkey; Turkish-American Claims

USA on behalf of George Hopkins, Claimant *v.* Mexico, 1926; US-Mexican General Claims Commission

USA on behalf of McAndrews and Forbes Company *v.* Turkey; Turkish-American Claims

USA on behalf of Raissis *v.* Turkey; Turkish-American Claims

USA on behalf of Singer Sewing Machine Company *v.* Turkey; Turkish-American Claims

(d) *Quasi-international arbitral tribunals*

Radio Corporation of America *v.* China, 1935

Radio Corporation of America *v.* Czechoslovakia, 1932

Saudi Arabia and the Arabian American Oil Company (Aramco), Arbitration between, 1958

DECISIONS OF NATIONAL COURTS RELATING TO RECENT NATIONALIZATION MEASURES

Aden, Supreme Court: decision of 9 Jan. 1953

Amsterdam (Netherlands) Court of Appeal: decision of 4 June 1959

Bremen (Federal Republic of Germany) Court of Appeal: judgement of 21 August 1959

Rome (Italy) Civil Court: decision of 13 Sept. 1952

Tokyo (Japan) High Court: decision of 1953

4. Concession agreements

ALGERIA

/Compagnie Esso Saharienne S.A.F. (associate of Esso Sahara, Inc. of Delaware); Compagnie Française des pétroles (Algérie); Société de participations pétrolières (Petropar)—1959

/Phillips Petroleum Company (France); COPEAFA; OMNIREX—1959

/Phillips Petroleum Company (USA); Société nationale des pétroles d'Aquitaine—1958

ARGENTINA

/YPF/C.M. Loeb-Rhoades and Co.—1958

/Esso Sociedad Anónima Petrolera Argentina (subsidiary of Standard Oil of New Jersey)—1958

/Pan American International Oil Co. (subsidiary of Standard Oil Co. of Indiana)—1958

/Shell Argentina Ltd. (subsidiary of Shell Oil Ltd. and Royal Dutch)—1958

/Union Oil Co. of California—1958

CONGO (Brazzaville)

/Cie. Minière de l'Ogooué (COMILOG)—1959

COSTA RICA

/United Fruit Company—10 Dec. 1934 (supplementary to agreement of 1920)

/United Fruit Company—31 Dec. 1949

/Compañía Bananera de Costa Rica—23 July 1938

/Compañía Bananera de Costa Rica/Chiriqui Land Company —24 Dec. 1954

GABON

/Cie. Minière de l'Ogooué (COMILOG)—1959

GUATEMALA

/United Fruit Company—7 Nov. 1924

/Compañía Agrícola de Guatemala—12 Sept. 1930

/Compañía Agrícola de Guatemala—3 Mar. 1936

/Compañía Agrícola de Guatemala—27 Dec. 1954

HONDURAS

/Tela Railroad Co. (a subsidiary of United Fruit Company) —10 Nov. 1949

/Tela Railroad Co. (a subsidiary of United Fruit Company) —5 April 1955

/Standard Fruit and Steamship Co.—31 March 1955

IRAN

/NIOC—Consortium Agreement of 20 Mar. 1954

/NIOC-AGIP Mineraria, 3 Aug. 1957

/NIOC-Pan-American Petroleum Corporation, 24 Apr. 1958

/NIOC-Sapphire Petroleums Ltd., June 1958[c]

IRAQ

/Iraq Petroleum Co., Ltd. (originally the Turkish Petroleum Co., Ltd.) of 14 Mar. 1925

/British Oil Development Co., Ltd. (Mosul Petroleum Co., Ltd., as amended) of 20 Apr. 1932

/Basrah Petroleum Co., Ltd.—Convention of 29 July 1938 (as amended)

/Iraq Petroleum Co., Ltd.
Mosul Petroleum Co., Ltd.
Basrah Petroleum Co., Ltd. } of 3 Feb. 1952

JORDAN

/George Izmiri—3 Mar. 1958

KUWAIT

/Arabian Oil Co., Ltd. (subsidiary of Japan Petroleum Trading Co., Ltd.)—Offshore Concession Agreement of 5 July 1958

/Shell Petroleum Development, Ltd., 15 Jan. 1961

NORWAY

Concession agreements concerning water power (see chap. V, para. 221)

/Luossavaara-Kiirunavaara Company—11/7 Oct. 1898

PERU

/American Smelting and Refining Co.—1952

SAUDI ARABIA

/CASOC—Supplementary Agreement of 31 May 1939

/ARAMCO—Off-shore Agreement of 10 Oct. 1948 and 30 Dec. 1950

/Standard Oil Co. of California (SOCAL)—29 May 1933

/Japan Petroleum Trading Co. Ltd. (Off-shore Concession Agreement)—10 Dec. 1957

UNITED ARAB REPUBLIC

/United Petroleum (Concordia) Ltd.—Decree No. 2819 of 2 Sept. 1956

/Compagnie Financière de Suez—13 July 1958

5. United Nations documents*

(a) *General Assembly Resolutions*

322 (IV)	799 (VIII)	1316 (XIII)
438 (V)	824 (IX)	1401 (XIV)
561 (VI)	1054 (XI)	1515 (XV)
626 (VII)	1157 (XII)	1606 (XV)
749A (VIII)		

[c] Effective 19 Jan. 1962, the title of Sapphire Petroleums, Ltd., became Cabol Enterprises, Ltd.

* For a full listing of pertinent resolutions see also appendix to chapter V.

(b) *Annual Reports of the Trusteeship Council to the General Assembly*

A/603	A/2427	A/3822
A/933	A/2680	A/4100
A/1306	A/3170	A/4404
A/1856	A/3595	A/4818
A/2150		

(c) *Reports of the Committee on South West Africa*

A/266 and Add.1 and Corr.1
A/2913 and Add.1 and 2
A/3151
A/3626
A/3906 and Add.1
A/4191
A/4364
A/4957

(d) *Other General Assembly documents*

A/3898—Agreement between the United Arab Republic and Compagnie Financière de Suez of 13 July 1958

A/3916/Rev.1—Association of Non-Self-Governing Territories with the European Economic Community

A/4081/Add.1—Information from Non-Self-Governing Territories—Summary and Analysis, Northern Rhodesia

A/4095/Add.1—Cessation of Transmission of Information under Art. 73 c—France—17 July 1959

A/4211—Report of the Secretary-General on the Economic Development of Under-Developed Countries (E/3259)

A/4220 and Add.1-6—Report of the Secretary-General on Measures taken by the Governments of Member States to further the economic development of Under-Developed Countries in accordance with General Assembly resolution 1316 (XIII)

A/5078, A/5079, A/5080, A/5081—Information from Non-Self-Governing Territories: Summaries of Information Transmitted under Article 73 e of the Charter of the United Nations

A/C.4/454—Constitution of the Independent State of Samoa

A/CONF.13/29 and Add.1—United Nations Conference on the Law of the Sea

A/CONF.32/4—Second International Tin Agreement

(e) *Economic and Social Council documents*

E/2256—Commission on Human Rights—Report to the 8th Session

E/2901—International Flow of Private Capital, 1953-55

E/3021—Financing of Economic Development—Flow of Private Capital

E/3128—International Flow of Private Capital—1957

E/3137—Structure of Growth of Selected African Economies

E/3202—World Economic Situation—Extracts of Resolutions of the General Assembly and the Economic and Social Council Involving the Principle of International Economic Co-operation

E/3244—World Economic Survey, 1958 (ST/ECA/60)

E/3246/Rev.1—ECLA Annual Report 1958/59 (E/CN.12/530/Rev.1)

E/3249—International Flow of Private Capital 1956/58 (Sales No.: 59.II.D.2)

E/3256—Economic Development in the Middle East 1957/58 (Sales No. 59.II.C.2)

E/3259—Report of the Secretary-General on the Economic Development of Under-Developed Countries (A/4211)

E/3269—Interim Co-ordinating Committee for International Commodity Arrangements

E/3325—The Promotion of the International Flow of Private Capital—1960

E/3334—Progress Report of United Nations Commission on Permanent Sovereignty over Natural Resources covering the work of its first session

E/3338—Opportunities for International Co-operation on Behalf of Former Trust Territories and other newly Independent States—23 March 1960

E/3361—World Economic Survey, 1959 (ST/ECA/63)

E/3369—Economic Development of Under-Developed Countries—International Flow of Private Capital, 1958-1959

E/3374—International Commodity Problems—1960

E/3384—Economic Development in the Middle East—1958-59 (ST/ECA/64)

E/3395—Economic Development of Under-Developed Countries—4 July 1960

E/3492—The Promotion of the International Flow of Private Capital, Further Report by the Secretary-General (18 May 1961)

E/3580—Capital Requirements of Petroleum Exploration and Methods of Financing (15 Mar. 1962)

E/CN.11/374—Development of Mineral Resources in Asia and the Far East (Sales No.: 53.II.F.5)

E/CN.11/457—Development of Water Resources in the Lower Mekong Basin

E/CN.11/462—Survey of Mining Legislation for Asia and the Far East (Sales No.: 57.II.F.5)

E/CN.11/507—Mineral Resources Development Series No. 10

E/CN.12/360—Foreign Capital in Latin America (ST/ECA/28; Sales No.: 54.II.G.4)

E/CN.12/365/Rev.1—Economic Development of Colombia (Sales No.: 57.II.G.3)

E/CN.12/429/Add.3—El desarrollo económico de la Argentina

E/CN.12/449 and Add.1—European Economic Community and Latin American Exports, 20 Apr. 1957

E/CN.12/486—Desarrollo Económico en Centroamérica (Sales No.: 57.II.G.9)

E/CN.12/489/Rev.1—Economic Survey of Latin America—1957 (Sales No. 58.II.G.1)

E/CN.12/492—(ECLA) Report of the Central American Economic Co-operation Committee, 25 Feb. 1957-10 June 1958 (Sales No. 58.II.G.3)

E/CN.12/498/Rev.1—Economic Survey of Latin America—1958 (Sales No. 59.II.G.1)

E/CN.12/499—The Role of Agricultural Commodities in a Latin American Regional Market

E/CN.12/503—Systems of Administrative Organization for the Integrated Development of River Basins

E/CN.12/511—Preliminary review of Questions relating to the Development of International River Basins

E/CN.12/530/Rev.1—ECLA Annual Report 1958-59 (E/3246/Rev.1)

E/CN.12/541—Economic Survey of Latin America, 1959 (Preliminary edition)

E/CN.12/550—Foreign Private Investment in the Latin American Free-Trade Area (Sales No. 60.II.G.5)

E/CN.12/565 and Add.1—Economic Survey of Latin America, 1960 (Preliminary edition)

E/CN.12/C.1/9—Latin American Common Market and the Multilateral Payments System (Sales No. 59.II.G.4)

E/CN.12/C.1/12—Government Policies Affecting Private Foreign Investments

E/CN.14/28—Economic Survey of Africa since 1950 (Sales No. 59.II.K.1)

E/CN.14/29—The Impact of the European Economic Community on African Trade (20 Nov. 1959)

E/CN.14/61—Information Paper on Procedures for Accession to GATT and the Advantages for Less-Developed Countries (30 Sept. 1961)

E/CN.14/72 and Add.1—The Impact of Western European Integration on African Trade and Development (7 Dec. 1960)

E/CN.14/100 and Add.1—Report of the Ad Hoc Committee of Government Representatives on the Impact of Western European Economic Groupings on African Economics (2 Feb. 1961)

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E/CONF.27/5—International Sugar Agreement, 29 Oct. 1958

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6. Documentation of other international organizations

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C.75.M.69.1929.V—Conference for the Codification of International Law: Bases of discussion drawn up by the Preparatory Committee

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II. REPORT OF THE COMMISSION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

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REPORT OF THE COMMISSION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

I. Establishment, membership and terms of reference of the Commission

1. The United Nations Commission on Permanent Sovereignty over Natural Resources was established by the General Assembly in its resolution 1314 (XIII) of 12 December 1958, entitled: "Recommendations concerning International Respect for the Right of Peoples and Nations to Self-Determination". It is composed of nine members: Afghanistan, Chile, Guatemala, the Netherlands, the Philippines, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic and the United States of America.

2. In the above-mentioned resolution, the General Assembly, noting that the right of peoples and nations to self-determination as affirmed in the two draft Covenants completed by the Commission on Human Rights include "Permanent Sovereignty over Natural Wealth and Resources", and believing it necessary to have full information at its disposal regarding the actual extent and character of that sovereignty, entrusted to the Commission the task "to conduct a full survey of the status of this basic constituent of the right to self-determination with recommendations, where necessary, for its strengthening". It was further decided that in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, "due regard shall be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries". The regional economic Commissions of the United Nations and the specialized agencies were invited by the Assembly to co-operate with the Commission in its task; and the Commission was requested to report to the Economic and Social Council at its twenty-ninth session.

II. Representation and attendance

3. The member States on the Commission, the specialized agencies and the International Atomic Energy Agency were represented at the meetings of the Commission as follows:

Member States	*Representatives*	*Alternate representatives or advisers*
Afghanistan	Mr. A. R. Pazhwak	Mr. A. H. Tabibi
Chile	Mr. O. Pinochet (first session) Mr. D. Schweitzer (second and third sessions)	Mr. V. Rioseco (third session)
Guatemala	Mr. A. Herrarte (first and second sessions) Mr. G. Flores Avendaño (third session)	Mr. M. Kestler (first and second sessions) Mr. C. Gonzalez-Calvo (third session)
Netherlands	Mr. C. W. A. Schurmann (first and second sessions) Mr. J. Polderman (third session)	Miss J. D. Pelt (first and second sessions) Mr. J. Kaufmann (second session) Mr. L. H. J. B. van Gorkom (third session)
Philippines	Mr. J. Gamboa	Mr. J. Brillantes Mr. Quiambao Mr. Espejo
Sweden	Mr. S. Petren (first and third sessions) Mr. L. Myrsten (second session)	Mrs. A. Rossel (third session) Mr. A. Willen (third session)
Union of Soviet Socialist Republics	Mr. Sapozhnikov	Mr. B. P. Prokofyev (second session) Mr. I. A. Ornatsky (third session) Mr. I. I. Yakovlev (third session)
United Arab Republic ..	Mr. A. H. Abdel-Ghani (first session) Mr. R. Asha (second session) Mr. A. H. Khamis (third session)	Mr. A. H. Khamis (second session) Mr. A. B. Abdel Ghaffar (second session)
United States of America	Mr. John M. Raymond	Mr. S. M. Finger Mr. J. Simsarian (first and second sessions) Mr. C. G. Parker, III (second session)

International Organizations	*Representatives*
International Labour Organisation	Mr. R. A. Métail (first session) Mr. H. Reymond (second and third sessions) Mr. E. Zmirou (second and third sessions)
Food and Agriculture Organization	Mr. J. L. Orr (second and third sessions) Mr. P. V. Acharya (second and third sessions)
International Atomic Energy Agency	Mr. A. I. Galagan (second and third sessions) Mr. A. V. Freeman (second and third sessions)

Mr. M. F. Maurtua (Peru) attended the second and third sessions of the Commission as an observer.

III. Officers of the Commission

4. The Commission has held three sessions; the first from 18-22 May 1959, the second from 16 February to 17 March 1960 and the third from 3 to 25 May 1961. At its first session the Commission elected Mr. M. J. Gamboa (Philippines) as Chairman, Mr. A. Herrarte (Guatemala) as Vice-Chairman and Mr. A. H. Abdel-Ghani (United Arab Republic) as Rapporteur. At its second session, owing to the absence of Mr. Abdel-Ghani, the Commission elected Mr. R. Asha (United Arab Republic) as Rapporteur. At its third session, due to the absence of Mr. Herrarte and Mr. Asha, the Commission elected Mr. G. Flores Avendaño (Guatemala) as Vice-Chairman and Mr. A. H. Khamis (United Arab Republic) as Rapporteur.

IV. The work of the Commission at its first two sessions

5. At its first session, the Commission decided that the Secretariat should prepare a study on the Status of Permanent Sovereignty of Peoples and Nations over their Natural Wealth and Resources for consideration by the Commission at its second session. In his preliminary observations on the preparation of such a study, the representative of the Secretary-General referred to the variety of legal provisions in different countries governing this subject. While it would be difficult, in his view, for the Secretariat to compile such material on every single aspect for every country, it was possible to prepare a study that would cover a broad representation of Member States, including the various geographical regions as well as different economic and legal systems (A/AC.97/3). The Commission agreed that the study to be prepared by the Secretariat should not be confined to legal matters but must also contain information on economic matters pertaining to the status of permanent sovereignty of peoples and nations over their natural wealth and resources. It was suggested that emphasis should be placed on the less developed areas as well as Non-Self-Governing Territories and Territories under the International Trusteeship System and on the exploitation of natural resources by foreign nationals and foreign enterprises, taking into account regional international organizations as well as bilateral and multilateral agreements concerning exploitation of natural resources.

6. At its second session, the Commission considered the preliminary study prepared by the Secretariat (A/AC.97/5 and Corr.1 and Add.1). A number of suggestions were presented for the inclusion of additional information. Among the items suggested for inclusion were: factual data on the methods of financing the exploitation of natural resources and on the extent of indigenous participation in Trust and Non-Self-Governing Territories; information regarding the area and relative fertility of agricultural land exploited by foreign companies; a survey of the effects of the present economic blocs in various parts of the world on the exploitation of natural resources; an indication of common features of legislative measures in various countries aimed at promoting foreign investment; more detailed information on transit rights, especially of land-locked countries; general conclusions from the available sources of law regarding the rights and duties of States under international law; and information supplied by international organizations in regard to international co-operation in the development of under-developed countries. Some members stressed the need for data on income and profits derived from investments in the exploitation of natural resources in the under-developed countries, Trust Territories and Non-Self-Governing Territories. It was also suggested that additional information might be included on the *per caput* income and *per caput* land holdings of indigenous people in Non-Self-Governing Territories as compared with those of foreigners. Other members of the Commission considered that information on income and profits could hardly be representative and that no sound conclusions could be derived from such information; consequently, they opposed the inclusion of such material. Some members also objected to the proposed indication of common features of legislation relating to the promotion of foreign investment. It was suggested by some representatives that the Department of Economic and Social Affairs, the Legal Office and the Department of Trusteeship and Information from Non-Self-Governing Territories of the Secretariat should co-operate in furnishing the necessary information.

7. After discussion, the Commission adopted the following resolution:

"The Commission on Permanent Sovereignty over Natural Resources,

"Recalling General Assembly resolution 1314 (XIII),

"Having considered the preliminary study prepared by the Secretary-General entitled 'The Status of Permanent Sovereignty over Natural Wealth and Resources' (A/AC.97/5 and Corr.1 and Add.1),

"1. *Commends* the Secretary-General for the preliminary study prepared for the Commission;

"2. *Requests* the Secretary-General, taking into account the views expressed by the members of the Commission at this session:

"(*a*) To invite Member States and specialized agencies to verify the material in the preliminary study and to submit additional pertinent information with regard to matters within their respective jurisdictions;

"(*b*) To prepare, not later than 15 March 1961, in the light of such submissions, a revision of the study for consideration by the Commission at its next session;

"(*c*) To include in the revised study appropriate references to United Nations decisions, reports and studies relating to rights and duties of States under international law and to international co-operation in the economic development of under-developed countries;

"3. *Expresses the hope* that Member States which have not yet already done so would as soon as possible submit the necessary information on the status of permanent sovereignty over natural wealth and resources within their respective jurisdictions."

8. The Commission also decided, in accordance with General Assembly resolution 1314 (XIII), to submit a progress report covering the work of its first two sessions to the twenty-ninth session of the Economic and Social Council (E/3334). It was stated in the progress report that the Commission would hold its third session at the end of April 1961 to consider the revised text of the Secretariat study and would submit its final report to the Economic and Social Council for consideration at its thirty-second session.

V. Consideration of the revised Secretariat study

9. In accordance with the decision taken by the Commission at its second session, the Secretariat submitted its revised study for consideration by the Commission at its third session (A/AC.97/5/Rev.1 and Corr.1, and Add.1). The revised study consists of five chapters: (I) National Measures Affecting the Ownership or Use of Natural Resources by Foreign Nationals or Enterprises; (II) International Agreements Affecting the Foreign Exploitation of Natural Resources; (III) International Adjudication and Studies under the Auspices of Inter-governmental Bodies Relating to Responsibility of States in Regard to the Property and Contract of Aliens; (IV) Status of Permanent Sovereignty over Natural Wealth and Resources in Newly-Independent States and in Non-Self-Governing Territories and Territories under Trusteeship; (V) Economic Data Pertaining to the Status of Sovereignty over Natural Wealth and Resources in Various Countries. In the introduction to the revised study, it was stated that the Secretariat, in preparing the revision, was guided by the views expressed by the members of the Commission at its second session and in particular by the summary of these views as set forth in the Commission's progress report. Special consideration was given to the wishes of some members of the Commission that the revised study include more factual information on sovereignty over natural resources in the less developed countries and in Non-Self-Governing Territories. As a result, chapters IV and V were considerably expanded.

10. In his opening statement made at the third session of the Commission, the Chairman described the revised Secretariat study as containing a wealth of concrete information which could serve as a practical and constructive guide for Governments when considering the problem of the sovereignty over natural wealth and resources. Most members of the Commission also regarded the study as a valuable document and some of them felt that it could be the basis on which the Commission might make its recommendations on the subject to the Economic and Social Council. On the other hand, some members considered that the study of the Secretariat, even in its revised form, does not reflect the real situation in the field of exploitation by foreigners and their companies of natural wealth and resources of Non-Self-Governing Territories, Trust Territories and less developed countries. Some members stated that information on certain matters which they suggested at the second session of the Commission (see paragraph 5 above) was still lacking in the revised study; they further suggested that the revised study should include more factual data concerning the method of financing the exploitation of natural resources and the extent of indigenous, as compared with alien, participation, as well as supplementary information concerning legislation to encourage foreign investors. It was also suggested that fuller information be given on the profits made by foreign companies and the proportion attributable to those companies of exports from the countries in which they had acquired rights of exploitation, and on the transit rights, particularly relating to the rights of land-locked countries for free access to the sea. The view was also expressed that the revised study did not sufficiently reflect violations of the sovereignty of peoples over their natural wealth and resources occurring in many parts of the world. It was pointed out by the representative of the Secretary-General that certain information requested by some members had not been available to the Secretariat, that the replies from Governments to the requests made in accordance with the Commission's decision had not provided such information and that in view of the General Assembly resolution on control and limitation of documentation, it had not been thought necessary to reproduce in the revised study the voluminous material which had already appeared in other United Nations documentation.

VI. Recommendations of the Commission

11. The following draft resolutions and amendments were submitted to the Commission at its third session.

(*a*) A draft resolution was submitted by the USSR (A/AC.97/L.2) to which amendments were proposed by the United Arab Republic (A/AC.97/L.4). After discussion, the representative of the USSR submitted a revised version of his draft resolution (A/AC.97/L.2/Rev.1).

(*b*) A draft resolution was submitted by Chile (A/AC.97/L.3/Rev.1) to which amendments were proposed by the United Arab Republic and later jointly by Afghanistan and the United Arab Republic (A/AC.97/L.6 and Corr.1). After holding informal meetings with other members of the Commission, the representative of Chile submitted a revised draft resolution (A/AC.97/L.3/Rev.2), to which amendments were proposed jointly by Afghanistan and the United Arab Republic (A/AC.97/L.7). An amendment submitted by Sweden (A/AC.97/L.5) to the original Chilean draft resolution was revised and submitted jointly by Sweden and Afghanistan (A/AC.97/L.5/Rev.1) to the revised Chilean draft resolution. A sub-amendment was submitted by the United Arab Repubic (A/AC.97/

L.10) to the joint amendment by Sweden and Afghanistan. Amendments were also submitted by the United States (A/AC.97/L.9) to the Chilean revised draft resolution.

(*c*) A draft resolution was submitted by the United Arab Republic (A/AC.97/L.8/Rev.1) which replaced a proposed amendment originally contained in document A/AC.97/L.7.

12. After the representative of Chile introduced his revised draft resolution (A/AC.97/L.3/Rev.2), Part B of which would request the Economic and Social Council to arrange for the publication of the revised Secretariat study together with the Commission's report, the Commission was informed by the Secretariat of the financial implications of that provision.

13. Those paragraphs of the Chilean revised draft resolution to which amendments had been submitted are reproduced below:

Preambular paragraph 1, in part A, *"The General Assembly,*

"Bearing in mind resolution 1314 (XIII) adopted by the General Assembly on 12 December 1958, which instructed the Commission to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and recommended further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries,"

Preambular paragraph 2 of part A:

"Bearing in mind resolution 1515 (XV) adopted by the General Assembly on 15 December 1960, which recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,"

Operative paragraph 2 of part A:

"2. The exploration, development and use of those resources, as well as the import of the foreign capital required for those purposes, shall be in conformity with the rules and conditions which those peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities;"

Operative paragraph 3 of part A:

"3. In cases where authorization in granted, the capital imported and the earnings on that capital shall be governed by it, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources;"

Operative paragraph 4 of part A:

"4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases, the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law;"

Operative paragraph 6 of part A:

"6. International co-operation for the economic development of under-developed countries, whether it takes the form of public or private capital investments, technical assistance, or exchange of scientific information, shall be so oriented as to contribute in every possible way to the exercise of sovereignty as described in paragraph 5 above;"

Operative paragraph 8 of part A:

"8. States and international organizations shall rigorously and scrupulously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the United Nations Charter and the provisions of this resolution."

14. At the thirty-first meeting of the Commission held on 22 May 1961, at the request of the representative of Chile, the Commission decided to give priority of voting to the Chilean revised draft resolution.

15. The following amendments were either withdrawn or not pressed to a vote by their authors: (1) the amendment by the United States (A/AC.97/L.9) to add to the end of the second preambular paragraph the words "in conformity with the rights and duties of States under international law"; (2) the amendment by the United States (A/AC.97/L.9) to add at the end of operative paragraph 2 the words "and in accordance with international law", which was not pressed to a vote on the understanding that the United States reserved the right to submit an amendment to the Economic and Social Council; (3) the amendment by Afghanistan and the United Arab Republic (A/AC.97/L.7) to replace in operative paragraph 4, line 4, the word "appropriate" by the word "adequate"; (4) the amendment by Afghanistan and the United Arab Republic (A/AC.97/L.7) to insert in operative paragraph 4, line 5, the words "when and where appropriate" after the word "compensation" which was not pressed to a vote, on the understanding that the proposal would be submitted by Afghanistan to the Economic and Social Council or the General Assembly.[1]

16. The following amendments being merely drafting changes were accepted by the author of the revised draft resolution and were incorporated in the draft resolution without vote: (1) the amendment by Afghanistan and the United Arab Republic (A/AC.97/L.7) to replace in the first preambular paragraph, line 5, the word "recommended" by the word "decided" in the English text; (2) the amendment by the United States (A/AC.97/L.9) to replace, in the first preambular paragraph, line 2, the words after the comma by "which established the Commission on Permanent Sovereignty over Natural Wealth and Resources and instructed it to conduct a full"; (3) the amendment by the United States (A/AC.97/L.9) to replace, in operative paragraph 2, line 1, the word "use" by the word "disposition" and the amendment by the United States (A/AC.97/L.9) to replace, in line 2, the word "shall" by

[1] For explanations given by the representatives of Afghanistan and the United Arab Republic, see A/AC.97/SR.29, page 4 (Afghanistan) and A/AC.97/SR.30, page 5 (United Arab Republic).

the word "should"; (4) the oral amendment by the Philippines to replace in operative paragraph 2, line 1, the word "those" by "such", line 2, the word "those" by "these", and line 3, the word "those" by "the"; (5) the oral amendment proposed by the Philippines to replace in operative paragraph 3, line 2, the word "it" by the words "the terms thereof"; (6) the oral amendment proposed by the Philippines to replace in operative paragraph 6, line 2, the words "it takes" by the word "in" and in line 4, the word "oriented" by the word "encouraged"; (7) the amendment by Afghanistan and the United Arab Republic (A/AC.97/L.7) to replace in operative paragraph 8 the words "rigorously and scrupulously" by the words "strictly and conscientiously".

17. The following amendments were put to the vote: (1) the amendment by the United States (A/AC.97/L.9), to add at the beginning of the second sentence in operative paragraph 3 the words "agreements freely made in each case should be faithfully observed and", was rejected by 5 votes to 4. Thereafter, the representative of the United States withdrew his other amendments to operative paragraph 3; (2) by a vote of none for, 4 against and 5 abstentions, the Commission decided to retain the word "utility" in the English text of operative paragraph 4, line 2, page 2, instead of "purpose"; thereafter, the representative of the United States withdrew his amendment to delete the words "or national interest"; (3) the representative of the USSR requested a vote by division on the two paragraphs of the sub-amendment by the United Arab Republic (A/AC.97/L.10) to the joint amendment by Afghanistan and Sweden (A/AC.97/L.5/Rev.1) to operative paragraph 4. The request was rejected by 1 vote in favour, 4 against, with 4 abstentions. The sub-amendment was adopted by 5 votes in favour, 3 against, with 1 abstention. As a result, the joint amendment by Afghanistan and Sweden (A/AC.97/L.5/Rev.1) which provided for the settlement of disputes arising out of the question of compensation by international adjudication or arbitration, subject to agreement by the parties concerned, was not put to the vote.

18. The Commission agreed to insert at the end of part A of the revised Chilean draft resolution a new paragraph proposed by Afghanistan and the United Arab Republic (A/AC.97/L.7) concerning a request to the International Law Commission.

19. The revised Chilean draft resolution, as amended, was adopted by 8 votes to 1, with no abstentions (for text, see annex, resolution I).

20. The revised draft resolution submitted by the USSR (A/AC.97/L.2/Rev.1) in addition to the paragraphs, which were later adopted as resolution II (see paragraph 22 below), would request the Economic and Social Council to recommend the adoption by the General Assembly of the following draft resolution:

"The General Assembly,

"Recalling its resolutions 523 (VI) and 626 (VII) and, in particular, resolution 1314 (XIII), which emphasizes that the right of peoples and nations to self-determination includes permanent sovereignty over their natural wealth and resources,

"Considering that one of the basic purposes of the United Nations, as proclaimed in its Charter, is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,

"Considering that the Declaration on the granting of independence to colonial countries and peoples solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations,

"Having regard to the special importance of the question of promoting the economic development of the less developed countries and the strengthening of their national independence,

"Considering that the realization and strengthening of the permanent sovereignty of States over their natural wealth and resources helps to strengthen their national independence,

"1. *Reaffirms* the permanent sovereign right of peoples and nations freely to own, utilize and dispose of their natural wealth and resources in the interests of their independent national development and of enhancing the well-being of the people, including the sovereign right: to admit or not to admit foreign capital to the exploration and utilization of natural wealth and resources in their territory; to lay down conditions for and exercise control over the activity of domestic and foreign capital in their territory and over the distribution and export of profits; to limit, curtail or halt such activity if it conflicts with their national interests or infringes their sovereignty over natural wealth and resources; to carry out nationalization and expropriation measures without let or hindrance; and to take other necessary measures to safeguard and strengthen their sovereignty over natural wealth and resources;

"2. *Declares* that the violation of the sovereign rights of peoples and nations with respect to their natural weath and resources is contrary to the spirit and principles of the United Nations Charter and hampers the development of international co-operation and the preservation of peace;

"3. *Fully supports* the measures adopted by peoples and nations to restore or strengthen their sovereignty over natural wealth and resources and regards as inadmissible any action designed to hinder the realization, protection and strengthening of that sovereignty;

"4. *Recognizes* that assistance to the economically less developed countries and the activity of foreign capital permitted by them in their territory should correspond to the interests of their independent national development and should be based on respect for their sovereignty over their natural wealth and resources;

"5. *Calls upon* all States and international organizations strictly and conscientiously to respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the United Nations Charter and the provisions of this resolution;

"6. *Calls for* the encouragement of international co-operation in the economic development of less developed countries based on the sovereign equality and mutual respect of States."

21. At the thirty-second meeting of the Commission held on 23 May 1961, the representative of the United Arab Republic explained that in view of the acceptance by the USSR of the majority of his amendments (A/AC.97/L.4), he would request a voting only on his amendment to operative paragraph 1 of the USSR revised draft resolution. This amendment, which would

replace all the phrases beginning with "including the sovereign right" by the following: "and to take all measures to strengthen the sovereignty over their natural resources in accordance with the principles laid down by the Charter of the United Nations", was adopted by 3 votes to none, with 5 abstentions.

22. At the request of the representative of the Philippines, a separate vote was taken on the first part of the USSR draft resolution, beginning with "The Commission on Permanent Sovereignty over Natural Resources" and ending with "Transmits the said study to the Economic and Social Council together with the observations made by the members of the Commission". This part was adopted by 7 votes to none, with 1 abstention (for text, see annex, resolution II). At the request of the representative of the USSR, operative paragraph 3 of his revised draft resolution was put to a roll-call vote and was rejected by 3 votes in favour (United Arab Republic, Afghanistan, Union of Soviet Socialist Republics), 4 against (United Sates of America, Netherlands, Philippines, Sweden) and 1 abstention (Chile). The remaining part of the USSR draft resolution was rejected by 3 votes to 4, with 1 abstention.

23. The draft resolution submitted by the United Arab Republic (A/AC.97/L.8/Rev.1), with drafting changes proposed by the representative of the Philippines, was adopted by 6 votes to none, with 3 abstentions (for text, see annex, resolution III).

24. The three resolutions adopted by the Commission are reproduced in the annex to the present report. In accordance with resolution II, the Commission transmits the revised Secretariat study, together with the observations made by the members as contained in the summary records of the meetings of the Commission, to the Economic and Social Council.

ANNEX

Resolution I

A

The Commission on Permanent Sovereignty over Natural Resources,

Bearing in mind the task entrusted to it by the General Assembly in its resolution 1314 (XIII),

Convinced of the need for recommendations to strengthen the right of peoples and nations to permanent sovereignty over their natural wealth and resources,

Requests the Economic and Social Council to recommend that the General Assembly should adopt the following draft resolution:

"*The General Assembly,*

"*Bearing in mind* resolution 1314 (XIII) adopted by the General Assembly on 12 December 1958, which established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries,

"*Bearing in mind* resolution 1515 (XV) adopted by the General Assembly on 15 December 1960, which recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

"*Considering* that any measure in this respect must be based on recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

"*Considering* that in order to promote international co-operation for the economic development of under-developed countries, based on respect for the principles of equal rights and the right of peoples and nations to self-determination, it is desirable to establish in advance economic and financial agreements,

"*Considering* that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

"*Considering* the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connexion,

"*Attaching particular importance* to the question of promoting the economic development of under-developed countries and securing their economic independence,

"*Declares* that,

"1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of the well-being of the people of the State concerned;

"2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities;

"3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources;

"4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases, the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, national jurisdiction should be resorted to. Upon agreement by the parties concerned settlement of the dispute may be made through arbitration or international adjudication;

"5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality;

"6. International co-operation for the economic development of under-developed countries, whether in the form of public or private capital investments, technical assistance, or exchange of scientific information, shall be so encouraged as to contribute in every possible way to the exercise of sovereignty as described in paragraph 5 above;

"7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary

to the spirit and principles of the United Nations Charter and hinders the development of international co-operation and the maintenance of peace;

"8. States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the United Nations Charter and the provisions of this resolution.

"*Requests* the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly."

B

The Commission on Permanent Sovereignty over Natural Resources,

Having examined the revised study on the "Status of Permanent Sovereignty over Natural Wealth and Resources" prepared by the United Nations Secretariat (A/AC.97/5/Rev.1 and Add.1),

1. *Thanks* the Secretariat for the study it has prepared;

2. *Requests* the Economic and Social Council to arrange for its publication, together with the Commission's report, so that the document may be available to all who wish to consult the useful information which it contains.

Resolution II

The Commission on Permanent Sovereignty over Natural Resources,

Recalling General Assembly resolutions 523 (VI) and 626 (VII) and, in particular, resolution 1314 (XIII),

Desiring to promote the strengthening of the permanent sovereignty of peoples and nations over their natural wealth and resources,

Considering the study prepared for the Commission by the Secretariat with this end in view,

Transmits the said study to the Economic and Social Council, together with the observations made by the members of the Commission.

Resolution III

The Commission on Permanent Sovereignty over Natural Resources,

Considering the importance and usefulness of further studies and recommendations for the promotion of the right of peoples and nations to permanent sovereignty over their natural wealth and resources,

"*Requests* the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly."

Addendum

Statement of financial implications submitted by the Secretary-General

1. Under operative paragraph 2 of resolution I B adopted by the Commission on Permanent Sovereignty over Natural Resources, the Economic and Social Council was requested to arrange for the publication of the revised study on "The Status of Permanent Sovereignty over Natural Wealth and Resources" prepared by the United Nations Secretariat (A/AC.97/5/Rev.1 and Add.1), together with the Commission's report (E/3511—A/AC.97/13).

2. The cost of printing the study in the three languages of the Economic and Social Council, estimated on the basis of 2,000 copies in English, 850 copies in French and 600 copies in Spanish, would be $15,400.

3. Should the request of the Commission be approved by the Council, the Secretary-General would request provision for the cost in his revised 1962 budget estimates to be submitted to the General Assembly at its sixteenth session.

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