Document symbol: E/3325

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UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/3325
26 February 1960

ORIGINAL: ENGLISH

Twenty-ninth session
Agenda item 5

THE PROMOTION OF THE INTERNATIONAL FLOW OF PRIVATE CAPITAL

Progress Report by the Secretary-General

0-03293

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98 p.

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FOREWORD

1. The present report has been prepared in pursuance to General Assembly resolution 1318 (XIII) of 10 December 1958 on the promotion of the international flow of private capital (reproduced as Annex I).

2. The drafting of the report has been preceded by an initial round of consultations with government officials, bankers and industrialists including representatives of corporations with international interests and entrepreneurs in capital-receiving countries. The Secretary-General wishes to place on record his gratitude to those who gave generously of their experience and time. A deeper insight into the problem involved in the promotion of the international flow of private capital to under-developed countries has been afforded by these consultations. This report, however, is only a progress report, as its conclusions must be tested by further consultations covering a still broader range of views and experiences.

3. This preliminary report examines the kinds of foreign private investment sought by under-developed countries and favoured by investors and the types of measures adopted to increase the flow of private capital into such countries in general and into favoured fields and forms of investments in particular. Special consideration is given to the protection of foreign private investment against non-business risks. The report does not attempt a quantitative analysis of the international flow of private capital as such an analysis is the subject of separate continuing studies submitted to the Council under General Assembly resolutions 824 (IX) and 1035 (XI).[1] Neither does it describe in detail the various government measures aimed at promoting the international flow of private capital which are currently in force.[2]

1/ The latest report in this series was published in 1959 under the title, The International Flow of Private Capital 1955-1958 (United Nations Publication, Sales No. 59.II.D.2). An interim report will be submitted to the 30th session of the Council.

2/ Such measures have been reviewed in Foreign Investment Laws and Regulations in the ECAFE Region (U.N. Sales No. 1951.II.F.1); United States Income Taxation of Private United States Investment in Latin America (U.N. Sales No. 1953.XVI.1); Foreign Capital in Latin America (U.N. Sales No. 1954.II.G.4); Government Policies Affecting Private Foreign Investment in a Latin American Regional Market (U.N. document E/CN.12/C.1/12 and Add.1); Laws and Regulations Affecting Foreign Investment in Asia and the Far East (U.N. document ECAFE/L.122) and Taxation in Capital-Exporting and Capital-Importing Countries of Foreign Private Investments (U.N. documents E/2865 and E/3074).

4. In the preparation of the report, account has been taken of General Assembly resolution 1427 (XIV) of 11 December 1959 requesting that attention be given to the role of industrial development banks and development corporations in promoting the international flow of private capital, and of the discussion at the thirteenth session of the General Assembly of a draft resolution submitted by the Byelorussian Soviet Socialist Republic on foreign private investments in extractive industries.[1]

1/ See A/C.2/L.392, A/C.2/SR.570 and A/3947.

SUMMARY

5. The efforts of developing countries to attract foreign private capital must be viewed against the background of a growing volume of international direct investment, stimulated by the continued expansion of the world economy and the relaxation of exchange restrictions in capital-supplying and capital-receiving countries. These efforts are frequently expressed in policy statements, investment laws and development programmes in which Governments indicate their preferences regarding the fields of activity and methods of operation through which foreign private capital can be expected to make an optimum contribution to economic development.

6. In the implementation of these statements, laws and programmes many Governments accommodate their provisions to the legitimate requirements and practices of foreign private investors. This flexibility on the part of Governments meets growing response in the pattern of operations of foreign investors. In their foreign operations major companies look for long-term growth through the establishment and consolidation of new markets; in this context profit rates are related to the capacity of the venture to expand through reinvestment of earnings. The variety of forms in which foreign capital moves into the under-developed countries covers a broad spectrum of arrangements, and leaves room for considerable adaptation to the conditions and policy objectives of individual capital-receiving countries.

7. The participation of foreign private enterprise in the development of natural resources is now often sought and obtained under conditions which differ considerably from those which formerly prevailed. New concession arrangements have been devised, frequently formulated within the framework of general enabling legislation, in which foreign investors meet increased requirements of the Governments concerned. Several countries, while restricting the ownership and development of petroleum resources to the public sector, have arranged for foreign companies to supply various services under contract. Attitudes towards foreign private investment in utilities are less clear.

8. Industrialization is a major objective in most under-developed countries. Foreign private investment and the technical skills that accompany it are most commonly sought in the manufacturing sector, praticularly in a fairly wide range

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of intermediate industries such as synthetics, chemicals and vehicle assembly. Governments appear to take an increasingly broad view of the role of foreign capital in industrial development, and countries are liberalizing the terms to be met by the foreign investor.

9. The existence as such of development programmes in under-developed countries is of less concern to the foreign investor than is the scope offered him under them. They have in fact been found helpful in clarifying the fields of activity in which foreign private investment is most welcome and the conditions under which it will be expected to operate.

10. Rigid legislative requirements regarding the employment of local personnel have frequently been relaxed in recognition of the acute shortage of technical and managerial skills. Companies operating abroad are also anxious to minimize the employment of expatriate staff, if only for cost reasons, and many of them have established their own training programmes to supplement governmental training facilities. Considerable importance is attached, it was found, to training activities carried out under international technical assistance programmes.

11. Most industrial companies operate abroad through foreign owned or controlled branches or subsidiaries. Of late, however, they have tended to establish joint ventures associating their capital, technical knowledge and management not only with those of other foreign investors, often from third countries, but especially with domestic enterprises in the country of investment. Many under-developed countries require or at least favour foreign industrial investment through joint ventures. Difficulties sometimes arise between foreign and local associates over management and financial policies as well as over profit distribution policies but the limited experience of this form of investment suggests that it can make possible successful ventures in cases where a pooling of foreign and domestic capital, experience and techniques is required. It is often recognized that formal control is less important than active participation at the technical and managerial level.

12. Patent licensing and similar arrangements are attracting much interest as a means of associating foreign expertise in the development of local enterprise even in the absence of foreign capital investment. Often such an arrangement is for the foreign firm a first step towards the investment of equity capital, possibly

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in a joint venture with the licensee. Licensing agreements are of limited use where a wide gap remains between the stage of technical development of licensee and licensor and where the capital, and in particular foreign exchange, required for related purchases of equipment is in short supply.

13. Incentives intended to reduce or remove deterrents to foreign investment, are frequently made available on an *ad hoc* basis, within the framework of governing legislation, after evaluation of the usefulness of the prospective investment in accordance with established criteria.

14. In the tax field the tendency of the major capital-supplying countries to reduce their tax demands on foreign income enables the Governments of capital-receiving countries effectively to offer a wide range of tax incentives. These include special concessions intended to eliminate hardships inherent in the tax systems of the country of investment as well as positive attractions in the form of tax holidays. Tax incentives are generally made available to foreign and domestic investors alike and are seldom open to the criticism that they put the foreign investor in a privileged position, a charge which is sometimes made against incentive measures in the field of exchange and trade. Many investors, however, look for a stable and sound tax system rather than for extensive concessions, especially as the latter are normally of limited duration. Broad tax concessions appear to fit more readily an early stage of industrialization where the tax system is not yet fully development-oriented.

15. The initial problem of uncovering investment opportunities is solved for large international enterprises through reliance on their foreign establishments and research staffs. Investors with limited experience of operations abroad, however, make use of investment information services provided by an increasing number of Governments. Foreign investment centres play a part in stimulating an initial interest in foreign investment and in assisting investors in the preparation and establishment of projects.

16. A growing number of international institutions, government-sponsored development banks and corporations and private financial institutions provide increasing amounts of finance for under-developed countries in conjunction with private business ventures. The provision of supplementary finance has been found to be of assistance in attracting foreign enterprise by reducing the initial capital which the foreign investor must provide.

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17. Foreign investors are highly conscious of non-business risks. Experience has shown that the risk of expropriation is not the same for medium-sized manufacturing firms as it is for large enterprises operating in the natural resources, plantations and public utility fields. Nevertheless, the impairment of the assets of any foreign investor is likely to affect the attitude of potential investors in other fields of activity and even in other countries. In order to overcome such apprehensions, Governments of capital-receiving and capital-supplying countries have made provisions, unilaterally or through bilateral agreements, for the protection of the investor against the occurrence of these risks or at least to assure him of indemnification if they should occur.

18. The limitations of the unilateral and bilateral approaches have led to the formulation of proposals for the conclusion of a multilateral investment charter. None of the draft investment charters so far suggested, however, has yet been put into effect, chiefly, it would appear, because the relevant rules of international law are still too much in dispute to permit broad agreement on a really meaningful definition of the investor's rights and obligations.

19. Many investors have expressed considerable interest in the possibility of international arbitration of disputes which might arise between them and the Governments of the countries of investment. Certain investment laws and a number of individual concession agreements, particularly in the petroleum field, provide for such international arbitration. Yet investors have not generally found it possible to secure this right. A solution may be the establishment of a special tribunal or panel of outstanding neutrality and expertise, perhaps under United Nations auspices, with members drawn from both capital-supplying and capital-receiving countries, possibly on a regional basis. The existence of such an agency might encourage Governments to accept its use at first perhaps only as a last resort in specific disputes, then more generally under the investment laws and perhaps under bilateral, and ultimately multilateral, agreements.

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CHAPTER I

THE SETTING OF THE PROBLEM

20. The most active and pervasive factor which has stimulated the flow of international private investment in recent years has been the continued expansion of the world economy.[1/] This expansion, which originated in the advanced industrialized areas, has been accompanied by the restoration of exchange stability among key currencies and growing emphasis upon convertibility, multilateralism and trade liberalization among capital-exporting nations on one hand and by an increasingly receptive attitude towards private foreign investment among capital-importing countries on the other.

21. The continued growth of the industrial nations has led not only to a great increase in the inducements and opportunities for direct and financial investment among advanced countries but also to an increase in the outflow of private capital to the rest of the world. Industrial growth in an advanced country builds up pressures for further expansion and stimulates new ventures, foreign as well as domestic. Rapid technological and industrial advance is reflected in new processes and new products, high levels of corporate expenditure on research and development and improvements or refinements in production and marketing methods. It adds up to a sum of processes and techniques which can also be applied abroad and the benefits of which are sought after by capital-importing countries.

22. Historically, foreign private investment in the under-developed countries has been concentrated in the development of export crops and minerals, including petroleum, and this sector continues to attract large amounts of foreign capital.[2/] However, economic development through industrialization and diversification of the

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1/ Since 1955 international investment has grown faster than world trade. The average annual outflow of private capital in the period 1955-1958 was $4 billion, twice the average annual outflow in 1951-1952. United Nations, The International Flow of Private Capital, 1956-1958 (Sales No. 59.II.D.2).

2/ It is not possible to state with any precision how much foreign private capital goes to the under-developed areas of Latin America, Africa and Asia. It has been estimated that the outflow to these areas averaged about $2 billion a year during the period 1955-1958. (United Nations, loc. cit.). Of this perhaps two-thirds was invested in petroleum and mineral extraction.

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economy has now become a major objective of most primary producing countries. Political independence, which releases and channels energies towards the path of conscious growth and industrialization, may create transitional problems and involve certain shifts in attitudes towards private foreign investment. The governments of under-developed countries are doing their utmost to promote the establishment and growth of a domestic industrial sector. They seek to establish investment patterns and priorities which in their judgement are the most conducive to development and will secure the maximum benefits for the local economy.

23. But deficiencies in capital, equipment and know-how often lead public authorities and frequently also private entrepreneurs in under-developed countries to look for assistance of various kinds - technical, and if possible financial - from foreign firms, and there is consequently intense international competition for capital, technology and know-how. At the same time the protective measures often employed by the capital-importing countries for the purpose of promoting industrialization, reinforced by the exchange difficulties in which they frequently find themselves, create, if local market conditions are promising, a strong incentive for foreign industries to circumvent tariffs and quantitative restrictions against the sale of their products by establishing manufacturing facilities, with or without local partners, inside the market. The desire for "import substitution" by the developing countries thus finds its counterpart in a willingness to engage in "export substitution" on the part of firms in capital-supplying countries.

24. In spite of a recent revival of financial and portfolio investment, most of the outflow of private capital is in the form of direct investment which complements rather than substitutes for domestic investment. These investments, it should be observed, are financed mainly out of retained earnings originating from domestic operations or through other sources available to the investing company, and only rarely through public issues.

25. Direct industrial investment, at home and abroad, appears to be based chiefly on long-term growth prospects. Investment planning may be based on forecasts for ten to twenty years. Competition for market shares and access to sources of raw materials are hardly less important influences on business

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investment decisions, as both will affect the return of the investment over a long period. A distinction must be made, however, between enterprises engaged in manufacturing and those operating in the field of extractive industries.

26. The prospects for economic growth in the industrial countries, rather than in the countries where mineral and petroleum deposits are situated, is the chief consideration underlying the investment decisions of the mining and petroleum companies, though in countries with a sizeable and expanding industrial sector, such as Argentina, the petroleum companies in particular have an extra incentive to search for and develop local resources to feed existing refineries and distribution networks.

27. Companies engaged in extractive operations are also concerned with the problem of maintaining their competitive position, which may include not only their share in the market for the selling product but also in the rights to explore and develop new proven or unproven deposits.

28. Under suitable conditions mineral and petroleum companies are not necessarily deterred from preliminary exploration by an absence of proven, or even suspected, reserves. Thus during the last twenty years over $100 million has been spent on oil prospecting in Nigeria, judged a politically stable area, though likelihood of finding oil in commercially exploitable quantities seemed at first less probable than in other areas.

29. The size of the local market is a major limiting factor to investment in manufacturing industries, which is one of the reasons why industrial investment is largely a function of a broader process of growth. Yet such investment can proceed even in the absence of such a process so long as it adds a new link to the chain of industrialization by absorbing materials or semi-finished goods already available or by producing materials or goods for further processing. In addition, the shift from a subsistence to a monetary economy in hitherto backward areas creates new local markets and the trend toward urbanization which is apparent in many under-developed countries multiplies the number of focal points in which market growth occurs.

30. Capital for investment in manufacturing flows chiefly into countries which, in terms of their industrial and market structure, are already beyond the first stages of economic development. Some foreign capital is invested in manufacturing in countries which are beginning to establish food, textile and other labour-

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intensive industries and which, despite low *per capita* income levels, have an important market potential because of their size, population and resources. The foreign industrial investor is also interested in countries which may develop sizeable markets on the basis of some degree of regional economic association or integration and those which are endowed with important natural resources and are attempting to diversify their economies.

31. The aggregate inflow of foreign industrial investment in under-developed countries is not very large in relation to investment in oil and minerals which, as already indicated, absorbs most of the foreign private capital flowing to under-developed areas. It should be noted, however, that the proportion of capital investment in manufacturing industry required for growth is relatively small compared with that required for utilities, transport and housing and the development of indigenous mineral resources, all of which absorb large amounts of foreign capital and domestic funds in most under-developed countries, and the contribution of foreign industrial investment to economic growth is not to be measured in terms of outright capital imports alone. There is simultaneously a vast investment in technology and know-how and a steady generation and reinvestment of capital through retained earnings.[1/]

32. Foreign industrial ventures are undertaken to ensure a fuller utilization of the resources of the firm in one way or another. They may involve the earnings of quasi-rents on trade marks, good-will, patents and other often already amortized assets of the company. They may also enable the firm to spread many items of overhead cost, such as management, research and development, over a larger volume of operations.

33. In foreign no less than in domestic industrial investment the expected profitability of the venture is assessed in terms of growth prospects for the market for a particular product, and for the economy as a whole rather than in terms of initial rates of return. Industrial investors are not as closely concerned with immediate yield considerations as are financial investors.

1/ For instance the foreign subsidiaries of United States manufacturing corporations retain about 50 per cent of their earnings for reinvestment on average. See United Nations *loc. cit.*, Table 8, which is derived from statistics published by the United States Department of Commerce.

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Industrial planning recognizes that the "break-even" point for a particular venture may not be reached for several years, and sales and profits figures are projected over periods of three to five years or longer, from the time when the operation becomes profitable.

34. The profitability of a foreign venture may also be affected by the capitalization of the enterprise. Large corporations of international reputation are often in a position to launch a foreign venture with a comparatively moderate cash investment, relying to a considerable extent on local borrowing so as to limit their foreign currency capital commitments. This policy may attract criticism if foreign corporations, on the strength of their standing as prime risks, annex what is considered to be an unfair share of the limited supply of local loanable funds.

35. Wage differentials alone are not likely to lead to international migrations of capital save for exceptional cases of under-developed areas which are part of a larger market, as low wages are often accompanied by low rates of productivity.

36. Foreign financed operations in under-developed countries are usually smaller and more labour-intensive than the operations of the same firms in industrialized countries. But foreign capital and enterprise generally imply a moderately capital-intensive type of production and a reasonably large scale of operation or at least a planned scale of output which is significant within the context of the given market situation.

37. In most under-developed countries competition is very imperfect, especially in the area of "growth" industries, and the producer of an entirely new type of product may enjoy (temporarily at least) a position of quasi-monopoly. Yet there will nearly always be some competition, either from imports or from other existing domestic products which are more or less close substitutes for the new one. Moreover if an industry appears to be promising enough to attract one important foreign manufacturing concern it is probable that its competitors will be tempted to enter the field.

38. The approach to foreign investment of a large company manufacturing drugs and pharmaceuticals is fairly typical of the way in which business may expand abroad. When an export market has been developed, an independent agent is appointed as sole distributor for the country. Next the firm assists in the

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establishment of a local plant which produces on the basis of a lincensing agreement and with materials purchased from the licensing company. The final step is the establishment of a local subsidiary, frequently through the purchase of the local firm and the employment of its owner as manager. In countries where for political reasons the firm does not want to commit large amounts of capital, local borrowing is relied upon to supplement a comparatively modest equity investment. The investment programme in relation to the establishment of a foreign subsidiary is usually envisaged in terms of ten years, but this is subject to considerable flexibility. Profits of the first ten years of operation are usually reinvested. The major reasons for establishing production facilities in a foreign country are high tariffs or other import barriers and the entry into that market of a foreign competitor.

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CHAPTER II

FIELDS AND FORMS OF INVESTMENT

1. Fields of Investment and Public Policies in Under-Developed Countries

39. The Governments of capital-receiving countries, however favourable their attitudes towards private foreign investment have preferences regarding the sectors of the economy to which priority in development should be given and the types and forms of investments which are better suited to achieve the desired end. The essential task is the creation of specific conditions under which the natural patterns of industrial investment can be adapted to the requirements and aspirations of the countries of investment.

(a) Investment in Natural Resources

40. The exploration and development of mineral resources requires large amounts of capital which countries possessing such resources have had little difficulty in attracting from abroad during the post-war period. The main petroleum and mining companies have invested in exploration and extraction even in periods when demand for their products is weak, in anticipation of a continuing rise in demand and in order to maintain their competitive position in reserves, refining and distribution.

41. Governments of most under-developed countries control the development and use of natural resources.[1/] In some countries the development and utilization of some or all natural resources is barred to private enterprise, whether foreign or national, and is in the hands of a government monopoly created through a statutory corporation or national council.

42. Petroleum operations are usually governed by legislation separate from mining laws in view of the considerable differences in technology and finance (and sometimes in public attitudes) between petroleum and other mineral development. In the post-war period and especially in the last decade there have been important shifts in the policies of oil-producing countries, reflecting changes in the relative bargaining positions of the countries and the international oil companies.

1/ For a full description of the ways in which the development and use of natural resources are regulated see United Nations document number A/AC.97/5 on The Status of Permanent Sovereignty over Natural Wealth and Resources.

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The Governments of producing countries have been pressing for higher shares in the proceeds of extraction in the form of increased royalties and taxes and for participation in other phases of the industry. The so-called 50-50 formula has been modified in some cases by more favourable terms for the producing country and the demand for new leases and concessions has been intensified by the entry of a number of new smaller independent companies.

43. On the other hand, recent discoveries of new petroleum deposits in North Africa and elsewhere, combined with temporary conditions of over-supply, have led to the adoption of new measures to attract foreign capital and expertise in the search for oil by actual and potential producers. Some countries having no large proven reserves have introduced specific incentive measures to encourage foreign participation in petroleum exploration and production.[1/] Others have found it desirable to modify their tendency to grant exclusive rights for the exploration and exploitation of national oil resources to state-owned monopolies so as to promote thorough exploration activities involving heavy foreign exchange expenditure through a variety of efforts.

44. The Indian Industrial Policy Resolution of 1956 included mineral oils in Schedule A, a list of industries in which all new units, "save where their establishment in the private sector has already been approved, will be set up only by the State",[2/] but towards the end of 1959 the Government, influenced particularly by foreign exchange considerations, decided to admit the foreign oil companies "subject to mutually acceptable terms for exploration and also assuring that such arrangements with foreign oil explorers fall generally within the ambit of India's policy resolution".[3/]

1/ See for example Perú: Petroleum Law No. 11.780 of 12 March 1952 in El Peruano of 14 March 1952; Turkey: Petroleum Law No. 6326 of 7 March 1954, as amended in Official Gazette of 16 March 1954. In 1955 Libya adopted a similar law (Petroleum Law No. 25 of 1955 in Official Gazette of 19 June 1955).

2/ Industrial Policy Resolution of the Government of India, 30 April 1956, paragraph 8. (Printed in the Reserve Bank of India Bulletin for May 1956).

3/ Speech by the Minister of Mines and Oil on 24 November 1959, reported in the Financial Times.

45. A similar policy has been adopted by the Government of Argentina, which in November 1958 announced that foreign capital would be permitted to participate in the development of petroleum resources to a greater extent than in the past, though as suppliers of services under contract not as holders of concession.[1]

46. This greater flexibility in devising appropriate ways for foreign capital to participate in petroleum development has probably been facilitated by the fact that many producing countries have evolved a type of legislation which, besides removing basic uncertainties, incorporates provisions and safeguards already tested in other countries or political subdivisions, such as e.g., the Provinces of Canada.

47. A similar flexibility is apparent in the arrangements made for the development of other mineral resources, which have absorbed considerable amounts of foreign capital in recent years. Mining operations may be linked to large development projects, sometimes financed in part by IBRD, governmental or private bank loans, involving the provision of energy and/or the establishment of plants for smelting, or large steel or aluminium industries. Many such projects are being carried out by consortia of foreign companies of different nationalities, sometimes with the participation of domestic interests.[2] Investment through a consortium apart from the inducements it may offer to its individual members, may be more acceptable to a country concerned with the problem of foreign control over its resources than an individual venture of comparable size.

48. Most arrangements for foreign participation in the development of mineral and petroleum resources in under-developed countries are negotiated individually. They are, however, substantially different from former concession agreements as they are frequently framed under the provisions of a general law. The investment is usually of such importance to both the host Government and the company concerned that *ad hoc* agreement must be sought on a number of points, including

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1/ United Nations *op.cit.* chapter V, paragraphs 89-93.

2/ A project to develop bauxite deposits in Guinea, for example, is being financed by French, Swiss, United Kingdom and United States industrial interests, together with a long-term loan from the French Government.

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special tax, exchange and other incentives and liabilities and the provision of social overhead facilities by Government or corporation.[1] Foreign mining and petroleum companies usually provide transport and housing facilities, without which access to and operations in remote areas would be impossible.

(b) Investment in Utilities

49. At the present time the prospects for private foreign investment in utilities vary. Private-owned utilities (whether foreign or domestic controlled) sometimes have to comply with regulations tying utility rates to levels which are insufficient to cover full costs and amortization and generate earnings to the extent required to make additional investment attractive. In countries where private foreign-owned utilities have long been active, expropriation has been envisaged in several instances and it has become increasingly difficult to obtain concessions covering new projects or additional areas. In many countries which have attained independence in recent years the Government has taken utilities, such as electric power, railways and telephones, into public ownership and operation.

50. There have been recent instances of nationalization, e.g. in the State of Rio Grande do Sul, Brazil. On the other hand there are signs of the adoption of a more favourable attitude towards foreign investment in utilities in Argentina, Chile, Peru and Brazil itself where the "historical cost rule" applied to the determination of rates appears to be no longer operative or undergoing modification. Foreign companies have already established several joint ventures with domestic public agencies and this form of investment may become more wide-spread. For the time being, however, foreign investment in public utilities is quantitatively far less significant than it used to be before 1939, when it was of major importance.[2]

1/ Thus agreement between the Jamaican Government and a group of aluminium companies investing in the development of the Island's bauxite deposits included a clause requiring the companies to farm their land where they were not actually mining it.

2/ United Nations International Capital Movements during the Inter-War Period (Sales No. 1949.II.D.2). Page 30.

(c) Manufacturing Industries

51. The expansion and diversification of manufacturing activities is expected to make a major contribution to economic development in most under-developed countries.

52. At the earliest stages of economic development light industries such as simple food processing and textile plants supplying basic needs of the consumer are usually domestic enterprises. Once industrialization has begun, however, and local enterprise branches out into new industries requiring higher degrees of skill such as plastics, metal fabrication and vehicle assembly, opportunities for foreign investment arise in many intermediate industries including synthetic fibres (which are of special importance in low-income countries where emphasis is on low-priced basic items of consumption), tyre cord and tyres, glassware, chemicals, fertilizers and pharmaceuticals. In many cases local entrepreneurs take the initiative in establishing a plant, sometimes with foreign co-operation from the beginning, sometimes seeking foreign capital and assistance as their market expands sufficiently to absorb large-scale production and to permit product diversification and specialization.

53. Foreign industrial investment is particularly suited to contribute to the establishment or development of intermediate industries which require advanced technology, product and sales development and other up-to-date techniques. Moreover, recourse to foreign investment may be the only way of importing equipment where exchange devaluation and foreign exchange shortages make its purchase costly or impossible. Foreign investment in intermediate industries does not normally involve the control of basic productive resources and is therefore usually acceptable, though sometimes subject to restriction. As the development process gathers momentum, investment in consumer durables and the capital goods industries expands. There are new openings for foreign industrial corporations, sometimes in association with local public or private interests, to manufacture such items as office equipment, sewing machines, steel tubes, refrigerators, tractors, and automobiles (as recently in Argentina, Brazil and Mexico).

54. Few under-developed countries encourage foreign investment in the heavy industrial sector (steel, shipbuilding) though they may welcome foreign assistance in establishing such industries.

55. The industrial development policies of under-developed countries range from those favouring the maximum amount of public ownership and operation through those stressing national control (though not necessarily ownership and operation) to those leaving the major role in economic development to private enterprise, though with a measure of government control.

56. Most Governments indicate that they attach particular importance to the development of specific industries within the sector open to private enterprise. Investments, both foreign and domestic, in these approved or registered industries are frequently entitled to benefit from a wide range of tax and other incentives (cf. chapter III below).

57. Development programmes vary greatly in scope and precision. Few countries in the Western Hemisphere have drawn up general economic development programmes. On the other hand the Second Indian Five-Year Plan set quantitative investment targets, including a very modest estimate of the probable inflow of new foreign capital investment in the period. More frequently development programmes indicate qualitatively the sectors to which priority is attached. Thus the Government of Ghana has drawn up a list of "Pioneer Industries" to which special tax reliefs apply, including metal products, manufacture of articles from synthetic resins, glassware, pharmaceuticals, and motor truck and bus assembly.

58. Foreign investors, it has been found, rarely object to and may indeed welcome the extension of development programming to the private sector. It can be helpful if Governments define clearly those fields where private, or private foreign investment is permitted or encouraged. Governments may also attract rather than deter foreign capital by indicating precisely the forms in which such investment is acceptable.

59. In their industrial policy resolutions, investment legislation and development programmes, most capital-receiving countries make no distinction between foreign and domestic private capital. Foreign investment is normally permitted on equal terms with domestic capital in industries other than those reserved for the public sector and hence also closed to domestic private enterprise. Additional restrictions, in respect of ownership and employment policies for example, may be imposed on foreign enterprises but these enterprises may on the other hand be granted privileges which sometimes give rise to

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complaints from domestic entrepreneurs. Thus the special treatment (including exemption from tariffs and exchange restrictions) often accorded to foreign investors supplying needed equipment or the exchange with which to purchase it may lead to the objection that enterprises so treated are put in an unduly advantageous position.

60. The differing attitudes of under-developed countries towards private foreign investment in manufacturing industry can be illustrated by reference to a few specific cases.

61. India is an outstanding example of a country which offers to private industry the opportunity to develop and expand "as an agency for planned national development".[1] Three industrial sectors are distinguished:

(a) Basic industries, including mineral and petroleum extraction and refining, iron and steel, public utilities and defence equipment, to be developed henceforward exclusively by the public sector, though the expansion of existing privately owned units is not precluded provided that the State has the requisite powers (through majority participation in the capital or otherwise) to control the undertaking;

(b) A small group of industries, including essential drugs, fertilizers and machine tools, which are to be progressively State owned, though development opportunities will be open to private enterprise either alone or with State participation;

(c) All other industries (chiefly the secondary consumer goods industries) the development of which will ordinarily be undertaken by the private sector.

62. Within this framework private foreign investment in India is treated exactly like private domestic investment once it has been admitted to the country. Its admission is subject to prior screening and approval, governed by a set of established criteria which include the extent to which a particular investment introduces a modern technique not available in the country, requires sizeable

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1/ Industrial Policy Resolution of 30 April 1956 (replacing the original guiding Resolution of 1948), paragraphs 4 and 5. (Printed in Reserve Bank of India Bulletin, May 1956).

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imports of plant and machinery which can best be secured along with foreign capital, depends to the minimum extent on imported raw materials and components, and earns or saves foreign exchange. A list of the fields in which foreign capital is required has been drawn up, but it is not exhaustive and may be subject to change.

63. The pattern set by India is reflected in the form of the industrial policies of other countries. For instance the Government of Ghana recognizes three categories of industries: those reserved entirely to the Government (public utilities, atomic and armaments manufacture); those where government participation will normally be insisted upon (consisting at present of alcohol, alcoholic beverages and narcotics) and those not included in the other two groups.1/

64. In the Union of Burma a new attitude has developed toward private industrial enterprise after a first phase in which the Government took a major part in initiating the industrialization process. In 1955 the Government issued an important investment policy statement which recognized the potential contribution which productive private investment, both domestic and foreign, could make to the economic and social progress of the country and to long-term development plans for increasing output and productivity and raising living standards and welcomed the managerial and technical skills which accompany private foreign investment. It noted that many opportunities exist for profitable private investment in Burma in a variety of manufacturing activities, in processing and in the distributive and service enterprises. Subsequently the Government established joint enterprises with the Burma Oil Co. and other foreign companies affected by the nationalization measures of the immediate post-war period. At a later date (June 1957) the Government announced that it would concentrate only on key economic projects, and that the whole field of industries, including mining would now be open to private enterprise.2/

1/ Industrial Promotion in Ghana, published by Ministry of Trade and Industries, Ghana.

2/ The Premier Reports to the People, Government of Burma, Printing Press.

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65. In Pakistan the Government plays a major role in industrialization as a matter of necessity rather than of policy. While the entire field of manufacturing industry is open to private capital, some measure of government control is maintained over many industrial activities including iron and steel, machine and precision tools, heavy engineering equipment, manufactures of non-ferrous metals and alloys, pharmaceuticals and paper, cardboard and pulp. Participation by Pakistani nationals in ventures sponsored by foreigners is favoured and in many industries, including food and fish canning, sugar refining, leather, cotton spinning and weaving, heavy chemicals and dyestuffs, glass and ceramics, cement and shipbuilding, majority control by nationals is prescribed as a rule. On the other hand, government statements of policy[1/] have stressed the fact that Pakistan welcomes foreign capital seeking investment for purely industrial and economic reasons and not claiming special privileges.

66. In Iran government control and extensive ownership of industries has also occurred as a matter of necessity rather than preference. Nearly all important industrial installations in Iran are owned and managed by the seven-year Plan Organization, a semi-autonomous government agency which is vested with the responsibility for planning and supervising the development programme. The ultimate objective of the Plan Organization, however, is to sell these industries, many of which are still operating at a loss, to private capital. Private foreign investment, therefore, is likely to be welcomed, particularly in the development of new industries and in the manufacture of substitutes for products currently imported into Iran.

67. In countries and territories where nearly all fields of industrial activity are open to private initiative preferences and priorities with respect to types

1/ Industrial Policy Statement of 2 April 1948, Supplementary Statement of 18 November 1948 and Supplement Statement of 3 November 1954, printed as Appendix "A" to the booklet Pakistan Welcomes Foreign Investment, published by the Bureau of Business Facilities and Information Department of Supply and Development.

of industrial investment, domestic and foreign controlled, are reflected in the laws granting tax and other incentives to desired investments. In the Federation of Malaya,[1] Jamaica[2] and Trinidad[3] special encouragement and preferential treatment are given to "pioneer" industries, those not already established on a substantial scale. To qualify for tax relief under the laws of the Federation of Malaya, an industry must be new, or not at present carried on on a scale suitable to the economic requirements and development of the Federation and have favourable prospects for further development.

68. The main factors considered by the Government of Jamaica in relation to the prospective benefits of a new industry are its assistance in (a) the provision of employment; (b) lifting the general level of skills; (c) increasing national and individual productivity; (d) diversifying the economy of the country. Special benefits are also given to industries producing goods for export.

69. Trinidad considers investment applications in the light of their expected repercussions on the foreign exchange position and their value in stimulating economic development. A list of industries prepared by the Government distinguished among three types of industries, rated as "most favourable", "medium favourable", and "unfavourable".

70. It is apparent from the examples quoted that the order of priority assigned to various fields and types of industrial activity by under-developed countries is roughly the same whether these fields are open or not to private enterprise and foreign investment. Legislation or policy statements are invariably founded upon the expectation that these activities will raise national product levels, stimulate productivity, expand employment and earn or save foreign exchange. The lists of favoured industries drawn up by governments are of course subject to change as industrialization gathers momentum.

1/ Pioneer Industries (Relief from Income Tax) Ordinance, Number 31 of 1958.

2/ Jamaica Industrial Development Corporation: A National Plan for Jamaica, 1957-1967, Chapter 7.

3/ Regulations and Policy Concerning Investment of Foreign Capital in Trinidad (mimeographed).

71. More specifically, foreign private investment in manufacturing industries is invited when it is expected to have beneficial effects on production, productivity, employment and foreign exchange reserves, and the accompanying improvement of the entire industrial environment. Obviously it is unlikely that any single investment will have all these desirable effects, and some projects may be beneficial in some ways but disadvantageous in others. For instance the introduction of modern productive facilities into an industry hitherto carried out by local enterprise or by small craftsmen can well have an adverse impact upon employment. A new industry established with foreign capital and management may make little or no direct contribution to the foreign exchange position of the country and may indeed require additional imports.

72. There must almost invariably be some degree of reconciliation among conflicting objectives in any industrial policy, whether it relates to domestic or foreign private investment, at least in the short or intermediate period. There are growing indications, however, that both governments and foreign investors recognize that investment in an increasing range of industries can be mutually advantageous provided that suitable arrangements can be worked out. Many of the pressures and conflicts which are an inevitable concomitant of economic growth recede as the industrial sector expands.

2. Forms of Investment

73. It has already been stated that most foreign private investment in under-developed countries is direct industrial investment in the broad sense, including natural resources and utilities as well as manufacturing operations. There are, however, a number of other significant forms of investments, all related in essence to an investment either of capital or of specialized skills, including export credits for the procurement of industrial goods, machinery and equipment; patents, licensing and technical assistance agreements; and institutional or joint arrangements through which private and public financial and other resources are channeled for development purposes.

(a) Export Credits

74. Industrialization in less advanced countries leads to increased requirements of imported capital goods, and consequently to a change in the composition of

imports as between consumer and capital goods. Import requirements tend to exceed foreign exchange resources even when export earnings are supplemented by foreign aid, long-term lending and private foreign investment.

75. The granting of export credits by the industrialized countries of Western Europe has undoubtedly been of considerable help to under-developed countries in financing their purchases of imported equipment and machinery.[1] The growth and lengthening terms of such credits in the last decade have been stimulated by the competition among exporters of capital goods. They have also been an indication, in some cases, that a country is moving into a position in which it will have a surplus of capital available for foreign investment. In the Federal Republic of Germany, and to a lesser extent in Italy, the granting of extensive export credits has in some instances led to more direct participation in foreign ventures. On the other hand the accruing maturities of large export credits may impose on importing countries a debt burden which they may find difficult to carry. Credit competition among capital-supplying countries may also have adverse effects in these countries and may affect the supply of capital for long-term investment.[2]

76. At best, export credits cannot be more than a partial substitute for foreign business investment.

(b) Licensing and Technical Assistance Agreements

77. Frequently purchases of equipment are accompanied by a request from the buyer for technical instruction in its maintenance and operation. Foreign firms which have technical know-how to sell but which are reluctant to commit large amounts of capital in foreign ventures are often ready to meet such requests by

1/ For a detailed discussion of export credits and an analysis of European export credit schemes see Segré, Claudio, Medium Term Export Finance, European Problems and Experiences in Banco Nazionale de Lavoro Quarterly Review, Rome, June 1958.

2/ See The International Flow of Private Capital 1956-1958 (United Nations Sales No. 59.II.D.2), Chapter IV.

making arrangements for the use of patents and licences and supplying technical assistance.[1]

78. Nearly all patent agreements and technical assistance contracts extended to under-developed countries entail the provision of services whether they cover the design, installation and operation for a given period of an entire new industry or project, or, more frequently, industry-to-industry assistance for the development on improvement of specific products, phases of production and marketing techniques. Technical assistance contracts of the first type are usually related to the establishment of a new basic industry requiring vast fixed installations procured with foreign public or private financing and an advanced stage of technology. They are used for public work construction (roads, dams), heavy industry plant erection (steel mills), exploration of natural resources, and in general for projects in which domestic (public or private) control is preferred and in which the financial technical and operational phases (though often combined in some way) are tackled separately.

79. The second type of contract, used chiefly in manufacturing industry, deals with licence or "know-how" agreements under which foreign expertise, usually viewed as a complementary benefit of foreign direct investment, is increasingly made available to domestic enterprises, by itself though it may be accompanied by limited direct financial participation on the part of the licensor. The licensor may not only offer the right to use patents and utilize production and other technical information, but also give technical assistance for the solution of special problems and help train local staff. Many licensing agreements are combined with sales of the necessary machinery. Payment may be in the form of a fixed royalty or licence fee (plus the sale of the machinery - frequently on extended terms), a percentage of sales or a share in the licencee's equity capital. These three choices reflect increasing stages of involvement by the licensor in the risks of the licensee enterprise.

1/ In 1957 at least 650 U.S. firms had licensing agreements with foreign firms (in both developed and under-developed countries though overwhelmingly in the former) under which they received gross earnings of $140 million. United States Government, Hearings before the Sub-Committee on Foreign Trade Policy of the Committee on Ways and Means, House of Representatives, 85th Congress, Second Session, page 15. (Statement by Hon. Henry Kearns, Assistant Secretary of Commerce for International Affairs).

80. The licensor can thus participate in foreign ventures and expand his markets and operations with a minimum of risk and on a scale which is not limited by his capital resources. A licensing agreement enables a foreign industrial enterprise to secure an additional return from a given investment in research and technical staff and makes it possible for firms which specialize in know-how rather than in production to engage in substantial international operations. The domestic entrepreneur, for his part, receives access to new foreign processes and machinery without the necessity of either putting up large capital funds for them or surrendering a large share of the control and profits of his enterprise.

81. Licensing and technical assistance agreements between industries have certain limitations and drawbacks for the assisted country. They may lead to an outflow of foreign exchange which has not previously been offset by the importation of capital and do not always relate to industries which make a direct contribution to foreign currency earnings, especially where the licence covers the use of trademark or of styles or designs (for prints or fabrics) whose value is commercial rather than developmental.

82. More important, however, are other factors which relate essentially to the willingness and ability of licensor and licencee to co-operate. When the consideration stipulated for the "know-how" is substantial and payable in a hard currency and when the supplier undertakes certain specific responsibilities, no contractual difficulties are likely to arise. Where effective control of operations is necessary to yield satisfactory results, however, licensing arrangements may not be the most suitable arrangement. In countries with a depreciating exchange rate, the hard currency value of payments related to domestic sales will decline. These limitations are inherent in all forms of assistance extended from the outside, particularly when responsibility for performance is shared among two different firms separated by distance, language and habits. It is for this reason that industries which supply their know-how to foreign licencees seldom stipulate the performance of specific results unless they have in effect a complete management contract, which is the exception rather than the rule.

83. These limitations have caused some firms to follow a pattern of replacing licensing arrangements with direct (and sometimes wholly owned) investment in local production facilities whenever the expansion of the local market justified, and in their view required, such a change-over to directly controlled operation. Technical contracts thus frequently constitute a first step towards direct investment in productive facilities.

(c) Direct Investments and Joint Ventures

84. A major decision facing the management of an industrial corporation located in an advanced country which plans to establish productive facilities in an under-developed or semi-developed country is whether to invest through a branch or controlled subsidiary or to enter into an association with local interests in the country of investment through a joint venture.

85. Some companies insist, as a matter of policy, on sole control of their foreign investments, particularly when the venture is a major company project, involving large commitments of resources. In such cases full control over the development of the enterprise, particularly its management, may be of great importance.

86. On the other hand many large industrial corporations have reached the conclusion that it is generally undesirable, or at least inexpedient, to operate abroad except through joint ventures, even in projects which are major company ventures and require a large investment. This policy is frequently the result of previous experiences with solely-owned foreign subsidiaries but may also be influenced by purely economic considerations, such as the advantage of sharing risks and responsibilities with partners who are peculiarly fitted for handling local problems or who are already well established in the country of investment. It may be reinforced by the policies adopted by some capital-receiving countries which have a strong preference for joint ventures and may offer special tax and other incentives to them. Companies which do not wish or are not in a position to commit large resources to the establishment of productive facilities abroad are also naturally inclined to consider favourably the prospect of joint ventures.

87. Entrepreneurs and industrialists in the developing countries weigh their preference for sole control(a natural one, especially where enterprises are run

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as a personal or family business even when clothed in corporate form) against their need to meet competition, including competition from imports and from foreign-owned or managed enterprises, through plant modernization and re-equipment. New and advanced technology and know-how, obtainable only from foreign sources, are also needed to diversify production and to branch out from "primary" to "secondary" industrial activities.

88. So long as the local company can secure foreign assistance without surrendering sole or major control over its business it will be normally inclined to do so. This is one of the reasons for the popularity of licensing and technical assistance agreements. But at some point it may become apparent that only through a closer arrangement with a foreign company can the domestic company hope to maintain its competitive position and survive. Modernization and expansion require large amounts of capital which cannot be generated through the earnings of the local firm nor supplied by local savings, and even when earnings are available for reinvestment the cost of imported machinery and equipment may be prohibitive, at least in foreign exchange.

89. Joint ventures are often instrumental in expanding and modernizing a certain intermediate group of industries, such as advanced segments of the textile, canned foods and paper industries, synthetics, certain chemical products, and assembly (and possibly production of parts) of durable goods.

90. Difficulties sometimes arise over the introduction of new management policies which conflict with local customs and require strong co-operation between local and foreign personnel.

91. There may also be some differences of opinion over profit and dividend distribution policies. While investors in advanced countries are accustomed to plough back into the business a good share of the earnings, especially until the original investment has been fully amortized, investors in under-developed countries frequently expect liberal dividend distributions. This difference of opinion may be related to a disagreement regarding the rate at which the enterprise is expected to grow, businessmen in under-developed countries often looking for high profits per unit rather than an expanding turnover.

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92. The financing of joint ventures also raises problems. In countries where the amount of capital available for new and risky ventures is small, it may be held undesirable that enterprises established in conjunction with foreign firms, which have ready access to finance, should absorb local funds. It has even been considered that foreign firms should be obliged to find all the initial capital for new ventures themselves and only later sell a majority holding in the established enterprise to local investors.

93. In many under-developed countries public policies regarding the establishment of joint ventures hinge on the question of size. Where emphasis is laid on attracting the maximum volume of foreign investment and reserving scarce domestic capital resources for locally managed ventures, foreign financing of large projects in particular is preferred and may be encouraged, or at least permitted, even in countries which formally restrict foreign investment to joint ventures. Many Governments appear to have adopted a more flexible approach to the question of domestic participation and, in some instances, majority control. It is increasingly apparent to them that the realities of the foreign partner's greater technical and management expertise, especially when he holds title to decisive patents, may in any case prevent such domestic "control" from serving the policy aims intended, even in the absence of the not infrequent use of nominees on a company's board or of a domestically incorporated subsidiary as the "domestic" stockholder. Furthermore insistence upon strict requirements as to ownership and control may simply divert potential industrial investors to other countries.

94. On the whole the co-operation of domestic and foreign investors in the management of joint ventures appears to work well. It must be observed, however, that joint ventures are a relatively new form of investment in under-developed countries and further study will be needed for a full evaluation of their impact.[1]

1/ There is a growing literature of case studies of joint ventures. In particular Joint International Business Ventures. A Research Project of Columbia University may be cited. So far this series, which is unpublished, includes case studies of joint international business ventures in Brasil, Burma, Colombia, Cuba, India, Italy, Japan, Mexico, Pakistan and Turkey. In the same series a study has also been made of German Capital Exports and Joint Ventures in the Less Developed Countries.

(d) Financial and Institutional Investment

95. Direct and financial investment are increasingly being stimulated through the operations of private financial institutions[1/] in Western Europe and North America which help mobilize public and private capital for development purposes. The increase in their activities reflects the improving conditions and newly emerging opportunities in many developing countries, the result of the efforts of the Governments of these countries and the assistance, made available to them by the Governments of industrialized countries and international organizations.

96. International financial investment has traditionally been the concern of a relatively small group of specialized banks in Western Europe and the United States. Many of the large United States commercial banks are expanding their foreign investment business rapidly and moving into new areas from Africa to the Far East. The First National City Bank of New York, the First National Bank of Boston and Bank of America International (an affiliate of Bank of America) have been traditionally active in certain areas, particularly Latin America. The Chase Manhattan Bank of New York has set up a subsidiary, the Chase International Investment Corporation, to promote private investment in under-developed countries and to advise clients of the parent bank regarding their foreign ventures. The Chemical Bank New York Trust Co. has established an affiliate, Chemical International Finance Ltd., having similar functions. The leading Canadian commercial banks, such as the Royal Bank of Canada and the Bank of Montreal, are also extending the scope of their foreign activities.

97. In addition, a number of new financial groups less directly connected with commercial banking interests have been established to invest abroad. They include American Oversea Finance Co., the Transoceanic Development Corporation Ltd., an international investment company owned jointly by Western European and United States commercial and investment banking interests, and the International Basic Economy Corporation (IBEC) which is particularly concerned with investment in Latin America. The range of services offered by IBEC is extensive:

1/ The role of public lending institutions, international, regional and national, in promoting the international flow of private development capital is considered below in Chapter III (section 3).

its Industrial Development Division assists in organizing manufacturing companies overseas, negotiates licensing agreements, surveys markets abroad, brings together potential partners, United States and foreign, assists in arranging financing, and provides guidance on the administration and supervision of foreign activities. IBEC operates on a basis of fees, commissions or shares in the equity of foreign operations which it forms or serves. At the end of March 1959 it had an interest in twenty-one projects in under-developed countries, including several agricultural processing plants (coffee, seeds, poultry feed), shopping centres in Peru and Venezuela and a drop forging plant in Brazil. IBEC's equity interest in these enterprises ranged from 100 per cent to only 7.1 per cent. It has also established investment banking and management companies in Brazil, Thailand and Venezuela.[1/]

98. In the United Kingdom Barclays Bank D.C.O., which operates chiefly in Africa, has assisted in the financing and establishment of development corporations in conjunction with the Commonwealth Development Finance Company, a semi-public institution, e.g. the Investment Company of Nigeria. It also operates in development projects and construction through an investment panel called the South African and General Investment Trust (SAGIT), in which it is associated with insurance companies, development corporations and other financial institutions.

99. The Chartered Bank of India, Australia and China, a United Kingdom-owned bank operating mainly in the Far East, formed a new wholly-owned subsidiary in 1956, the Chartered Bank of India Development Corporation, to finance development in under-developed countries.

100. The Banque de Paris et des Pays Bas, the Banque de l'Indochine and other French banks are also expanding their activities and widening the geographical scope of these activities, as are Belgian banking interests. In the Netherlands several groups are extending financial and technical support to Dutch business operations in under-developed countries. Commercial banks in the Federal Republic of Germany are shifting the focus of their activities from the promotion of German export trade to assistance to German investors in Latin America and other

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1/ International Basic Economy Corporation. Annual Report for 1958.

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developing areas. Italian banks are actively sponsoring trading and investment activities in various parts of the Middle East and Africa.

101. In addition to increasing their individually sponsored foreign investment activities many Western European banks are participating in the formation of banking and investment syndicates for the financing of projects in under-developed countries. Among the principal sponsors of such arrangements are S.G. Warburg Ltd., Lazard Frères, the Société Financières de Transports et d'Entreprises Industrielles (SOFINA), N.M. Rothschild and Banca di Credito Finanziario (MEDIOBANCA). Some national or international groups, consortia and syndicates have been established in association with engineering firms and other technical consultants. One such group is the Middle East Industrial Development Projects Corporation S.A. (MIDEC) with headquarters in Luxembourg, which includes participants drawn from seventeen nations. It has recently taken steps to double its capital.

102. Foreign banks are an important source of loan and working capital for foreign-owned companies operating in under-developed countries. They may also come to play an increasing part in the mobilization of domestic savings for investment in private enterprises. Thus Barclays Bank D.C.O recently assisted in the launching of a share issue of the Nigerian Cement Company Limited (a concern financed jointly by Nigerian and United Kingdom public funds and two private United Kingdom companies) which was oversubscribed. Of the total applications 51 per cent were for the minimum number of shares (ten), and of these applications, over 95 per cent were from Africans.

CHAPTER III

INCENTIVE MEASURES

103. The incidence of incentive measures offered bears a close relationship to the structure and stage of development of a capital-importing country. The less advanced that country, the more will incentives be designed to reduce the initial cost and risk of the venture or to compensate for them by special concessions, particularly in the tax field. The protection of foreign investments against non-business risks is the subject of the following chapter.

1. The Provision of Information on Investment Opportunities

104. An increase in private foreign investment is contingent upon adequate knowledge about investment opportunities among investors in capital-supplying countries. Many possible investment projects pass unnoticed and those that are perceived may not be brought to the attention of the foreign investor in a way that attracts his interest. Furthermore once a project has been brought to his notice the investor may not have the background information necessary to assess its prospects.

105. No improvement in the supply of information about investment opportunities can shift the burden of the decision to invest from the entrepreneur. At a preliminary stage in the determination of an investment opportunity, however, appropriate institutions may do much to help the prospective investor in his evaluation of a project, by providing detailed information about costs and markets and by advising him on the incentives available and in some instances helping him to claim them. Where government regulations regarding the establishment of new enterprises are complicated and time-consuming, such investment agencies may, and do, intervene to guide the foreign investor and expedite his applications.

106. An investment centre, whatever its sponsorship, can do three things: draw the attention of the foreign entrepreneur to investment opportunities, in general and by preparing specific projects, provide economic and other background information the investor requires to reach his decision and facilitate the acceptance and establishment of a project. For the centre the first two of these functions overlap

to some extent,[1] but from the point of view of the investor they are separate. Comapnies which are already engaged in foreign operations are made aware of investment opportunities through the activities of their sales staff abroad (many of them have investment planning departments) yet many still require precise economic information as well as administrative assistance in getting a project under way.

107. Governments of countries interested in encouraging the flow of private foreign capital undertake a wide range of promotional activities through their commercial representatives abroad and also on an increasing scale through domestic government departments, development banks and corporations and other bodies. Thus the East African Industrial Council, which is the authority in charge of all forms of industrial development in the three territories of Uganda, Kenya and Tanganyika, provides information about economic conditions and industrial prospects in the area, and the publicly owned East African Railways and Harbours has published detailed plans of available industrial sites in Kenya. The Kenya Government has established an information service for industrialists in Nairobi. A main function of the Department of Industry and Commerce in Haiti is to encourage foreign private investment, and it controls the designation of industries entitled to tax and import duty exemptions. In Liberia inquiries related to foreign investment are dealt with by the Board of Foreign Concessions and the Bureau of Mining and Geology, which between them answer all queries regarding investment in minerals, petroleum, agriculture and forestry.

108. A few under-developed countries are establishing branches of their domestic investment-promoting institutions abroad. The Israeli Government Investment Center and the Jamaica Industrial Development Corporation, both of which are authorized to accept or reject foreign investments and control the allocation of incentives for foreign enterprises, have offices in New York, the latter in London and Toronto as well. The New York office of the Jamaica Industrial Development Corporation will survey a project and estimate its initial costs, find a plant site and in certain cases build a factory for lease or sale to the foreigner,

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1/ See, for example, the booklet Pakistan Welcomes Foreign Investment (published by the Bureau of Business Facilities and Information, Department of Supply and Development), which consists of a survey of economic conditions in Pakistan (basic resources, industry, money and banking, taxation, labour, etc.) and relevant policy statements and legislation.

screen and train workers, and even, if the proposed industry is thought sufficiently important for the future of Jamaica, invest in common stock or debentures of the enterprise. The Economic Development Administration of Puerto Rico, which is of course in a special position as it is within the customs and political boundaries of the United States, has offices in New York, Chicago, Los Angeles and Miami, all of which offer extensive assistance in the planning and installation of a new plant. It has recently opened a Western European branch in Frankfurt, Federal Republic of Germany.

109. Whether or not other under-developed countries decide to establish investment centres abroad depends, among other factors, on the cost of operating such a centre in relation to its expected return. It has been estimated that over the last ten years the benefits, in terms of additional income and revenue, of the Puerto Rican Economic Development Administration's industrial development programme have been thirty times its cost. Puerto Rico, however, has special links with the United States, and the investment centres set up by the Government of Israel in the United States and the Federal Republic of Germany and by the Government of Jamaica in the United Kingdom, the United States and Canada are also in a special position. It should be noted that many investors, in Western Europe in particular, rarely make use of investment centres but approach the problem of uncovering and developing investment opportunities individually. This is especially true of large corporations which have research staffs at their disposal and can rely on their foreign establishments to provide them with intelligence regarding conditions abroad.

110. Among capital-exporting countries the United States has made systematic efforts to bring foreign investment opportunities to the notice of possibly interested firms and individuals, and to give advice to concerns venturing abroad. The United States Department of Commerce publishes information on investment opportunities abroad compiled by United States Government officials overseas.[1] It also reports on various aspects of trade and investment in foreign countries.[2]

1/ See Foreign Commerce Weekly. The projects listed are chiefly joint ventures.

2/ See the series "Investing in ....", which describes the procedures necessary to set up an investment in the country concerned and the conditions under which it will have to operate, "Licensing and Exchange Controls in ....", "Living Costs and Conditions in ....", and translations of foreign countries' investment laws.

111. International institutions, as well as governments, can play a part in the identification of opportunities for private investment abroad. The International Bank for Reconstruction and Development has promoted interest in foreign investment opportunities through the reports of its missions. The International Finance Corporation, an affiliate of the IBRD established in 1956, is more specifically concerned with the investigation and development of private investment projects. At first the corporation confined itself to examining privately sponsored proposals, but recently, recognizing the difficulties confronting private investors in the examination of projects overseas, it has begun to investigate investment opportunities on its own account, and undertake preliminary planning and negotiations "in order to present well-preapred proposals to investors, thus enabling them to consider participation without undue expense to themselves".[1] Within the United Nations the Special Fund has been set up to "facilitate new capital investments of all types by creating conditions which will make such investments either feasible or more effective",[2] by undertaking country or regional surveys of natural resources, manpower, skills and industrial potentials. The reports of United Nations technical assistance experts have been found to be a potential source of detailed information about investment opportunities, as they frequently contain original statistical and other economic information about an under-developed country which may point to the existence of such opportunities in the economy as a whole or in a particular sector.[3]

2. The Provision of Economic and Social Overhead Facilities

112. A prime obstacle to investment is the absence of the facilities required by modern industry. This is a natural concomitant of under-development and is most apparent in the least developed countries. While large enterprises, especially in the natural resources field, have frequently provided their own economic and social

1/ Address by Mr. Robert L. Garner, President, International Finance Corporation, at the 1959 Meeting of the Board of Governors of the International Finance Corporation, Washington, D.C., September 30th, 1959, page 3.

2/ United Nations, The United Nations Special Fund: An Explanatory Paper by the Managing Director, 1959 (Symbol SF/1), page 1.

3/ For a list of all derestricted reports issued through 30 June 1959, see Index of Final Reports Issued as United Nations Documents (ST/TAA/INF/5).

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overhead (e.g. roads, schools, hospitals) the manufacturing investor is not ordinarily in a position to do so; nor do all governments welcome the entry of foreign investors into what are typically governmental spheres of activity.

113. As a result public authorities in some under-developed countries have given increasing thought to making specific provision for the facilities needed by industry (as distinguished from their over-all capital investment programme) through the establishment of industrial estates complete with reasonably priced power, transport facilities, workers' housing, etc. The availability of land alone, free of encumbrances and at a reasonable rent, may be important to the investor in countries where a complicated tribal system of land tenure still prevails.[1/]

114. The development of economic overhead facilities for selected groups of investors in an under-developed country may be very costly. Nevertheless, if the establishment of an industrial sector has high priority in the government's programme, it may be effective in attracting foreign private investment. By the end of 1958 the assistance in the form of the provision of factory buildings and industrial loans given by the Jamaica Industrial Development Corporation had facilitated the establishment of twenty-two industries with a total capital investment of over £3 million.[2/]

115. An inadequate legal structure may also impede the full utilization of investment opportunities. Gaps in major areas of commercial law, which are frequently found in countries at the early stages of economic development, limit the institutional facilities at the disposal of the foreign investor and subject the legal nature and consequences of his transactions to considerable uncertainties. This situation is further confused, especially in some of the countries which have but recently achieved independence, where customary tribal rules coexist with highly complex business practices of foreign origin. Efforts to develop a cohesive body of commercial law are therefore under way in most of these countries, often with the help of the United Nations and bilateral technical assistance.

1/ Wood, Keyser and Hehmeyer <u>Opportunities in the Gold Coast</u> (New York 1955) discusses this problem (pages 83-86).

2/ <u>Economic Survey Jamaica 1958</u>, page 22. Foreign capital and technical assistance played a part in the establishment of many of these industries.

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The fields covered include company law, insolvency, commercial papers, sale, lease and credit regulations, patents and trade marks, the regulation of banking, insurance and, ultimately, of capital markets.

3. The Provision of Development Finance

116. The shortage of risk capital available for development purposes in under-developed countries has led to the establishment of development banks and corporations in capital-exporting and capital-importing countries, as well as through international co-operation with the various aims of assisting and supplementing the flow of private foreign finance into development and stimulating the growth of private domestic savings and investment.

International Agencies and Financial Institutions in Capital-Supplying Countries

117. Internationally, large amounts of public and private capital have been invested through the International Bank for Reconstruction and Development. The IBRD, though a publicly owned and run institution, has facilitated the investment of considerable amounts of private capital through arranging for the direct participation of private commercial and investment banks in the early maturities of its loans.[1/] It has also tapped the capital markets through sales of its own bonds and, in the case of countries which have managed to establish or re-establish their financial standing, has arranged for the flotation of bond issues in the market in conjunction with its own loans.

118. The International Finance Corporation finances (without government guarantee) productive private enterprises in its developing member countries in association with private capital and management. One of its main objects is to stimulate the flow of investment (i.e. financial as opposed to business) capital from private

1/ Thus a group of United States Banks participated to the extent of $12 million in a loan of $72 million to the Government of Iran for its road building programme, and a similar larger group put up $1.5 million, one third of the total, for a loan of $3.5 million to the Central Bank of Costa Rica to finance imports of capital equipment. It was announced that a New York investment bank was arranging the private sale of at least half of the maturities of a $35 million loan to the French-United States mining consortium COMILOG for the development and operation of a manganese mine in the Gabon Republic (IBRD, *Fourteenth Annual Report*, 1958-59).

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sources. For each dollar of IFC funds committed to date, over $3 of private capital has been invested.[1]

119. Public lending institutions in capital-exporting countries are also providing development finance in conjunction with private investors. The Export-Import Bank of Washington, besides being an important source of finance for long- and medium-term export credits, also makes development loans. It works as closely as possible with private banks, and has also assisted in the development of several large industrial joint ventures.[2] The present policy of the Bank is to expand its existing connexions with the investment banks.[3]

120. In the United Kingdom, the Commonwealth Development Finance Company was set up in 1953 as a new channel for the investment of private capital in Commonwealth development schemes likely to benefit the sterling area's balance of payments, and in particular those schemes for which adequate capital cannot be raised from ordinary sources. Its authorized capital, which is £15 million, was subscribed by ninety-one business concerns in the United Kingdom and by the Bank of England, and it has the power to borrow up to twice this amount on the capital market. In addition to financing various industrial, power and other projects, the Company has invested in a number of Development Corporations (Nigeria, the Federation of Rhodesia and Nyasaland).[4] The Colonial Development Corporation, initially

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1/ International Finance Corporation Third Annual Report 1958-1959, page 11. Among its investments in 1959 was a loan of $1.5 million to an Indian-owned company, Republic Forge, for the construction of a steel forging plant near Hyderabad, the rest of the initial cost of $3 million to be financed by a public share issue and by a United States firm, Steel Improvement and Forge Company, which has signed a management and technical assistance agreement for the first twelve years of the plant's operations.

2/ E.g. the Hindustan Aluminium Corporation, a joint undertaking organized by the Kaiser Aluminum and Chemical Corporation of Oakland, California, and the Birla interests in India, in which the Export-Import Bank participated to the extent of $13.6 million in a total investment of over $39 million (Export-Import Bank Press Release No. 532 of 27 January 1960).

3/ Outlined in a speech delivered by the President of the Export-Import Bank at the Investment Bankers Association's Convention held at Bar Harbor, Florida, on 3 December 1959.

4/ See Cmnd. 237, The United Kingdom's Role in Commonwealth Development.

financed with public capital but empowered to borrow on the market, is authorized to invest in association with private enterprise, though in fact it has mainly been connected with the financing of government sponsored projects.[1/]

121. French public financial aid to the members of the community is administered through two main channels: the Caisse centrale de Coopération Economique (the former Caisse centrale de la France d'Outre-Mer) and the Fonds d'Aide et de Coopération (FAC) (the former Fonds d'investissement et de Développement Economique et Sociale (FIDES)). Both these institutions have increasingly invested in association with private entrepreneurial funds, chiefly in large mining enterprises. Among the projects for which they have provided finance are the Fria international bauxite and aluminium consortium in Guinea and the exploitation of manganese ore deposits in the Gabon Republic.[2/]

Development Banks and Corporations in Under-developed Countries[3/]

122. A large number of development banks and corporations have been established in under-developed countries in recent years, most of them either wholly or mainly with public funds. Some of these institutions, mainly those created in the last decade, have benefited from technical or/and financial assistance of foreign governments, foreign investment corporations and the International Bank. The establishment of new development banks has been urged by missions organized at the request of governments by the IBRD and the United Nations. In the United States a report prepared at the request of the Department of State has recommended that the "U.S. Government give further encouragement by means of financial support to soundly organized foreign development banks" and "undertake to supplement the resources of American financial institutions prepared to invest in private enterprises contributing to economic development in less developed countries".[4/]

1/ Ibid.

2/ See United Nations Economic Survey of Africa since 1950 (Sales No. 59.II.K.1), Chapter 4, page 200.

3/ Much of the information in this section is derived from Problems and Practices of Development Banks by Shirley Boskey, published for the IBRD by the Johns Press, 1959.

4/ Expanding Private Investment for Free World Economic Growth. A special report by Mr. Ralph Straus prepared at the request of the Department of State of the United States Government (Washington, D.C., 1959), page 16.

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123. The activities of development banks vary considerably in scope within their declared aim of promoting economic development. Some have undertaken to finance and operate large government investment programmes in the fields of mining, petroleum and manufacturing. A few, such as development banks in Brazil and Chile and the Jamaica Industrial Development Corporation, have played a more general part in the programming of economic development. This feature of development banks is mainly typical of their earliest stage. If the basic aim of development banks has remained unchanged, experience acquired in the operation of development projects and the increasing tendency of under-developed countries to encourage private productive investment have led to various modifications in their functions, their administrative structure and the scope of their financing activities. The statutes of some development banks authorize them to establish and manage pioneering enterprises not likely to show returns soon enough to be attractive to private entrepreneurs, and then to relinquish their interest as soon as possible after these concerns have proved economically viable, leaving their future development to private entrepreneurs.

124. In recent years development banks have concentrated on stimulating private enterprises by helping to remedy the shortage or absence of medium- and long-range capital and equity financing for industrial ventures, and to bring promising new investment opportunities to the attention of private businessmen at home and abroad. Thus the Industrial Credit and Investment Corporation of India Ltd. (ICICI) has underwritten public and private issues and offers of sale of industrial securities; made direct subscriptions to such securities; made secured loans in rupees, repayable over periods up to 15 years; made similar loans in foreign currency for payment for imported capital equipment and technical services, guaranteed payments for credits made by others; announced it was ready to assist clients in the preparation of investment proposals and to make available or to find technical and managerial advice and services both in India and abroad.[1] The Development Bank of Ethiopia has the power to make, guarantee or participate in loans to any industrial, agricultural or business enterprise on such terms and conditions as it shall deem appropriate; to purchase, hold and sell stocks or other evidence of

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1/ The ICICI A Source of Capital for Private Industry in India. The Commercial Printing Press Private Ltd., Bombay 1959, p. 6.

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ownership of any industrial, agricultural or business enterprise; to borrow money, float loans and issue bonds. The Industrial and Mining Development Bank of Iran will help to develop, encourage and stimulate private industrial development in Iran by making medium- and long-term loans and by investing in share capital; will promote and help to develop a capital market, guarantee loans and commitments of other investors; and provide technical and managerial assistance to Iranian industry.

125. Most of the development banks established some years ago are public institutions, owned and managed by the government or sometimes jointly by government and private capital, the latter having a minority interest. Recently however a number of institutions wholly or principally controlled by private interests have been established, including the Industrial Development Bank of Turkey, the Industrial Credit and Investment Corporation of India, the Development Finance Corporation of Ceylon, the Pakistan Industrial Credit and Investment Corporation and the Industrial and Mining Development Bank of Iran, all of which received initial assistance from, amongst other sources, the IBRD. Several other development banks have been established under private control although their initial capital has come largely from public sources, including the China Development Corporation, the Industrial Development Bank of Israel, the Agricultural, Industrial and Real Estate Credit of Lebanon, the Industrial Development Corporation of Malaya, the Industrial Bank of Syria.

126. Private investment and commercial banks, insurance companies and other institutional investors and large industrial corporations have begun to participate in the financing of development banks. The statutes of several development banks, including the Industrial Credit and Investment Corporation of India, the Pakistan Industrial Credit and Investment Corporation, the Industrial Development Bank of Turkey, make express provision for foreign participation. Four United States private investors have subscribed $250,000 each in the Industrial Credit and Investment Corporation of India, in which forty-four United Kingdom investors (eight Eastern Exchange Banks, thirty leading insurance companies, the Commonwealth Development Finance Company Ltd. and five industrial corporations) have invested a further $2 million. Foreign participation in the Pakistan Industrial Credit and Investment Corporation amounts to the equivalent of more than $1.6 million:

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United Kingdom and United States investors have subscribed 3 million rupees each and a group of twelve Japanese foreign exchange banks a further 2 million rupees. Belgian, French, German, Italian, Netherlands, United Kingdom and United States investors have supplied 40 per cent of the $5.3 million share capital of the Industrial Mining Development Bank of Iran.

127. Some development banks have attempted to induce foreign businessmen to invest together with them. Being familiar with local conditions and the credit-worthiness of local entrepreneurs, they are in a better position to uncover good investment opportunities than foreign investors. A special committee to attract foreign participation in industrial ventures has been set up by the Corporation de Fomento de la Produccion of Chile, which has offices in New York and Europe. The Industrial Development Corporation of South Africa has managed to obtain participation by foreign enterprises in projects which it has developed.

128. Development banks can play an important part in the mobilization of local savings, which may be available in considerable amounts,[1/] through the creation and organization of a capital market. Some banks have sold their own shares to the public, and some have attracted local investors in their own financing or have underwritten issues of new securities.

129. Commercial banks, industrial firms and trade associations took up the entire initial share capital issue of the Industrial Development Bank of Turkey, but its second issue, four years later, was oversubscribed, and attracted large numbers of individual subscribers. Rupees 1.5 crores of the authorized capital of rupees 25 crores of the Industrial Credit and Investment Corporation of India Limited were taken up by the general public as the result of an offering in February 1955. One third of the initial share issue of the Pakistan Industrial Credit and Investment Corporation was taken up by public offering. The first public debenture issue of the Industrial Development Bank of Israel was taken up within two hours.

1/ "In many under-developed countries, including India, the amount of capital available for investment is often surprisingly and inexplicably large" (Report of an IBRD mission to India unpublished, quoted in William Diamond, Development Banks (A publication of the IBRD Economic Development Institute) 1957, page 10).

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130. Through the issuance of participation certificates Nacional Financiera of Mexico has played an important role in the formation of savings and investment habits among the local population. Since 1941 their circulation has grown from 7 million pesos to 1,130 million pesos. Through these fixed income certificates Nacional Financiera acts as an investment company, managing the common fund of stocks and bonds represented by the respective certificate issues. In May 1956 a new security was floated, the certificate of industrial co-proprietorship, differing from the participation certificate in that the yield is variable. The common fund co-owned by the certificate holders is composed of equal amounts of stocks and bonds, so that holders are guaranteed the minimum yield derived from the bonds and participate as well in dividends declared on the stocks. During their second year the co-proprietorship certificates paid a dividend of 8.9 per cent.[1]

131. Foreign owned development institutions have been active in developing capital markets in Latin America. The Deltec Corporation, a private corporation, which operates chiefly in Argentina, Brazil and Venezuela, but has recently extended its interests to Colombia and Peru, was founded to develop capital distribution and underwriting facilities in Latin America. It also arranges for the placing of Latin-American securities, chiefly of subsidiary and associated foreign companies, on the Western European and United States capital markets.

132. As yet development banks and corporations have not made any foreign issues. The number of potential foreign investors interested in acquiring bonds and shares of such institutions is somewhat limited, as development banks cannot offer a high rate of return. Dividends are in fact limited by law in the case of the Industrial Bank of Peru (6 per cent), the Industrial Development Bank of Turkey (12 per cent) and the Industrial Credit and Investment Corporation of India (12 per cent). However the bonds of the last named, like those of the Industrial Development Corporation of South Africa, carry a government guarantee.

4. Tax Measures

133. In their efforts to encourage the investment of foreign private capital in desired projects, governments of under-developed countries have increasingly

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1/ Nacional Financiera, S.A.: The Expanding Mexican Economy, pp. 24, 25 (1959).

resorted to granting tax concessions to favoured activities. Such tax incentives, which are often featered in comprehensive investment laws, are usually applicable to foreign and domestic investors alike. Their impact on the foreign investor is conditioned by the operation and effect of his home country's tax system. Whatever the importance of the tax factor may be in the investor's decision, the tax burden with which he is concerned is the combined burden of the taxes levied on his foreign operations in the country of source and by his home country.

134. As a result, tax incentive measures, and all tax obligations, in the country of investment must be reviewed from the point of view of their ultimate effect when taken in conjunction with the tax levied by the capital-supplying country.

(i) Measures of Capital-Supplying Countries[1/]

Unilateral Action:

135. Capital-supplying countries have reduced or withdrawn their tax demands on foreign income,[2/] in order to accommodate the primary taxing power of the country of investment.[3/] This has been done chiefly through measures for the avoidance of double taxation. In a number of countries, including Canada, Federal Republic of Germany, Japan, United Kingdom and the United States, the avoidance of double taxation is effected through the so-called tax credit mechanism which consists in deducting the tax levied on foreign income in the country where it arises from the tax due thereon in the investor's home country. As a result, the taxpayer's total

1/ For a comprehensive description of the various measures offered by capital-receiving and capital-supplying countries, see especially the following earlier Secretariat studies: United States Taxation of Private United States Investment in Latin America (Sales No. 1953.XVI.1); Taxation in Capital-Exporting and Capital-Importing Countries of Private Foreign Investment (documents E/2865, 23 May 1956 and E/3074, 3 June 1958); International Flow of Private Capital 1956-1958 (Sales No. 1959.II.D.2)(See also footnote 2, Foreword).

2/ It should be noted that the tax demand of the capital-supplying countries on foreign investment is substantially limited to the income tax (and in a few countries to the wealth tax, which largely follows the same rules as the income tax), while in the capital-receiving country foreign investments are liable to the entire range of (direct and indirect) taxes.

3/ The principle of this primacy was affirmed by Economic and Social Council resolution 378.B.II(XIII) on International Tax Problems of 10 August 1951.

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liability amounts only to the higher of the two taxes, and, since the tax levels in most under-developed countries are below those of the major capital-supplying countries, the foreign tax burden is wholly absorbed by the latter which collects only the residuary tax amount. The tax payable by the investor on a given income is thus in principle the same whether that income is derived from foreign or domestic investment.

136. Other countries, including France, Italy, the Netherlands and Switzerland, eliminate double taxation of foreign investments by virtually exempting corporate profits derived from foreign permanent establishments (i.e. branches) and dividends from qualified foreign subsidiaries;[1/] in the Netherlands the same privilege is extended to substantially all dividend income of holding and investment companies, while Belgium reduces the proportional tax on foreign profits to a fraction of the regular rate. Since, as already indicated, tax levels in under-developed countries are generally lower than those in capital-supplying countries, these measures go beyond the mere elimination of double taxation: they decrease the tax on foreign income below that on an equal amount of domestic income earned in the capital-supplying country.

137. Such advantage is also available to a broad range of foreign investment activities under the tax laws of the countries which in principle rely on the tax credit for the avoidance of double taxation. Thus Canada grants full exemption for dividends paid by foreign subsidiaries of Canadian companies as well as to the profits of the foreign branches and subsidiaries of so-called Foreign Business Corporations, i.e. companies which carry on their business, and maintain their assets, wholly outside Canada (though currently no new applications for this special status are being entertained). The tax laws of the Federal Republic of Germany empower the tax authorities to accord special treatment (up to complete exemption) to income out of foreign business activities which are of interest to the German economy. The United States grants an outright reduction in the tax

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1/ France grants a substantial reduction for such dividends.

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rate, currently from 52 to 38 per cent, to companies which derive practically all their income from active business operations in other countries of the Western Hemisphere (so-called Western Hemisphere Trade Corporations).

138. One of the most important tax facilities for foreign investment by United States corporations results from the fact that under current rules (common to a number of tax systems) profits earned on foreign operations which are carried on through companies incorporated abroad are considered to be outside United States tax jurisdiction unless and until they are remitted to the parent company in the form of dividends. Since foreign investment by United States manufacturing companies is increasingly carried out through subsidiaries, and since a substantial portion of the profits of foreign subsidiaries is regularly reinvested and, therefore, does not become taxable income in the hands of the United States parent company, a considerable part of foreign investment income is thus withdrawn from United States taxation. Even if the foreign subsidiary is ultimately sold or liquidated its accumulated profits will be taxable only at the preferential capital gains rate. Foreign subsidiaries are less generally used by mining and petroleum companies but this is due to the fact that they can secure important tax advantages through the percentage depletion allowances which are available under the United States tax law for foreign (as well as domestic) operations in these fields.1/

139. The draft Foreign Investment Incentive Act currently pending in the United States Congress2/ seeks to enlarge the range of this tax deferral privilege by extending it to so-called Foreign Business Corporations, defined as United States companies which are almost wholly engaged in foreign operations. The Act would enable qualifying United States companies to secure tax deferral privileges for profits earned not only (as at present) through foreign subsidiaries, but also directly through foreign branches. In addition a Foreign Business Corporation could act as a holding company for several foreign subsidiaries through which profits could be shifted, free of United States tax, from one foreign operation to another. This would enable a company to finance a new foreign venture out of the accumulated profits of an earlier one without attracting tax while at the present time this could only be done through a holding company established in a third country.

1/ In the case e.g. of oil wells, the allowance amounts to 27 1/2 per cent of gross income.

2/ H.R.5, 86th Congress, 1st Session (the so-called Boggs Bill).

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140. In the United Kingdom, a foreign subsidiary is recognized as being outside United Kingdom tax jurisdiction, only when its actual centre of management is located abroad - a condition not as readily fulfilled as that of foreign incorporation. The tax deferral privilege was, however, extended in 1957 to domestic companies exclusively engaged in foreign business operations (so-called Overseas Trade Corporations), but only for profits which they derived directly from foreign branches or from other Overseas Trade Corporations and not also - as in the case of the proposed United States Foreign Business Corporations - for dividends received from their foreign subsidiaries. Thus Overseas Trade Corporations cannot be used as holding companies for operations through subsidiaries resident in the country of investment - a requirement in a number of capital-receiving countries (at least for qualifications for tax concessions) and a business preference in many types of foreign operations, especially those with local capital participation.

Bilateral Action - International Tax Agreements1/

141. The unilateral provisions reviewed so far may be further strengthened through the use of bilateral tax agreements. Over the last fifteen years the network of these agreements has been rapidly expanding among developed countries,2/ and yet until quite recently very few such agreements had been concluded by independent under-developed countries, except among members of the British Commonwealth, mainly with the United Kingdom. This is now beginning to change:3/

1/ The present discussion relates only to general income tax agreements which are most relevant to the promotion of foreign investments. For the texts and data on the status of these and other types of tax agreements, relating e.g. to the taxation of international transport enterprises or to death duties and gift taxes, see "International Tax Agreements" Volumes I to IX (Volume I - United Nations Sales Nos. 1948.XVI.2; Volume II - 1951.XVI.1; Volume IV - 1954.XVI.1; Volume VI - 1956.XVI.1; Volume VII - 1958.XVI.1; Volume VIII - 1958.XVI.4 (superseding volumes III and V) and Volume IX - 1958.XVI.5).

2/ More than one hundred such agreements are at present in force.

3/ See "General Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income covering Under-Developed Countries and Territories" Annex III of the present Report.

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Sweden, the United States and the Federal Republic of Germany have already concluded a number of agreements with capital-receiving countries and are engaged in negotiations with others. In 1956 for the first time a Latin American country, Honduras, became a party to such an agreement (with the United States). Ceylon, Ghana, India, the Federation of Malaya, Pakistan and the United Arab Republic are among the countries which have concluded tax agreements or are negotiating them with major capital-supplying countries.

142. The reluctance of many under-developed countries to enter into tax agreements has presumably been due in some part to the fact that double taxation was already largely eliminated by the unilateral measures outlined above. Moreover they stood in some cases to lose revenue, since, under the traditional pattern of these agreements as negotiated between developed countries, double taxation of certain categories of income, especially dividends, interest and royalties, was frequently avoided in part by limiting the tax levied at source, i.e. by the capital-receiving country.

143. It is significant that in some of the agreements recently signed or currently under negotiation by under-developed countries this approach no longer fully prevails. Thus the agreements concluded by India with Sweden and the United States do not require a reduction in the Indian source tax on income from capital received by foreign investors but place the burden of avoiding double taxation exclusively on the capital-supplying country - through a tax credit in the case of the United States and through outright exemption in the case of Sweden. In fact a number of these agreements greatly increase the foreign investor's relief from the tax imposed in his home country and thus give him a substantial tax incentive. This is most clearly seen in the case of Sweden whose tax law provides no general double taxation relief while her tax treaties provide for exemption of foreign branch profits as well as, in most of these treaties, of foreign intercorporate dividends. The Federal Republic of Germany, which allows a tax credit under her tax law, offers in her tax treaties with India, Pakistan and the United Arab Republic (Egyptian Province) outright exemption for the profits derived from foreign branches and - except in the last-mentioned treaty - for the dividends from qualified subsidiaries. Under the agreements concluded in 1956/57 with many of her overseas territories, France exempts from proportional tax the dividends paid out of profits from these territories - an important

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change from the rule prevailing in the absence of a treaty. The most significant innovation in this field is the inclusion by the United States in her current tax agreement negotiations with under-developed countries of the so-called tax-sparing privilege, under which the United States investor would be allowed to credit against his United States tax on his foreign income not only the foreign tax actually paid thereon (as under the normal tax credit scheme) but also the amount of the foreign income tax which was abated by the capital-receiving country as a special investment incentive.[1/] This new privilege is of course not needed for non-repatriated profits of foreign subsidiaries which enjoy the benefit of the deferral privilege. In the case of repatriated profits of subsidiaries and of all branch profits, however, tax-sparing will prevent the nullification of these incentives by the tax credit under whose normal operation an incentive reduction in the foreign tax merely reduces the credit deduction and correspondingly increases the domestic tax leaving the investor's total tax undiminished by the concession but shifting part of the tax revenue from the country of investment to the capital-supplying country. Here the tax-sparing privilege will result in an outright reduction of the investor's total tax liability by the amount of the tax sacrifice conceded by the capital-receiving country.

144. The negotiation of tax agreements along these lines with a growing number of under-developed countries may thus be expected further to add to the tax benefits already available to foreign investors under the tax laws of their home countries. It will be noted that both the tax-sparing and the deferral privileges are responsive to the desire of under-developed countries for promoting only productive long-range investments, since their benefits are restricted - in the latter case to retained (i.e. largely reinvested) profits, and in the former case to those ventures which have qualified for special preference in the capital-receiving country itself.

1/ It should be noted that this privilege will not automatically extend to all tax incentives available in the co-contracting country, but only to those selected concessions which are specifically listed in each treaty.

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145. What precedes should confirm the conclusion stated in an earlier Secretariat study[1/] that the major capital-supplying countries have substantially eliminated their tax demands on foreign income as a possible deterrent to foreign investment, and have only a limited margin left for future measures which might provide substantial additional incentives to such investment.[2/] The tax treatment of foreign investors thus comes largely under the control of the country of investment.

(ii) Measures of Capital-Receiving Countries

146. The developments described above have opened wider possibilities for under-developed countries to offer effective tax concessions, even to investors from countries which rely chiefly on the tax credit system for the elimination of double taxation. Such concessions are today available in most under-developed countries for the selective promotion of investments which may be expected to make long-range contributions to their economic development.[3/] The concessions may be divided into two main groups: those which are designed to remove tax impediments, i.e. tax burdens which might stand in the way of successful operations, and those which are intended to lend special attraction to favoured types of investment.

1/ "Taxation in Capital-Exporting and Capital-Importing Countries of Foreign Private Investment", document E/2865, paragraph 29.

2/ As an illustration, it may be noted that the United States Treasury recently estimated its annual tax revenue on the income from United States direct investments abroad at $240 million (Hearings before the Committee on Ways and Means, House of Representatives, 86th Session, on H.R. 5, Foreign Investment Incentive Tax Act, 7, 8 and 9 July, p. 43). This may be compared to the total value of such investments of $25.2 billion and to the annual income thereof of $3.3 billion in 1957 (International Flow of Private Capital, 1956-1958, United Nations Sales No. 1959.II.D.2, Tables 7 and 8). Yet it must be added that United States investors continue to give to changes in the United States tax treatment of foreign investments first place among measures apt to facilitate a growth in such investment (see the replies to two inquiries by the United States Department of Commerce: Factors Limiting United States Investment Abroad - Part 2: Business Views on the United States Government's Role, 1952, p. 6; Responses to Business Questionnaire Regarding Private Investment Abroad, 1959, pp. 12-15,43).

3/ See "Selected List of Official Texts Concerning Foreign Private Investments in Capital-Receiving Countries", Annex II to this Report.

Removal of Tax Impediments

147. Tax impediments to investment flow from elements in the tax structure which are not adapted to the requirements of modern industry. The revenue burden may be weighted on the side of indirect taxes, which push up the costs and prices of industrial products while cutting into the mass consumption markets on which modern industry must rely. In many cases, moreover, tariffs are so structured as to place heavy burdens on the import requirements of industry for machinery and raw materials. The income tax, in itself a basic element of progressive taxation, may not be geared to the development of industry, particularly large-scale industry, in corporate form because of its rudimentary character. While these defects have been widely recognized and are the object of efforts at tax modernization in many countries, investors cannot await the slow progress of tax reform and must, in the meantime, rely on relief through special tax concessions.

148. In a number of countries, therefore, such concessions are the most valuable of the tax concessions currently available. Of major importance are tariff exemptions or reductions on imports of capital goods and materials needed for the installation of the enterprise. Measures of this type are available in almost all countries where import duties constitute an important burden. These concessions may be extended to machinery and raw materials imported during the subsequent operations of the enterprise, though usually for a limited period,[1] partly because of the need to limit the loss to the public revenue and partly in the expectation that after a number of years they will no longer be needed - either because the tariff will have been modified so as to relieve the burden on needed industrial imports or because some of the imports will have become available from domestic manufacturers.

149. Several countries exempt the products of approved enterprises from export taxes in order to make them competitive on the foreign market.[2] Similar

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1/ Thus the time-limit varies between three and ten years in a number of Latin-American laws, according to the value classification of the enterprises in these laws the quantum of the concession also may vary on the same basis (e.g. from 30 per cent to 100 per cent in Ecuador).

2/ The Nicaraguan law expressly limits the concession to so much of the duty as the international market situation requires.

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temporary concessions are available for other indirect taxes which may be considered particularly burdensome for the cost structure of the enterprise and the marketability of its products.1/

150. Other tax incentives of this type are addressed to removing specific defects in the income tax system. Thus a number of investment laws grant special loss carry-over privileges which permit the averaging of tax burdens on fluctuating incomes over a period of years.2/ This privilege also benefits firms which have been granted accelerated depreciation allowances for new investments, but do not earn enough profits to take full advantage of them during the early years in which they apply.

Tax Advantages

151. Foremost among the concessions which serve as special tax advantages to the foreign (and domestic) investor are the so-called income tax holidays offered to new investments in favoured fields of activity, mostly manufacturing industries. For an investor who is relieved from all or part of the tax ordinarily imposed by his home country, this additional concession by the country of investment is tantamount to a substantial increase in his expected net (i.e. after-tax) profits. Tax holidays are income tax concessions usually for temporary periods running typically from five to ten years (though in a few countries they may be as low as two or as high as twenty years). The tax remission granted may be complete, or may consist in a sizeable reduction of the tax.3/ Under some laws the exemption period varies with the amount of capital invested.4/ Some countries limit the exemption to a given return on invested capital.5/ Dividends paid out of exempted profits are frequently also exempt.6/

1/ Among these are especially production, turnover and sales taxes.

2/ This privilege is available e.g. under the laws of Ecuador and Guatemala.

3/ The latter is the case e.g. under the laws of Israel and Mexico.

4/ See, e.g. the laws of the Federation of Malaya and Sudan.

5/ E.g. 6 per cent in Burma and India, 5 per cent in Ceylon and Sudan, 15 per cent in Afghanistan.

6/ This is the case, e.g. in the laws of the Federation of Malaya, Ghana, India and the United Arab Republic.

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152. Many laws contain special income tax incentives which are designed to encourage investment (and reinvestment) in the creation, renewal or expansion of productive capacity. Among these are investment concessions which permit the deduction from taxable income of all or part of the cost of new plant or machinery and accelerated depreciation allowances which allow a substantial part of such cost to be recovered tax-free out of the profits of the first few years of operations. In the case of firms with a high rate of investment, and of new enterprises generally, these allowances may equal the benefits of tax exemptions or reductions. In fact, some laws which provide for both types of incentives permit the postponement of the use of these special investment concessions until after the tax holiday period so as to protect the former from being absorbed by the latter.1/ Others, on the contrary, require the investor to claim both simultaneously in order to prevent duplication of tax benefits.2/

153. In more refined tax systems concessions can be used as directional productivity incentives, e.g. by providing special allowances for multi-shift use of machinery or by shortening or extending the total depreciation period depending on whether it is desired to encourage replacement or discourage uneconomically excessive obsolescence. Other special concessions provide tax reductions on account of research outlays, give special tax treatment to foreign technicians or exempt the interest on foreign loans incurred for the import of industrial machinery and equipment.

(iii) The Role of Tax Concessions in Promoting Foreign Investments

154. For the foreign investor broad tax exemption offers may dramatize, and thus arouse interest in, investment opportunities which might not otherwise attract attention. Where they result in a substantial increase of net profits (e.g. through an extended "tax holiday" or through accelerated depreciation allowances) they sharply reduce the pay-back period and thus the initial risk inherent in a long-range investment; alternatively they permit the expansion of an enterprise through self-financing without the need for fresh capital.

1/ E.g. in the Federation of Malaya, Ghana and Jamaica.

2/ This is the result, e.g. of the Indian tax benefit scheme.

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Customs concessions in turn allow a venture to be started with a smaller initial investment by reducing the cost of imported plant and equipment needed to establish the enterprise.

155. Yet, since most broad concessions are granted for a limited period only, the investor in the long-range venture to which concessions are usually limited must also consider the normal tax burdens under which he will have to operate after the expiration of the concessions. For this reason he may be more attracted by a well-balanced tax system geared to a moderate rate level than by the combination of an unsatisfactory tax structure with special tax exemptions and reductions.[1/] From the Government's point of view, extensive exemptions, especially from the income tax, impair the revenue structure by decreasing tax revenue needed for financing development programmes, and by undermining the equity of the tax structure and thereby its acceptability to the taxpayer at large.

156. Broad tax concession schemes may therefore be more appropriate for an early state of industrialization. At this point, industry is not yet a major factor in the tax structure. The investor for his part may be expected to view a defective or burdensome tax system with more equanimity if he will not become fully subject to it until after he has had a chance substantially to recover his initial investment under the protection of special tax concessions - the more so, if there is reasonable expectation of tangible progress in the improvement of the tax system during that period. Tax concessions may be particularly useful in contributing an initial impetus to the industrialization process, which should become self-generating at later stages.

157. Indeed, as the industrialization process advances the need for broad tax stimuli should diminish. Developments in several countries have shown that Governments keep a careful watch on the relative costs and benefits of a tax concession scheme and seek to reduce its scope (sharply or gradually) by changes

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1/ In support of this view, see: International Chamber of Commerce, Taxation and the Developing Nations (Brochure 197, February 1959, pp. 3-4); see also: Hearings before the Committee on Foreign Relations of the United States Senate, 9 August 1957, Memorandum submitted by Professor Stanley S. Surrey of Harvard Law School, p. 32).

in their legislative or administrative approach as the tempo of industrialization increases.[1] At this point the legislative effort is likely to be directed toward the development of a balanced and development-oriented tax structure and administration rather than toward the granting of compensatory exceptions to the deterrent features of an antiquated tax system.

158. Tax concessions may however continue to be useful in channelling investment (domestic and foreign) into particular industries whose development is so important that special tax privileges are justified or whose conditions are so difficult that they are necessary. They may also be used, as a quid pro quo, to secure compliance with specific development policies, relating e.g. to the increased use of domestic raw materials or the use and training of domestic personnel. At this point, with corresponding advances in the tax administration, special concessions intended to influence investment practices, such as the above-mentioned investment and accelerated depreciation allowances, will also become more fully effective.

159. Limited directional tax incentives may thus retain their place in an advanced tax system, while general tax concessions recede, as the industrial process demonstrates its ability to advance under its own momentum.

5. Exchange and Trade Measures[2]

160. Freedom to transfer earnings and capital and exemptions from tariff and exchange restrictions are among the most significant measures by which capital-receiving countries have attempted to attract foreign investment.

1/ Thus, the incentive legislation of Mexico has gone through four successive revisions during the last twenty years which "may be considered to reflect some of the major economic changes during that period". (Ross and Christensen, "Tax Incentives for Industry in Mexico", International Program in Taxation, Harvard Law School, Cambridge, 1959, p. 41).

2/ Much of the information in this section has been derived from the International Monetary Fund's Tenth Annual Report on Exchange Restrictions (1959).

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(a) Movements of Capital and Earnings

161. With a few exceptions exchange restrictions have been increasingly relaxed in recent years. An important number of under-developed countries nowadays maintain a single fluctuating or fixed exchange rate without restriction, at least for financial transactions.

162. Most countries which still restrict foreign exchange transfers distinguish between "approved" or "registered" investments and others. Remittances of profits and principal are permitted more freely on registered investments. The criteria for an approved investment, which are frequently the same as those governing the grant of tax and other concessions, vary widely. Its exchange earning or saving propensities are nearly always a consideration, as is its ability to bring into use substantial amounts of domestic labour or raw materials. Investments in petroleum and mineral extraction are frequently given special treatment. Sometimes particular forms of investment (e.g. loan capital) are treated differently, though in most countries equity and portfolio investments in given sectors of the economy are treated alike. An important, though less precise, criterion is the expected contribution of the enterprise to economic development, determined by its "basic" nature, its location in a development area or the new techniques it introduces, in addition to the criteria already cited.

163. Qualifying investments in countries which adopt a registration system usually enjoy the privileges established by law or concession automatically. In many countries these privileges now amount to complete freedom to transfer earnings and capital (Ceylon, India, Libya, Federation of Malaya, Turkey). Elsewhere, complete freedom to transfer is more commonly granted only to earnings of approved enterprises (Ethiopia, United Arab Republic - Egyptian region), capital remittances being subject to percentage or quantitative restrictions and frequently not permitted until an initial waiting period has elapsed. In Ethiopia, the maximum amount of capital of approved enterprises that may be remitted abroad annually is fixed at $70,000 for each firm. In the United Arab Republic (Egyptian region) a waiting period of five years is imposed, after which 20 per cent of the investment, including capital appreciation, may be repatriated each year. A third category of countries restrict transfers of both capital and earnings, even for favoured investments. In Israel transfers of profits, interest and capital on

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approved investments may not exceed 10 per cent of the total investment in any one year: other investments do not benefit from these transfer privileges. Earnings on foreign investments in the Philippines can be remitted up to a varying annual percentage of either total earnings or invested capital, depending on the nature of the investment.

164. Almost as universal as the distinction between approved and other investments, and indeed arising partly out of the same legislation, is that between "old" and "new" investments. "Old" investments are those made before the law, decree or official act creating categories of investment to which varying exchange and other regulations apply, and they generally receive less favourable treatment than "new" approved investments. In India the proceeds of investments made before 1 January 1950 by foreigners other than residents of the sterling area or Denmark, Norway and Sweden are blocked: funds obtained on liquidation may however be reinvested in approved Indian securities on which transfers of interest, though not of principal, are allowed. Profits on foreign capital invested in Cambodia before 31 May 1956 may be remitted at varying exchange rates, and capital up to 10 per cent per annum on the original investment on liquidation; in the case of new approved investments, 20 per cent of profits and, on liquidation, 20 per cent of capital may be transferred annually.

165. Countries with multiple exchange rates sometimes authorize transfers of profits and principal of investments in favoured sectors or forms at a preferential rate. Principal and profits of investments in the petroleum and metal-extracting industries in Colombia may be transferred at a favourable "certificate" rate. In Brazil, repayments of principal and transfers of interest on approved loans and credits not exceeding 8 per cent per annum may be made at a preferential rate.

166. Some countries give specific assurances of their ability to provide foreign exchange for these transactions. In the event of an exchange shortage in Iran the Government undertakes to allocate a minimum amount from its foreign exchange reserves for the remission of profits accrued to the foreign investor. If the exchange thus allocated is not sufficient, the investor is entitled to export the equivalent of his surplus profit in authorized goods without entering into an obligation to sell foreign exchange. Approved investments in Thailand may be accorded a guarantee of the transfer abroad of current net earnings.

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(b) Movements of Payments for Services

167. The rules regarding the repatriation of salaries of foreign personnel may be extremely important for foreign investors. Where a free market exists, as in many Latin American countries, no restrictions are imposed, but there are countries which limit salary transfers to a definite percentage or a "reasonable" amount. Thus foreign employees in India are permitted to make reasonable remittances (up to £150 a month for sterling area nationals) to their own countries for the support of their families and to pay expenses there. In Ethiopia foreign personnel are allowed to remit up to 25 per cent of their income (35 per cent for employees under contract to the Government) for family maintenance. In Indonesia the maximum permitted is 20 per cent, with annual ceilings of rupiahs 36,000 for those in independent professions and rupiahs 48,000 for employed persons.

(c) Goods

168. Firms receiving foreign equity investment or loans may on that ground, if priority of the investment or loan is approved, be granted exemption for their imports from quantitative restrictions or import surcharges and also from tariffs which, in some under-developed countries, have been raised partly in order to ration foreign exchange. Examples are Argentina, Brazil (both exchange surcharges and tariffs) and Viet-Nam (tariffs only). Such exemptions are generally only granted in respect of capital equipment, though exceptionally they are extended to imports of parts and semi-finished goods. Under the Indian system imports financed by deferred payments are granted special exemption from quantitative restrictions provided that either payments made prior to shipment do not exceed 20 per cent of the f.o.b. value of the plant and equipment and at least seven annual instalments are required to pay the remainder, or initial payment is limited to 10 per cent, the balance to be paid after production has started in instalments not exceeding the net foreign exchange earning or saving capacity of the project. Special facilities are also granted in India when the total value of the equipment to be imported is smaller than the amount of new foreign capital coming in for the project.

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169. The offer of preferential exchange and tariff treatment to approved categories of foreign investment can be an important incentive to such investment in primary producing countries which frequently lack stability in the exchange sector owing to fluctuations in their export receipts brought about by changes in world demand - an instability which may be compounded by development policies which result in one way or another in inflation. Measures conferring special exchange and tariff treatment on all or some foreign investors have, however, sometimes given rise to the objection that they create, apparently or in fact, a privileged position for the foreign investor.

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CHAPTER IV

MEASURES FOR THE PROTECTION OF FOREIGN INVESTMENTS

The Scope of the Problem

170. In discussions of foreign investment deterrents, a primary role is frequently assigned to the risk of expropriation.[1/] In a broader sense this apprehension extends to all government measures which might tend to impair the rights or assets of foreign investors, whether directly, as through expropriation, or indirectly, as through discriminatory tax demands, denial of import licences or foreign exchange.

171. This deterrent is compounded by the reluctance of many investors to undertake operations in a foreign country because of their lack of knowledge of its legal and institutional framework, the extent of government control over business and the policies and attitudes which guide the day-to-day exercise of governmental functions. Where these conditions are subject to frequent changes, especially as a result of governmental instability, this reluctance is reinforced by the difficulty of assessing the costs and risks of a contemplated venture.

172. The latter consideration may be particularly important for small and medium firms, typically in the manufacturing industries, which have neither the resources to undertake comprehensive and authoritative investment surveys, nor are normally in a position to resolve their apprehensions through individual agreements with the Government of the country of investment. Yet it has been found that these are also the firms in whose cases at least the risk of expropriation is least likely to materialize. Experience has shown that the risk of expropriation of foreign capital is not the same for medium-sized manufacturing firms as it is for large enterprises operating in the natural resources, plantations and public

1/ "The fear of expropriation has probably been one of the main impediments to the international flow of private capital ...". (From a statement of the International Chamber of Commerce on "Attracting Foreign Investment", Brochure 200, February 1959, p. 5).

utility fields.[1] Nevertheless, any measure impairing the assets of any investor in a given country is likely to affect negatively the decisions of potential investors in other fields of activity and even in other countries.

173. Governments of capital-supplying and capital-receiving countries which are desirous of promoting the international flow of private capital have therefore sought to counteract these deterrents by a variety of measures.[2] These measures are chiefly designed to provide assurances either directly against the occurrence of these non-business risks or toward the indemnification of the investor, should they occur. Such assurances may be proffered by the country of investment, by the capital-supplying country or by international treaty.

The Unilateral Approach

Assurances by the Capital-Receiving Countries

174. There are numerous instances of unilateral assurances on the part of capital-receiving countries. Many of these have constitutional provisions limiting the cases in which private property (whether of foreign or domestic ownership) may be expropriated (e.g. for public necessity), and defining the manner in which the owner is to be indemnified.

175. Similar provisions are to be found in special investment promotion laws which secure qualifying investments against expropriation for a minimum period of time (e.g. ten to thirty years under the Foreign Investment law of Cambodia, twenty to thirty years under the Foreign Investment Law of Indonesia),[3] provide for full compensation in case of a taking (e.g. the Approved Enterprises (Concessions) Act of Sudan assures not only fair and equitable compensation, but also its free

1/ See the cases listed in "The Status of Permanent Sovereignty over Natural Wealth and Resources" (Document A/AC.97/5, Chapter I, paragraphs 120-224).

2/ See the detailed recommendations contained in General Assembly resolution 824 (IX) on "International Flow of Private Capital for the Economic Development of Under-developed countries" of 11 December 1954.

3/ See "Selected List of Laws and Official Texts Concerning Foreign Private Investments in Under-developed Countries", Annex II.

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remittance out of the Sudan) and generally promise non-discriminatory treatment to foreign investors with regard to available concessions and facilities (see e.g. the Law Concerning the Encouragement and Protection of Foreign Capital Investments of Iran and the Law for Encouragement of Foreign Capital Investment of Jordan).1/

176. Such provisions may also be included in individual concession agreements between a Government and a foreign investor, especially where the investment is sizeable (see e.g. the 1951 agreement between India and the Standard-Vacuum Oil Company for the construction of an oil refinery, under which the Government guaranteed the company against expropriation for at least twenty-five years, and promised "reasonable compensation" in case of a subsequent taking).

177. Policy statements including such assurances have also increasingly come into use as a means of publicly defining the Government's attitude and intentions vis-à-vis foreign investments. A recent example is the statement of the Indian Minister of Finance before Parliament in November 1959 upon the conclusion of an extended journey to capital-supplying countries for the purpose of promoting interest in investment possibilities in India. In this statement the Minister said:

> "that he had made it clear to foreign private investors that India did not believe in nationalisation as a creed, and had, therefore, no programme of nationalisation as such.
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> "This did not mean, however, that particular industries would not be nationalised if public interest demanded it. In such an event, compensation would be paid. There was no scope for apprehension on the part of foreign investors in regard to the security of their investment in India." 2/

178. Where such statements are issued by representatives of stable governments, and are presented under circumstances which mark them as considered formulations of official policy, their effectiveness may be considerable. Yet there are certain

1/ For a fuller discussion of these provisions see: The Status of Permanent Sovereignty over Natural Wealth and Resources (Document A/AC.97/5, Chapter 1, paragraphs 120-224).

2/ Reported in The Times of India, 20 November 1959.

limitations inherent in the fact that such assurances or legislative guarantees are in the nature of unilateral acts. Even while they remain unchanged, and specifically where they are incorporated in a contract between the Government and the investor, their value depends normally on their enforceability in the domestic courts of the country and on the interpretation which these courts will give to the wording of the statutory or contractual provisions. It has also been pointed out that many foreign firms will hesitate to push their objections to measures short of expropriation to the point of litigating against a Government whose continued goodwill may constitute an essential condition for their further successful operation in the country. Thus, the value of such assurances and guarantees may ultimately depend less on their wording and legal form than on the investor's confidence in the long-range attitude of the Government and of the executive and judicial services.

Guarantees by the Capital-Supplying Countries

179. For these reasons investors have been seeking protection for their investments through guarantee insurance issued by their own Governments. Such guarantee insurance has the advantage of placing the investor vis-à-vis an agency with which he is familiar and which he may expect to share his basic concepts, if not necessarily his point of view, in cases of dispute. To the extent of such insurance the safety of the invested capital (if not of the operation itself) becomes independent of the action of the country of investment.

180. Such guarantee insurance against certain defined non-business risks is currently available for investors from the United States (since 1948),[1] Japan (since 1956)[2] and the Federal Republic of Germany (since 1959).[3]

1/ Mutual Security Act of 1954, Section 413 (b) (Public Law 665, 82nd Congress), as amended.

2/ Export Insurance Law (Law No. 67 of 31 March 1950), extended to the insurance of foreign investment capital as of April 1956, and to that of foreign investment profits as of May 1957.

3/ Budget Law of 1959, Art. 18, paragraph 1 (Law of 6 July 1959, Official Gazette Part II, p. 793).

181. Fundamentally, these schemes are similar. They limit the guarantee to investment projects which have been approved by the insuring Government as serving important economic policy aims.[1] In addition the United States scheme requires that the project must be approved by the Government of the receiving country as well. The German and - since 1959 - the United States schemes are expressly limited to investments in under-developed countries. All three countries offer insurance against the risks of expropriation, non-convertibility (only for profits, in the case of Japan) and war. Government measures tantamount to expropriation may also be covered under certain conditions. The Japanese and German schemes also extend to loss by insurrection. As a rule the guarantee will not come into play, unless continued normal operation of the enterprise has become impossible. While the United States insurance covers the total loss, the other two schemes require the investor to carry part of the risk (20 or 25 per cent) himself. Insurance premiums do not vary with the type of investment or the country of investment.

182. The United States and German insurance is basically available only for investments in countries which have signed a supporting agreement. In the United States type of agreement the insuring Government undertakes to limit its guarantee to projects approved by the co-contracting Government, while the latter agrees to the subrogation of the United States Government to the claims of any investor which it may have satisfied under the guarantee. While there are no substantive assurances against the occurrence of the risks covered (except for a prohibition against discrimination in the matter of compensation for war losses), the agreements provide for the settlement, through arbitration, of claims to which the United States Government has been subrogated.

183. The Law authorizing the German insurance scheme requires that the country of investment offer adequate protection for foreign investments. While under the terms of the Law, such protection may be assured through the general legal system of the country or through special provisions, e.g. in a concession agreement with the investor, the normal method is expected to be the conclusion of a Treaty

1/ Specifically the investment must serve the purposes of the Mutual Security Act (United States), contribute materially to strengthening the balance of payments (Japan), serve the promotion of economic relations with under-developed countries (Federal Republic of Germany).

for the Promotion and Protection of Investments. Such treaties, to judge by the one already signed with Pakistan on 25 November 1959,[1] seek to protect foreign investments (including those made since 1 September 1954), through assurances of "sympathetic consideration to requests for the grant of necessary permissions," non-discriminatory treatment, adequate and promptly transferable compensation in the case of expropriation (which in turn is permitted only "for public benefit") and exchange facilities for the repatriation of capital and profits. The interests of the capital-receiving country are to be served by a provision that the Parties shall further the exchange of scientific and technical knowledge and the development of training facilities. As in the United States treaties, a Government which has made good an investor's loss under its guarantee will be subrogated to his claims against the other Government; resulting disputes which the Governments cannot settle by negotiation shall be resolved by the International Court of Justice or by arbitration.

184. While there is as yet no experience under the German scheme, the figures available for Japan and the United States show that foreign investors from these countries had made only limited use of this facility. Thus, by 31 March 1959 insurance for foreign investment capital had been issued in Japan for only sixteen cases, covering an aggregate amount of slightly under Yen 1.5 billion, or 3 per cent of total foreign investments.[2] The United States had concluded agreements for the extension of guarantee insurance with twenty-five under-developed non-European countries up to June 1959;[3] insurance had been issued for investments in only twelve of these, though pending applications covered projects in twenty-four. The fact value of convertibility and expropriation guarantees

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1/ It is understood that negotiations for the conclusion of similar treaties are currently under way with a number of other capital-receiving countries.

2/ See: "Present Status of Economic Co-operation and Problems Thereof", Japanese Ministry of International Trade and Industry, 1959, p. 71.

3/ Afghanistan, Bolivia, China, Colombia, Costa Rica, Cuba, Ecuador, Ghana, Guatemala, Haiti, Honduras, India, Iran, Israel, Jordan, Malaya (Federation of), Nicaragua, Pakistan, Paraguay, Peru, Philippines, Sudan, Thailand, Tunisia and Viet-Nam. Prior to the limitation of the programme to under-developed countries such agreements had in addition been in force with seventeen developed countries.

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issued for investments in these countries (no insurance against war risks had as yet been taken out) totalled $167.4 million. No claim of loss had yet been filed under any of these insurance contracts.

185. While, thus, the coverage remained quite small compared to the total outflow of direct investments, the programme has recently gained considerable momentum in the United States: during 1958 more insurance was written (including investments in the developed countries) than in the first nine years of its operation together.[1] In addition, for the first time, guarantees were issued for very sizeable investments in under-developed countries, one of them in the extractive field for a bauxite development project in Guinea covering $72 million. The recent introduction of this scheme in the Federal Republic of Germany serves further to underline its growing importance. Yet, among the investors interviewed, support, though considerable, was not unanimous. A minority felt that the burden of protecting foreign investments should be borne by the capital-receiving country and not be shifted to the taxpayers of the guaranteeing capital-supplying countries. Many also anticipated that only few countries would have the resources or the impulsion to further foreign investments through such an outright guaranty insurance.

186. This concern has given rise to proposals for the establishment of international guarantee funds jointly by capital-supplying and capital-receiving countries: One such scheme on a regional basis has been under study by the Council of Europe and may be considered by a Conference of European and African Governments whose convocation the Council's General Assembly has recommended to its Committee of Ministers.[2] A broader proposal for the establishment of an International Guarantee Fund for private foreign investments, under the auspices of the United Nations, was put forward by the Inter-Parliamentary Union at its 1958 Meeting in Rio de Janeiro.

1/ See "The United States Investment Guaranty Program and Private Foreign Investment" by Mr. Neumann Whitman, International Finance Section, Department of Economics and Sociology, Princeton University 1959, pp. 46 ff.

2/ Recommendation 223 on the Development of Africa of 18 January 1960.

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The Bilateral Approach

187. The international agreements underlying the United States and the German Guarantee Insurance schemes provide for the impartial settlement by the International Court of Justice or by arbitration of all claims which may arise from the occurrence of the covered risks. They thereby demonstrate the determination of the contracting parties to protect the investor against these risks, even though the United States agreements do not contain express assurances to this effect. These agreements thus serve not only to reduce the risks of the guaranteeing Governments, but by the same token they provide added encouragement to the foreign investor who is necessarily more interested in the safety of his investments than in compensation for its loss.

188. This latter purpose is also served by the inclusion of provisions for the protection of foreign investment in the treaties of Friendship and Commerce which the United States has concluded since the war, independently of its guaranty insurance scheme, with a number of under-developed countries.[1] These bilateral treaties - in the words of the United States Government - contain assurances against "rigid exchange controls, inequitable tax statutes, drastic expropriation laws and any other laws or juridical conditions that do not afford investors a proper measure of security against risks over and above those to which venture capital is normally subject".[2]

189. In recent years other countries have also entered into bilateral agreements which include substantial provision for the protection of private foreign investment. The first such agreement concluded by the United Kingdom, with Iran, was signed on 11 March 1959. It contains, inter alia, the following significant provisions:

Article 8-2

"2. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain

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1/ China, Ethiopia, Iran, Israel, Republic of Korea, Nicaragua; Pakistan (awaiting ratification).

2/ Reply of United States Government to United Nations questionnaire of 1954/55 on full employment and balance of payments. (See also document E/3021, p. 40).

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from applying unreasonable or discriminatory measures that would impair their rights and interests; and shall ensure that their contractual rights are afforded effective means of enforcement in conformity with the applicable laws."

Article 15

"The nationals and companies of one High Contracting Party shall receive equitable treatment in any territory of the other in respect of any measure of requisition, civil or military, or of disposal, limitation, restriction or expropriation affecting their property, rights and interests, or affecting the property, rights and interests of any company of the other High Contracting Party in which they own interests, and shall receive prompt, adequate and effective compensation for any such measure. ..."

190. The Federal Republic of Germany concluded a similar agreement with the Dominican Republic in 1957. It is understood that negotiations on the part of these three capital-supplying countries are under way for the conclusion of further agreements of this kind which will extend the coverage of these investment protection provisions to other under-developed countries. Yet it is not likely that this technique could offer a comprehensive solution to the problem: the expansion of such a bilateral network is not only a necessarily slow process, but is bound to remain highly selective in its geographic scope, especially since some capital-supplying countries are likely to be in a better position for securing such treaty protection for their investors than others.

The Multilateral Approach - Investment Charters

191. For this reason, the idea of a multilateral investment charter has been put forward as a more effective means of securing the rights of foreign investors. The implementation of this idea has taken various forms: One approach has been to combine assurances to foreign investors regarding the safety of their assets and the exercise of their rights, with an affirmation of the right of capital-receiving countries to adopt safeguards against outside interference and to control the admission and operations of foreign investors. Provisions and recommendations to this effect were included in the draft charter for an International Trade Organization, the so-called Havana Charter, and in the Economic

Agreement of Bogotá adopted at the Ninth International Conference of American States, both in 1948. The Havana Charter called specifically for the preparation of "a general agreement or statement of principles, regarding the conduct, practices and treatment of foreign investment" (Art. 11.2 (c)).[1]

192. Neither of these instruments went into effect, nor was any action taken on the proposals for the study and preparation of an independent investment charter. Recently, however, the idea was taken up by the Prime Minister of the Federation of Malaya in his opening address to the fourteenth meeting of the Economic Commission for Asia and the Far East in 1958, where he said:

> "It would be a powerful incentive to the investment of private capital in Asia, if the countries of the region were to come together under the auspices of the United Nations Organization and draw up, in consultation with representatives of potential lender countries, an international charter to regulate the treatment of that capital. The charter would have the object of safeguarding the legitimate rights and interests of foreign lenders; it might also indicate the part which the latter would be expected to play in promoting the development of both human and natural resources in the receiving country; and it would allay any fears that private foreign investment might interfere with that country's sovereignty and national interests." [2]

193. Another proposal for regional action, in Africa, is currently under consideration in the Council of Europe which contemplates the convocation of a Conference of interested European and African Governments for the purpose *inter alia* of investigating - in addition to the above-mentioned Guarantee Fund

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1/ This mandate echoed a recommendation included in the final League of Nations report on "Conditions of Private Foreign Investment" (Publication No. II Economic and Financial 1946.II.A.1, paras. 8-10). Similarly the instructions to the Sub-Commission on Economic Development of the United Nations Economic and Employment Commission called *inter alia* for "a study ... regarding the need for an international code relating to foreign investments which will cover among other things, the protection of economic and social interests of the countries in which investments are to be made, as well as the protection of both public and private investors ..." (Report of the First Session of the Economic and Employment Commission to the Economic and Social Council; Official Records Supplement No. 4, Second Year: Fourth Session, 1947, Part V.B.3).

2/ Reported in: Economic Commission for Asia and the Far East, *Annual Report*, 1957/58 (document E/3102, p. 25, paragraph 216).

scheme - the possibility of agreeing on an Investment Statute that would govern the rights and duties both of foreign investors and of the Governments involved.[1] A study group of the Council of Europe has been engaged for some time in preparing possible specifications for the Investment Statute and the Guarantee Fund which could be submitted to the Conference.

194. A different type of investment charter was put forward by the International Chamber of Commerce in 1949 and has been the object of considerable interest ever since. This Draft International Code of Fair Treatment for Foreign Investments[2] is limited to provisions for the protection of foreign investors, chiefly against the risks of discrimination, nationalization and currency restrictions, and leaves the definition of the corresponding obligations to be imposed on them in the capital-receiving countries to the national legislation of these countries.

195. Two years ago, two other draft investment charters, which were also limited to the protection of foreign investors, were introduced before the Organization for European Economic Co-operation (OEEC) by the Governments of Switzerland and of the Federal Republic of Germany. The Swiss draft is mainly addressed to technical aspects of such problems as currency restrictions, double taxation, compensation in case of nationalization and the right of establishment. The German draft was originally quite comprehensive, limiting rigorously the right of governments not only over the property of foreign investors but also over their admission and operations. In addition, it contained two significant provisions - one making the Charter enforceable against non-signatory countries, the other providing for the imposition of collective economic sanctions against violators by a special international court to be created under the Charter. These two provisions were subsequently eliminated and the draft considerably revised in consultation with a group of prominent Continental and British international

1/ See Recommendation 223 of the General Assembly, to the Committee of Ministers, on the Development of Africa, of 18 January 1960.

2/ The text of this Code was reproduced in the United Nations experts' report on "Method of Financing Economic Development in Under-Developed Countries" (Sales No. 1949.II.B.4, pp. 148, 155 ff.).

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lawyers and businessmen. The present draft is limited to the formulation of a few general rules which are considered basic to the protection of foreign investors: these rules are that Governments should observe their undertakings, that they should not practise discrimination and that there should be prompt and effective compensation for any direct or indirect deprivation of property. The draft Charter provides for the non-recognition of the legal effects of measures conflicting with its principles and strictly limits the extent and duration of any exceptions which may be permissible in time of war or other major emergency. In view of the intentionally limited scope of its substantive provisions, particular importance in this draft Charter attaches to its provisions for the settlement of disputes: while, as a last resort, these are to be submitted to the International Court of Justice, parties may agree to arbitration, and the Charter makes detailed provision for such arbitration in a Special Annex. Moreover, Governments may agree to extend the recourse to arbitration to the aggrieved private parties themselves.

196. The Investment Charter idea has thus demonstrated a remarkable vitality over the years.[1] Yet not only have none of the drafts been enacted so far, but the consultations carried out under resolution 1318 (XIII) with qualified representatives of foreign investment circles have shown that they realize the practical obstacles to the adoption of such charters. Some, however, especially among those in the natural resources field and those from countries which have no established tradition and position in private foreign investments, attach considerable importance to the promotion of an international investment charter. Others who are in agreement with the principle hold little hope that it can be translated into an international instrument. This scepticism derives not so much from the range and impact of the particular provisions contained in one or the other of the proposed drafts, but rather from the fact that in a field in which the rules of international law are still in dispute between groups of countries,

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1/ Support for investment charters, though of widely varying scope and principles, has also been registered by the 47th Inter-Parliamentary Conference in Rio de Janeiro in 1958, the British Parliamentary Group for World Government in 1959, the International Bar Association meeting in Cologne in 1958, and the European League for Economic Co-operation, also in 1958. In addition, an International Association for the Promotion and Protection of Private Foreign Investments was established in Geneva in 1959 by a group of bankers, businessmen and international lawyers for the purpose of bringing together the various independent studies and proposals for an investment charter.

no substantial codification of these rules could be made which would be acceptable to a representative number of capital-supplying and capital-receiving countries.

197. The variations in the rules recognized by different countries is exemplified by the constitutional and legislative provisions governing the nationalization of private property and the determination and payment of compensation therefor, which are to be found in the Preliminary Study on the Status of Permanent Sovereignty over Natural Wealth and Resources.[1/] To cite just a few examples of the diversity of provisions to be found, expropriation may be constitutionally permitted for "reasons of public utility", "for the exploitation of national resources", for "purposes of land reform", to "promote the fair distribution of property" and "when property does not serve a useful purpose".[2/] Correspondingly compensation may be determinable by law, by the courts or by a special commission; it may be based on fair market value, on original cost, on recorded tax valuation, or on the "just consideration of the interests of the general public and the participants";[3/] its payment may be "in cash" or in securities, and it may be due in advance of the taking or over an extended period of time (e.g. twenty years) thereafter.[4/]

198. Those who oppose the negotiation of an investment charter at this time feel that the disagreement on the applicable rules of international law which would become apparent, especially if the charter were to contain more meaningful provisions than a mere declaration of general principles, would serve to disturb the international investment climate rather than to stabilize it. This must be expected, especially because many governments which are quite ready in fact to protect the rights of foreign investors within their territories, may be reluctant for constitutional or other reasons to subscribe to strict rules or to an undertaking to settle their disputes directly with the investor's government. While the inclusion of guarantees for the rights of capital-receiving countries

1/ Document A/AC.97/5, Chapter I.D.: Measures of Expropriation and other Forms of Taking, paragraphs 120-224.

2/ Ibid., paragraphs 129-135.

3/ Ibid., paragraphs 148-153.

4/ Ibid., paragraphs 148-153, 195-205.

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might be viewed as making such investment charters more acceptable to the latter, the formulation of such guarantees might further extend the area of disagreement.[1/]

199. As one way of averting this difficulty it has been suggested than an investment charter might initially be concluded among a smaller number of like-minded developed countries, in the expectation that their joint sponsorship of the rules embodied in it would lead other countries to adhere to them in order to benefit from the encouragement to private investors which is expected to result. While this may indeed facilitate the adoption of the charters currently under consideration by the Organization for European Economic Co-operation; it would remain to be seen whether capital-receiving countries would in the end be more ready to adhere to an instrument in whose formulation they had not participated than is generally expected to be the case with a text submitted to a world-wide or regional conference in the first place.

Settlement of Disputes - Arbitration

200. Yet, there remains the very real problem of the insecurity of foreign investments, whether as an actual danger or as a subjective deterrent in the estimation of the investor. Here, it is widely felt that what is lacking is not so much a definition of his rights, as an effective forum in which to enforce them. This lack springs chiefly from the reservations which the investor might feel toward reliance either on foreign courts and agencies with which he is not familiar, or on the support of his own government, which in practice he may have

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1/ A different proposal for offering to capital-receiving countries a quid pro quo for their adherence to an investment charter has been put forward by the British lawyer Lord Shawcross, one of the most prominent proponents of the investment charter idea. He has suggested that capital-supplying countries "give some assurances that the economic interests of the borrowing States will be recognized", including consideration of higher equilibrium prices for their primary export commodities, assurances of fair tariff treatment for these commodities and matching tax privileges in capital-supplying countries for special tax concessions received by their investors in under-developed countries. (See para. 133 above.) ("The Promotion of International Investment", Paper submitted by Lord Shawcross to Société Royale d'Economie Politique de Belgique, Brussels, 14 December 1959).

difficulty in securing and which, in many countries of investment especially in Latin America, he is under an express prohibition to enlist.[1/]

201. This dilemma has led to the suggestion that alternative recourse be provided for such disputes before an international arbitral body. Arbitration has increasingly become a favoured method for resolving disputes arising in business relations. Such recourse has been extended to the relations between private enterprises and state trading agencies. The Economic and Social Council in its resolution 708 (XXVII) of 17 April 1959 recommended increased resort to arbitration for private law disputes.[2/] In fact, in a number of countries governments have accepted, either in individual concession agreements or in general investment laws, that disputes with foreign investors be decided by arbitral bodies.[3/] Even then the promise to arbitrate may be felt to afford insufficient assurance, since unwillingness of the government to proceed to arbitration in a given case may leave the investor without effective redress. A few laws and concessions, especially in the petroleum field, have, therefore, sought to make the arbitration clause substantially self-executing by conferring

1/ This prohibition generally takes the form of the Calvo-Clause, under which foreign enterprises must submit to local laws and tribunals and renounce all claims to the diplomatic protection of their home government. (See "Status of Permanent Sovereignty over Natural Wealth and Resources", Document A/AC.97/5, Chapter I, paragraphs 56-61, 154).

2/ This subject has received considerable attention in the United Nations which culminated in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The Regional Economic Commissions for Europe and for Asia and the Far East also are active in this field.

3/ Thus, e.g. the Law on Investment and Protection of Foreign Capital in Greece provides for the settlement of disputes, arising under the terms of the instrument of approval (issued for each investment), by arbitration and expressly permits the appointment of a foreign umpire; arbitration, at least for disputes over compensation in case of nationalization, is also provided in the Law Encouraging the Investment of Private Foreign Capital in Afghanistan.

upon an independent neutral authority the power to appoint arbitrators and umpires in case of need.[1/]

202. As a more general solution to the problem, it has been proposed to include the arbitral agreement in an international treaty so as to transform the government's promise into a clearly enforceable obligation of international law.[2/] Foremost among the proposals along these lines are precisely the above-mentioned investment charters which provide for the settlement of disputes, arising under their terms, exclusively or alternatively by arbitration.[3/]

1/ Thus the Libyan Petroleum Law confers this power upon the President of the International Court of Justice. The Bolivian Petroleum Code makes such provision only for disputes on technical and accounting matters, in which case the Chairman of the Petroleum Section of the American Institute of Mining, Metallurgical and Petroleum Engineers is to make the appointment. The concession agreements between the National Iranian Oil Company and the so-called International Consortium, between Iraq and the Iraq Petroleum Company, between Saudi Arabia and the Japan Petroleum Company and between Kuwait and the Arabian Oil Company, also assign the appointing power to the President of the International Court of Justice. The Iranian concession in addition lists the Presidents of the Swiss Federal Tribunal and of the Supreme Courts of Denmark, Sweden and Brazil as alternative appointing agencies; in disputes on technical or accounting questions, however, the Heads of the appropriate technical institutes in Zurich are to have the appointing power. The concession agreement between the National Iranian Oil Corporation and AGIP Mineraria (Italy) also assigns the role of appointing authority to different agencies for different types of disputes, among them the Managing Director of the International Monetary Fund for disputes involving currency and exchange matters.

2/ See e.g. the United States and German agreements in support of their guarantee insurance schemes.

3/ The draft Charter submitted by the Swiss Government to the Organization for European Economic Co-operation contemplates the establishment of a special Arbitral Tribunal, as does the draft Code of the International Chamber of Commerce. The revised Charter sponsored by the Government of the Federal Republic of Germany contains a special Annex on the Arbitral Tribunal, which confers the power of appointment upon the President of the International Court of Justice or the Secretary-General of the United Nations.

203. In view of the doubts regarding the practicality of these charters, an alternative would be to limit the international agreement to the acceptance of international arbitration as a means for resolving disputes between foreign investors and governments of investment countries. Many among the persons consulted who were in favour of an investment charter expressed interest in an independent arbitration agreement, at least as an intermediary solution. In fact the latter might provide broader protection than the investment charters: while the protection of an investment charter would normally be limited to the specific rules of conduct which the parties had agreed to include in it, an international arbitration agreement might conceivably be made to cover all disputes arising in connexion with the treatment and operations of foreign investors.

204. The fact that the rules and principles which would guide the arbitrators would not be specifically set out in the underlying arbitration agreements should not militate against their acceptance: thus the above-mentioned Exchanges of Notes, signed by the United States Government in support of its guarantee insurance scheme, provide for arbitration of disputes arising from the nationalization of foreign investments or the imposition of currency restrictions without formulating the governing rules of law.

205. The issue, whether the investor himself would be accepted as a proper party or would have to be represented by his government, will pose a separate problem. While the investor's access to his government's sponsorship should be easier, where it is expressly contemplated under an international treaty, the ability to sue in his own name and on his own authority would greatly enhance the value of the agreement to him. Moreover, governments of capital-receiving countries which are apprehensive of the intervention of foreign governments in their disputes with foreign investors might well prefer arbitration agreements under which the latter remain the active party in interest throughout the proceedings. In fact this possibility is contemplated by the above-mentioned draft investment charter presented by the Federal Republic of Germany to the Organization for European Economic Co-operation and - though in a limited case only - under the International Chamber of Commerce draft code, and of course under those investment laws and concession agreements which provide for arbitration.

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206. Where a government has different policies vis-à-vis investments from different capital-supplying countries, bilateral instruments might offer a more acceptable solution than multilateral agreements. Indeed the latter may conceivably develop from the emergence of a growing network of bilateral agreements or within the framework of a regional organization. Such agreements might vary widely in their scope: they could be made applicable either to all investment moving between the two countries, or to those investments only which had been approved by both governments for the pruposes of this protection (as in the case of the United States investment guarantee agreements). As an important initial step, the agreement might be limited to providing the procedure for the appointment and conduct of arbitrators in the case of those disputes which the governments (or one government and the aggrieved investor) would agree to arbitrate, as they arose. Guidance may here be sought from existing arbitration provisions, e.g. in some of the above-mentioned laws and concession agreements, as well as in the instruments signed between international financial institutions (e.g. the International Bank for Reconstruction and Development)[1] and governments.

207. Much emphasis was placed by many of the persons interviewed by the Secretariat on the establishment of a suitable arbitration agency or centre as a condition precedent for the acceptability of arbitration to governments and investors. There are at present many highly reputable national and international arbitral bodies in existence in the private law field. Foremost among the latter is the Court of Arbitration of the International Chamber of Commerce, the American Arbitration Association and the Inter-American Commercial Arbitration Commission. While these have been used in commercial disputes between government bodies and private parties, a separate arbitral body not identified with a

1/ The Bank's Loan Regulations which have been incorporated by reference in its Loan Agreements make detailed arrangements for arbitration including a provision for the appointment of the Umpire, in case of need, by the President of the International Court of Justice or the Secretary-General of the United Nations.

commercial approach might be more readily acceptable to the governments of some capital-receiving countries in matters involving the rights and assets of foreign investors. This view would tend to favour a special arbitration tribunal or panel, of outstanding neutrality and expertise, perhaps under the United Nations auspices, with members drawn from both capital-supplying and capital-receiving countries possibly on a regional basis. While the structure and operation of such an arbitration agency would raise a series of questions (relating e.g. to the identity of the appointing bodies, the terms and qualifications of the arbitrators, the organization of a permanent centre, its possible relationship with existing arbitral bodies), these questions do not appear to be in the nature of intractable difficulties.

208. Once such an arbitration agency was established, its very availability might encourage governments to commit themselves to arbitration (even in the absence of an inter-governmental agreement) either as a special concession to favoured investments, or merely as a last recourse in specific disputes, as they arose. If such an agency were able to achieve a wide practice and prestige, it might in time become the natural fulcrum for the conclusion of bilateral, and possibly multilateral, agreements between governments on foreign private investments.

ANNEX I

General Assembly resolution 1318 (XIII). Promotion of the international flow of private capital

The General Assembly,

Reaffirming the need for a higher level of capital formation for the economic and social progress of the under-developed countries,

Taking note of the expanding bilateral and multilateral arrangements in the field of capital investment, particularly the establishment of the International Finance Corporation and the prospective increase in the resources of the International Bank for Reconstruction and Development,

Confident that such arrangements contribute to a general improvement in the conditions necessary for an expanding flow of private capital for investment beneficial to under-developed countries,

Taking into account its resolution 824 (IX) of 11 December 1954 on the international flow of private capital for the economic development of under-developed countries, and section B of Economic and Social resolution 368 (XIII) of 22 August 1951 concerning the objective of achieving an expansion and steadier flow of private foreign capital,

Welcoming the fact that a growing number of countries have become increasingly conscious of the need to improve the international climate in relation to both existing and prospective private investment,

Stressing the need for increased knowledge and better understanding of the conditions of and opportunities for international investment,

1. Requests the Secretary-General to consult as appropriate and obtain the views of qualified persons, drawn from both capital-exporting and capital-importing countries, regarding:

(a) The fields of activity in which foreign private investment is needed and sought by under-developed countries and the volume and forms in which such investment would be acceptable;

(b) The types of projects - including, where possible, specific examples - which private foreign investors may be interested in financing or undertaking in under-developed countries in suitable circumstances;

2. Further requests the Secretary-General, drawing on the views of the qualified persons concerned and taking into account other available information, to prepare a report concerning measures in operation or contemplated, both in capital-exporting and capital-importing countries, for the channelling of an increasing flow of private capital investment into the development of under-developed countries under mutually satisfactory arrangements;

3. Invites the Secretary-General to submit his report to the Economic and Social Council at its twenty-ninth session for transmission, with the Council's recommendations, to the General Assembly for consideration at its fifteenth session.

788th plenary meeting,
12 December 1958.

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ANNEX II

Selected list of laws and official texts concerning foreign private investments in under-developed countries *

AFGHANISTAN

Law of 13 May 1959 for the encouragement of investment of private capital in Afghanistan.

ARGENTINA

Law No. 14780 of 22 December 1958 on the regulations for the investment of foreign capital (Boletín Oficial, 30 December 1958).

Law No. 14781 of December 1958, on industrial development.

Law No. 13273 of 30 September 1948 (forestry legislation).

Resolution No. 1018/59, Ministry of Finance, on deductions provided in the general income tax law.

Law No. 14222 of 26 August 1953 on the entry of foreign capital for investment in industry and mining (Boletín Oficial of 28 August 1953).

Decree Law No. 14630/44 of 5 June 1944 on development and defence of national industry (Boletín Oficial of 10 June 1944).

BOLIVIA

Law of 17 October 1945 on the regime of foreign investment as amended on 19 August 1954 by Decreto Supremo No. 3812, and re-amended on 15 December 1956 by Decreto Supremo No. 4538.

Law of 21 December 1948 on industrial promotion.

BRAZIL

Law No. 1807 of 7 January 1953, on exchange control.

Instruction No. 133 of the exchange authorities of 17 January 1955, relating to imports of capital goods financed by foreign capital.

Decree No. 41019 of 26 February 1957, on electric utility companies, issued as regulations under the Water Code of 1934.

Decree No. 42820 of 16 December 1957 containing regulations to the laws on exchange operations.

Law No. 1942 of 12 August 1953, authorizing the executive to grant public facilities for the establishment of cement factories in the country.

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* This list is based on information available to the Secretariat at the present time. It is a revised and expanded issue of the list contained in The International Flow of Private Capital 1956-1958 (U.N. Sales No. 59.II.D.2).

BRUNEI	Oil mining enactment of 1955.
BURMA	Union Mineral Resources (Grant of Right of Exploitation) Act of 1949.
	Transfer of Immovable Property (Restriction) Act of 1947.
	Investment policy statement of 8 June 1955.
	Income Tax (Second Amendment) Act of 1954.
CAMBODIA	Law No. 221-NS of 13 September 1957 on the treatment of foreign capital invested in Cambodia after 31 May 1956.
CEYLON	"Government policy in respect of private foreign investment in Ceylon", Government Publications Bureau, Colombo, July 1955.
	1958 Statement on government policy towards foreign private investment in Ceylon (Press communique No. 41/58).
	Income Tax (Amendment) Act No. 3 of 1956.
CHILE	Decree-Law No. 427 of 10 November 1953, providing rules for the entry of foreign capital (Diario Oficial, 26 November 1953), revised by Decree-Law No. 437 of 2 February 1954 (Diario Oficial, 4 February 1954) and amended by Law No. 12084 of 13 August 1956 (Diario Oficial, 18 August 1956).
	Decree No. 427 of 3 May 1954 on regulations for the investment of new foreign capital in Chile (Diario Oficial, 7 July 1954).
	Decree-Law No. 439 of 4 February 1954 on exemptions for the entry and investment of foreign capital to increase immigration of agricultural settlers (Diario Oficial, 4 February 1954).
	Decree-Law No. 375 of 27 July 1953 authorizing the industry department of the Ministry of Economy and Commerce to approve the establishment of new industries subject to the conditions specified therein (Diario Oficial, 4 August 1953).
	Decree No. 194 of 20 February 1954 of the Ministry of Economy and Commerce regulating the formation, enlarging and changing the location of industries.
	Law No. 12861 (Diario Oficial, 7 February 1958) and Decree No. 10815 (Diario Oficial, 17 September 1958) on the encouragement of export industries.
	Law No. 11828 of 5 May 1955 on the mining of, and trade in, copper.

CHINA (REPUBLIC OF)	Statute for investment by foreign nationals, promulgated on 14 July 1954.
	Statute for investment by overseas Chinese, promulgated on 1 September 1954 and amended on 8 November 1955.
COLOMBIA	Law No. 8 of 18 July 1952 on the status of foreign capital (Diario Oficial, 5 August 1952) as amended by Law No. 107 of 1957.
	Decree No. 65 of 12 March 1953 on power companies.
COSTA RICA	Law No. 2426 of 9 September 1959 on industrial encouragement (La Gaceta, 9 September 1959).
	Law on international payments of 1951, amended on 4 October 1956.
CUBA	Decree-Law No. 1038 of 15 August 1953 on promotion of industries (Gaceta Oficial, 27 August 1953).
	Decree No. 212 of 4 February 1952 on cotton (Gaceta Oficial, 16 February 1952).
	Decree No. 1798 of 26 May 1948 on construction and operation of hotels (Gaceta Oficial, 29 May 1948).
CYPRUS	Law No. 25 of 7 November 1952 to control and encourage the manufacture of cement.
DOMINICAN REPUBLIC	Law No. 2236 of 11 January 1950 on industrial and agricultural concessions (Gaceta Oficial, 11 January 1950).
	Law No. 2643 of 28 December 1950, supplementary to the Law on industrial and agricultural concessions.
ECUADOR	Emergency Decree-Law No. 15 of 21 June 1957 on industrial encouragement (Registro Oficial, 27 June 1957).
EL SALVADOR	Decree-Law No. 661 of 22 May 1952, on the development of manufacturing industries (Diario Oficial, 30 May 1952), as amended by Decree-Law No. 1719 of 7 January 1955 (Diario Oficial, 17 January 1955).
	Decree No. 188 of 4 July 1949 on the development of cement industry (Diario Oficial No. 147, 5 July 1949 as amended by Decree No. 727 of 8 August 1950 (Diario Oficial No. 170, 8 August 1950).
	Decree No. 1039 of 19 May 1953 on the development of hotel industry (Ley de Fomento de la Industria Hotelera) (Diario Oficial No. 96, vol. No. 159, 29 May 1953) as amended by Decree No. 1828 of 11 May 1955 (Diario Oficial No. 91, vol. 167, 18 May 1955).

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EL SALVADOR (continued)	Decree No. 1620 of 13 October 1954 on the development of theatres and motion picture houses (<u>Diario Oficial</u> No. 197, vol. No. 165, 26 October 1954).
ETHIOPIA	Statement on policy for the encouragement of foreign capital investment in Ethiopia, issued by the Ministry of Finance in February 1950.
	Agricultural and Industrial Proclamation No. 145 of 1954, which provides tax exemption for the import of agricultural and industrial machinery and equipment.
	Government Proclamation of 30 November 1954, effective in February 1955, exempting from import duties all agricultural and industrial machines and parts therefor.
FEDERATION OF MALAYA	Government declaration to promote the establishment of secondary industries, in White Paper No. 30 of 1957.
	Ordinance No. 31 of 28 August 1958 on pioneer industries (relief from income tax).
	Ordinance No. 16 of 1959 called Customs (Dumping and Subsidies) Ordinance.
FIJI	An Ordinance of 13 May 1957 to Amend the Income Tax Ordinance.
GAMBIA	The Income Tax (Amendment) Ordinance of 1955.
GHANA	Income Tax Act No. 27 of 1943 Fourth Schedule, Pioneer Companies Relief.
	Pioneer Industries and Companies Act of December 1958.
	Income Tax Amendment Act, 1958 (Supplement to <u>Ghana Gazette</u> No. 84 of 1958).
	Mineral Oil Taxation Ordinance 1956 (Supplement to <u>Ghana Gazette</u>, 23 November 1957).
	Mineral Profits Tax Bill, 1957 (Supplement to <u>Ghana Gazette</u>, 23 November 1957).
GUATEMALA	Legislative Decree No. 1317 of 30 September 1959 on industrial development.
HAITI	Law of 8 October 1949 on encouragement of the establishment of wholly new industries (<u>Moniteur</u>, 24 October 1949).
	Law of 8 August 1955 protecting agriculture and national industry (<u>Moniteur</u>, 25 August 1955).

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INDIA	Industrial Policy Resolution of 30 April 1956.
	India Companies Act, 1956.
	Section 15 C of the Income Tax Act of 1922 (as amended).
INDONESIA	Act No. 78 of 27 October 1958 concerning foreign capital investment (Government Gazette No. 138 of 1958).
IRAN	Law of 29 November 1955, effective on 14 April 1956, concerning the encouragement and protection of foreign capital investment.
	Mining Law of 18 May 1957.
	Petroleum Law of 31 July 1957.
IRAQ	Law No. 72 of 1955 for the encouragement of industrial undertakings (Official Gazette No. 3636, 9 June 1955), amended by Law No. 51 of 18 June 1956 and Law No. 18 of 1957.
ISRAEL	Law of 29 March 1950 for the encouragement of capital investment (Sefer-Ha-Chukkim No. 41, 19th of Nisan 5710 (6 April 1950)), as amended by Law of 20 June 1955 (effective 30 June 1955) (Sefer-Ha-Chukkim No. 186 of the 10th Tammaz 5715 (30 June 1955)), and by Law of 9 June 1959.
	The Petroleum Act of 31 July 1957.
	Income Tax (Depreciation) Regulations of 1941.
JAMAICA	Law No. 13 of 21 February 1949, for the encouragement of pioneer industries, amended by law of 22 December 1955 and Law No. 42 of 17 August 1956.
	Law No. 45 of 16 August 1956 on industrial incentives.
	Law No. 49, Export Industry (Encouragement) Law, 1956.
	International Business Comapnies (Exemption from Income Tax) Law, 1956.
	Bauxite and Aluminum Industries Law of 12 June 1950.
	Law No. 4 of 17 February 1949, called the buttons manufacture encouragement law.
	The Cement Industry (Encouragement and Control) Law of 15 November 1948.

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JAMAICA (continued)	The Hotels Aid Law of 16 November 1944, as amended by Law No. 51 of 11 December 1953, Law No. 67 of 16 November 1954, Law No. 58 of 22 December 1955 and Law No. 63 of 13 December 1956.
	The Textile Industry (Encouragement) Law of 30 December 1947, as amended by Law of 15 December 1955.
JORDAN	Law No. 28 of 21 April 1955 on the encouragement of foreign capital investment (<u>Official Gazette</u> No. 1225, 1 May 1955).
	Law No. 27 of 21 April 1955 on the encouragement and guidance of industry (<u>Official Gazette</u> No. 1225, 1 May 1955).
KOREA (REPUBLIC OF)	Draft Law on the encouragement of foreign investment.
	Customs Law of 1 January 1957.
LAOS	Communication of the <u>Direction des Finances Extérieures</u>, September 1956 (provisional measures relative to foreign investment).
LEBANON	Law of 29 December 1953, promulgated on 5 February 1954, exempting new corporations from income tax.
LIBYA	Law of 30 January 1958 on the investment of foreign capital (<u>Official Gazette</u> of 26 April 1958).
	Law No. 51 of 23 September 1956 and Regulations of 7 April 1957 on the development of national industries.
	Executive Regulations of 7 April 1957 under the law on development of national industries of 1956.
	Customs Law of 1 January 1957.
MEXICO	Law of 31 December 1954 for the development of new and necessary industries (<u>Diario Oficial</u>, 4 January 1955) and Regulations thereunder of 30 November 1955 (<u>Diario Oficial</u>, 2 December 1955).
	Mining Law of 1930 (<u>Diario Oficial</u>, 7 August 1930).
	New Regulations under Article 27 of the Constitution relating to petroleum of 1941 (<u>Diario Oficial</u>, 30 December 1941).
MOROCCO	Law of 13 September 1958 instituting measures to encourage private investment, promulgated by Dahir (Royal Decree) No. 1-58-263 of 13 September 1958 (<u>Bulletin Officiel</u> of the Kingdom of Morocco No. 2395 of 19 September 1958).

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MOROCCO (continued)	Arrêté of the Vice President of the Council, Minister of National Economy and Agriculture, of 13 September 1958 fixing the composition and rules of procedure of the Investment Commission (<u>Bulletin Officiel</u> of the Kingdom of Morocco No. 2395 of 19 September 1958).
	Arrêté of the Vice President of the Council, Minister of National Economy and Agriculture, of 13 September 1958 defining the industrial sectors that may benefit from the provisions of the above law of 13 September 1958 (Dahir No. 1-58-263).
NICARAGUA	Law of 11 March 1955 on foreign capital investments in Nicaragua (<u>La Gaceta</u>, 10 March 1955).
	Legislative Decree No. 317 of 12 March 1958 on the encouragement of industrial development (<u>La Gaceta</u>, 24 April 1958).
NIGERIA	Statements of foreign investment policy of 17 September 1956.
	Aid to Pioneer Industries Ordinance, 1952 (No. 10 of 1 April 1952) (Laws of Nigeria, 1952).
PAKISTAN	Government statement of industrial policy of 2 April 1948.
	Supplementary statement of 18 November 1948.
	Government statement on foreign investment policy of 3 November 1954.
	Pakistan Mining Concession Rules of 1949.
	Pakistan Petroleum (Production) Rules of 1949.
	Income Tax Act (Section 15 B).
PANAMA	Law No. 25 of 7 February 1957 for the encouragement of production (<u>Gaceta Oficial</u> No. 13167 of 8 February 1957).
	Decree-Law No. 22 of 28 September 1950 for the encouragement of the development of natural resources and the establishment of industrial enterprises of general usefulness (<u>Gaceta Oficial</u>, 9 October 1950).
	Law No. 27 of 21 December 1950 authorizing the Executive Branch to enter into contracts (<u>Gaceta Oficial</u>, 16 January 1951).
	Legislative Decree No. 3 of 11 April 1957 amending the Fiscal Code with respect to Income Tax (<u>Gaceta Oficial</u>, 22 April 1957).

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PARAGUAY	Law No. 246 of 25 February 1955 establishing a system for the incorporation of foreign capital.
	Decree-Law No. 30 of 31 March 1952 establishing rules for the development of new industries (<u>Gaceta Oficial</u>, 31 March 1952)
PERU	Law No. 12378 of 6 July 1955 establishing rules regarding the operations of the electric power industry in the country (<u>El Peruano</u>, <u>Diario Oficial</u> No. 4303, 14 June 1955).
	Law No. 8565 of 12 August 1937 and Law No. 6604 of 5 April 1929 concerning taxes and exemptions for enterprises engaged in irrigation works.
	Decree-Law No. 11357 of 12 May 1950 containing the mining code.
	Law No. 11780 of 12 March 1952 (<u>El Peruano</u>, 14 March 1952) on petroleum.
PHILIPPINES	Republic Act No. 901 of June 1953 revising Act No. 35 authorizing the exemption of new and necessary industries from the payment of internal revenue taxes (<u>Official Gazette</u>, Vol. 49, No. 7) and Department of Finance Order No. 185 of October 1953.
PUERTO RICO	Industrial Incentive Act of 1954.
RHODESIA AND NYASALAND (FEDERATION OF)	Statement of foreign investment policy of 1956.
SARAWAK	Pioneer Industries (Encouragement) Ordinance No. 13 of 1957 (<u>Sarawak Government Gazette</u>, Extraordinary Part 1, vol. XII, No. 2).
SAUDI ARABIA	Law of April 1957 regulating the investment of foreign capital.
SUDAN	Act No. 8 of 1956 on concessions for approved enterprises (Legislative Supplement to <u>Sudan Government Gazette</u> No. 892 of 15 March 1956).
THAILAND	Industrial Promotion Act of 4 October 1954.
	Royal Decree of June 1955 determining the categories, sizes and conditions of the industrial activities to be promoted.
	Exchange Control Act of 1942.

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TRINIDAD	Aid to Pioneer Industries Ordinance (16 March 1950) (Laws of Trinidad and Tobago, 1950).
	Cement Industry (Development) Ordinance (1 December 1951) (Laws of Trinidad and Tobago, 1951-1953).
TUNISIA	Decree of 4 June 1957 on the encouragement of capital investment.
TURKEY	Law No. 6224 of 18 January 1954 on the encouragement of foreign investment (_Official Gazette_ No. 8615 of 23 January 1954).
	Ordinance No. 53 of 6 September 1956 enumerating activities forbidden to foreign nationals, enterprises and institutions.
	Law of 1915 on foreign corporations and foreign limited partnerships in which the capital is divided into shares.
	Law No. 6791 of 9 July 1956 on expropriation or confiscation guarantees.
	Law No. 6309 of 3 March 1954 on mining (_Official Gazette_ No. 8655, 11 March 1954).
	Law No. 6326 of 7 March 1954 on petroleum (_Official Gazette_ No. 8658, 16 March 1954) as amended by Law No. 6558 of 13 May 1955 (_Official Gazette_ No. 9011, 21 May 1955) and by Law No. 6987 enacted on 29 May 1957 (_Official Gazette_ No. 9626, 6 June 1957).
UAR (Egyptian region)	Law No. 156 of 1 April 1953 on the investment of foreign capital in economic development projects, amended by Law No. 475 of 2 September 1954.
	Law No. 430 of 3 September 1953 establishing tax exemptions for the strengthening and development of the national economy (_Journal Officiel_ No. 712, 3 September 1953).
	Ministerial Decree No. 6 of 25 January 1954 concerning the execution of Law No. 430 of 3 September 1953.
VENEZUELA	Legislative Decree No. 476 of 19 December 1958 on income tax (_Gaceta Oficial_, 19 December 1958).
VIET-NAM (REPUBLIC OF)	Presidential Declaration of 5 March 1957 on investment policy (_Journal Officiel_, 5 March 1957) and implementing Circular of 11 September 1957.
	Decree No. 478-KT of 16 November 1957 creating an Industrial Development Centre.

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ANNEX III

GENERAL AGREEMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME COVERING UNDER-DEVELOPED COUNTRIES AND TERRITORIES

I. Countries Members of the United Nations

with:	CANADA	CEYLON	DENMARK	FRANCE	GERMANY (FED. REPUBLIC)	INDIA	JAPAN	NETHERLANDS	NEW ZEALAND	NORWAY	PAKISTAN	SWEDEN	UNITED KINGDOM	UNITED STATES
BURMA													E	
CAMBODIA				N										
CEYLON						E						E	E	N
CHILE														N
CHINA														N
COLOMBIA														N
CUBA														N
FEDERATION OF MALAYA			E							E		E	E	
GHANA	E		E					E	E	S		E	E	N
HONDURAS														E
INDIA		E			E					N	E	E		S
INDONESIA								S						
ISRAEL													E	N
LAOS				N										
MEXICO														N
PAKISTAN					S	E	S					E		E
PERU														N
PHILIPPINES														N
SUDAN													N	
THAILAND														N
UNITED ARAB REPUBLIC					E							E		N
URUGUAY														N

E = Agreements in effect.

S = Agreements signed but not yet in effect.

N = Agreements under negotiation.

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II. Overseas Territories

(i) Income tax agreements concluded between the United Kingdom and:

Aden Colony
Antigua
Barbados
Basutoland Protectorate
Bechuanaland Protectorate
British Guiana
British Hunduras
British Solomon Islands Protectorate
Brunei
Cyprus
Dominica
Falkland Islands
Federation of Rhodesia and Nyasaland
Fiji
Gambia
Gilbert and Ellice Islands Colony
Grenada
Guernsey
Jamaica
Jersey
Kenya
Mauritius
Montserrat
Nigeria (including Cameroons under United Kingdom Trusteeship)
North Borneo
St. Christopher and Nevis
St. Lucia
St. Vincent
Sarawak
Seychelles
Sierra Leone
Singapore
Swaziland
Tanganyika
Trinidad
Uganda
Virgin Islands (British)
Zanzibar

(ii) Income tax agreements concluded among United Kingdom territories:

Gambia - Nigeria
Gambia - Sierra Leone
Jersey - Guernsey
Mauritius - Seychelles
Nigeria - Seychelles

(iii) Income tax agreements concluded by Ghana with United Kingdom territories:

Gambia
Nigeria
Sierra Leone

(iv) Income tax agreement between Canada and the United Kingdom of 5 June 1946 extended to:

Aden Colony
Antigua
Barbados
British Guiana
British Honduras
Cyprus
Dominica
Falkland Islands
Fiji
Gambia
Grenada
Jamaica
Mauritius
Montserrat
Nigeria
Nyasaland
St. Christopher and Nevis
St. Lucia
St. Vincent
Seychelles
Sierra Leone
Trinidad
Virgin Islands

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(v) Income tax agreement between New Zealand and the United Kingdom of 27 May 1947 extended to:

Aden Colony
Antigua
Cyprus
Falkland Islands
Gambia
Grenada
Jamaica
Mauritius
Montserrat
Nigeria
Nyasaland
St. Christopher and Nevis
St. Vincent
Seychelles
Sierra Leone
Trinidad
Virgin Islands

(vi) Income tax agreement between Sweden and the United Kingdom of 30 March 1949 extended to:

Aden Colony
Antigua
Barbados
British Honduras
British Solomon Islands
Cyprus
Dominica
Falkland Islands
Federation of Malaya
Fiji
Gambia
Gilbert and Ellice Islands
Jamaica
Mauritius
Montserrat
Nigeria
North Borneo
St. Christopher and Nevis
St. Lucia
St. Vincent
Seychelles
Sierra Leone
Singapore
Trinidad
Virgin Islands

(vii) Income tax agreement between Denmark and the United Kingdom of 27 March 1950 extended to:

Aden Colony
Antigua
Barbados
British Honduras
British Solomon Islands
Cyprus
Dominica
Falkland Islands
Federation of Malaya
Fiji
Gambia
Gilbert and Ellice Islands
Jamaica
Mauritius
Montserrat
Nigeria
North Borneo
St. Christopher and Nevis
St. Lucia
St. Vincent
Seychelles
Sierra Leone
Singapore
Trinidad
Virgin Islands

(viii) Income tax agreement between Norway and the United Kingdom of 2 May 1951 extended to:

Aden Colony
Antigua
Barbados
British Honduras
British Solomon Islands
Cyprus
Dominica
Falkland Islands
Federation of Malaya
Fiji
Gambia
Gilbert and Ellice Islands
Grenada
Jamaica
Mauritius
Montserrat
Nigeria
North Borneo
St. Christopher and Nevis
St. Lucia
St. Vincent
Seychelles
Sierra Leone
Singapore
Trinidad
Virgin Islands

(ix) Income tax agreement between the United States and the United Kingdom of 16 April 1945 extended to:

Aden Colony
Antigua
Barbados
British Honduras
Cyprus
Dominica
Falkland Islands
Federation of Rhodesia and Nyasaland
Gambia
Grenada
Jamaica
Montserrat
Nigeria
St. Christopher, Nevis and Anguilla
St. Lucia
St. Vincent
Seychelles
Sierra Leone
Trinidad and Tobago
Virgin Islands

(x) Income tax agreement between the United States and the Netherlands of 29 April 1948 extended to the Netherlands Antilles.

(xi) Income tax agreement between the United Kingdom and the Netherlands of 15 October 1948 extended to the Netherlands Antilles.

(xii) Income tax agreement between Belgium and Sweden of 1 April 1953 extended to the Belgian Congo and Ruanda-Urundi.

(xiii) Income tax agreement between the United States and Belgium of 28 October 1948, as modified on 9 September 1952, extended to the Belgian Congo and Ruanda-Urundi.

(xiv) Income tax agreement between the Union of South Africa and the Federation of Rhodesia and Nyasaland of 22 May 1956.

(xv) Agreements relating to taxes on income from movable capital concluded between France and French Equatorial Africa (of 14 December 1956 and 3 January 1957), French Oceania (of 28 March and 26 May 1957) and French West Africa (of 31 January and 20 March 1956).