SYMPOSIUM

Multinational Corporations and the Energy Crisis

Foreign Governmental Control of Multinational Corporations Marketing in the United States

American Tax Credits and Foreign Taxes and Royalties

Expropriation, Threats of Expropriation and Developmental Policy

EXPROPRIATION, THREATS OF EXPROPRIATION AND DEVELOPMENTAL POLICY*

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I. INTRODUCTION

The title of the presentation which I was asked to discuss twice utilizes the word "expropriation." The word is part of that semantical schematic of levels of private property deprivation, which includes intervention, nationalization, expropriation and confiscation, each with its own degree of assumption of ownership and level of compensation, and often carrying overtones of politicization. Expropriation is perhaps not the most appropriate way to identify the most "popular" contemporary transference of property ownership and control from foreign investors to either the private or public sector of the host nation. Expropriation neither encompasses all of the above-mentioned forms of property deprivation, nor, more significantly, does it relate well to the somewhat less traumatic property transferences, where host nations go through property deprivation processes which have been identified nationally, such as "Mexicanization," "Chileanization," or "Peruvianization."[1] These terms presumably bring more sympathy to the property transfer, since they are allegedly founded on a desire for increased participation by the host nation in the ownership and control of the means of production. They can, of course, fit the generally accepted definition of expropriation,[2] as in the case of the takeover of the petroleum industry by Mexico in 1938,[3] or evidence a prospective policy of regulating new investments in certain areas, such as requiring all future businesses in a particular industrial sector to be at least in a majority sense locally owned and controlled.[4]

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1. *See, e.g.*, Creel, *"Mexicanization": A Case of Creeping Expropriation*, 22 Sw. L.J. 281, 285 (1968).

2. Expropriation denotes the taking of private property without necessarily then passing to state ownership, and generally is considered to include incorporation.

3. *See, e.g.*, J. SILVA HERZOG, HISTORIA DE LA EXPROPRIACION DE LAS EMPRESAS PETROLERAS (3d ed. 1964).

4. *See* Gordon, *The Contemporary Mexican Approach to Growth with Foreign Investment: Controlled But Participatory Independence*, 10 CALIF. WEST. L. REV. 1 (1973) [hereinafter cited as *Mexican Approach*].

II. MANIFESTATION OF DISCONTENT

A. Political Motivations and Implications

The transference of ownership to host nation control has been, nearly without exception, politically, rather than economically motivated. While there are often viable economic justifications for domestic ownership of the means of production, economic issues are often poorly expressed or arise not in the context of the prior justification for property transference, but rather as a later impediment, due to the inability of a developing nation's current economic resources to meet the demanded payment for the property takeovers. The past decade and a half, commencing dramatically with the Cuban nationalizations, has encompassed a series of nationalizations in developing sectors of the world. They were implemented most often either by persons newly in control of the government or by an incumbent government wishing to sustain itself, but under pressures to take some dramatic action, usually toward foreign property, in order to frustrate a more nationalistic, ambitious, political adversary. The issue of foreign private investment has increasingly become a major element in political campaigns in developing countries. It is expected to create sympathy from masses of the population for arguments demanding change in an actual or assumed foreign domination of the nation's means of production and distribution. Increasingly, questions of foreign ownership and domination are arising even in the more developed sectors of the world, as evidenced by concern in Canada over extensive U.S. ownership of investments,[5] and in England with respect to ownership of the oil industries, particularly in light of the vast potential of England's role in North Sea oil production.[6]

There should be no expectation that the issue of ownership of the means of production and distribution will prove to be a transitory problem and, in the near future, become subordinate to other contemporary issues. The frustration generated in developing areas by the elusive multinational enterprise is likely to sustain the contemporary popularity of property takeovers, thus necessitating a closer look at the area of property deprivations in light of the Hickenlooper and Gonzalez amendments.[7] The need is obvious; there must be some recognition by the less developed nations which take over valuable foreign owned properties that hostilities will ensue with the developed nation. Further direct investments, plus the granting of credits and other developmental benefits, will diminish without some assurance of both reasonable pre-

5. Loehwing, *Chile of the North?*, BARRON'S, April 2, 1973, at 7, col. 1.

6. *Taking Over? Labor Party's Pledge to Nationalize Oil in Britain Has Some Big Concerns Nervous*, Wall St. J., March 12, 1974, at 40, col. 1.

7. Foreign Assistance Act of 1962 § 620(e), 76 Stat. 260 (1962), *as amended*, 22 U.S.C. § 2370(e)(1) (Supp. V 1964).

dictability that nationalization will not occur,[8] and if it does occur, assurance that some compensation will be paid. Assurances against nationalization cannot be particularly effective since governments often change on the basis of property ownership issues.[9] The reasonable expectation of fair compensation therefore becomes important because no new government, however hostile to previous sentiments toward foreign investment, can hope to achieve economic and social goals if it is to be isolated from the capital exporting world for failure to provide some affirmative response to the compensation issue.

B. Tactics and Strategies of Expropriation

Despite recent recognition by less developed nations of a right to payment, resolution of the compensation issue has been complicated by creation of alleged necessary deductions from the investors' assessment of the property value, or direct challenges to the method of evaluation itself used by the foreign claimant. The latter form of challenge arose both in the Guatemalan takeover of United Fruit Company properties in 1954,[10] and initially during the Cuban takeovers commencing in 1959. In both cases the host nation governments indicated that the value of real property should be that which had been stipulated in the local tax rolls by the owning company, a figure which for varying reasons was substantially lower than any reasonable market value of the property. More recently, beginning with the 1969 Peruvian expropriation of properties of the International Petroleum Corporation (IPC), and continuing during the Chilean expropriations of copper, the host country nations have formulated certain deductions which were subtracted from the values set for the foreign properties by their owners. In the case of Peru, the deduction was based on the theory that the oil in the ground had *always* belonged to Peru, and that there should be a deduction for Peruvian properties sold by the company over a long span of years.[11] The Chilean takeover of copper industries resulted in a new constitutional amendment requiring the newly nationalized companies to make an excess profits deduction on their Chilean operations.[12] The deduction in both the Chilean and Peruvian situations conveniently exceeded the claimed value of the properties, thus purportedly negating any alleged

8. *See* Gordon, *Predictability of Nationalization of Foreign Private Investment in Latin America*, 1 SYR. J. INT'L L. & COM. 123 (1973).

9. *Id.* at 142.

10. *Id.* at 133.

11. *See* Goodwin, *Letter from Peru*, NEW YORKER, May 17, 1969, at 41. The background of the controversy, as prepared by IPC, is contained in *The La Brea y Pariñas Controversy* (1969 ed.).

12. Chilean Law of July 15, 1971, concerning Natural Resources and their Nationalization, [1971] *translated in* 10 INT'L LEG. MAT. 1067 (1971).

international law requirement of compensation. Consequently, capital-exporting sectors of the world are going to face increasingly difficult issues regarding compensation if there is to be any international consistency as to the right to compensation.

The focus upon the petroleum industry in this symposium is appropriate in discussing threats of expropriation, since it is from those sectors of the world which possess critically needed products, such as petroleum, that the threats of expropriation most often arise. The crucial need for petroleum and the success of the Organization of Petroleum Exporting Countries (OPEC) has had a spillover effect to other mineral-producing nations, particularly those which produce copper and bauxite, and to such areas as lumber and basic food production, including bananas and coffee. In addition to the developing nations' identification with critically needed products, the success of expropriatory threats is directly proportional to the concentration of products in a group of nations committed to a uniform policy. There are attributes shared by the newly formed bauxite producing nations, banana producing nations and the earlier organized copper producing nations, which suggest a less successful future than the recent achievement of the OPEC nations.

C. *Defenses and Reprisals*

Counteractions in the developed world arising from these threats of product unions have taken several forms. They are evidenced in such direct forms as U.S. intervention in the Guatemalan takeovers of United Fruit in 1954, or intervention by the investor itself—when it possesses sufficient independent power in the host nation—such as has been disclosed regarding the International Telephone and Telegraph Company in Chile.[13] Less overt threats evolve from unilateral legislation such as the Hickenlooper and Gonzalez amendments, which nevertheless amount to economic retaliation, and even from political policy such as the 1972 statement of the executive branch on policy toward nationalization.[14]

Some nationalizations may be averted without this counterthreat and conflict through increased local participation by foreign investors and by affirmative, realistic policy changes to satisfy the host nations. Examples of the latter include those of the United States vis-a-vis Israel in light of Arab oil pressures, and toward Argentina and Canada regarding the sale to Cuba of automotive products and locomotives manufac-

13. SENATE FOREIGN RELATIONS COMMITTEE, SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS, 93D CONG., 1ST SESS., INTERNATIONAL TELEPHONE AND TELEGRAPH CO. AND CHILE, 1970-71 (Comm. Print 1973).

14. *U.S. Statement on Economic Assistance and Investment in Developing Nations, Jan. 19, 1972*, 8 WEEKLY COMPILATION PRES. DOCS. 64.

tured by U.S.-owned foreign corporations.[15] It is perhaps unrealistic to believe that many companies will willingly seek to initiate the reduction of their participation in a profitable venture, and yet it is difficult to condone threats of expropriation conditioned upon changes in one's foreign policy.

The threats of expropriation evolve from developmental policies of the Third World which are not necessarily policies directed to other nations, but increasingly are illustrations of frustration in dealing with the foreign owned multinational enterprises. Developmental policy, it is expected, will increasingly be identified with the frustrations evolving from the less developed nations' inability to control the international parent and, indeed, the problem of even identifying the allegiances of the multinational enterprise. As multinational enterprises continue to seek methods of reducing a legitimate link and, consequently, some level of compelled obedience to a specific nation, Third World nations concurrently lose the ability to identify an entity's operations with political aspirations of the enterprise's now uncertain home base. Much of the developing nationalism in less developed countries, which has led to property takeovers, has evolved from identifying investments with particular nations, and often, nationalizations have amounted to a retaliation against foreign owned private business for unassociated acts or political philosophies of the foreign investor's government.

III. CAUSES OF DISCONTENT

It is desirable to identify the basis for the discontent of the less developed nations toward the multinational enterprise in order to determine how it affects policy toward private investment. Certainly there is a fear based on mere size when it is realized that a number of foreign investors have annual sales larger than the gross national products of a great many developing nations.[16] But the fear is not based on size alone; it reaches rather to the market power resulting from the size of the entity, as well as evolving from an acknowledged jealousy over the greater management sophistication of the foreign investor and, most importantly, a concern, albeit often unjustified, that a nation's finances are subjected to the uncontrolled flexibility of fund movements of the multinational enterprise.

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15. *See, e.g., Locomotive Sale to Cuba Signed by Canadian Firms,* Wall St. J., March 19, 1974, at 14, col. 2; *U.S. Mulls Car Sales to Cuba,* Miami Herald, Feb. 20, 1974, at 2-A, col. 3.

16. The 167 largest U.S. corporations in 1973 had sales in excess of $1 billion, nine larger than $10 billion, with General Motors leading with sales of $35,798,289,000. FORTUNE, May, 1974, at 232.

A. Split Developing Among Less Developed Nations

While the Third World has tended to view the multinational enterprise as a threat to the collective body of developing nations, the oil crisis has evidenced the fact that the theoretical cohesiveness of the less developed world is weaker than initially believed. The developing world appears to be polarizing into at least two groups which will have to deal *both* with the multinational enterprises and with each other. I would identify these groups as the large (usually), less developed nations with vast quantities of known and producing natural resources for export, and, by contrast, the smaller, less developed nations without vast quantities of known and producing natural resources. In the former group, using Latin America as an area example, we would initially identify Venezuela because of its vast oil resources. Additionally we should include Brazil and perhaps, assuming resource production returns to more efficient levels, Peru and Chile as well. Other large nations, such as Argentina, Mexico and Columbia, probably should not be included in this category since they are not currently producing large quantities of needed natural resources for export. Perhaps we should add smaller nations to the group where they possess large quantities of resources for export, such as Jamaica with its vast quantities of bauxite, and possibly Ecuador with its comparatively newly discovered oil and gas reserves. The bargaining power of these nations is often enhanced through association with other nations producing similar products, as illustrated by OPEC.

The second category—the smaller, less developed nations without vast amounts of known and producing raw materials—includes, in Latin America, the nations of the Central American Common Market and such South American nations as Bolivia, Ecuador and Paraguay. It is this author's belief that the group of larger, less developed nations will not find their cultural identity with the smaller nations sufficiently strong so as to override nationalistic sentiments for individual nation growth. This will be explored later with particular emphasis on the current attitude of Venezuela toward supplying oil products to the Central American nations.

B. Economic Grievances

Developmental policy of both groups of Third World nations is affected by economic, political and social forces. The alleged unfair advantage of multinational enterprises with regard to wage levels, relations with suppliers and customers, and special benefits from local fiscal authorities, may vary depending on the size of the developing nation and the severity of the need for its product. Domination by large corporations in these areas should not be unexpected; within the United

States itself, the large corporations possess such advantages over the smaller businesses. The issue should rather be identification of the *unfair misuse* of potential benefits accruing from size. The ability to regulate a multinational enterprise and control the use of its economic power within the host nation will be directly dependent upon the potential *capacity* of the host nation to assume control and ownership of the business and to successfully operate it if compliance with government restrictions is unsatisfactory. The Venezuelan government does not appear at all hesitant in negotiating with the foreign oil industry for greater control, while such dominant entities as United Brands in the Central American nations retain significant powers of persuasion over national economic policy.[17] Soon after the recent formation of the Union of Banana Exporting Countries, at which time a two and one-half cent per pound export tax increase was adopted, the Standard Fruit Company in Honduras was allegedly attempting to persuade the Honduran government not to comply with the agreed-upon increase.[18] One might predict greater success than Exxon's attempted persuasion to have Venezuela roll back crude oil prices, since bananas are not a critically needed commodity.

The inability to regulate the multinational enterprise parent of a local subsidiary often results in such frustration that concepts are formulated which may have widespread disequilibrating effects. The development in Argentina of the concept of the *conjunto economico,* the economic unit, evidences this frustration in a result which effectively pierced the corporate veil of a foreign owned domestic subsidiary solely on the grounds of commercial dependence by the subsidiary on the parent.[19] I think it is reasonable to assume that we may witness more of this type of reaction as the frustration over the host countries' inability to effectively regulate the multinational enterprise continues.

Claims that multinational enterprises exhaust local resources are no less untrue than similar claims made to a host nation company similarly involved in extractive industries. Host nations would not have sought the assistance of outside investment in extractive industries had they been able to develop those industries on their own, and, consequently the issue should not be whether the host nations are being exploited, but whether or not they are obtaining the greatest share possible in the foreign extraction of their natural resources. We are likely to

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17. United Brands was formerly known as United Fruit.

18. More recently, Standard Fruit, owned by Castle & Cooke, has been exerting pressures in Costa Rica, where it offered to sell its banana facilities to that Latin American government because of the imposition of a steep export tax. Wall St. J., May 22, 1974, at 26, col. 4.

19. *See* Gordon, *Argentine Jurisprudence: The Parke Davis and Deltee Cases,* 6 LAW. AMERICAS 320 (1974) [hereinafter cited as Gordon].

see much more testing by less developed nations in an effort to determine how far the host nations may increase the local share without economic collapse. Venezuela, although interested in obtaining full ownership of the oil concessions prior to the commencement of their expiration in 1983, is appropriately concerned about the resultant effect on the nation's ability to develop the vast Orinoco area without foreign capital.

The interest of the host nation is not solely to determine how much of a monetary share it can gain from an extractive industry, but rather how far the nation is able to go in redirecting the operations of an extractive, export oriented industry, to achieve host country development goals. These goals include improving the nation's own technology and utilizing such resources as fuel for the production of other forms of industrial development. The Arab nations' interest in lowering petroleum production is both to conserve resources and to foster the development of such industries as petrochemicals.

Another concern over multinational enterprises is that they interfere with the implementation of a host nation's economic policy. This is certainly true in the sense that wherever a nation is dependent upon the export of a single or a few products for the greatest percentage of its gross national product, its economic policies will fluctuate according to the world environment within which those products move. The effect may be both from world pricing, and, of significantly more concern in terms of overt influences on the nation's economic policies, from actions of the multinational in regulating production. Such regulation is undertaken not for the benefit of the host nation, but rather for that of the shareholder of the multinational corporation, as a way of assuring the existence of reserves closer to the multinational's home base, by first exploring those at further distances.

The external economic forces of the multinational enterprise are lessening in the case of our first group of developing countries, those less developed countries with vast known and producing natural resources. While this may mean a lessening of external economic regulation by the capital exporting nations, it does not necessarily foretell a benefit to be spread ratably among all the Third World nations. The benefit is more likely one which will accrue to the first group and often at the expense of the second, the smaller less developed nations without vast known and producing natural resources. There is a very serious potential effect to these nations, evidenced by recent meetings between representatives of the Central American Common Market nations and Venezuela. The former nations were desirous of a moratorium on pricing of oil by Venezuela, but received only preferential treatment promises. The resultant cost for the higher priced crude oil from Venezuela is expected to be approximately $80 million annually for Honduras and

$250 million annually for Costa Rica. The Central American nations had been hopeful that benefits of the new power of the oil producing nations might at least partially accrue to Latin America in general, while the Venezuelan response seems to indicate quite clearly that the common Spanish heritage is not as strong as the contemporary nationalism in Venezuela.

C. *Political Interference—Overt and Subtle*

The second major area of alleged influence by the multinational enterprise involves politics. A desired effect on host country policies may be sought either directly by the enterprise, or indirectly through requested pressure by the U.S. State Department on the less developed nation. The direct effect by large foreign corporations on political processes in the Third World has some historical substantiation. Large corporations, particularly those dealing with primary agricultural products, have in the past exerted such strong forces that it was often believed that the companies were directly responsible for designating presidents. Political forces have not altogether ceased to exist, although it appears they have become more subtle, *e.g.*, the recent experience of ITT in Chile.[20] Evidence in the Congressional hearings suggests that ITT representatives in Peru encouraged the Peruvian government to pay ITT for expropriated properties so that they would then be justified in isolating the takeover of the International Petroleum Company as a separate issue, and not one which should be identified with a general governmental policy of expropriation without compensation.[21]

The ITT experience in Chile indicates that multinationals based in the United States have not had significant success recently in persuading the State Department to assume management desired attitudes toward foreign nations. Mere "presence" always has some effect and embassies will continue to play roles as persuasive forces, as will the various credit agencies and such investment supportive programs as the Overseas Private Investment Corporation. There will obviously be continued policy input to these organizations by U.S. based multinational enterprises. Some evidence of successful corporate persuasion of State Department policy is nevertheless provided by the alleged pressure of U.S. multinationals interested in the large nickel deposits discovered in Burundi in 1973, which led to requests that the U.S. executive branch change its policy toward Burundi—a change which may be indicated by the recommencement of aid flows not long after the companies' policies were made known to the State Department.[22]

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20. See note 13 *supra*.
21. See note 13 *supra*, at 14.
22. Morris, *The Triumph of Money and Power*, N.Y. Times, March 3, 1974, § 4, at 13, col. 5.

With the increasing awareness of power by the large, less developed nations, there has been not only a lessening of the effectiveness of external political forces on the nations' policies, but an increasing ability of those nations to influence the political affairs of the capital exporting world. The Arab nations have been notably successful in affecting U.S. policy towards Israel, in bringing Secretary of State Kissinger into a pro-Arab dialogue, and in partially splitting the Atlantic Alliance. Argentina, perhaps not fully qualified as a member of the first group of the less developed nations, nevertheless is an important industrial nation of Latin America. It appears to have achieved some success in convincing the United States not to carry out the sanctions of the Trading with the Enemy Act in attempting to prevent U.S. automotive manufacturers in Argentina and locomotive manufacturers in Canada from selling their goods to Cuba.[23]

The effect of such actions on the small, less developed nations without the power base obtained through the possession of natural resources may be severe. Were Ecuador to condition its sale of petroleum and gas to the United States on increased purchases of bananas, the result could be to harm one or more of the Central American nations which lacked similar bargaining capacity. We may expect to continue to witness a shifting of political forces in favor of the large, less developed nations, with more than a counter-balancing effect on the capital exporting nations, but a deleterious effect on many of the small, less developed Third World countries.

D. Deculturalization

The third category of alleged force of the multinational involves social pressures. Since the publication of J.J. Servan-Schreiber's, *The American Challenge,*[24] both developed and less developed nations of the world, which have been host to substantial American direct investment, have been concerned with a deculturalization of the host nation. It is often difficult to distinguish deculturalization from the adoption of economically efficient methods of operation. The elimination of the *siesta* by law both in Honduras and several Mexican cities may have a significant impact on the structure of the Latin American family; on the other hand it provides economies in that the time spent in commuting to work is halved and, consequently, there is a significant reduction in fuel consumption. With fewer people returning home for lunch, there may be a need for restructuring the working hours and perhaps even for the elimination of some servants, while there will be an increased demand for new

23. See note 15 *supra*.
24. Published in 1968.

luncheon service facilities within the cities. The multinational enterprises have contributed to changes in work schedules and have had an impact in the area of distribution procedures, as evidenced by the increased appearance of franchising operations in less developed areas. Deculturalization has also come from sectors other than the multinational enterprise. Nations such as Mexico have adopted academic calendars similar to those in the United States, and concern has been expressed that such children's programs as Sesame Street and Electric Company have not been adequately sensitive to local cultural patterns, but are instead teaching children foreign (United States) cultural patterns.

The effect of deculturalization on a small less developed country may be to lessen that country's capacity, if such capacity currently exists, to rely upon the common (*e.g.*, Spanish) cultural base with the larger, less developed nations, from which to argue for common solutions to a variety of economic developmental problems. Hopefully, large and small less developed nations will be able to accept economically desirable changes to traditional social structures, but eliminate those which possess insufficient benefits to offset the cultural losses.

IV. EASING OF THE DISCONTENT

A. Three Areas of Possible Control

Resolution of the frustration of both groups of less developed countries over their inability to control multinational enterprise may come about in one or more of three ways. It may come through control of multinational corporations by their home countries or by a multinational regulatory agency such as the United Nations, or it may be brought about by increased control over multinational enterprise activities within each less developed nation.

1. Home Country Control

President Echevarria of Mexico presented a "Charter of Economic Rights" at a meeting of UNCTAD in Chile in 1972,[25] the essence of which was a concentration on the first two methods of governing the multinational entity. The Charter proposed legislation within the developed nations to control their own corporations' activities and by development of an international agency. I would have to submit that neither of these alternatives is likely to be achieved in the near future. There appears to be no identifiable national policy among the developed coun-

25. *See also* President Echeverrias comments on the Charter of Economic Duties and Rights of States, in Annual Report of the President, Sept. 1972, *cited in* Vision, Dec. 16, 1972, at 22.

tries to assist developing nations by restricting the activities of their corporations abroad in the manner urged by developing nations. Latin American nations have long been requesting special preferences from the United States for Latin American exports, without much success. The suggestion of additional control over corporations presents two questions: whether there is already too great an attempt to govern extra-territorial activities of U.S. corporations through such methods as the antitrust laws and the Trading with the Enemy Act; and whether the United States could effectively control corporate conduct abroad. For the United States to dictate how a company may act in a foreign nation, may interfere with the host nation's right to govern the conduct of corporations within its area. This suggests that what the less developed nations mean when they urge the application of extra-territorial laws is the adoption by the developed nations of laws clearly not inconsistent with less developed nation policies toward the governance of foreign corporations within their borders. The legislatures of developed nations would not respond favorably to such a concept.

2. International Agency Control

The second alternative, the development of an international agency to govern multinational corporations, does not give rise to any greater hope of success. The nations of the world have evidenced an inability to effectively utilize international organizations to govern such areas as the scope of territorial seas; it is unlikely that they would agree on a foreign investment code acceptable to industrialized nations. Further, the imbalance within the United Nations in favor of many extremely small developing countries has increasingly isolated the General Assembly to a position which cannot hope to have a major part in world development. At most, an international agency might become an information gathering entity, or seek to develop such problem-solving procedures as arbitration. The experience with arbitration, however, suggests that even that area of governance of corporate operations is not well accepted. None of the Latin American nations have adopted the Convention for the Settlement of Investment Disputes,[26] and indeed the Andean Common Market group has rejected the concept of arbitration outside of the Andean nations.[27]

26. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, June 1, 1966, [1966] 17 U.S.T. 1270, T.I.A.S. No. 6090. *See* Summers, *Arbitration and Latin America*, 3 Calif. West. Int'l L.J. 1 (1972).

27. Standard Regime for Treatment of Foreign Capital and for Treatment of Marks, Patents, Licenses and Royalties, Andean Commission, Decision 24 of Dec. 31, 1970, art. 51 [hereinafter cited as Decision 24].

3. Local Control

If the first two alternatives do not succeed, it appears that the less developed nations are left to develop domestic regulatory policies to apply to the activities of multinational enterprises operating within their nations. The Argentine development of the *conjunto economico* theory evidences how extensive the frustrations within Latin America have become.[28] Regulation within Latin American nations may come through a variety of concepts implemented by legislative acts. Several have been introduced during the past few years. Nations are increasingly adopting legislation which limits the entry of new foreign investment to certain areas. Frequently, areas considered essential for national development, such as banking, insurance, transportation, etc. are limited to local government ownership, while other sectors may be privately owned but limited to local majority ownership and control, with a balance of the industrial sector open to foreign investment.[29] In some cases, however, certain preferences will be granted only when a foreign investment assumes a minority position, even where the industry is not one of those considered crucial to host country development. Other legislation, governs the continuing operation of businesses, is specially directed to the transfer of technology, and results in a greater control over such areas as royalty payments, sublicensing rights and the utilization of those rights upon the termination of the agreement.[30] Further legislation affecting current investments involves fade-out requirements, which essentially require that current foreign owned operations turn over at least a majority of their ownership and control to host nation entities within stipulated periods of time.[31] Much of the legislation looks to increased utilization of joint ventures, whereby developing countries may benefit from needed foreign technology while retaining control over the entity. Several developing areas of Latin America are examining the restrictive joint venture legislation of Eastern Europe and, indeed, are looking beyond the control of foreign investment to the social forms of property ownership prevalent in Eastern European nations.[32]

B. Strengthening the Bargaining Position

In addition to increased legislation, there will be a further strengthening of economic unions and commodity power blocks. The Central American Common Market's disastrous breakdown which partially re-

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28. *See* Gordon, *supra* note 19, at 325.
29. *See generally Mexican Approach*, *supra* note 4.
30. *Id.*
31. *Id.*
32. *See Peru Mulls Wide Social Property Reform*, Miami Herald, Sept. 19, 1973, at 8-B, col. 1.

sulted from the Honduran-Salvadorian border dispute, should have clearly evidenced to that economic union that their position vis-a-vis both larger, less developed countries, as well as the United States, is worsening in the absence of a strong Central American Common Market. The comparative position of the CACM in relation to other, less developed countries is illustrated by the fact that Mexico has to some extent replaced the United States as the "Colossus to the North" of Central America. The Andean Common Market and its restrictive Decision 24, which includes *both* joint venture legislation with fade-out provisions and repatriation limitations, is evidence of the power of a significant economic union regulating foreign investment.[33]

The current bargaining strength illustrated by the Organization of Petroleum Exporting Countries has given rise to the formation of other commodity blocks, both in the areas of raw materials and agricultural commodities. It is highly questionable, however, whether areas other than petroleum are likely to acquire such effective power through organization. The organized copper nations may have difficulty because such countries as the United States are nearly self-sufficient in copper. The bauxite producing nations have also recently formed an organization which may effectively drive aluminum companies to develop lower grade deposits in countries which react by remaining outside of the bauxite group, and thus benefit by production of their poorer quality ore. Furthermore, Australia is one of the leading bauxite producers and does not appear generally amenable to the use of power as contemplated by three other bauxite producing nations. For such minerals as tin, other substitutes such as aluminum, steel and plastics, are available for many uses. Agricultural commodities often differ from minerals in that the demand is generally elastic, due primarily to the lack of need for the commodities and the availability of substitutes. Coffee producing nations are aware that the U.S. consumer will reduce consumption or substitute other beverages if prices are increased. The newly forming organization of banana growing nations has increased the price of bananas moderately, without knowing whether the effect will be to lessen the demand for bananas and increase the use of substitutes.

Current high prices for copper and other minerals, as well as for many other agricultural commodities, are not attributable to the power of organized producing country groups, but are rather the result of inflationary phenomena involving rapidly increasing demands. But these demands may be satisfied by substitute products in the face of unreasonable price increases.

33. Decision 24, *supra* note 27, arts. 28-30, 37.

C. *Learning from Third World Brethren*

In developing attitudes toward dealing with multinational enterprises, less developed nations, particularly the smaller nations, are increasingly looking, for developmental guidance, to the more developed of their Third World brethren, rather than to the large industrialized nations of the world. Honduras, for example, has been considering the Mexican real estate trust device for dealing with the developmental problems in the Bay Islands.[34] For the development of tourist facilities in that area, Honduras has been following the evolution of Mexico's state owned resort development, Cancùn, off the Yucatan coast. The Peruvian government, seeking to satisfy a diversity of political positions, has looked to Yugoslavia for the adoption of concepts dealing with ownership of the means of production. Peru had adopted, to a limited degree, the worker's socialism concept of Yugoslavia, where certain elements of the means of production are owned neither by private investors nor the state, but by the workers involved in the industry.

I believe it reasonable to suggest that there will be an increasing tendency for nations to look to the Eastern European sphere, since development in Eastern Europe often illustrates how far Western entities are willing to accept joint ownership and control in order to gain access to new markets. While there are vast differences between the markets of Eastern Europe and those in such Third World areas as Latin America, the European patterns nevertheless illustrate that companies are often willing to live with a great deal more local participation in management and ownership than they have evidenced in their dealing with Latin American nations.

V. *CONCLUSION*

The future of the multinational enterprise in developing world sectors seems to be one of having to live with a variety of regulatory devices adopted by those nations, rather than being governed by any international code of conduct. Indeed, the multinational corporations undoubtedly prefer this view, since they are thus able to influence individual nations to adopt positions different from collective nation groups, and may benefit from playing one nation against another. The smaller of the less developed countries have the most difficult time ahead. They do not possess the power to enact and expect compliance with restrictive legislation and, unless they join with larger economically integrated groups, the developmental gap which Raoul Prebisch has said is increasing be-

34. *See* TANCER & ZANOTTI, THE MEXICAN LAW OF FOREIGN REAL ESTATE INVESTMENT IN THE PROHIBITED ZONES: AN OVERVIEW, 1971-73 (1974).

tween the industrialized nations of the world and the less developed countries, will also increase between the smaller, less developed nations and those larger, less developed nations which possess sufficient resources to allow them a power base. It may well be that the comment of Porfirio Diaz regarding the relationship of Mexico and the United States may be altered in the future to read "Pobre Centro America, Tan Lejos de Dios, y Tan Cerca de Mexico."