DIRECT INVESTMENT DISPUTES
AND
U.S. CORPORATE MULTINATIONALISM IN POST-COLONIAL AFRICA
1959 - 1979

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree of Doctor of Philosophy in the Graduate
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By

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* * * * *

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To My Parents and My Teachers
ACKNOWLEDGEMENTS

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I benefitted from the experience of the faculty. My individual course of study with Professor Michael Hogan sharpened my theoretical focus. He taught me how to find a basis for harmony in conflicts. I am also appreciative of the contributions of Professors Merton Dillon, Warren Van Tine, Bill Childs and James Upton. Each one of them "donated a style" to my training at this university.
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INTRODUCTION

This is a history of American business enterprise and public policy in post-colonial Africa. My purpose is to examine the business component in U.S.-Africa relations and the historical matrix of this relationship, with a view to locating the structure and the ideological basis of U.S. policy choices and preferences.

I have focused on the multinational corporation (MNC) because it comprised the basic medium for the conduct of business relations between Africa and the U.S. in the last two decades. The MNC is a national firm that owns and manages direct investments in two or more foreign countries. In the 1960s and 1970s, the nationalization of the private direct investments of American MNCs in developing countries gave rise to a regimen of anti-expropriation policies in the United States. Although most U.S. expropriation laws were reactions to investment disputes in Latin America, these laws were also applied to investment disputes in Africa, where they had a net negative effect on U.S. business enterprise.

American firms that invested in Africa after the demise of colonial rule mirrored the performance of the
large industrial firm in pre-capitalist environments abroad. This fact raises certain basic questions. First, to what extent was the strategy and structure of the U.S. firm compatible with the political economy of post-colonial Africa? Second, what were the causes and consequences of private direct investment disputes in U.S.-Africa relations? Third, how effective was the role of the U.S. government in the management and settlement of foreign investment disputes? Fourth, how did the disputes affect the performance of the U.S. firm in Africa?

The decolonization of Africa in the late 1950s and 1960s opened the way for the expansion of U.S. private direct investments in the continent. At the same time, however, nationalist governments in Africa initiated policies to acquire control over their industrial resources. These policies resulted in the nationalization and coerced acquisition of U.S. private investments by host governments in Africa. The investment disputes that followed were not merely disagreements over the amount of compensation due to U.S. investors. The disputes were the consequences of economic nationalism and were expressive of the dissatisfaction of the host governments with the strategy and structure of the American MNC in Africa. The disputes caused structural changes in the ownership and management of the U.S. firm in Africa.
The investment disputes prompted changes in U.S. foreign policy. The U.S. had begun a Foreign Assistance Program originally designed to promote American interests, as defined by the cold war, in the developing nations. The investment disputes, as we shall see, altered the ideological basis of business relations between the U.S. and the low-income nations. The changes occurred because of congressional reaction to the disputes. The Hickenlooper amendments of 1962 and 1963 altered the original design of the Foreign Assistance Act. The "Sabbatino" amendment of 1964 further altered the basis of the Foreign Assistance Act and granted U.S. courts jurisdiction over the acts of foreign sovereigns in cases of investment disputes. In January 1972, the Nixon administration initiated major changes in America's expropriation policy that attempted to shift the burden of foreign investment disputes to multilateral development banks. Shortly afterwards, Congress passed the Gonzalez amendments of 1972, which sought to question the credit-worthiness of expropriating nations for multilateral development loans. Altogether, the responses of the U.S. government to foreign investment disputes hurt the competitiveness of U.S firms in Africa.

In post-colonial Africa, the strategy of the MNC did not determine the structure of the firm. This finding is contrary to the existing theory in business history, which
postulates that the strategy of a firm necessarily determines the firm's structure. Economic nationalism in Africa involved a conflict between private means and public ends. The regulation of foreign enterprises in Africa was based on public policy factors and the concern of host governments with the pattern of multinational business operations. Nationalization decrees altered the strategy and, therefore, the structure of the MNC. Recent studies have shown that the strategy of the firm does not always determine the firm's structure. In Africa, the consequences of nationalization decrees were such that the structure of the firm eventually determined the firm's strategy. There is, therefore, a need to "rethink" the traditional theory of the firm, particularly, as the theory relates to corporate behavior in foreign cultural and political environments.

Direct investments create special relationships between host nations and foreign investors. The foreign direct investments (FDI) of U.S. firms constitute a class of business interests separate from foreign portfolio investments, which are intangible interests in international corporate securities. For the purpose of this study, the FDI of U.S. investors comprise: (a) wholly-owned subsidiaries of U.S. firms, whether incorporated under the laws of the U.S. or the laws of the host country; (b) foreign subsidiaries and branches in
which American nationals or organizations control over 50 percent of the voting securities; (c) foreign non-subsidiaries in which American nationals or associations hold substantial equity interests of 50 percent and at least 25 percent of the voting securities, and (d) U.S. business interests in real property abroad.

The expansion of U.S. direct investments in Africa passed through distinct stages. Between 1897 and 1914, U.S. private investment in colonial Africa was minuscule. With World War I, the favorable changes in America’s public and private portfolio investments abroad created opportunities for the expansion of U.S. private direct investments abroad. In the 1920s the automobile industry increased the demand for raw rubber, petroleum and industrial metals. U.S. firms, correspondingly, increased their direct investments abroad. The abundance of industrial raw materials in Africa caused the large U.S. manufacturers to seek investment opportunities in the continent. Despite the depression, U.S. direct investments in Africa increased, particularly in the mining and smelting industries. World War II stepped up the demand for industrial raw materials. U.S. direct investment in Africa expanded during this period and, as before, remained clustered in the extractive industries.

U.S. direct investment in Africa came of age in the 1960s, with the decolonization of the continent. The
exodus of European colonialists created vistas of "free enterprise" in Africa. With the support of the Kennedy administration, Congress passed the Foreign Assistance Act of 1961. The Act established a framework for the expansion of American business enterprise and political presence in post-colonial Africa. The Act for International Development of 1961 symbolized a cooperative arrangement between government and business for the promotion of U.S. direct investment in the new nations. The massive expansion of U.S. private direct investments in the 1960s, however, came into conflict with the consolidation of independence by governments in Africa.

The sophistication of the modern industrial firm, apparently, was antithetical to the pre-capitalist and rudimentary structure of business enterprise in post-colonial Africa. Because modern capitalism is technology-based, it tended to dominate industrial activity in national economies that relied entirely on the sale of raw materials for revenue. Because U.S. investments in Africa were clustered in the raw materials industries, the firms became the major targets of nationalization policies in the host country. Although the MNC generated economic benefits for the host country, the firm occupied a daunting position in the political economy of Africa and, to most host countries, represented the apparatus of foreign domination and neo-colonialism.
A century of colonial rule in Africa sowed the seed of economic nationalism. European rule in Africa was based on a mercantilist ideology and, by its very nature, operated for the benefit of the colonial overlord. European rule also nurtured a cash-crop mentality among African entrepreneurs. The colonial economy was largely agrarian. The colonial authorities and the trading companies invested in the cultivation of industrial crops and the extraction of raw materials for export to Europe. Mercantilism bred a dependent economy and did not prepare the Africans for a transition to modern capitalism. Because colonialism thrived on domination and exploitation, it left behind a rudimentary and agrarian economy. At independence, African nations lacked the entrepreneurial and technological resources for effective participation in foreign business enterprises. Most governments, therefore, resorted to legislative actions designed to limit the influence of foreign firms on the political economy.

The U.S. government intervened in FDI disputes to protect the contractual rights of American investors abroad. The intervention involved a significant shift in policy and was based on three main considerations: (a) the need to encourage and promote economic development in Africa through public assistance and private investments; (b) ensuring at the same time that a conducive business environment could be secured abroad for U.S. citizens and
corporations; and (c) the need to sustain and implement
the long-term policy goals of the U.S. in Africa despite
the present concerns and narrow interests of business.

This study adopts the corporatist paradigm as the
framework of analysis. My approach, inspired by Michael
J. Hogan, "Corporatism: A Positive Appraisal," finds a
common ground between the institutional framework and the
organizational synthesis. This way, change and continuity
cease to occur in terms of major "partitions" in society.
Corporatism seeks to understand the working of the
political economy from a standpoint of means and ends. It
neither underrates individual and minority contributions
to history, nor does it focus on man-made structures at
the expense of the men who created the structures. The
corporatist approach finds mutual correspondence in
private actions and public policy, and establishes a
crucial link between U.S. business history and foreign
policy. Apart from showing how policy decisions were
reached and implemented, the corporatism traces and
"locates the basis of economic government in the private
sector." It identifies the institutional coordinators
responsible for the management of disputes between U.S.
firms and their host governments in Africa.

In the post-World War II era, the American business
community utilized the institutional apparatus of the
government to expand and protect its private interests and
investments in Africa. In America's foreign relations, the relationship between business and government has largely been cooperative. During World War I, the federal government provided the institutional framework for the expansion of U.S. direct investments abroad. In the inter-war years, the private sector collaborated with public officials for the pursuit and achievement of specific business interests abroad. During World War II, U.S. direct investments in Africa further expanded as a result of government support to business. In 1961, Congress created the U.S. Agency for International Development (USAID) to coordinate America's post-war policy in the developing nations. The USAID constituted the basis for the expansion of U.S. direct investments in Africa in the 1960s.

Successive administrations avoided direct government involvement in foreign investment disputes and worked to locate the seat of economic government in the private sector. In 1969, Congress created the Overseas Private Investment Corporation (OPIC), partly as an institutional response to FDI disputes. The OPIC, a self-sustaining institution, coordinated public-private sector efforts to stimulate and protect U.S. direct investments in low-income nations. In the 1970s, the OPIC contributed to the avoidance of investment disputes in Africa. The government provided the bureaucratic and supportive
services for the conduct of U.S. private enterprise abroad.

America’s policy on foreign expropriations, however, catered to U.S. private interests at the expense of the nation’s long-term policy objectives in Africa. The U.S. expropriation policy attempted to regulate contractual relations between U.S. investors and foreign governments. The extra-territorial application of U.S. public laws, often against the counsel of the State Department, only served the transient interests of business groups. In the long-run, the policy neither advanced U.S. interests in Africa nor solved the problem of FDI disputes.

The intervention of the government in foreign private investment disputes raised issues that concerned America’s policy choices and preferences in Africa. The historian is confronted with the task of interpreting the interplay between public policy and private contracts in U.S. foreign relations. How does the business historian explain the link between U.S. private investments and foreign assistance in developing countries? To what extent did business interests and expectations dictate U.S. foreign policy and its implementation in Africa after World War II? My finding is that economic considerations, more than political or cultural factors, influenced U.S. foreign policy in Africa in the 1960s and 1970s.
My approach to the issues is both comparative and interdisciplinary. I have drawn upon legal, political and economic factors as indicators of change and continuity. Primary materials from public and private sources, including personal interviews, have provided evidence of state policy and corporate practice. Secondary materials have been useful to the extent that they provided the relevant contextual and theoretical framework for my study. The historiography of American business abroad is silent on the issue of foreign expropriations and investment disputes involving U.S. corporations and foreign governments. This omission is crucial, considering that FDI disputes produced major changes in U.S. business policy at home and abroad, and altered the basis of business relations between the U.S. and Africa.

The historiography of U.S. business enterprise abroad has focused on changes in the strategy and structure of the firm. My study has benefitted from the works of Alfred D. Chandler, Jr., *Strategy and Structure: Chapters in the History of the Industrial Enterprise* (1962) and *The Visible Hand: The Managerial Revolution in American Business* (1977). Chandler brought a new dimension into the writing of business history. His organizational themes and comparative methods gave to historical scholarship the benefit of sociological insights. Chandler’s explanatory models gave new meanings to old issues.
However, Chandler’s *Visible Hand* did not address the problem of managerial responsibility to society and corporate responsiveness to the environment of business. The omission is understandable considering that Chandler limits his study to organizational changes in the firm.

At home and abroad, the corporate managers have often acted as if broad social problems were the exclusive concern of the government. In Africa, as in most "third world" areas, the expropriation of U.S. private investments occurred because the strategy and structure of the MNCs were not responsive to the social and developmental aspirations of the host nation. Capitalism represents more than a profit-seeking activity. Capitalism also refers to a system wherein business values and practices encompass more than the firm, and are reflected in popular behavior and social institutions. Business values and practices are based on commercial as well as humanitarian considerations. The success or failure of American business enterprise, at home or abroad, will depend on the responsiveness of the firm, as a social institution, to human problems. The U.S. expropriation laws did not consider this factor. The historiography of American business enterprise cannot afford to lose sight of it.

Mira Wilkins, in two companion books, presented useful insights into the origins of American direct investments abroad. Wilkins’ *The Emergence of*
Multinational Enterprise: American Business Abroad from the Colonial Era to 1914 (1970) and The Maturing of Multinational Enterprise: American Business Abroad, 1914 to 1970 (1974), have lent an important perspective to my study. However, Wilkins treats entrepreneurship in isolation of the legal, political, cultural and sociological factors that shaped American business abroad. Because business history is the chronicle of human progress, I have attempted in this study to present the diverse events and actions responsible for change and growth. My study looks at American business abroad from a functional perspective of means and ends, particularly the institutional framework that emerged for the resolution and avoidance of transnational investment disputes.

Other scholarly works have been informative and thought-provoking. Friedman, Wolfgang and Pugh, Legal Aspects of Foreign Investment (1959) and, Steiner and Vagts, Transnational Legal Problems (1976), raise specific problems that the business historian has either taken for granted or chosen to ignore. They draw attention to important areas of foreign investment that constitute the basis of contractual relationships between capital-exporting nations and host countries. Like Georg Schwarzenberger, in Foreign Investments and International Law (1969), they raise certain issues of international law that business historians have either overlooked or need to
reconsider. E.I. Nwogugu, *The Legal Problems of Foreign Investment in Developing Countries* (1965), and Carl Fulda and Warren Schwartz, *Regulation of International Trade and Investment* (1970), demonstrate that legal structures, more than the routine decisions of managers and executives in boardrooms, have shaped the strategy and structure of the MNC in its contractual relationships abroad.

The relationship between the MNC and foreign governments has been more of conflict than cooperation. Their differences have been the subject of extensive study by economists and political scientists in the last three decades and I have gained useful insights from these studies. Adeoye Akinsanya's *The Expropriation of Multinational Property in the Third World* (1980), gives a "third world" view of the problems of expropriation, but does so from the angle of political science, without sufficient historical explanations. I found Raymond Vernon’s *Sovereignty at Bay* (1971) and "Storm Over the Multinationals" pertinent because of their historical and prophetic value.

It is not surprising that only a few historians, mostly those with a social science bias, have shown significant interest in the relationship between the MNC and its foreign environment. The MNC came to engage the attention of American business historians only recently, understandably, due to the increasing tendency toward specialization within the discipline. The first major
effort to document the history of American business abroad was by Cleona Lewis, *America’s Stake in International Investments* (1938). Wilkins’ *The Emergence of Multi-national Enterprise* added to Lewis’ effort by explaining how the American trader became a leading foreign investor. My project builds on these outstanding treatises and, hopefully, will contribute to the existing literature, particularly, as it relates to investments in Africa.

Three propositions emerge from this study. First, the dramatic expansion that occurred in American business abroad in the early 1960s was a landmark stage in the history of American business enterprise. Second, the ability of the MNCs to cause fundamental changes in America’s diplomatic relations with foreign governments elevated the American private investor to a major actor in international relations. During this period American capitalism attained a most significant stature, with the "recruitment" of the MNC into the foreign policy mechanism of the United States. Third, the capacity of the MNCs to dominate the world market and to influence local politics and governments abroad endowed the MNC with a new stature in international relations.

The chronological order of this study is without prejudice to thematic arrangements. Chapter I traces the origin and expansion of U.S. direct investments in Africa. Chapter II examines the cooperative efforts of business
and government to consolidate and expand U.S. direct investments in Africa in the era of decolonization. Chapter III discusses the rise of economic nationalism in Africa and its effects on the strategy and structure of American firms. Chapters IV, V and VI constitute the second part of my study. They examine the policy framework within which the disputes occurred and its effectiveness in the management of investment disputes.
PART I

BUSINESS EXPANSION AND INVESTMENT DISPUTES

Three sets of relationships emerge in this study. The first is the relationship that existed between the American direct investor and his host government in Africa. The second is the relationship that developed, in the 1960s and 1970s, between the American investor and his home government in America. The third relationship relates to the inter-governmental exchanges that took place between the U.S. and host nations in Africa. The second and third categories constituted the public and foreign policy plank on which the U.S. investor conducted business enterprise in post-colonial Africa. The second and third sets of issues are discussed in Part II. Part II is an analysis of America's expropriation policy and the ideological basis of business relations between the U.S. and Africa.

The expansion of U.S. investments in Africa, in the 1960 and 1970s, increased the influence of the American MNC on the political economy of the host nation. Part I, therefore, deals with the rise of U.S. multinational corporate power in Africa and its immediate aftermath.
CHAPTER I

U.S. DIRECT INVESTMENTS IN COLONIAL AFRICA

This chapter is introductory. My purpose here is to explain why, when and how U.S. direct investments began in Africa. The objective is to set the background for an understanding of the experiences of the U.S. firm in Africa after independence. My approach is essentially corporatist. The corporatist paradigm helps to explain the reasons for the expansion of U.S. direct investments in Africa, the obstacles that confronted the U.S. investor in this effort and the ways in which business and government cooperated to overcome the investment barriers in colonial Africa. The private sector, indeed, utilized the institutional apparatus of the government to expand and protect U.S. private investments in Africa.

Colonialism was a major barrier to the expansion of U.S. private direct investments in Africa. European powers partitioned Africa into spheres of influence at the Berlin Conference of 1885. Between 1885 and the 1960s, European authorities in Africa devised and used restrictive policies to limit the presence of other national firms in their territories. Colonial restrictions took
several forms. They included controls on capital movement, restrictions on the repatriation of profits, import and export quotas, and discriminatory laws on property holding, contracts, concessions and consular services.

U.S. direct investments in Africa developed mainly in response to economic and political changes in the global balance of power. World War I increased the demand for raw materials and provided incentives for the expansion of U.S. investments in Africa. The war also transformed the U.S. from a debtor-nation to a leading creditor and created the basis for European concessions to American business interests in Africa. In the 1920s, structural changes in the world’s automobile industry affected the global demand for raw rubber, petroleum and industrial metals. There were huge expansions in the automobile and other related industries. In the 1920s, the U.S. consumed 70 percent of the world’s total output of raw rubber. In the inter-war years, U.S. firms competed with European trading companies for foreign sources of industrial raw materials.

World War II led to further expansions in America’s private direct investments in Africa. The war created investment opportunities for U.S. firms in colonial Africa. It increased the domestic demand for raw materials and the procurement of supplies served as a
fillip for the continued expansion of U.S. direct investments in Africa. Globally, U.S. long-term direct investments increased between 1939 and 1945. The increase represented private capital export and government credits. America’s gains in FDI, however, were upset by a deficit in the U.S. balance of payments during that period. The deficit resulted largely from U.S. capital transfers abroad, payments to foreigners, loss of investments in Europe, bad (uncollectible) debts, and war expenses. A sharp turn occurred shortly after the war when U.S. foreign direct investment picked up again. There was significant expansion in U.S. manufacturing activities in Europe and Canada. In Africa, as in the Middle East, U.S. investments expanded, mainly in the extractive industries. During this period, the government played a crucial role in the expansion and consolidation of U.S. direct investments in Africa.

U.S. business enterprise in Africa was not an isolated experience, but part of a continuity that originated from basic changes in the strategy and structure of the U.S. firm. In the nineteenth century, the private FDI of Americans in Europe and Canada expanded in response to increases in U.S. domestic production. The increases in U.S. domestic production led to the search for new markets abroad. In contrast, however, the expansion of U.S direct investments in Africa, at the turn
of the nineteenth century, was prompted by the search for new sources of raw materials. European trading companies, armed with royal charters, enjoyed market advantages over U.S. firms in colonial Africa. The growth of American business enterprise in Africa, therefore, owed its origins to distinctive historical forces.


American firms began looking outward for direct investment opportunities in the second half of the nineteenth century. Some historians have traced the international trading activities of Americans to the colonial era.¹ Yet, even when accompanied by warehouses and outposts in London or Paris, the early enterprises did not represent the modern MNC either in strategy or in structure. The FDI of U.S. firms was part of a larger pattern in the rise of "big business" in America. In the late nineteenth century, the large capital-intensive firms had definite advantages over the smaller, often labor-intensive, firms. Because of their size and capacity for capital export, the so-called center firms were able to make long-term direct investments abroad. The center firms had the resources to invest in newer technology and product development. They enjoyed both the economies of size and scope. The firms employed salaried managers and established extensive distribution facilities to market their products overseas.
U.S. direct investments expanded differently in Africa than in Europe. Most of the U.S. firms that expanded to Europe in the nineteenth century took three steps. First, the investor created extensive marketing and distribution networks abroad. By the late 1880s, some of the large firms had established foreign sales and service outlets in Europe and Canada. Second, the investor, in the course of time, adopted a multinational strategy and built plants to decrease production costs. Third, the investor concerned with the factors of cost, efficiency and competitive advantage, integrated backward toward the procurement of supplies and raw materials. Some of the firms, however, were already operating fully integrated enterprises abroad before 1914 and often tended toward oligopolistic strategies. In Africa, a different set of factors applied. U.S. direct investments in Africa expanded, not by way of additions to existing marketing facilities, but through the acquisition of stocks by U.S. investors in European ventures. In the distributive trade, U.S. investors employed the services of colonial agents who, in most cases, were headquartered in Europe.

World War I enhanced the foreign portfolio and direct investments of U.S. firms. With the war, U.S. investors moved into industrial areas hitherto dominated by the Europeans. In 1897 America’s FDI amounted to only $634.5 million, while net portfolio investment abroad amounted to
$50 million. The funds for foreign direct investment accrued largely from an expanding export trade, which by the late 1890s barely equalled payment obligations on imports.⁷ At the eve of World War I, America’s foreign payment obligations more than doubled the accumulated value of foreign investments. The deficit occurred, in spite of the net increases in short and long-term investments abroad.⁸ In 1914, U.S. direct investments abroad increased to $2,652.3 million, and net portfolio holdings to $861.5 million.⁹ With the war, the export capacity of the nation more than doubled. America, for the first time in a century, became a creditor-nation and a major source of capital for foreign investments.¹⁰

World War I also enhanced the competitiveness of U.S. firms in Africa. During World War I, America’s FDI exceeded that of any other capital-exporting nation, except Britain’s. The contrasting heritage of British and American firms gave British firms the advantage. Unlike the American firms, British firms enjoyed royal patronage in the colonies. In most cases, British trading firms were chartered by the Crown to perform duties of governance in the colony. Unlike the colonial firms, U.S. firms became competitive largely as a result of organizational innovations and access to newer technology. In the late nineteenth century, U.S. firms evolved distinctive competitive strategies in the form of vertical integration
and horizontal combinations. Firms that had expanded horizontally proceeded to integrate vertically in order to remain competitive at home and abroad.\textsuperscript{11}

Integration, as a business strategy, sustained the growth of U.S. firms in Europe and Canada, more than it did in Africa. The mass-production and mass-distribution of goods gave U.S. firms the initial edge over European firms.\textsuperscript{12} British author B.H. Thwaite in 1902 described the strategy of the U.S. firm as the American "invasion." While the "invasion" proved successful in Europe, Latin America and Canada, imperial policies impeded its success in the colonial regions of Africa. In effect, colonial limitations did not permit the full integration of American business enterprises in colonial Africa. For example, although U.S. firms were able to invest in oil distribution, the colonial officials did not readily grant exploration licenses and pipeline concessions to U.S. firms in the colonies.

American capital, however, served extensively in the development of colonial enterprises in Africa, if only indirectly. Many U.S. firms held stocks in and operated through foreign companies. In 1907, the Standard Oil Company of New Jersey had controlling interests in sixteen foreign oil companies based in Europe.\textsuperscript{13} The Standard Oil Company, since 1897, held the majority stock in the Vacuum Oil Company, an Austrian-Hungarian enterprise with
extensive sales and distribution outlets in colonial Africa. U.S. firms were welcome in the metal and mining industries where the demand for capital was high. Because U.S. firms readily possessed the technology and the finance, European firms were willing to allow the participation of American capital in their colonial markets.

The reliance of U.S. firms on colonial agents for the conduct of business in Africa continued up to the period of World War II. Vacuum Oil, which already had a London office by 1885, in 1902 established an branch in South Africa and a distribution center in Egypt.14

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<td>DISTRIBUTION OF U.S. DIRECT INVESTMENT 1897 -1935</td>
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<td>573.3</td>
<td>1,340.3</td>
<td>1,369.6</td>
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<td>618.4</td>
<td>1,657.4</td>
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</tr>
<tr>
<td>Cuba/ West Indies</td>
<td>49.0</td>
<td>281.3</td>
<td>1,025.5</td>
<td>731.3</td>
</tr>
<tr>
<td>Mexico</td>
<td>200.2</td>
<td>587.1</td>
<td>709.2</td>
<td>651.7</td>
</tr>
<tr>
<td>Central America</td>
<td>21.2</td>
<td>89.6</td>
<td>250.9</td>
<td>160.0</td>
</tr>
<tr>
<td>South America</td>
<td>37.9</td>
<td>323.1</td>
<td>1,719.7</td>
<td>1,718.2</td>
</tr>
<tr>
<td>Africa</td>
<td>1.0</td>
<td>13.0</td>
<td>117.0</td>
<td>123.6</td>
</tr>
<tr>
<td>Asia</td>
<td>23.0</td>
<td>119.5</td>
<td>446.5</td>
<td>487.6</td>
</tr>
<tr>
<td>Oceania</td>
<td>1.5</td>
<td>17.0</td>
<td>161.3</td>
<td>159.8</td>
</tr>
</tbody>
</table>

In later years, additional marketing outlets were established in Sudan and in a number of West African markets.

The Singer Manufacturing Company, in the late nineteenth century, maintained and managed an intercontinental sales outfit from its overseas headquarters in London; Singer's main trading contact with Africa, however, was through the London office.¹⁵ Singer marketed its sewing machines, for example, in Nigeria before the 1960s, through U.K. firms.

**TABLE 2**

**U.S. DIRECT INVESTMENTS IN AFRICA: 1897 - 1935**

**SECTORAL DISTRIBUTION**

(estimates in millions of dollars)

<table>
<thead>
<tr>
<th>Enterprises</th>
<th>1897</th>
<th>1914</th>
<th>1929</th>
<th>1935</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Units</td>
<td>-</td>
<td>4</td>
<td>15.7</td>
<td>a</td>
</tr>
<tr>
<td>Oil distribution</td>
<td>1</td>
<td>5</td>
<td>31.5</td>
<td>31.5</td>
</tr>
<tr>
<td>Oil production</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Mining &amp; Smelting</td>
<td>-</td>
<td>4.0</td>
<td>53.5</td>
<td>60.0</td>
</tr>
<tr>
<td>Agriculture</td>
<td>-</td>
<td>-</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>-</td>
<td>-</td>
<td>6.7</td>
<td>7</td>
</tr>
<tr>
<td>Transportation</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Utilities</td>
<td>-</td>
<td>-</td>
<td>1.5</td>
<td>3.0</td>
</tr>
</tbody>
</table>

¹⁵

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a no reliable data for the year.

b rubber plantations in Liberia.

c utilities in the Canary Islands.

source: same as for Table 1.
It was not uncommon, however, to find European firms sharing colonial markets. Such concessions were not readily available to American firms. While a French firm could market its products in a British colony and vice versa, U.S. firms relied more on commission agents and independent contractors for access to most colonial markets. For example, the Texaco Petroleum Company, incorporated in Texas in 1902, began marketing petroleum products in Nigeria in 1913, but through a French trading firm, the Companies Francaise de l'Afrique Occidentale (CFAO). The CFAO later acquired exclusive rights to market Texaco products in Nigeria. In 1964, Texaco Africa Limited was formed as a subsidiary of the Texaco Petroleum Company. The new company acquired control of CFAO service stations and began direct marketing of Texaco products in Nigeria. Thus, Texaco did not market its own products in Nigeria until in 1964, two years after Nigeria became an independent nation.

Firms engaged in the production of raw materials had little use for colonial agents and preferred to invest in Africa through partnership arrangements with European firms. European firms in Africa welcomed American direct investments in mining and smelting because the Americans possessed the needed capital and technology. Compared to investments in other industrial sectors, American direct investments in mining and smelting experienced the fastest
growth rate between 1914 and the period after World War II. As Table II shows, private investments in mining operations in Africa exceeded investments in agriculture and distributive trade after 1914. Indeed, while private direct investments remained almost stagnant in all other industrial sectors during the depression, investments in the mining and smelting industry continued to expand.  

FDI AND LIBERAL CAPITALISM: THE EXPORT OF AN IDEOLOGY

When wealthy Americans and investment firms began investing in African mines and minerals at the turn of the nineteenth century they did so in the "free enterprise" tradition of American capitalism. In Europe, monarchs chartered companies for foreign direct investments. In America, private firms and investors took the initiative. In 1906, King Leopold II of Belgium invited Thomas Fortune Ryan to Brussels to discuss the possibility of raising American capital for direct investments in Africa. Ryan, a New York tycoon, seemed capable of organizing American capital and technology for King Leopold's rubber and diamond projects in Africa. The meeting between Leopold II and Ryan resulted in the appearance of the Guggenheim Exploration Company and American interests in the Societe Internatinale Forestiere et Miniere du Congo, a Belgian firm that farmed rubber in the Congo valley. By 1907, Ryan had arranged a business partnership with Leopold II for the exploration of
diamonds in Portuguese Angola, leading to the formation in 1917 of the Angola Diamond Company.  

During World War I, liberal capitalism surfaced as America’s global strategy and approach to foreign direct investments in the European colonial dependencies. Although individuals took private initiatives to expand the scope of American business enterprise in Africa, the government provided and nurtured the ideological springboard. American liberalism was erected on the principle of equal access to opportunities and the inherent right of the individual to economic self-determination, with government playing a supportive rather than a superintending role. U.S. foreign economic policy after World War I took this proposition one step further by insisting that world peace and progress depended much on the capacity of nations to dismantle the nationalistic barriers that set nations apart and against one another. On the basis of this principle, the government directed its foreign economic policy toward specific national interests.

The American policy favored the equal access of nations to the resources of the world, with no discrimination and minimum government control. The nationalistic policies of the Europeans contradicted America’s liberal tenet and business strategy abroad after World War I. America’s security and economic interests as a nation demanded that definite measures be taken by the government
to uphold an Open Door policy in the European dominions. However, not all American policymakers agreed on the course of policy implementation. The Republican party in the 1920s preferred a conservative policy that was essentially inward-looking. The Republican leaders were not favorably disposed to excessive economic expansion abroad; a situation which Joan Hoff Wilson describes as "the protectionist consensus....fostered first by post-war nationalism and later by the 1929 depression."18

Among the business groups, there were differences of opinion on post-war economic policies. The nationalists in their protective stance, favored high tariffs and import duties whereas the internationalists wanted the removal of barriers to foreign investment and trade expansion.19 The National Association of Manufacturers was particularly concerned with the need for adequate protection for domestic industries, even though the association shared the views of the U.S. Chamber of Commerce and the National Foreign Trade Council that a more urgent need existed for international cooperation and interdependence. The underlying consensus, however, was that foreign investments were essential to the viability of domestic industries and should be encouraged.20

Most business leaders, including Bernard Baruch and Henry Ford, fought to discourage undue limitation on U.S. trade and investment expansion abroad.21 While America’s
sympathy for European colonial interests in Africa created reasons for hesitant responses to European monopolies abroad, the government nonetheless was determined to secure for Americans equal access to foreign markets, more so, in those regions that previously belonged to defeated Germany, now under the League mandate. The British had begun to treat the Mandate territories as part of the colonial empire, denying American investors free access to areas in Central Africa previously held by the Germans.

The controversy over Central Africa arose out of Article 6 of the League Mandate which reserved concessionary rights to the development of natural resources in a Mandate territory to members of the League exclusively. As a non-member, the U.S. found the stipulation unsatisfactory and insisted that business access to the Mandate territories be liberalized. After protracted negotiations, certain accords were finally reached between the two nations. On February 10, 1925, the U.S. and Britain signed three conventions that respectively granted to Americans the right to acquire property and conduct business in former German possessions in the Cameroon, Togoland and parts of East Africa "on equal terms" with members of the League of Nations. By the conventions, American nationals and associations secured "all the rights and benefits" hitherto enjoyed by members of the League in the Mandated territories.22
Similar American efforts succeeded in other areas as well. In Anglo-American negotiations, for example, the two sides hammered out cooperative arrangements in areas of cable, radio and petroleum.\textsuperscript{23} Certain fundamental and unresolved problems persisted, however, between the U.S. and its war-time allies in the area of shipping and raw materials exploitation. Britain and France, particularly, were most reluctant to abandon their nationalistic attitudes and were unwilling to apply the Open Door policy to their colonies in Africa and elsewhere. In spite the existence of a so-called "open market" in some colonies, the Europeans clung to protectionist policies until after World War II, when colonialism became a burden.

FINANCE CAPITALISM: THE CONSUMATION OF AN IDEOLOGY

The deregulation of foreign capital transfers on the eve of World War I contributed to the fair success of America's post-war liberal policies. Legal constraints on foreign investment banking had been a major obstacle to the expansion of American business enterprise abroad before 1914. American banks operating under federal or state charter were prohibited by law from organizing foreign branches and transactions. Not until the enactment of the Federal Reserve Act in 1913 did U.S. institutions begin to acquire a significant presence in foreign trade and investment. The provisional revision of the New York State banking laws at about the same time also made
New York a prospective financial center of the world. With the Federal Reserve Act now legalizing the establishment of overseas branches, U.S. were able to penetrate the foreign capital market hitherto dominated by Europeans.

The Federal Reserve Act benefitted American firms because it enhanced export trade and increased the amount of capital available for foreign investment. The supportive role of the federal government in expanding U.S. export capacity was crucial, therefore, to gains made in the area of foreign direct investment. The establishment of the American International Corporation in November 1915 and the enactment of the Edge Act on December 24, 1919 also contributed to the consolidation of gains for American foreign direct investment.

The Edge Act, by inserting section 25(a) into the Federal Reserve Act, enabled the International Bank to fulfill its promotional role in foreign investments. As a federal authorization of short and long term debenture issues for foreign investment, the Edge Act increased capital outflow while minimizing the financial risks involved in foreign portfolio and direct investment.24 The Act offered American firms a supportive springboard from which they ventured into new markets abroad. The Act also secured for American firms an edge over their European competitors in terms of money market rates and lending preferences.
America's transformation from a debtor-nation to an international financier enhanced the capital liquidity of the American investor and established his primacy in the ranks of global investors. At the diplomatic level, America's financial strength during this period helped to determine the future course of relationships between the U.S. and Western Europe, particularly the ability of the former to extract commercial concessions from European colonialists in their overseas dependencies. The creditor-debtor relationship that existed between America and Europe was a plus to America's foreign economic policy goals. Americans offered business solutions to the political problems created by World War I. "The problem bore particularly heavily upon the political and financial leaders of Great Britain, and therein lay the seed of an American involvement in Africa that would have seemed unlikely not many years earlier."26

BUSINESS LEADERSHIP AND PRIVATE SECTOR INITIATIVES

American financiers and industrial leaders took advantage of the opportunities presented by World War I to consolidate the long-term investment position of the U.S. vis-a-vis the colonial powers. Although the business community disagreed on the best approach to that end, there was a consensus on the need for American industrialists "to take advantage of the war to invest in areas of the world long controlled by British, French and
German interests."²⁷ James A. Farrell, President of U.S. Steel, was one of the many industrialists who supported and took practical steps to increase America's business presence abroad. With the assistance of the U.S. Shipping Board, Farrell in 1925 acquired control of the American South Africa Line and established a competitive American presence on the trans-Atlantic route hitherto dominated by the British. The Line became the first regular merchant marine to service an increasingly important U.S.-Africa route; since 1958, it has successfully operated as the Farrell Lines.²⁸

The House of Morgan played a significant role in financing both American and British investments in the Southern region of Africa. The House of Morgan, whose views on foreign investment represented those of the leading investment banks, favored a cooperative arrangement for the sharing of investment portfolios with the Europeans in Africa. In most cases, American investors bought into existing enterprises or invested in a growing raw materials sector. Private financiers favored firms that invested in the production of raw materials because of the quick returns on capital. The result of that U.S. private investments in Africa, in the course of time, clustered in the extractive industries. Morgan's liberal path to foreign direct investment, however, merely afforded the Europeans certain access to U.S. capital and
mining technology.

American capital and technology were crucial to the development of the mining industry and mining techniques in Africa. In Northern Rhodesia, an area rich in iron, copper and diamond, the American business presence had been active since 1917. Through the support of Herbert Hoover, himself a mining expert, and the cooperation of Sir Ernest Oppenheimer, a British industrialist, the Anglo-American Corporation of South Africa was formed in September 1917; the company ran extensive mining and smelting operations in the Southern region of Africa.\textsuperscript{29} American capital accounted for fifty percent of the Anglo-American Corporation stock, held principally by the Newmont Mining Corporation and the House of Morgan. An American mining engineer, one P.K. Horner, associated with the company became renowned for his unique copper treatments and flotation experiments which the European firms found to be of cost-saving value.\textsuperscript{30}

Anglo-American partnerships continued to flourish in the region, but mainly in the mining industry. Southern Africa had long been a major source of metallic minerals and an area of competition for foreign firms. In 1927 the American Metal Company of New York acquired proprietary interests in the British Roan copper mines of South Africa. The Selection Trust Ltd. had for several years controlled the mines, making it one of the largest British
enterprises in the region. The growing stocks of the American Metal Company in the mines, however, gradually reduced the holdings of the Selection Trust Ltd. to a minority interest by the end of 1933.

American business presence in Africa in the inter-war years increased steadily, but remained largely confined to the extraction of primary products. For example, in 1914, U.S. direct investments in Africa amounted to $13 million only, compared to $587 million in Mexico alone and $573 million in continental Europe. Although U.S. investment in Africa continued to be a drop in the bucket in relation to investments in Latin America, Canada or Europe, there was a steady growth in the volume of U.S. capital export to Africa. By 1924, American direct investments in Africa stood at $58.5 million, compared to $735 million in Mexico and $921 in Europe. Thus, between 1914 and 1924, U.S. direct investments in Africa increased by 450 percent, while investments in Mexico increased by 125 percent and in Europe by 160 percent. U.S. investments in Africa, however, continued to cluster in the extractive sector.

THE INDUSTRIAL PREFERENCES OF U.S FIRMS IN AFRICA

American firms undertook limited manufacturing in Africa. Between 1920 and 1960, the few manufacturing investments that existed were located mainly in the independent nations of South Africa, Liberia and Egypt.
In the colonies, there was a dearth of U.S. direct investments in manufacturing. Mercantilism, as the ideological basis of colonial rule did not promote local manufacturing except where it supplemented the industrial output of overseas plants. This was the case with the British textile business in Egypt. British authorities had discouraged the rival growth of the Egyptian textile industry until the inter-war years, when the industry ran into serious financial problems. Because domestic

<table>
<thead>
<tr>
<th>Selected Years</th>
<th>1897</th>
<th>1914</th>
<th>1924</th>
<th>1935</th>
<th>1943</th>
<th>1959</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europe</td>
<td>35</td>
<td>200</td>
<td>450</td>
<td>640</td>
<td>879</td>
<td>2,927</td>
</tr>
<tr>
<td>Canada</td>
<td>a</td>
<td>55</td>
<td>221</td>
<td>600</td>
<td>840</td>
<td>941</td>
</tr>
<tr>
<td>Latin America</td>
<td>b</td>
<td>-</td>
<td>17</td>
<td>97</td>
<td>213</td>
<td>325</td>
</tr>
<tr>
<td>Africa</td>
<td>c</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Asia</td>
<td></td>
<td>-</td>
<td>10</td>
<td>46</td>
<td>75</td>
<td>68</td>
</tr>
<tr>
<td>Oceania</td>
<td></td>
<td>0.5</td>
<td>10</td>
<td>26</td>
<td>50</td>
<td>50</td>
</tr>
</tbody>
</table>

a Canada includes Newfoundland.
b Includes Mexico, Central and South America; estimates exclude manufacturing in Cuba between 1897 and 1935.
c Africa includes Liberia and Union of South Africa.

consumption had fallen and British textile firms were experiencing a major financial decline, British firms had little choice but to develop the potential Egyptian market by establishing plants in Egypt. Thus, apart from supplying raw materials to overseas plants, the colonies also absorbed surplus industrial output from Europe. When American investors arrived in Africa in the 1960s, they found and blended into a dominantly service-oriented economy.

The low consumption level in Africa, compared to levels in Europe and America, seemed to be another reason for the dearth of manufacturing in the colonies. This factor, however, cannot stand in view of the fact that U.S. firms, since the 1900s, had invested in manufacturing in Latin America, despite the low consumption level in that region (see Table III). MNCs invested in manufacturing enterprises for two reasons: for export and for domestic consumption in the host country. In manufacturing, U.S. investors preferred Latin America to Africa because of nearness to raw materials and the cheaper cost of transportation from U.S. markets.

Colonial policies limited U.S. investments in industrial activities that competed with or threatened the position of the European trading companies. Before 1960, U.S. FDI in Africa was mainly in the self-governing nations of South Africa and Liberia, and later Egypt. In
the inter-war years, the expansion of U.S. investments in Africa was mostly by way of additions to existing plants. Generally, the growth in U.S. foreign holdings represented reinvested profits, appreciated value of existing investments, foreign earnings and new funds transferred from U.S. sources. Generally, U.S. manufacturing abroad resulted from the expansion of existing sales and purchasing units abroad, rather than the first-time entry of a new manufacturer. For example, the Ford Motor Company of Canada was organized in 1904 by the transfer of patent rights from American to Canadian interests. In Africa, U.S. investors, clustered as they were in the extractive industries, did not plan to establish manufacturing concerns. The Firestone Tire and Rubber Company, for example, went to Liberia in 1923 in search of raw material. The Firestone Company, however, did not manufacture tires in Liberia.

It was strategically profitable for U.S. firms not to manufacture in Africa. This was especially the case in the oil industry, where inter-firm competition for foreign sources of crude oil was intensive. With the breakup of the Standard Oil Trust in 1911, the number of firms engaged in the manufacturing and marketing of petroleum products increased. In the 1920s, the automobile industry escalated the demand for foreign raw materials. U.S. corporate executives, in order to keep U.S. plants open
and in full production, manufactured at home. Even after independence in Africa, American investors preferred to ship the crude oil to their home plants, rather than construct refineries in Africa. In recent times, the oil firms built refineries in Africa because the governments of the new nations demanded "that companies not only sell refined products, but actually refine within the host country." It took coercive measures in the host nations for the oil executives to establish refineries in Africa.

THE AUTOMOBILE AGE: OLD PROBLEMS, NEW INCENTIVES

While the primary concern of the American investor for unimpeded access to raw materials remained unaltered, new incentives appeared in the 1920s that widened the scope and structure of American business enterprise in Africa. The automobile age in America created new incentives for the global spread of business enterprise. The firms went abroad in search of crude petroleum, metal ores and raw rubber in response to industrial demands at home. The strategy of U.S. firms in Africa, therefore, did not result in vertically integrated enterprises, as production was essentially for the benefit of manufacturing firms outside Africa.

In the late 1930s, the demand for raw materials became more acute. The mobilization for World War II resulted in the diversification of the resource-base of firms engaged in the production of raw materials. The war
stepped up the demand for essential supplies such as minerals, tires, explosives, metals and petroleum, and U.S. firms looked abroad for supplies. In the previous decade, U.S. private portfolio investments had exceeded direct investments. With the depression, however, U.S. investors became more critical in their rationalization of capital. In spite of the depression, the portfolio and direct investments of U.S. firms in Africa increased substantially, from $119.2 million in 1929 to $125.8 in 1935. The increase was as a result of the mobilization for World War II and a corresponding rise in the demand for raw materials. As was the case in 1914, U.S. firms in the 1930s expanded their investments in Africa for strategic reasons.

THE PROBLEM OF FOREIGN CARTELS AND MONOPOLIES

In Africa, European firms dominated transportation, agriculture, utilities, the production of consumer goods and low-technology industries. In the British colonies, for example, large firms such as the Anglo-African Trading Company, the United African Company and the Company of African Merchants, maintained a strong presence that made it difficult for American firms to expand sales and marketing operations in colonial Africa.

European cartels and monopolies abroad posed a problem, which the U.S. had to confront and counteract. For example, Britain, before and after World War I,
dominated global crude rubber supplies and, therefore, subjected the huge consumer needs of the U.S. to a pricing system that threatened industrial stability. The British position, moreover, posed a challenge to America’s post-war economic policy of liberal capitalism. The British dominance of the world rubber trade created a situation that boded ill for the future of the American industrial economy. The automobile industry led the U.S. economy in the 1920s and automobiles required a continuous supply of rubber. As Tables I and II show, between 1929 and 1935, U.S. investments in Africa recorded a higher growth rate than investments in other geographical regions. The growth was in response to the increasing demand for raw materials in automobile-related industries, such as tire and rubber, petroleum, iron ore, lead, copper, tin, glass and chemicals.39

The "petroleum automobile" as it came to be known, opened a new chapter in the history of America’s corporate multinationalism.40 Private entrepreneurs, like Charles Goodyear, made serious efforts to locate new sources of raw materials. While America had considerable but limited crude oil resources, rubber could only be farmed in commercial quantities in the tropics. Before 1960, the Amazon Basin was the principal source of crude rubber to the United States. In later years supplies came from the East Indies, the Middle East, the Congo valleys and
Madagascar in Africa. Not unlike petroleum in the 1960s and 1970s, Americans in the 1920s and 1930s had become dependent on a foreign commodity and by the mid-1920s, consumed 70 percent of the world's raw rubber supplies. The British control of raw rubber supplies was part of the post-war controversy between the U.S. and Britain over resource allocation and access to raw materials.

In the post World War I era, the U.S. aimed at the creation of a world system of liberal capitalism based on private-public sector cooperation for the achievement of world order, progress and stability. But European cartelizations and the British influence on crude rubber supplies constituted post-war problems in America's international relations. Used in this sense, international relations means the unavoidable or normal encounter of nations in global economic, social and political exchanges. The U.S. government in the 1920s elevated the rubber controversy to a foreign policy issue. (This same pattern would recur in the 1960s and 1970s in the expropriation controversies.) In the 1920s and, more so, during World War II, the U.S. was the world's major consumer of petroleum, copper, nitrate, lead and other industrially critical metals. In the inter-war years, America lacked reasonable access to and control over foreign sources of supply. America's diplomatic problem was how to translate the ideology of "free enterprise" to
European nationalism and its imperial culture.

European post-war policies and practices in colonial Africa were directly contrary to the goals of the U.S. government. The Europeans formed cartels to control entry into raw materials production contrary to American tradition and antitrust laws. The U.S. had rejected from the outset British and French suggestions, at the Paris Peace Conference, for the formation of cartels among the Allied Powers to exploit raw materials. Germany, under the Imperial Chancellor Theobald von Bethmann-Hollweg had, in 1914, expressed its post-war plans to repartition Africa under central German control. In 1916, the Entente Powers adopted a scheme for international trade combinations among their ranks to counter Germany’s expansionist plans in Africa. In 1918, Edward Hurley, chairman of the Shipping Board, suggested to President Wilson the formation of a central purchasing cartel as an agency of the federal government to secure essential raw materials in competition with European cartels.

Many officials in the Wilson Administration supported positive U.S. action that would pre-empt or neutralize British, French and German cartel policies in raw materials. Aready, Germany had major colonial interests in Central Africa. Robert Lansing, as Secretary of State, was supportive of American state-sponsored cartels to compete for raw materials. Henry P. Fletcher, later
U.S. representative to Mexico, called in November 1916 for an American Economic League between the U.S. and the Latin American states. The League would function as a trade combination and have as its main purpose the control of raw materials in South America. Other officials, such as William Redfield of the Commerce Department, preferred an approach of moderation more in tune with the American tradition of liberal capitalism. Redfield did not support cartelization. Redfield, Bernard Baruch and William McAdoo, the Treasurer, supported the "open door" policy. Ideologically, the latter proposition agreed with U.S. objectives and policy for European reconstruction.

U.S. public policy, as the aggregate expression of prevalent private interests, emphasized equal access to and private exploitation of raw materials abroad. America offered a private-sector solution to the world’s economic problems, with certain results in foreign trade and direct investments. A change occurred in the volume and direction of U.S. foreign enterprise from 1914 to the depression, with new investments in the non-traditional areas of Asia, Africa and Oceania (Table 1). Commodities trade also increased in the inter-war years. Table 4 is illustrative of changes in commodities trade between the U.S. and Africa during the colonial era. Much of the exports, however, consisted of primary goods, while imports from Europe and the U.S. comprised finished goods.
THE BRITISH "RUBBER SQUEEZE" AND U.S. POLICY RESPONSES

The gains in U.S. foreign trade and investments resulted from the mutual inclusiveness of private initiatives and public support. The government's diplomatic support to the private sector enabled American investors to break new ground abroad. Incidentally, the cooperative

TABLE 4

NIGERIA'S TRADE DIRECTION 1900 - 1930

(Percentage of Total Trade Flow)

<table>
<thead>
<tr>
<th>Selected Years:</th>
<th>1900</th>
<th>1905</th>
<th>1910</th>
<th>1915</th>
<th>1920</th>
<th>1925</th>
<th>1930</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imports from the U.K.</td>
<td>70.5</td>
<td>69.6</td>
<td>61.2</td>
<td>83.6</td>
<td>82.0</td>
<td>73.8</td>
<td>68.3</td>
</tr>
<tr>
<td>Exports to the U.K.</td>
<td>46.2</td>
<td>50.1</td>
<td>48.7</td>
<td>87.3</td>
<td>91.3</td>
<td>54.7</td>
<td>40.2</td>
</tr>
<tr>
<td>Imports from the U.S.</td>
<td>-1(^a)</td>
<td>-1</td>
<td>3.7</td>
<td>6.8</td>
<td>11.5</td>
<td>6.5</td>
<td>9.4</td>
</tr>
<tr>
<td>Exports to the U.S.</td>
<td>-1</td>
<td>-1</td>
<td>-1</td>
<td>4.8</td>
<td>3.6</td>
<td>9.6</td>
<td>13.4</td>
</tr>
</tbody>
</table>

\(^a\) -1 = less than one percent of total trade.


efforts of business and government to secure alternative and independent sources of raw materials abroad led to the beginning of the Firestone Tire and Rubber Company investments in Liberia and the growth of U.S. direct investments in West Africa.
The Export Trade (Webb-Pomerene) Act of 1918 promoted private initiatives and provided continuity in the strategy and structure of the U.S. firm. The Act made direct government participation in foreign trade and investments unnecessary. Federal intervention in foreign investments would have caused major changes in the strategy and structure of American business firms abroad. The Webb-Pomerene Act indirectly conceded the right of internal self-government to the private sector by allowing exporters to combine, in counterpoise to European cartels. The Act, however, did meet the problems of importers such as the Rubber Association of America (RAA), a voluntary consumer group. The RAA could not compete against the British Rubber Growers Association (BRGA), a monopolistic cartel that controlled three-quarters of total world production of raw rubber. The BRGA enjoyed colonial privileges in the British Empire, and thus had definite advantages over the RAA at the sources of supply.

Britain needed the revenue from raw rubber to meet its war-debts to America. A sharp fall in the price of rubber caused a severe imbalance in Britain’s debt-payment schedule. On November 1, 1922, the Stevenson Rubber Restriction Scheme was approved by the British government to restrict rubber farming in the plantations of Ceylon and Malaya so as to cause artificial scarcity and raise prices. As a result, the U.S. consumer began to pay more
for rubber and rubber products. The "rubber squeeze" yielded $180 million annually to Britain. U.S. consumers were indirectly helping Britain to pay off its war debts.

The Department of Commerce worked with private groups to locate alternative and independent sources or raw rubber. The American consumer did not want to pay for the British deficit. The manufacturers wanted to free their supplies from the stranglehold of a foreign cartel. As Secretary of Commerce, Hoover established a division in the Bureau of Foreign and Domestic Commerce, with the responsibility of locating alternative and independent sources of raw rubber.50 Hoover's main concern was to disentangle the U.S. industrial base from the mulcting impact of British price controls. Hoover supported the American Automobile Chamber of Commerce in its $10 million effort to find alternative and independent sources of rubber and the incorporation of a company for that purpose.51 Hoover, well connected in executive and congressional circles, lobbied for a relaxation of antitrust laws and the formation of purchasing pools and cooperatives for foreign investments.52

THE EXPANSION OF U.S. DIRECT INVESTMENT IN WEST AFRICA

Before 1925, U.S. direct investments in Africa were mainly in the Southern region of Africa; in mines and minerals. The British "rubber squeeze" led to the entry of the Firestone Rubber and Tire Company into Liberia.
The company went to the West Africa in search of rubber and direct investment opportunities. The Department of Commerce Department and the federal government distinctively contributed to the initial success of the Firestone Rubber and Tire Company in Africa.

Change often came from necessity and the timely appearance of leaders with foresight. Hoover and officials of the State Department worked in concert to direct U.S. foreign economic policy in the early 1920s. The officials offered their bureaucratic services to private investors prospecting for raw materials abroad. Not all U.S. rubber manufacturers, however, were willing to take the risk of foreign rubber farming. Equally reluctant was the Automobile Chamber of Commerce, some of whose members preferred submissive reliance on British farmers for supplies. In the RAA, opinions were divided. The representatives of U.S. Rubber, Goodrich and Goodyear preferred collective plans to cope with the rubber shortage. Harvey S. Firestone of Akron, Ohio, however, believed in individual initiatives. Firestone supported Hoover’s plan for industrial self-sufficiency and, in 1923, resigned from the RAA because of disagreements.

Firestone led the search for independent sources of raw rubber. He was convinced that America needed a reliable and an independent source of rubber. Firestone’s foresight and business optimism led him to continental
searches for rubber. In the colonial East Indies, British and Dutch growers collaborated to frustrate Firestone's efforts. In December 1923, after similar disappointments in Mexico, the Panama region and the Phillipines, Firestone turned to West Africa. In Liberia, Donald A. Ross, a Firestone expert and surveyor, confirmed the prospects for direct investments in rubber farms.

Firestone successfully secured long-term investment concessions from the government of Liberia. After preliminary talks with Liberian officials, the Firestone Rubber and Tire Company concluded three separate agreements with the government. Under one of the contracts, the Firestone Plantations Company acquired a 99-year leasehold on more than 1 million acres of Liberian land at the yearly rental of 6 cents per acre. The company also took possession of the abandoned Mount Barclay rubber plantation previously farmed by the British. The company then initiated basic infrastructures in Liberia that were to be of path-finding value to future American firms in Liberia. Within a few years the Coca-Cola Company followed with a bottling plant in Liberia.

THE ROLE OF GOVERNMENT

The success of Firestone in Liberia was in part the result of diplomatic relations already in place between the U.S. and Liberia. In 1912, Congress had authorized a credit loan scheme through the National City Bank of New
York as a form of financial assistance to the Liberian government.\textsuperscript{54} In September 1918 negotiation began for another credit, initially intended as a post-war rehabilitation loan for Liberia. Britain and France objected to this form of assistance to Liberia because they were suspicious that the U.S. had economic and political motives to dominate Liberia. In a letter of January 17, 1919, the U.S. government informed the British authorities that Liberia, as an independent State, was not to be confused with the captured German territories in West Africa and as such could not properly be the subject of an International Mandate or discussion at the Paris Peace Conference.\textsuperscript{55}

Britain and France had attempted to bring Liberia under the League Mandate after World War I for economic reasons. Both nations had an interest in the exploitation of Liberia’s natural resources. France had particular interest in the post-war disposal of German cable stations and communication facilities in Monrovia, while Britain desired active participation in Liberia’s raw materials concessions.\textsuperscript{56} The presence of British and French forces in West Africa and the economic interests of these nations in the region, made Liberia vulnerable to annexation. America’s loan assistance and economic support to Liberia, apart from contributing to the timely preservation of Liberia’s sovereignty, worked to secure the entry of
American firms in the region.

The U.S. took the position that the post-war rehabilitation of Liberia included the financial reorganization of that nation, if the sovereignty of Liberia was to be conserved and protected. On January 22, 1919, the Liberian Legislative Assembly authorized President D.E. Howard of Liberia "to accept the proffered loan credit of five million dollars ($5,000,000) from the Government of the United States....for the rehabilitation and development of Liberia." But the Credit Loan agreement, based on the Liberty Bonds Acts under which the U.S. Treasury could establish credit for America's war allies, ran into a hitch. The necessary official approval had not come.

The policy of the U.S. government after the war was to shift international financing to private sector sources in line with the purpose of the Edge Act. Liberia still owed war debts to the U.S. government and further advances seemed unlikely. At about the same time, the State Department was advancing proposals for the reduction of the government's participation in foreign loans. In 1924 Harvey Firestone reopened the stalled negotiation for credit to the Liberian government. Firestone was interested in the financial viability of Liberia. A senior Firestone Company executive, W.D. Hines, had observed that Firestone would be gambling with a heavy capital investment without a firm assurance that
the Liberian government would not "go to pieces" in the near future. By reopening credit negotiations between America and Liberia, Firestone hoped to bring financial and political stability to a country that was already on the brink of bankruptcy.

Firestone had other reasons for promoting Liberia's interests at the government level. Liberia seemed a suitable base for a U.S. coaling station on the Atlantic coast. Also, Liberia, being an independent state, was a secure point for the regional spread of U.S. investments and enterprises. In a note of December 10, 1924 to Secretary of State Charles Hughes, Firestone explained the benefits of the Liberian project. "If the rubber industry could be developed in Liberia on a large scale, it would not only bring relief to the United States for commercial purposes, but it would be a great safeguard to us in time of national emergency." In his opinion, Liberia offered "splendid opportunities equal to or better than any in the British possessions in the Far East." Firestone urged the government to use its good offices to arrange a credit for Liberia. On September 1926, an agreement was reached between Liberia, the Financial Corporation of America, a Firestone subsidiary, and the National City Bank of New York for a $5 million loan to Liberia. As a result of government support the Firestone Rubber and Tire Company was able to expand into Africa for the first time.
THE STRATEGY AND STRUCTURE OF FIRESTONE IN LIBERIA

The strategy of the Firestone Plantations Company in Liberia was antithetical to the pre-capitalist structure of the Liberian economy. Shortly after Firestone began clearing lands and planting rubber trees, the Liberians began to complain about the "exploitation and domination" of their industrial resources by a foreign firm. Later, similar complaints would become commonplace in Africa.

Liberia’s discontent centered on the terms of the Planting Agreement of 1926, which successive governments found to be one-sided and oppressive. When Liberia agreed in 1926 to grant a lease to the Firestone Company for 99 years, the government had done so in the face of Anglo-French harassment. The Liberian concession to Firestone was made in the hope that it would attract to Liberia U.S. protection against French and British threats of annexation. As a result, Firestone acquired exclusive rights to vast tracts of land for roads and waterways, in addition to the acreage covered by the lease. Under the Agreement, Firestone acquired title to 4 percent of Liberia’s land mass and 10 percent of the agricultural land. Firestone also secured extensive tax relief and duty-exemption on plantation output and equipment for a fixed period.

The Planting Agreement interfered with and unduly restricted Liberia’s sovereign rights and freedom of contract. The agreement prohibited the government of
Liberia from entering into any future loan contracts with any foreign lenders except with the prior approval of the Finance Corporation of America, a Firestone subsidiary. This provision limited the sovereign right of the Liberian government to seek development loans outside of the Firestone rubber industry. Liberians were employed in the thousands by the Firestone Plantations Company mostly as farm laborers and at starvation wages. Successive administrations in Liberia fought to revise the 1926 agreements. In 1976, the parties signed a Concession Agreement that attempted to modify the original contract.

The Firestone Rubber and Tire Company did not have a definite and responsive policy for the social development of Liberia. Liberians, therefore, protested what they perceived as corporate exploitation and neocolonialism. In 1933 relations between Liberia and the U.S. came to a head when Liberians accused the Firestone Company of organizing the ouster of Liberian President Barclay, in favor of a former President, Charles King. King then was serving as private attorney to the company in Liberia. Barclay became unpopular with Firestone because he removed the American supervisor of internal revenue. Firestone found Barclay's action to be in violation of the loan agreement. Without success, Firestone sought the intervention of the U.S. government in the matter. There was indeed a limit to business-government cooperation.
The Liberian government, in need of development funds, continued to welcome foreign investors on terms that were not much different from what Firestone had contracted in 1926. Between 1926 and 1970, several U.S. firms established subsidiaries in Liberia. The Coca-Cola Company and other firms followed on the heels of the Firestone Company. The Pan American World Airways helped in the building of Liberia’s international airport and expanded its African route from Liberia. U.S. firms invested in Liberia’s iron ore and contributed to the development of the mining and smelting industry. Major capital investments by U.S. firms in Liberia were mainly in the extractive industry. In 1969, the government of Liberia proposed to the company a scheme for a Firestone tire manufacturing plant in Liberia. A draft agreement was drawn up after protracted negotiations on the rights and liabilities of the parties. Disagreement over contractual issues caused the plan for tire manufacturing to be shelved. Liberia was likely to remain a dependent economy and a source of crude rubber until October 1, 2025, when the Firestone leasehold of 1926 expires.

WORLD WAR II AND U.S. INVESTMENTS IN AFRICA

The coming of World War II increased the spread and scope of U.S. direct investments in Africa (Table 5). Although the U.S. emerged from the war with a negative balance of payments, private direct investments increased
shortly afterwards. U.S. direct investments in Africa after the war were mainly in petroleum, mining and smelting. Mining operations were for both precious and industrial metals, such as gold in Ghana and iron in Liberia. Most of the new investments were in South Africa and, to a lesser extent, Liberia. The ease with which American business developed in Liberia resulted in part from historical ties between the U.S. and Liberia. Moreover, Liberia and South Africa being independent states, did not suffer from colonial limitations on foreign investments.

In the colonies U.S. firms made significant progress in investments in spite of the dominant presence of European firms and colonial policies. For example, in 1943, U.S. direct investments in Nigeria stood at $5 million, by 1950 this had risen to $11 million. Similar changes occurred in U.S. investments in Ghana, Equatorial Africa, East Africa, Algeria and Morocco (Table 5). The legal and political barriers erected by Europeans in Africa, however, continued limit the effective participation of U.S. investors in colonial industries. In the Congo, the Belgians had an "open door" policy. Belgium’s liberal policy resulted from two post-war conventions, which obligated the Belgians to maintain an Open Door policy in the Congo. The Belgian authorities, however, employed legal devices to circumvent the treaties and
prevent foreign investments in the Congo.

In the post-war years, U.S. direct investments in colonial Africa became more diversified. By 1950, U.S. direct investments in British colonies and protectorates in Africa amounted to only $40.9 million. The sectoral distribution of activities by 1950 still presented the pattern of investment that existed in 1914. Mining, smelting, petroleum marketing and petroleum distribution, ranked high as the favored areas for FDI and together, accounted for $36.4 million. Wholesale and retail trade, agriculture, transportation, communications and utilities, together accounted for less than $4 million in direct investments.\textsuperscript{70} The expansion of U.S. investments in British African colonies between 1943 and 1950 resulted mainly from additions to existing plants and facilities. Mercantilist policies were yet to allow for the wholesale entry of private U.S. investors into the dominion.\textsuperscript{71}

In some cases, however, the nationalist policies of the government limited the expansion of U.S. investments. In Egypt, for example, the government's nationalist policies impeded the growth of U.S. investments in agriculture and primary industries. Although the government in 1922 relaxed its investment regulations, U.S. direct investments in Egypt continued to be marginal. In 1950, the book value of U.S. private investments in Egypt was close to $40 million. There was no dramatic growth in
### TABLE 5
U.S. DIRECT INVESTMENTS IN AFRICA: 1929 - 1959  
(in millions of dollars)

<table>
<thead>
<tr>
<th>Area and Country</th>
<th>1929</th>
<th>1936</th>
<th>1943</th>
<th>1950</th>
<th>1957</th>
<th>1959</th>
</tr>
</thead>
<tbody>
<tr>
<td>NORTH AFRICA*</td>
<td>10</td>
<td>10</td>
<td>27</td>
<td>56</td>
<td>106</td>
<td>148</td>
</tr>
<tr>
<td>Algeria</td>
<td>3</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>Egypt</td>
<td>7</td>
<td>8</td>
<td>17</td>
<td>39</td>
<td>57</td>
<td>60</td>
</tr>
<tr>
<td>Morocco</td>
<td>**</td>
<td>1</td>
<td>4</td>
<td>7</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>EAST AFRICA*</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>12</td>
<td>30</td>
<td>43</td>
</tr>
<tr>
<td>British E. Africa</td>
<td>**</td>
<td>**</td>
<td>4</td>
<td>4</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>**</td>
<td>**</td>
<td>-0.5</td>
<td>5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>WEST AFRICA*</td>
<td>6</td>
<td>17</td>
<td>26</td>
<td>42</td>
<td>147</td>
<td>235</td>
</tr>
<tr>
<td>French Equatorial</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td>4</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>French W. Africa</td>
<td>1</td>
<td>**</td>
<td>3</td>
<td>11</td>
<td>34</td>
<td>76</td>
</tr>
<tr>
<td>Ghana (British)</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Liberia (independent)</td>
<td>5</td>
<td>**</td>
<td>18</td>
<td>16</td>
<td>72</td>
<td>115</td>
</tr>
<tr>
<td>Nigeria (British)</td>
<td>**</td>
<td>**</td>
<td>5</td>
<td>11</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>CENTRAL &amp; S. AFRICA*</td>
<td>82</td>
<td>61</td>
<td>72</td>
<td>117</td>
<td>381</td>
<td>417</td>
</tr>
<tr>
<td>Belgian Congo</td>
<td>**</td>
<td>1</td>
<td>4</td>
<td>8</td>
<td>19</td>
<td>17</td>
</tr>
<tr>
<td>Rhodesia &amp; Nyasaland</td>
<td>**</td>
<td>**</td>
<td>18</td>
<td>26</td>
<td>59</td>
<td>72</td>
</tr>
<tr>
<td>Union of South Africa</td>
<td>77</td>
<td>55</td>
<td>50</td>
<td>140</td>
<td>301</td>
<td>323</td>
</tr>
<tr>
<td><strong>AFRICA - TOTAL:</strong></td>
<td>102</td>
<td>93</td>
<td>129</td>
<td>287</td>
<td>664</td>
<td>843</td>
</tr>
</tbody>
</table>

**Note:**  * asterisk indicates total regional investments.  
** asterisks mean that figures for the year are part of estimates for a neighboring colony or country. Total for 1929 does not account for about $15 million in FDI.

**Source:** U.S. Department of Commerce, U.S. Business Investments in Foreign Countries, (OBE, 1960).
subsequent years. In 1958, thirty-nine U.S. firms had branches, subsidiaries or other investments in Egypt. Most of the firms operated marketing and distribution facilities and a few engaged in manufacturing activities.

U.S. direct investments in Africa expanded steadily in the post-war years. In spite of the growth, however, the volume and value of American investments in Africa remained a drop in the ocean when compared to U.S. FDI in Canada, Latin America or Europe, for the same period. In the Directory of American Firms Operating in Foreign Countries for 1958, only Egypt, Liberia and the Union of South Africa were listed as hosts to U.S. multinational firms in Africa. In 1959, U.S. manufacturing in Africa amounted to only $120 million, almost all of which was located in the Union of South Africa. None of the colonial regions of Africa was included in the Directory because U.S. investments in colonial Africa were conducted in most cases through European agencies, rather than resident subsidiaries of American firms.

Despite the upward trend in FDI between 1943 and 1959, U.S. investments in Africa remained relatively marginal. Out of 4,109 FDI enterprises established with substantial U.S. capital between 1951 and 1957, only 178 (valued at $199 million) were located in Africa. U.S. investors held at least 50 percent ownership interests in 169, and interests of less than 50 percent in 9 of the
enterprises. In 1959 U.S. direct investment in Africa amounted to $843 million compared to $10,171 in Canada and $8,218 in Latin America. The maturation of U.S. business enterprise in Africa still had to wait for the end of colonialism in the continent.

As the appendix shows, most colonial dependencies in Africa achieved independence in the late 1950s and early 1960s. Decolonization in Africa resulted in the emergence of new nations. U.S. firms that expanded to Africa in the 1960s followed the "containment trail" and adopted a "cold war" business strategy. The Eisenhower administration organized the basis of business relations between U.S. firms and post-colonial governments in Africa. The next chapter examines the consolidation of U.S. business presence in Africa in a new era.
CHAPTER II
BUSINESS – GOVERNMENT COOPERATION
IN THE ERA OF DECOLONIZATION

The decolonization of Africa after World War II created the conditions for the expansion of American business enterprise in the continent. The U.S. government provided the political and diplomatic framework for this expansion. The U.S. supported the massive dismantling of colonial superstructures and the emergence of new nation-states in Africa in the late 1950s. The attainment of sovereign statehood by hitherto colonized peoples, in the heat of the cold war, raised new issues and major concerns about the global balance of power between capitalism and communism. Central to these concerns were economic and security considerations about the present and future directions of the new nations. As with the Marshall Plan in Europe, the U.S. was determined to steer Africa away from the tentacles of communism and direct the new nations along the path of liberal capitalism.

The American leadership set out early to establish political, social and economic relations with African nations emerging from colonial rule. In the process, the leaders created an intellectual framework that cast
American policy toward the continent in the mold of cold war ideology. In February and March of 1957, Vice President Richard Nixon conducted state visits to Morocco, Ghana, Sudan, Uganda, Ethiopia, Tunisia and Libya to assess the post-colonial status of these nations in relation to U.S. interests. In his report to the President, Nixon observed that the emergence of Africa from a colonial status "could well prove to be the decisive factor in the conflict between the forces of freedom and international communism."¹ The Vice President recommended the creation within the State Department of a new bureau of African Affairs to oversee U.S.-Africa relations, the forging of social and economic links with the new nations and the involvement of private American capital in the development of mutual interests between the United States and Africa.

A "MARSHALL PLAN" FOR AFRICA?

The task of formulating and implementing U.S. foreign policy in post-colonial Africa after World War II fell on President Eisenhower. As Kim McQuid philosophically put it, Harry Truman had constructed a Marshall Plan for Europe, but Dwight Eisenhower designed one for the world.² While Truman invested in European reconstruction, Eisenhower invested in the expansion of America’s business and political influence in developing nations. The President had lived and worked in Africa during World War II as a
command general and was conversant with the mercantilist inequities and structural dislocations that colonialism had wrought in the continent. In spite of Eisenhower’s sympathy with European colonial interests in Africa, he was in the position to comprehend the problems and prospects of the new nations as they emerged from a century of colonial exploitation.

Many African nations were inspired in their agitation for independence by the revolutionary experience and the democratic traditions of the Americans. Against this background, the new nations looked forward to a mutually beneficial relationship with the United States. Nixon, in his report to President Eisenhower on his African tour, observed that the prestige of the U.S. was "more uniformly high" in the countries he visited than in any other area of the world at that time.

These countries know that we have no ambitions to dominate and that the cornerstone of our foreign policy is to assist countries in resisting domination by others....This understanding of the principles for which we stand as a nation is a tremendous asset to us in this area. The maintenance of the present high prestige we are fortunate to have in Africa will depend on whether the people of the continent continue to understand our dedication to the principles of independence, equality and economic progress to which we are so deeply devoted.³

America’s economic strength and political influence increased tremendously in the post-World War II era. The war had cost Britain, France and the lesser European powers much in terms of men, material and finance. For
example, Britain, in debt after the war, had lost over four billion dollars in foreign investments. The choice was not easy, but Western Europe had to divest itself of the burden of vast colonial holdings. The United States, however, emerged from the war a stronger world power. In spite of the balance of payments problem at the conclusion of the war, the U.S. was financially fluid and politically determined to manage the future course of global events.

The American design for a positive leadership role in international relations came in a "Pax Americana" package. Part of the deal involved the organization of the Bretton Woods Agreement in 1944. The Agreement established the International Monetary Fund (IMF) to promote and maintain exchange stability among member-states, and the International Bank for Reconstruction and Development (IBRD) to facilitate capital development and productivity in member-nations. These institutional arrangements, however, were programs directed essentially at Western Europe and not for the immediate benefit of Africa. Although the older African states received assistance from the institutions, the level of support was as unimpressive as the lending record of the U.S. Export-Import Bank (Eximbank). In 1956 a new institution, the International Finance Corporation (IFC), came into being as an affiliate of the IBRD. The IFC, however, made limited contributions in pursuit of its charter to promote "productive private enterprise" in
Africa. The important point is that the U.S. played a crucial role both in the organization and the financing of these multilateral institutions.

It was obvious that America's preoccupation with the rehabilitation of Europe slowed down the expansion of U.S. business enterprise in Africa during the Democratic era. The Truman administration did not have a coherent foreign policy for Africa. Although Truman in the "fourth point" of his inaugural address of January 20, 1949, recommended economic assistance to low-income areas, Africa received less than 1 percent of the foreign aid appropriation of $4.94 billion for 1950. With the Korean war in 1950, and the passage of the Mutual Security Act in 1951, a large portion of the foreign aid budget went to military causes.

In the Truman era, Europe continued to receive the largest share of U.S. foreign aid. The administration was also cautious not to disturb America's post-war entente with Western Europe. The administration often took an "unobtrusive" stance in African affairs and did not insist on the immediate decolonization of the continent. The Truman administration, however, clearly saw the need for U.S. investors to break into European colonial monopolies and preferential trading zones. Moreover, the Marshall Plan indirectly extracted concessions from Britain and France in relation to their vast colonial holdings. The Marshall Plan encouraged and, in some instances, insisted
on the liberalization of trade, the removal of quotas on trade and the discount of nationalist considerations in international business transactions. The Truman doctrine, wrapped as it was in the containment policy, provided a vehicle for the carriage of liberal capitalism into former colonial dependencies in Africa.

U.S.-AFRICA RELATIONS IN THE EISENHOWER ERA

Truman's containment policy in Africa was short of battle cry devoid of a systematic program of economic cooperation similar to the Marshall Plan in Europe. Eisenhower took steps to add economic substance to the policy. Eisenhower, while recognizing a Soviet threat, wished to confront the enemy not in a blood-bath nor from "the pulpit" of propaganda, but "in terms of the dollar." Despite his respect for European imperial interests in Africa, Eisenhower was not excited by European colonialism. He recognized that the "winds of change" were blowing across the continent, tearing down the vestiges of European imperialism and colonialism.

The massive decolonization of Africa really began at the end of Eisenhower's second term. In 1957, only ten African nations had a sovereign status (see appendix). These nations, however, were relatively new in the comity of nation. Because of their past experiences with the West, the new nations at first questioned the President's containment policy in Africa. Their cautiousness
reflected fears of the substitution of a new colonizer. In North Africa, for example, the Eisenhower administration had a problem with his containment policy. The nationalist governments in North Africa could not, for instance, understand why Eisenhower took a soft stance in favor of France in the Algerian agitation for independence. Most African nationalists interpreted Eisenhower's policy in the region as an expression of neo-colonialism. African governments had come to see U.S. foreign policy in terms of an ideological overtone. They welcomed Eisenhower's economic aid, but did not reject similar contributions from the Soviet Union. This ambivalence stemmed from the logic that to remain non-aligned in the Cold War was one way of eating the cake and having it.

Eisenhower supported the expansion of American business abroad. The President was seen by most observers as the friend of big business. The President, no doubt, believed in the "free enterprise" system, where private initiatives, more than state regulation, served as the basis of economic government. Eisenhower was reluctant to support or increase federal interference in the private sector. (Vice-President Nixon would pursue a similar policy in the 1970s as President). Eisenhower's foreign economic policy, however, tended to confuse pure business considerations with anti-communist concerns. His first four years in office were significantly devoted to a global
fight against communism. The administration's foreign aid program, inasmuch as it attempted to create a favorable investment environment for U.S. firms abroad, largely served an ideological purpose in Africa.

At home, Eisenhower found the 85th Congress uncooperative. The legislators were determined to maintain control over foreign aid spendings. Even the Republicans saw the administration's foreign aid program as a bottomless pit; a tedious financial commitment unwarranted by immediate national interests or necessities. The "Eisenhower Doctrine", which the President presented to Congress on January 5, 1957, was unpopular among the legislators. Eisenhower's Middle East policy and plans for military aid to the Arab nations received more opposition than support, and Congress cut his budget proposal of January 17, 1957, drastically. Congress, apparently, did not share the President's doctrinaire program in major respects.

Eisenhower was convinced that U.S. foreign assistance to developing nations would secure their confidence and loyalty. Much like the other American leaders of the Cold War era, Eisenhower imagined the global omni-presence of communism and was determined to fill the vacuum created by the European evacuation from Africa, supposedly, before the Soviets moved in. The President also hoped to build up Africa as a market for American goods and capital. More importantly, Eisenhower saw his presidency as a
mandate for change. The Eisenhower Doctrine, a vigorous campaign against Communism, was intended by the administration to be a program of action in the Middle East. In due course, however, the program would also apply to Africa. African leaders were observant of the Middle East policy, especially the administration’s sympathy with the Lebanese Christians against the Moslems. Islamic nationalists in particular saw the Eisenhower Doctrine as a revival of Eurocentric imperialism in North Africa. At the same time, however, the Islamic states had been most favored in the allocation of U.S. economic aid to Africa.

The structure of U.S.-Africa relations changed in material respects during Eisenhower’s second term. The volume of economic assistance to Africa increased as the global expenditure on military assistance decreased. In 1956 the International Cooperation Administration, the successor to the Foreign Operations Administration, granted over $11 million in aid to Africa. By 1960 Africa’s share of U.S. foreign aid had increased to 5 percent of the total, nevertheless, a trickle compared with grants to the Near East. At the same time, however, Eisenhower’s policy altered to a position that linked foreign trade with foreign aid. Although the turn-around showed the awakened concern of the administration for the economic condition of Africa in the post-colonial era, it sowed the seed of a misunderstanding in
U.S.-Africa relations, as we would see in the Hickenlooper amendment of 1962.

Eisenhower supported trade and business liberalism in principle. In practice, however, Eisenhower condoned the monopolistic practices of U.S. firms abroad. Contradictions such as these, justified charges of inconsistency against the Eisenhower administration and its policies.\textsuperscript{12} The administration’s inconsistency in policy formulation and implementation obstructed the U.S. foreign economic goals in that period. In spite of the President’s seeming drift in policy and reputation for delegating executive action, Eisenhower had definite foreign policy objectives and a realistic world-view based on realpolitik. These objectives stood at the center of his African policy and foreign aid program.

Eisenhower’s seeming concern for the economic well-being of post-colonial Africa was a veil that hid the President’s primary concern: the pursuit of Communist containment on a global scale. Eisenhower’s Secretary of State, himself, was an avowed warrior against Communism. Dulles, described as cold and lacking in any genuine appreciation of the outlook and problems of the developing nations, was disliked by the Europeans for his anti-colonialism speeches and by the developing nations for the neo-colonialist symbol which the Secretary appeared to represent.\textsuperscript{13} Dulles’ withdrawal of U.S. funds from the
Aswan Dam project in Egypt in 1956 was well-considered, politically, but it affected the credibility of Eisenhower’s foreign policy in the region. It aroused cynical criticisms of the foreign aid program in Egypt.

Eisenhower’s African policy, as imprecise as it was, continued to evoke political debates. Questions still existed among both Republicans and Democrats as to the volume and value of federal aid to the developing nations, and the preference for aid to private investments. The administration’s African policy seemed unclear. The wavering nature of Eisenhower’s policy in the continent, slowed down the expansion of U.S. private enterprise in the continent. Eisenhower’s foreign aid policy in Africa proved ineffective because foreign assistance, as a diplomatic option, was unduly pampering and merely provided a cover for the pursuit of a political ideology inherited from the Truman administration. Toward the end of 1959, Eisenhower, because of balance of payment problems and lack of popular support for his purpose, undertook a revision of his foreign aid policy. As President Nixon would attempt to do in the 1970s, Eisenhower substituted an international cooperative formula for the economic development of the new states.

SUPPORT FOR PRIVATE INITIATIVES

In spite of the shortcomings of Eisenhower’s African policy, he was the first American President to organize
comprehensive measures for the economic development of "third world" nations through a program of actions involving private initiatives and multilateral cooperation. Under Eisenhower, an emphasis for the economic and industrial transformation of post-colonial Africa became a pressing priority, albeit, strung to a persistent anti-communist agenda. Eisenhower’s determination to neutralize a perceived Soviet threat around the world, did not falter throughout his terms in office. This determination underscored Eisenhower’s foreign policy and, to a large extent, the basis of his policy on foreign investments. Back in 1954, Eisenhower, in his message to Congress had stressed the need for increased U.S. foreign direct investment as a means of developing international trade and foreign sources of raw materials "to meet our own ever-increasing needs even while it helps to strengthen economies of foreign nations."\(^{14}\)

The promotion of foreign direct investments for the benefit of American entrepreneurs comprised the cardinal aspect of Eisenhower’s Mutual Security program, and the subsequent passage in 1959, of an amendment to Section 413 (c) of the Mutual Security Act, was an attempt to consolidate the program. The so-called Javits amendment set up a mechanism that would study and recommend measures for a more effective utilization of private sector resources for the achievement of the purposes of the
Mutual Security Act. The Javits amendment was a realistic attempt, therefore, to redirect the focus of the Mutual Security program from a preoccupation with ideological issues to the concerns of business.

The Javits amendment also complemented present efforts by the executive branch to find ways and means of strengthening America’s stake in foreign investments. Earlier, the Department of Commerce, in compliance with section 516 (c) of the Mutual Security Act of 1951 as amended, had begun a study of the legal, social and economic impediments to private investments abroad. The goal was to seek ways for the removal or mitigation of barriers to U.S. private direct investments abroad.15 In the report that followed, the Department of Commerce found that most of the impediments resulted from basic differences in cultural, social, economic and political conditions. Differences relating to global politics, instability, lack of information on investment opportunities and imbalances in the world economy, constituted major impediments to the expansion of U.S. direct investment in Africa.

The imbalances in the world economy stemmed from the fact that U.S. direct investment was severely underrepresented in developing countries outside Latin America. Relative to European holdings, there were few subsidiary enterprises in developing countries in which American
investors or parent companies held a controlling (ownership) interest of twenty-five percent or more of the voting stock, and in Africa, there were fewer such investments. Although U.S. direct investments were more diversified in Africa than in the Near East, two-thirds of the African investments were still clustered in the older states of Liberia and South Africa by 1960. Thus, the end of colonial government in Africa did not by itself ensure the influx of foreign investments. A number of other factors continued to limit the entry of foreign capital.

American investors did not immediately take advantage of the end of colonial rule in African states. Most investors were unwilling to assume financial risks in new nations whose political future was uncertain. In deciding whether to invest abroad, American entrepreneurs generally considered U.S. domestic policies on foreign investment of lesser influence and effect than external factors in the host country. Most U.S. investors were more concerned with factors such as expropriation, economic nationalism and political stability in the host country. Thus, despite government efforts to stimulate private investments in the new nations, many U.S. investors preferred to invest their capital in the familiar grounds of Asia and Latin America.

Private investors needed more than mere salutary encouragement from the federal government to venture into
unfamiliar territories. Business groups expected the government to create a more favorable investment climate abroad, particularly in the areas of antitrust laws, taxes on foreign income and risk insurance. Because the seemingly high level of taxes in the United States on both domestic and foreign income limited the volume of capital available for reinvestment, most U.S. investors wanted taxes on income from foreign investments to be eliminated or substantially reduced.

Business groups wanted the antitrust laws to be clarified and, if possible, excluded from applying to contractual arrangements allocating sales territories abroad. In 1955, the Attorney General’s National Committee set up to review the implications of the antitrust laws, had affirmed that commercial transactions under Section 1 of the Sherman Act included direct capital investments. Further, the general attitude of U.S. courts since 1947 had been to regard as illegal foreign oligopolistic arrangements "touching upon" U.S. trade or commerce. Thus, inter-firm contracts between U.S. and foreign interests to share markets abroad, exclude competition, fix prices or cartelize were, prima facie, illegal. For most U.S. investors the existing framework for foreign investment was unsatisfactory and inadequate for the post-war challenges of global competitiveness.

FOREIGN INVESTMENT RISKS
American investors expected the government to institute appropriate measures that would ensure the safety of their investments abroad. The government needed to do more than provide information services to Americans on business and investment opportunities in developing areas. Most firms demanded the expansion of government-supported programs for risk avoidance in foreign countries. The Office of International Trade reported that of 247 investor-firms surveyed, 128 believed that the existing federal insurance guaranty against expropriation and inconvertibility encouraged American firms to invest abroad. Thirteen investor-firms, however, believed that such guaranties did not encourage foreign investment, while 65 percent of the firms with foreign investments (about 160 out of 247) contended that guaranty insurance, as then constituted, had not influenced their decisions to invest abroad.21

While the guaranty program did not by itself pose a barrier to the expansion of U.S. business enterprise in Africa, certain changes were necessary to bring the program in line with the expectations of U.S. investors. The guaranty program as then organized required an insurance contract between the U.S. government and the host country without the direct involvement of the investor-firm who, for practical purposes, was considered a third-party beneficiary. Most of the firms complained
of the red-tape that limited the effectiveness of the scheme, for in three years (1956-1958) only 15 investment guaranty treaties were concluded and of these only one involved a new African participant, Ghana, in 1958.

The investment guaranty program, as first organized under the Economic Cooperation Act of 1948, provided only for insurance against the inconvertibility of the host country's currency. The program did not cover the problem of expropriation or the confiscation of private investments. Under the Act, the federal government was named the beneficiary of any payments made under the insurance contract. In 1949, the Act was amended to provide for the subrogation of the U.S. government to the rights, title, claim or other cause of action relating to an investment dispute in which benefits were paid or to be paid to a U.S. interest. Another amendment of 1950, while retaining the basic provisions of 1949, expanded the scope of the statute to include insurance guaranty against foreign expropriations of certain private direct investments of U.S. firms.22

The Eisenhower administration took steps to secure from foreign governments the safety of American investments abroad. The Mutual Security Act of 1954, among other objectives, was intended by Congress to consolidate existing laws and measures for the protection of U.S. foreign investments and the expedient realization of the
purposes of America's foreign aid. The Mutual Security Act of 1956 raised the insurance coverage from $200 million to $500 million and extended the effectiveness of the guaranty from April 1962 to June 1967. American firms, however, did not all agree that the Guaranty Program was sufficiently comprehensive because it did not adequately protect against all expropriations and the inconvertibility of foreign currencies.

The effects of U.S. foreign aid on the willingness of the new nations to enter into investment guaranty contracts remained unclear. A few firms wanted the federal government to cancel or curtail the foreign aid program which Eisenhower had expanded to include the developing nations of Africa, Asia and the Middle East. Of the 138 firms interviewed by the Department of Commerce, 53 firms considered the foreign aid and loans program an obstacle to private business initiatives abroad. These firms, mainly the large ones, were of the opinion that foreign aid encouraged a poor investment climate abroad by making private capital funding unattractive to the beneficiary host nation.

The smaller firms, those with marginal capital outlay of less than $400 million either in the U.S. or abroad and comprising about 10 percent of the foreign-investor firms, did not have any serious objections to the foreign aid program. The smaller firms, interested mainly in licens-
ing rights, did not consider foreign aid a serious threat to their survival abroad. However, about 26 percent of the firms with over $400 million of assets in the U.S., were opposed to foreign aid; a program that they considered economically unsound and only politically motivated.  

While a majority of the firms supported purely technical assistance to foreign countries, a number of them expressed fear that financial aid from the government would be used by the developing nations to purchase goods from U.S. competitors. This attitude, not surprisingly, reflected a pattern of thought among most American business groups from the time of the Marshall Plan. For instance, on March 18, 1949 Curtis E. Calder as chairman of the International Relations Committee of the National Association of Manufacturers (NAM) took the position that:

there is no effective substitute for private management in the investment and administration of capital funds. Intergovernmental loans must be restricted to fundamental economic needs indirectly productive and unsuitable for private investment.  

According to the NAM, with the termination of the European Recovery Program the American taxpayers would have reached the limit of their desire and ability to finance foreign developments by public grants.  

The fear was that the American taxpayer would be the ultimate victim of any foreign expropriations. To the
NAM, Asia, Africa and Oceania ranked high as fields for the investment of American capital but then, it was often "difficult, if not impossible, for a capital-importing country to offer a sufficiently 'favorable climate' to attract foreign investors to invest in the country most in need of outside help."²⁶ Past experience had shown that a serious risk faced by American entrepreneurs in foreign countries was the expropriations or forced acquisition of their capital. As the concern of the NAM showed, "foreign investors will hesitate to invest their capital in a country if they believe that such capital may be appropriated."²⁷

The Investment Guaranty Program, therefore, did not fully satisfy the expectations of the American investor. The program did not protect against all foreseeable deprivations of property in foreign countries. More importantly, the guaranty program, originally formulated as part of the Marshall Plan, did not directly relate to the foreseeable needs of the new nations of Africa, Asia or Oceania. The subsequent inclusion in the guaranty program of developing nations receiving economic and technical assistance from the U.S. broadened the scope of the guaranty program and raised new questions as to the true design of the scheme. In 1959 the investment guaranty program was limited to the so-called Third World
nations with Europe now fully rehabilitated and on the path of liberal capitalism.\textsuperscript{28}

The investment guaranty program was limited in scope and did not cater to the interests of American investors in all conceivable circumstances involving loss of property. That was because guaranty contracts were patterned after the Treaty of Friendship, Commerce and Navigation, which before and after World War II, existed for the reciprocal guarantee of the personal security and rights of citizens of the contracting nations. The Treaty of Friendship, Commerce and Navigation, being of a contractual nature, did not prevent a foreign country, with no treaty obligations toward the U.S., from expropriating private American investments within its national jurisdiction.

In Africa, there were few conventional and treaty arrangements for the protection of American investments. Only Liberia had a treaty of Friendship, Commerce and Navigation with the U.S. before World War II. In the post-World War II years up to 1968, only Ethiopia (1953) and the Togolese Republic (1966) had a similar treaty arrangement with the United States. American investors had cause to be concerned about the safety of their investments in Africa, considering that by the end of 1975, U.S. firms controlled 790 subsidiaries and incorporated outposts in 47 African states with investments worth
about $2.4 billion in book value.\textsuperscript{29} The U.S. government, therefore, needed to do more than encourage private investment initiatives. The government had a diplomatic responsibility to ensure that it secured a harmonious balance between the expectations of business and the imperatives of U.S. foreign policy in Africa.

**BUSINESS AND POLITICS IN U.S.-AFRICA RELATIONS**

The problem confronting U.S. business and foreign policy in Africa rested on two main considerations. First, there was the goal of establishing more firmly the political presence of the U.S. government in the yet-to-become and the newly independent areas of Africa as a deliberate aspect of the containment policy. Second, the economic aspect of the containment strategy included the participation of U.S. firms and investors in the pursuit of the goals of foreign policy, without thereby causing the latter foreseeable financial losses. To achieve this objective, however, meant a delicate balance of private and public interests.

The containment policy had to be pursued in such a manner that would not alienate foreign governments. The foreign assistance program had proved successful, at least in Europe, as a way of securing the political loyalty and economic cooperation of foreign governments. Eisenhower's economic policy in Africa, conceived "in terms of the dollar," came to be expressed through the foreign aid
program. This way the government sought to attract the political loyalty of the African nations, while it sought to consolidate the political gains through private initiatives and direct investments.

The problem, however, was in striking a balance between the broad objectives of foreign policy and the narrower pursuits and expectations of business. Thus, U.S. foreign economic policy in Africa involved finding a workable solution between two distinct positions: public aid and private initiatives. The juxtaposition, if not properly defined, would mean the displacement of private resources by funds from public sources. In a press release of October 15 1958, Congressman Hale Boggs of Louisiana, as Chairman of the House Subcommittee on Foreign Trade Policy, pointed out that "our foreign economic policy must be conceived of as a whole, aimed at achieving certain national goals through a coordinated set of programs." 30 There was divided opinion, however, as to the methods by which business means could be effectively recruited to achieve political ends.

The major concern of most American investors was in retaining control of invested capital without undue and prejudicial interference from the host government. The Council for Private International Investment, a largely private group, took the position that "it is not possible to induce an enlarged flow of private capital to countries
abroad unless the investor is assured a fair opportunity to receive his profit and is given some guaranty that he will be compensated adequately in the event that his investment is seized."\textsuperscript{31} The Council, formed on November 20, 1958 in New York to find ways of stimulating and safeguarding U.S. foreign private investments, comprised seventy-five representatives of industry, banking, the professions and government. The Council agreed with the need for increased private capital transfer to the developing nations but noted that private capital, in the long-run, must necessarily replace government-to-government foreign aid projects which the Council considered unduly costly.

Unlike private entrepreneurship, government foreign aid projects in a developing country often disregarded certain economic factors that determined the location and situation of an industrial enterprise. American firms and investors were not only concerned with the costly nature of government-to-government foreign aid, but with the fact that foreign aid would encourage undue interference from the federal government in the private sector. In his statement at the House subcommittee hearings, the Treasurer of Standard Oil of New Jersey, Emilio G. Collardo, pointed out that substantial private sector equity participation was necessary to avoid "the inevitable tendency for government-to-government aid to foster
more pervasive governmental control of production to the
detriment of private enterprise. "^32

More importantly, business groups were concerned that
direct federal government involvement in the economic
development of new nations had the potential of sparking
nationalistic reactions and charges of neo-colonialism.
Such a situation would become counter-productive to
private interests in foreign investments. As a represen-
tative of the Machinery and Allied Products Institute
pointed out, the influx of foreign capital into a foreign
country "gives rise to self-conscious concern with foreign
economic domination on the part of the host country",
resulting in the expression of nationalistic fears of
foreign domination of the local economy. ^33

American firms were equally concerned with tax relief
and incentives as they were with the safety of their
investments. The Machinery and Allied Products Institute,
for example, suggested the establishment of a United
States World Trade Corporation through which American
business firms would conduct business with foreign
nations, and the deferral of tax on the foreign income of
American firms until such income was remitted to the U.S.
in the form of dividends. ^34

Taxation had been one of the oldest and primary
factors affecting the decision of U.S. firms to locate
abroad. This is because the problem of taxation is as old
as the history of business enterprises, and American firms with foreign operations have always made efforts to avoid double taxation or to secure tax relief and incentives. However, the U.S. government, like any other capital-exporting nation that relies on foreign business enterprise for the balance of payments, has always taxed income from foreign sources regardless of the firms’s obligations to pay tax in the host country. The tax issue, therefore, represented an area in which the federal government needed to strike a balance between its foreign policy objectives and the peculiar demands of business.

To eliminate the onus of double taxation on U.S. firms, the National Foreign Trade Council suggested amendments to the Internal Revenue Code and applicable international conventions, the effect of which would make the taxation of business income enforceable only in the host country. In the opinion of the Council, this would make it possible for American firms to be placed in a position of tax equality with enterprises of the host nation and eliminate the exposure of American firms to the jeopardy of double taxation, in the host country and in the U.S. where tax assessments are based on entirely different principles.

The National Foreign Trade Council also lent support to President Eisenhower’s 14 percent-point tax reduction plan by which the reduced rate granted to Western European
trade corporations would become effective on a worldwide basis. President Eisenhower had recommended in 1955 that a law be enacted for the taxation of business income from foreign subsidiaries at a rate 14 percent lower than the corporate rate on domestic income, and a deferral of tax on income of foreign subsidiaries not yet repatriated to the United States. The President’s recommendation was favorably received by most business groups. The United States Council of International Chamber of Commerce, a private organization comprising industrial representatives, in support of Eisenhower’s recommendation, urged that the foreign subsidiary of a U.S. corporation be permitted by law to defer U.S. tax on its foreign income until such income is withdrawn from the host country.

The deferral of tax on foreign-source income until repatriated to the U.S. seemed a logical compromise and a necessary incentive to the expansion of private business enterprise abroad, particularly in the post-colonial regions. A bill introduced in the House following recommendations from business groups, provided for an extension of 14 percent-point reduction in tax rate from the regular 52 percent applicable only to Western Hemisphere trade corporations to 38 percent, and the exemption of foreign-source corporate income from taxation until brought back to the United States. The Foreign Assistance Act of 1961, as amended, incorporated these
provisions, including the clause for the establishment of an Agency for International Development to oversee program implementation, an issue more fully discussed in a subsequent chapter.

It is clear from the foregoing that American business groups were particularly concerned with the investment environment at home and abroad. They were concerned with issues of tax, currency convertibility, antitrust laws, expropriation and other obstacles to foreign investment. The problem, however, was that the politicians confused business problems with ideological issues and business interests suffered in the long run.

THE MEANS AND ENDS OF POLITICS

While the business community and the government conceived a common end - the effective entry of U.S. firms into Africa - they had separate and different purposes. The government, though concerned with creating an atmosphere conducive to the growth and expansion of American business in the developing world, was more particularly addressing a different set of issues that centered on the containment of communism. While the government was competing with Eastern Europe and its communist manifesto for strategic and political spheres of influence in Africa, the business community, less preoccupied with a Soviet menace, was more concerned with gaining competitive
advantages over Western European firms on a platform of liberal capitalism.

Political rhetoric, however, often blunted the line between ends and means, especially when business statements are made under political auspices. Douglas Dillon as Under Secretary in 1959 said that:

free private enterprise is the very basis of our free system. On this foundation stands the freedoms we hold so dear—freedom of thought, freedom of religion, and freedom of the individual. If our system is to prevail over the formidable challenge of totalitarian Communism in the economic sense, we must show the people of these lands that the private enterprise system is in their own best interest.40

Dillon seemed to view private enterprise as the foundation of other freedoms instead of vice versa. Dillon's statement was based on the same premise as Eisenhower's foreign aid and trade policy, at least rhetorically: the idea that foreign trade and investment benefitted the capital-importing nation more than the capital-exporter. Further, the interest of the business community in the foreign aid program and the policy reasons behind foreign aid, converged only to the extent that the economic development of the new nations was profitable to the corporate strategy of the multinational firms.

The perception of private enterprise as an ideological armory for the several battles against Communism in Africa and the "third world" indirectly laid the foundation for the economic nationalism that swept through
Africa, the Middle East and Latin America in the 1960s. The expropriations and nationalization of foreign private enterprises in most developing countries was the logical response of the new nations to the conceptual link between economic freedom and private enterprise, between internal self-government and multinational corporate domination. The overlap of U.S. foreign economic policy with private sector strategies was not clearly defined and therefore not as well understood in the "third world".

To some nationalist governments in Africa, U.S. development assistance was based on political calculations that were far-removed from the immediate concerns of business expediency. Although the general perception in the post-World War II era was that the rise of communism posed military, economic and political threats to the international balance of power and free enterprise, most African states were more concerned with consolidating their political economies than with the cold war, and therefore, remained apathetic to U.S. political interests.

FOREIGN ASSISTANCE AND FOREIGN INVESTMENT

The political interests of the U.S. in Africa during the Eisenhower era was expressed and pursued in economic terms. The administration as well as some elite groups believed that the potentially vast resources of Africa must not become another China or Southeast Asia for the diabolical machinations of the Soviets. They reasoned that
if Communism was permitted to exploit the vast human and natural resources of the African continent "the effect on Western security, confidence and political cohesion will be serious."\textsuperscript{41}

The apprehension of a Soviet mischief in Africa had much impact on the course of U.S.-Africa relations. Business and elite policy groups such as the Committee for Economic Development, a consultative group closely linked to large U.S. firms, unflinchingly supported a long-term program of development assistance to the new African nations. The Committee recommended the use of assistance programs "as an instrument of national policy....governed by the test of our long-run national interest."\textsuperscript{42} To the Committee, the birth of new nations in Africa and elsewhere presented the U.S. with duties imperative to its national security. As uncertain as it was how real and extensive the Communist threat existed for the U.S. in Africa, the fact is that the Cold War created a forceful mechanism for a government-business partnership supportive of the full-blown entry of U.S. firms into post-colonial Africa, a situation likened to "a pork barrel for American farmers and manufacturers."\textsuperscript{43}

Although U.S. foreign aid to Africa had come in trickles, it paved the path for the cooperation that emerged between the American private sector and post-colonial governments in Africa. To be sure, during the
Eisenhower years, about 2 percent ($1.5 billion) of the total foreign assistance budget, which between 1946 and 1961 amounted to $90.5 billion, went to Africa.\textsuperscript{44} U.S. foreign aid in post-war period has been described as a sort of New Deal for the world, a Keynesian formula for the stimulation of global demand for American goods and capital.\textsuperscript{45} The bulk of U.S. aid to Africa during this period was in the form of economic and technical assistance, with African States south of the Sahara receiving less than $1 billion in aid. Presently, however, sub-Saharan Africa would emerge as a new frontier for U.S. business and diplomatic activity. The decolonization process had gathered momentum and more colonial dependencies were becoming independent states.

\textbf{THE KENNEDY ERA: DIFFERENT MEANS AND COMMON OBJECTIVES}

Truman, as much as Eisenhower, worked to expand America's political and business influence abroad. Both leaders adopted a Cold War strategy in their foreign-relations and encouraged the participation of the American private sector in U.S. foreign economic policy. The massive exodus of the European colonialists from Africa in the 1960s created a major political and economic vacuum. Moreover, decolonization had removed a basic barrier to the expansion of U.S. business presence in Africa. Kennedy, building on the heritage of his office, took
steps to sustain the balance of power in Africa. His approach, however, was different.

The inauguration of a Democratic president in January 1961 transferred the focus of U.S. foreign policy from an ideological concern with the North Atlantic Treaty Organization to the consolidation of America's business presence and democratic ideals in the new nations. During this period, concrete efforts were made by the Kennedy administration to surmount the remaining barriers to the expansion of U.S. direct investment in Africa. On September 4, 1961, the U.S. Congress approved the Act for International Development. The Act empowered a new Agency for International Development (USAID) to oversee matters relating to investment security in developing nations. The USAID emerged as an institutional framework for the effective coordination of business, economic and political exchanges between the U.S. and Africa.

The agency now coordinated all matters and divisions of the foreign assistance program. USAID inherited most of the basic functions that belonged to the defunct International Cooperation Administration. The agency staff comprised an administrator, whose rank within the Department of State was that of Under-Secretary. Two deputy administrators supervised the entire bureaucracy and were accountable to the Under-Secretary for the routine administration of the agency. The operations of
the agency were in four major divisions or regional offices: Africa and Europe, Latin America, the Far East, the Near East and South Asia. Each division was headed by an assistant administrator, responsible for routine management and decisions. Other divisions within the agency included the offices of International Development Organizations, Commodity Assistance, Program Review and Coordination, Development Research and Assistance, and Information and Congressional Liaison. A number of inter-departmental committees were formed from time to time to address specific issues.

The functions of USAID were unique. The fact that Africa and Europe, in 1961, came under the same bureau indicated the strategic concern of USAID for decolonization in Africa. The agency, in mapping out its overseas operations, took into consideration political, cultural, ideological and business imperatives crucial to U.S. foreign policy. The USAID, apart from serving as a political link between the United States and foreign governments, organized and allocated foreign assistance funds in a manner that reflected the ideological and business interests of the U.S. in developing countries. Because of the strategic position of the agency in U.S. post-war diplomacy, the Secretary of State had over-all responsibility for the USAID and reported directly to the President on matters of policy and strategy. The agency
worked to achieve the purposes and objectives of the Foreign Assistance Act of 1961.

The Foreign Assistance Act of 1961 contributed to the expansion of America's business and political presence in post-colonial Africa. The Act superseded both the Economic Cooperation Act of 1948 and the Mutual Security Act of 1951, as amended. The Act provided for government assistance to private investment initiatives in developing countries in areas of treaties negotiation, information on investment opportunities abroad, expropriation and investment disputes.46 The implementation of the Foreign Assistance Act in the early 1960s consolidated the investment position of U.S. firms in Africa and sustained a new relationship between African governments and American MNCs.

There was continuity of purpose in America's foreign aid program vis-a-vis U.S. private direct investments. The business objective of the new Foreign Assistance Act did not depart from the substance of the repealed Economic Cooperation Act which, in part, provided that:

Technical assistance and capital investment can make maximum contribution to economic development only where there is understanding of the mutual advantages of such assistance and investment, and where there is confidence of fair and reasonable treatment and due respect for the legitimate interests of the peoples of the countries to which the assistance is given and in which the investment is made, and of the countries from which the assistance and investments are derived.47

The Economic Cooperation Act, as much as the Foreign
Assistance Act, was intended by Congress to reflect the reciprocal purpose of the foreign aid program and the need for a mutually beneficial exchange between U.S. firms and foreign governments.

American private direct investment in Africa came of age in the Kennedy era. John F. Kennedy, a former member of the Senate foreign relations committee, assumed the presidency with a distinct and pragmatic program for the economic development of post-colonial Africa. The President supported the UN 'development decade in Africa' and supported huge financial contributions to international economic organizations concerned with the development of former colonial regions. Throughout his brief term in office, Kennedy nurtured great optimism for the consolidation of political and economic independence in Africa, and practically supported this goal. In the Kennedy era, U.S. economic and technical support to Africa received significant attention.

America's foreign assistance helped to sustain economic planning and development projects in many African states. The USAID program also created business links between American firms and the beneficiaries of foreign aid. For example, shortly after Nigeria's independence, the U.S. government advanced substantial amounts in grants and loans to facilitate Nigeria's implementation of its First Development Plan. Both nations also signed an
investment guaranty treaty for the protection of American direct investments in Nigeria.

As in Nigeria, the foreign assistance program supported major infrastructural projects in many African nations. The beneficiaries of the USAID program included Tanzania, Ethiopia, Congo, Ghana and Cameroon. The forms of assistance ranged from outright government-to-government grants to technical support. The Congo (later named Zaire) received over $100 million from the U.S. in grants and technical assistance between 1961 and 1962. Technical assistance, in some cases, included military equipment, advisory support and the training of personnel. Sierra Leone, Ghana, Ethiopia, Cameroon, Guinea and the Congo benefitted from such support in the 1960s. Under the program, recipients of USAID assistance also signed investment guaranty contracts that protected U.S. private assets in the host nation. The foreign assistance program, therefore, encouraged American firms to invest in Africa, leading to the rapid expansion of U.S. private investments in Africa. For example, between 1959 and 1966 over 13,000 new U.S. enterprises established business operations in Africa.

Kennedy's other major achievement was the enactment of the Trade Expansion Act in 1962 to replace the Reciprocal Trade Agreements Act and, more directly, to counteract the monopolistic design of the European
Economic Community. The Common Market, as a resurrection of the post-World War I European tendency toward cartelization, had posed a serious threat to the primacy of America’s multinational business enterprise, particularly in the export sector. Kennedy’s Trade Expansion Act, therefore, helped to secure for the U.S. a continuing competitive presence in the world market and in extracting trade concessions from former European colonialists in Africa.

America’s foreign policy in Africa remained fairly consistent during Lyndon Johnson’s term as President, in spite of the unavoidable distraction of focus from Africa to Vietnam. Although the Vietnam commitment and congressional cutbacks adversely affected the level of economic assistance to Africa, the U.S. continued to encourage the participation of the American private sector in the strengthening of economic ties with "less developed friendly countries" under section 601 of the Foreign Assistance Act, 1961. In his Foreign Aid Message of 1965, Johnson pledged support for the role of American "private institutions and private enterprise" in the development process of the new nations.

As the principal coordinator of America’s foreign assistance projects, the USAID became the manager of investment risks for U.S. firms in nations benefitting from U.S. assistance. Section 221(b) of the Act for
International Development of 1961, provided for risk insurance and administrative procedures for the protection of American investments in developing nations. Through the medium of USAID, Congress established an institutional framework for government support and incentives to U.S. private investors. In addition to providing investment guaranties, USAID compiled information on investment opportunities in Africa, conducted investment surveys on a cost-sharing basis with interested firms and made loan advances in multiple currencies to American firms. The USAID also assumed up to fifty percent of costs incurred in the survey of new investments where a prospective investor failed to proceed with a project. Many firms ventured into Africa as a result of these incentives. Private direct investments expanded in due course and helped to sustain U.S. policy goals in post-colonial Africa.50

A major achievement of the Foreign Assistance Act was its responsiveness to business concerns with foreign expropriation. The Act authorized the USAID to insure U.S. firms and investors against loss resulting from insurrections, war, revolutions, confiscations, and expropriations. The guaranty covered up to 75 percent of political and business risks, and full coverage for the loss of certain housing projects and physical plants in the host nations. The problem of foreign expropriation
had been the most discouraging aspect of American direct investment in developing countries.

In more recent years, alterations to the investment guaranty scheme introduced additional safeguards and incentives. In March 1966, the USAID announced a 25 percent reduction in the premium of U.S. firms in developing countries. The objective was to provide expanded protection against losses arising out of the investor’s inability to repatriate earned profits to the United States. The modified scheme also provided additional coverage for losses due to expropriations and political instability. 51

As of March 16, 1966, twenty-nine African states had signed guaranty agreements with the U.S. against currency inconvertibility and expropriation. Of these states, twenty-five also signed guaranty agreements against war, revolution, insurrection and extended risks. 52

One of the factors that limited the expansion of U.S. firms in the past was governmental restrictions on foreign exchange. To alleviate this problem the USAID was granted powers under the Act to grant loans to U.S. firms or their subsidiaries in the local (host country) currency for direct investment projects or the expansion of capacity for U.S. agricultural exports. The loans bore interests at various rates comparable to those offered by lenders in the host country. However, in order to protect the home economy, loans could not be made to firms that
manufactured overseas for export to the U.S. market.\textsuperscript{53} Unfortunately, this provision indirectly contributed to the low level of manufacturing by U.S. firms in Africa because most recurrent expenditures, such as wages and salaries, were met in local currency.

The Foreign Assistance Act enabled U.S. investors to overcome the problem of currency inconvertibility in another respect. In addition to receiving loans in the currency of the host country, American investors were able to receive investment loans in the dollar. Dollar loans were granted through authorized U.S. banks and financial institutions under section 201 of the Foreign Assistance Act. The USAID administered the loans, usually, through the Edge Act Corporations authorized by the provisions of the Federal Reserve Act to finance foreign investments.\textsuperscript{54} Funds from the Edge Act Corporations were supplemented by the lending facilities of the Export-Import Bank and the International Finance Corporation, an affiliate of the International Bank for Reconstruction and Development.

The bureaucratic function of the USAID served as a link between U.S. foreign policy and business interests in post-colonial Africa. By September 1965, the Agency maintained offices in twenty African nations, including Algeria, Burundi, Cameroon, Ethiopia, Ghana, Liberia, Malawi, Kenya, Uganda, Zambia and Nigeria. USAID offices in the Central African Republic, Chad, Congo Brazzaville,
Dahomey, and nine other nations were centrally administered, however, from the agency's regional office for Africa in Washington. The seeming success of USAID's efforts in Africa, benefitted from the supportive role of the Departments of Commerce and State. The Department of Commerce, in collaboration with the Department of State, created a network of commercial attachees assigned to U.S. consular and diplomatic missions in Africa. The officials provided advisory and consular services to American investors and the host country.

The government's promotional role was strategic and bureaucratically managed. In the Commerce Department, a new Office of International Regional Economics took charge of investment publicity and information. Present and prospective investors received information on recent developments in foreign investment portfolios. The *Overseas Business Reports* served as the investors' main guide to trends abroad. The Department also published several other periodicals and reports, with updated data on foreign investment opportunities.

In order to secure a competitive edge over foreign firms, the Department of Commerce maintained a Commercial Intelligence Division to gather information on the operations and finances of specific foreign firms, individuals and organizations. The information was then made available to the American business community through
the World Trade Directory Reports. The Department's investment services included the Business and Defense Services Administration, whose functions involved providing detailed analysis of investment portfolios in strategic industrial sectors.

Private support-groups also contributed to the establishment of America's corporate presence in the developing countries. In order to facilitate the transfer of managerial expertise to American firms that had recently opened offices abroad, the International Executive Services Corps (IESC), a non-profit volunteer group based in New York, assisted in personnel development abroad. The services of IESC, however, were temporary and ordinarily free of charge; its expenses and operational costs were largely defrayed from private sources and initially, by the USAID. The efforts of IESC helped to install the basic organizational and administrative framework which most firms needed in their new environment and to export a culture of business management to the new nations of Africa.

TOWARD A CONFLICT

The Foreign Assistance Act effectively recruited the former colonial dependencies into the American system of corporate capitalism, however, without absorbing them. In other words, while the Foreign Assistance program succeeded in establishing political and economic ties between
America and Africa, the new nations were ill-prepared for the sudden graduation from rudimentary mercantilism to the sophistication of modern corporate capitalism. The political economy of Africa, conditioned by over a century of colonial domination, was slow to comprehend and adjust to the strategies and structure of the large industrial enterprise. The failure of the new nations to resolve these perceptual differences from the onset contributed to the occurrence of investment disputes in subsequent years.

The Foreign Assistance program, though not so intended, reinforced a colonial habit of dependence among its African beneficiaries. While U.S. foreign assistance was intended to support the new nations toward economic independence and self-reliance, Africa emerged as a service economy, unable to comprehend America’s corporate multinationalism and its technological consumption of Africa’s raw materials.

The nationalization of American business enterprises in Africa was, in part, a reaction by some governments to the aloofness of the MNCs to the economic aspirations of the host country. In some cases, the host country expected the foreign firm to participate financially in national development efforts beyond the terms of business. The failure of the firm to respond to such expectations increased the margin of conflict between the foreign firm and its host government. In Africa, as in most developing
nations, the American MNC was confronted with heightening nationalist demands. Most host nations expected the MNC to assume a charitable role along the line of the Foreign Assistance Act. Indeed, the Foreign Assistance Act had blurred the line between American public assistance and private enterprise in developing nations. The tendency, therefore, arose for some host nations to confuse the seemingly charitable thrust of the foreign assistance program with the purely commercial essence of foreign direct investment. The irony was that while the foreign aid program served as a mechanism for the transfer of capital from the U.S. to colonially-impoverished Africa, the MNCs, as business institutions, sought to accumulate and transfer capital from Africa to the United States.57

The stage was set for a conflict because the host nations expected from the MNCs more than the firms could profitably offer. Multinational direct investments in Africa, clustered as they were in the raw materials sector, failed to promote the economic objectives and aspirations of the host countries. Because agriculture relied on cheap and unskilled labor, and mining on imported complex technology, foreign investments in Africa did not have a practical necessity to develop local skills and entrepreneurial participation.58 It is not surprising, therefore, that the failure of the MNCs to relate to the
economic aspirations of their host nations in Africa resulted in a conflict of objectives.
CHAPTER III
THE CONFLICT:
ECONOMIC NATIONALISM VERSUS CORPORATE MULTINATIONALISM

African governments took active steps after independence to ensure a balanced distribution of equity in their national relationships with foreign direct investors. In Africa, therefore, the consequence of state intervention in the private sector was that public policy, rather than the strategy of the MNC, came to determine the structure of the foreign firm. This chapter examines the course of economic nationalism in post-colonial Africa.

The conflict of objectives between the American MNC and its African host-nation was from the onset inevitable. The U.S. firms that went to Africa under the banner of the Foreign Assistance Act conceived of their strategies in terms of the missionary thrust of the Foreign Assistance program, which was to extend modern technology and economic civilization to "third world" economies.¹ The seemingly highbrow disposition of the MNCs toward their host governments did not make for a mutually beneficial relationship as anticipated by the U.S. foreign assistance program. The African nations, however, saw the coming of the MNCs in terms of a partnership toward the realization
of their economic sovereignty. As it turned out, both
parties had distinctive and, indeed, conflicting purposes.

THE PATTERN OF CONFLICT

The strategy and the structure of the U.S. firm in
Africa were bound to be a source of conflict. Generally
U.S firms, unlike Japanese firms for example, clustered in
the raw materials and mining industries. For most African
nations, the extractive industries were the mainstay of
the economy and, therefore, the most sensitive sectors.
In both mining and agriculture, the MNCs did not find it
strategically profitable to develop local skills and
entrepreneurial participation. For most MNCs, Africa was
more of a source of raw materials than a "market". The
MNC extracted raw materials from Africa, shipped them to
manufacturers overseas and returned the finished products
to the African consumer who, on a cost-per-unit ratio,
paid more for the finished products than the MNC paid for
the raw materials. Dissatisfied with this exchange,
African governments reacted to gain greater control over
the operations of the multinational firms.

The substance and scope of the conflict that ensued
between the MNCs and their host governments differed by
country. In Ethiopia and Tanzania, for example, the
conflict between the MNC and the government resulted from
the ideological opposition of the national leadership to
capitalism. In Libya, Mamur Gaddafii complained of the
arrogance of U.S. oil company executives. Gadaffi's Islamic fundamentalism, culturally opposed to Western capitalism, created a major rift between certain U.S. firms and the Libyan government. Generally, the host governments sought to bring the strategy and structure of the mining firms in alignment with national goals.

The host governments acquired control of foreign direct investments by legislative action. Between 1959 and 1979, the regulation of MNC operations in Africa was achieved by host governments in one of three ways. One, the outright nationalization of MNC investments, as in Tanzania, involved a 100 percent take-over of the ownership and voting stock of firms in certain industries. Two, selective nationalization, as in Nigeria and Zambia, were cases in which the national government did not seek total expropriation of MNC assets but only limited participation in the equity of firms operating in certain industrial sectors. Three, in most cases expropriation was of a creeping nature. By this method, host nations enacted laws that made it almost unprofitable for foreign firms to continue operating. In Egypt, for instance, certain land tenure laws had the subtle effect of discouraging foreign investments in mining and agriculture.

Next to Latin America, Africa accounted for the highest number of expropriations of U.S. direct investments in developing countries since World War II. Between
January 1, 1961 and January 31, 1975, Africa accounted for twenty-nine percent of the expropriations in developing areas. There were 260 major expropriation disputes involving U.S. firms and host governments in developing nations.² Seventy-five of the disputes occurred in Africa, 118 in Latin America, 37 in the Middle East and 30 in Asia. The disputes related to 128 investments in the petroleum and mining industries; 38 in banking and insurance; 35 in manufacturing; 14 in public utilities and 45 in miscellaneous industries.³

The disputes, for the most part, concerned the expropriation of investments in primary industries. Twenty-three of the disputes in Africa related to investments in the petroleum industry; seventeen in banking and insurance; nine in mining and processing; five in manufacturing and twenty-one in miscellaneous enterprises.⁴ Fifty-eight cases, or 77 percent of the expropriations in Africa, related to outright take-over of U.S. private investments. Only thirteen cases, about 17 percent of the total, involved coerced sales and the renegotiation of existing contracts.⁵ This pattern contrasted with that in Latin America, where only 29 percent of the expropriations involved the outright take-over of American investments.

U.S. investments in Africa were expropriated by the host governments, in most cases, without regard to the
risk of U.S. sanctions under the Foreign Assistance and Trade Acts. Although the statutes threatened the withdrawal of economic assistance and trade preferences to expropriating nations, the choice between expropriation and U.S. foreign assistance seemed a simple one. MNC investments in any one African nation amounted to several millions of dollars and often out-sized the volume of foreign aid. Further, expropriated capital was interest-free and without enforceable repayment obligations or schedule. For example, while total U.S. assistance to all of Africa south of the Sahara in 1977 in economic and military aid was $543,618,000, the assets (net current and fixed) and turn-over of Mobil Oil Nigeria Ltd in 1984 stood at N408,869,000 (roughly $706,703,400 at the 1984 exchange rate) in book value. In 1969, the investments of AMAX Inc. in three mining operations in Southern Africa totaled $21,820,000. Given a choice, therefore, between nationalization and foreign aid (often by way of loans), some governments preferred to nationalize and control their economies.

In those states with a socialist agenda, the choice between nationalization and U.S. grants-in-aid was almost a foregone conclusion. In such states, the MNC was seen as the embodiment of capitalism and exploitation and, therefore, not for the public good. Marxism-Leninism equated corporate multinationalism with imperialism at its
highest stage of development. The late President of Ghana, Dr Kwame Nkurumah, in his philosophy of Consciencism remarked that in certain cases revolution was "an indispensable avenue to socialism." Nkurumah was not urging a revolution in Africa, but appraising the efforts of African governments to regain control of their economies. For Nkurumah, however, neo-colonialism and economic nationalism were merely a manifestation of class conflict at an international level. Thus, most socialists in Africa saw economic nationalism as the fulfillment of a Marxian prophesy.

In non-socialist states, economic nationalism was a logical response to the increasing power of the MNC. The rise of state capitalism, whether in Africa or in Europe, signified a nationalistic reaction to the "monopoly tendencies and market imperfections" caused by foreign industrial firms. Because foreign firms tended to perpetuate a system of capital accumulation and repatriation, host countries adopted measures to counter the balance of payment problems generated by the firms. In Western Europe, for example, the emergence of state capitalism led to nationalization decrees in France and the intervention of the British government in North Sea oil enterprises. In the Soviet bloc, COMECON enterprises became a vehicle for for state participation in the ownership and management of capital in the West.
MNCs continued to flourish, national governments adopted measures to control the strategy and, therefore, the structure of foreign firms.

AFRICAN NATIONS AND CORPORATE STRATEGY

In Africa, state intervention in the private sector was unavoidable. The MNCs were not responsive to the developmental needs of the host country. First, the clustering of U.S. firms in the raw materials industry did not blend with the development plans of host nations for a diversified economy. Second, there was a dearth of U.S. manufacturing in Africa. As a result, the plans of the host governments for the development of a viable industrial and technological base became frustrated. Third, the MNCs became so powerful, economically, that they began to interfere in the local politics of the host country. Fourth, the MNCs did not reinvest their huge profits in the host country, except the much that was necessary for operational expenses. The firms repatriated most of the corporate profits abroad. Fifth, the development of local manpower was not a priority issue in the strategy of the firms, given the nature of their investments. The extractive industries thrived on cheap labor. Sixth, firms in the extractive industry created ecological problems for the host country and seldom had remedial plans for the environment.
The strategy and structure of multinational firms contributed to the rise of economic nationalism in Africa. In the 1960s, the MNC aroused global concern and anxiety, especially in relation to its daunting position vis-a-vis the developing nations. The term 'multinational corporation' itself emerged as a conceptual category in business, economic and politics in the early 1960s. To be exact, D.K. Fieldhouse traces the term to a paper delivered in 1960 by the former chief executive of the Development and Resource Corporation of New York, David Lillienthal.\textsuperscript{12} The issue of conceptual authorship aside, it is important that Lillienthal's paper was read at a time when the American firm was emerging as a new economic and political force in international relations.

In the 1960s, U.S. foreign direct investments achieved a phenomenal spread that surpassed that of any other nation.\textsuperscript{13} The growth in FDI resulted from three main factors: (i) the changes in the global economy since World War I; (ii) technological advances in the U.S. since World War II and, (iii) the decolonization of imperial holdings abroad and the opening of new markets. Between 1959 and 1966, over 13,000 new subsidiaries and non-subsidiaries of U.S. corporations existed abroad. While in 1960, the FDI of U.S. firms amounted to $32.8 billion, greater than that of the U.K. at $10.8 billion, by the end of 1980 the FDI of U.S. firms had increased to $215.6
billion, in current dollar. At the same time the FDI of U.K. firms stood at $74.2 billion and the Japanese firms at $37.1 billion. In comparison, however, Japanese FDI increased by 74.2 percent, the U.K. by 6.8 percent and the U.S. by 6.7 percent. Even though America’s global share of FDI reduced by 6 percent points between 1967 and 1980, as a result of foreign disinvestments and U.S. fiscal regulations, U.S. firms continued to lead in the ranks of foreign direct investors. Despite the 1968 regulations, U.S. capital export to developing nations in 1971 stood at 0.21 percent of the GNP, greater than the global average of 0.156 percent or Japan’s 0.10 percent.

America’s corporate multinationalism was the inevitable and necessary response of business to "the inexorable pressures of international commerce." In the age of intense global competition for foreign markets and raw materials, U.S. firms employed America’s financial, technological and diplomatic resourcefulness to their advantage. Satellite technology, computerized storage, retrieval and transmission of information added new dimensions to international business. Transnational and international communication between parent firms and their foreign subsidiaries occurred in hourly seconds. The availability of specialized skills and improvements in technology also made capital-intensive operations less tedious and enabled many more firms to engage in foreign
investments. America’s vast resources gave U.S. firms comparative advantage over other national firms. However, as U.S. investments expanded abroad, the incidence of economic nationalism increased.

THE NATURE OF ECONOMIC NATIONALISM IN AFRICA

African governments applied direct and subtle pressures on foreign firms in an attempt to regain control of their economies and secure managerial interests in certain industries. U.S. firms expanded into Africa in the 1960s both in response to economic factors and the urgings of the containment policy. The strategy and structure of the firms, however, had become a major concern for most African governments. African leaders, therefore, sought through political means to limit the firms’ influence on the economy. Political leaders in Africa thought they had lost their economic freedom to the MNCs despite the fact that America’s post-war policy was "to make the free world strong and to keep it free." The firms, of course, had veered from U.S. policy goals, in pursuit of certain multinational corporate strategies. Indeed, no official mechanism existed for the monitoring of corporate activities to ensure that the business practices and strategies of the MNCs promoted diplomatic goodwill and mutuality of purpose in the host nations.

In Africa, the conflict between the MNCs and the host nations resulted from a number of causes. First, the
executive managers of the MNCs saw themselves as missionaries with a manifest destiny to accomplish in Africa. The executives related to their hosts, not as partners, but as replacements of the colonial authorities with a supervisory role in the political economy of the host nation. Second, because the new nations desperately needed foreign capital for economic development and, therefore, were unable to negotiate on equal terms with the MNCs, the political economy of the host nation became subjugated to the bruises of East-West ideological warfare. Third, because the strategy of the MNC was far-removed from the charitable theme of the Foreign Assistance Act and U.S. foreign policy in Africa, the top managers of MNCs took private actions to protect their interests in the host country, including involvements in partisan politics.¹⁹

The inherent characteristic of the MNC to secure oligopolistic advantages abroad became exacerbated in Africa when the American investor was co-opted to participate in the East-West rivalry under the Foreign Assistance Act. The issue, however, was whether African nations could have their cake and eat it. While nationalist governments in Africa spoke of neo-colonialism and feared foreign domination, the climate of opinion in America at this time was that economic independence and fair treatment of foreign investment were not
irreconcilable. "The choice," a writer observed, "is not between independence and foreign domination, but between stagnation and growth." In 1963, a new government in Argentina announced plans to nationalize the assets of U.S. oil firms in that country in an effort to return the Argentine economy to local control. The move vexed American businessmen who stood to lose their investments in Argentina.

Many African governments were beginning to think along the Argentine line. The economic freedom of most nationalist governments had become severely limited under the free enterprise system. In many cases, the net assets of a foreign firm exceeded the host country’s gross national product and the host country was far from being in control of the productive sectors of the economy. For the American firm, however, foreign investments had become counter-productive. Instead of helping to ‘strengthen the forces of freedom’ as conceived under the Foreign Assistance Act, U.S. firms were now outstanding targets of economic nationalism in developing countries.  

In Africa, several related factors converged to kindle the spirit of economic nationalism. After World War II, the expropriation of U.S. direct investments in Eastern Europe and Latin America established a dangerous precedent. State seizure of foreign investments since the nineteenth century, became a phenomenon in international
relations. More recently, investment disputes had arisen, for instance, in Egypt (1956), Cuba (1959) and Ghana (1962). In many instances, middle-class nationalists and revolution-minded military officers championed the call for the regulation of foreign enterprises.

Ideological orientations played a part in the assertive attitude of the new nations. In Marie Nguabi's Congo-Brazzaville, as well as in Somalia, Benin and Ethiopia, the so-called Afro-Marxism dominated the conduct of the political economy. In Nkurumah's Ghana, 'scientific socialism' had become a national creed; in Angola, there was a strong inclination toward Marxism-Leninism; in Algeria, Tunisia, Mali and Guinea, the political rhetoric extolled 'African socialism' as a more viable alternative to liberal capitalism. In Gaddafi's Libya, Western cultures came in conflict with Islamic fundamentalism, leading, for example, to the seizure of properties belonging to the Seventh-Day Adventist Mission in Libya.

THE ROLE OF THE UNITED NATIONS

The General Assembly of the UN addressed the problems that were emerging in the developing nations in a series of resolutions that reflected support for the efforts of African states to gain control of their economies. Moreover, a climate of opinion in the post-World War II era argued that "economic colonialism" was antithetical to the concept of human rights. On December 21, 1952, the General
Assembly of the UN adopted Resolution 626 (VII) proclaiming the sovereign and inherent rights of peoples "freely to use and exploit their natural wealth and resources." While recognizing the right of a host nation to exercise control over its natural resources, Resolution 626 did not provide for the rights of the capital-exporter against expropriation or confiscation and the U.S. delegation voted against it. In Resolution 1314 (XIII) of December 12, 1958 the General Assembly underscored the rights of "peoples and nations" to self-determination, but also recognized the special interests of the foreign investor. Following the resolution, the Assembly organized a commission of nine member-states that included the United States, the Soviet Union and some developing nations, to survey the associational rights of importers and exporters of capital under international law and to make appropriate recommendations. In Resolution 1515 (XV) of December 15, 1960, the Assembly affirmed the right of sovereign states to manage and dispose of their wealth and resources in accordance with the basic rights and duties of states under international law.

The right of developing nations to control their economic destinies was more specifically affirmed in 1962. Resolution 1803 (XVII) of December 14, 1962, declared the "inalienable right" of all nations to dispose of their national wealth and resources freely and in accordance
with their "national interests". The resolution called for respect for the "economic independence" of states. It affirmed the rights of peoples and nations to "permanent sovereignty" over their national and natural resources. While recognizing the right of states to nationalize foreign investments on grounds of national interests and public policy, the resolution called for cooperation among nations in the resolution of investment disputes. The U.S. voted for Resolution 1803. Most Soviet-bloc nations abstained from the vote. A Soviet proposal designed to entrench the expropriatory right of host governments was rejected. To the Soviet Union, therefore, Resolution 1803 was a capitulation to capitalism. However, an American proposal for "prompt, adequate and effective" compensation had equally been rejected. Resolution 1803, therefore, did not concede to any particular ideological interest.

The UN continued to express support for the developing nations in their relationships with the MNCs. A General Assembly Resolution 2158 (XXI) of November 25, 1966, encouraged the effective participation of host nations in the administration and control of foreign enterprises within their territories. In 1974, the UN established the Center on Transnational Corporation to initiate and encourage studies that would promote a better understanding of MNC-host country relations, including the drafting of a code for the conduct of the MNCs.
INVESTMENT CODES

Before the disputes, most governments already had investment codes to regulate the conduct of business by foreign investors. In the Central African Republic, Ghana, Guinea, Algeria and many other nations, specific statutory provisions reflected the government’s desire to intervene in the private sector, in spite of contractual assurances to the contrary. In the Central African Republic, the constitution, in article 17, specifically granted to the state the right to intervene in the private sector. In Ghana, the Capital Investment Act of 1963 contained a list of the foreign investors obligations, including a clause that required prospective investors to employ and train the citizens.31

In Algeria, the investment code authorized the government to accept and purchase shares in private firms. Shortly after independence on July 3, 1962, the Algerian government enacted the Investment Code of 1963. In order to "meet the conditions necessary for the establishment of a socialist economy," the Algerian code provided for government participation in private enterprises. The government, from the onset, made it clear that it planned to achieve communist objectives through private capital and initiatives. The Code provided, however, that "no expropriation may be made except in accordance with this
law and when the accumulated amount of the net profits equals the amount of the imported capital invested."³²

Foreign private investments in Algeria were a means to an end. Algeria's socialist agenda accepted private enterprise (or capitalism) as a transitional stage to communism: the grand socialist end. Algerians reasoned that as soon as a foreign investor recouped his capital from accumulated profits, the state became morally free to nationalize such investment. The Algerian code, in effect, established a predictable contractual framework by which a foreign investor reconciled his expectations of free enterprise with the objectives of state control.

Although African government solicited and welcomed foreign investments, they did not by that intend to forfeit the right to intervene in the economy when the need arose. The reasons for intervention of host governments in foreign investments varied from country to country. Nationalization laws enabled the host government to intervene in the management foreign firms. Nationalization could mean the cancellation, the renegotiation of existing contracts or the coerced sale of ownership stocks. Between 1959 and 1979, the expropriation of foreign investments occurred in as many as twenty-six African states.³³ Although the governments approached nationalization differently, generally they all had the common objective of gaining greater control over the
"commanding heights" of their national economies. The experiences of foreign firms in Egypt, Nigeria, Tanzania, Zambia, Libya and Ethiopia, for example, represented the general pattern of economic nationalism in Africa.

**ECONOMIC NATIONALISM IN EGYPT, 1956 - 1974**

The first major expropriation of foreign capital in Africa occurred in Egypt in 1956. On July 26, 1956, the Egyptian government nationalized the Universal Company of the Suez Maritime Canal. American interests, however, were not the primary targets of the action. The nations directly involved in the Canal dispute were France and Britain, although U.S. investors had considerable stock holdings in the Canal Company. The government of Egypt and the foreign stockholders settled the expropriation dispute on July 13, 1958, two years after the Eisenhower administration had withdrawn U.S. funds from the Egyptian Aswan Dam project in 1956. The U.S. government, however, rejected and unsuccessfully discouraged a British plan for the invasion of Egypt.

The Egyptian expropriation revealed what was the beginning of a pattern in post-colonial Africa. The military had come to be in the vanguard of economic nationalism in Africa. In July 1952, the Revolutionary Command Council of the military assumed political power in Egypt. The new government was determined from the outset to regain control of the national economy from foreigners.
In 1960, the government initiated far-reaching business policies aimed essentially at the nationalization of Belgian and British industrial enterprises. In 1961, the policies were expanded and consolidated by Law 117, Law 118 and Law 119 to cover a wide range of foreign enterprises. The new leaders, comprising young army officers, had found military decrees a speedier alternative for economic government than the conventional parliamentary approach of caution and indecision.

Egypt (later the United Arab Republic), embarked on economic nationalism in the 1960s in line with its national objectives and the resolutions of the UN. In 1963, a presidential decree declared that foreigners, "be they natural or juristic persons," were prohibited from owning agricultural lands, fallow or desert lands, and land susceptible to cultivation in the Republic. The law provided that foreigners and firms who already "owned" such lands immediately forfeited them to the state.

The Egyptian law had the effect of a "creeping" expropriation. While Egypt offered to compensate foreign firms for their interests in land, the law provided for the issue to all dispossessed foreigners of a 15-year registered state bond bearing a four percent annual interest, negotiable at the stock exchange. The bond, however, could not be transferred to a non-citizen. The law transferred proprietary and concessionary interests in
real property and desert oil fields to Egyptian citizens, the state acting as public trustee. Gamal Nasser, the Egyptian leader and a functional socialist, was merely implementing the ideological biases of his administration through a program of land reforms. As in many African states, socialism had become a guiding principle and a more viable option for the management of national economics. In 1963, Egypt and the United States signed an investment guaranty treaty. The treaty, renewed in 1974, provided for the avoidance of disputes and the promotion of the mutual interests of both nations.\(^3\)

There is no evidence that the expropriations in Egypt influenced other African governments or inspired their leaders to embark on economic nationalism. Nevertheless, nationalization decrees soon became the order of economic government in many African nations.

**ECONOMIC NATIONALISM IN NIGERIA, 1960 - 1977**

Colonialism sowed the seed of economic nationalism in Nigeria. Nigeria fell under British imperial rule in 1862 and only became internally self-governing, on October 1, 1960. The Nigerian constitution of 1960 established the framework for the nation’s economic self-determination. When the country achieved full republican status in 1963, the political leaders took legislative steps to restructure the political economy, which had been founded by the British on a mercantilist ideology.\(^3\)\(^8\)
The Nigerian economy suffered immeasurable neglect under colonial rule. The British designed and built infrastructural projects only to enhance the narrow interests of the colonial administration. Schools were established mainly to produce English-speaking natives for clerical and supplementary duties within the colonial administration. Roads, bridges and rail tracks were built to make the interior accessible from the coast where ships were waiting to haul peanuts and palm kernel to Liverpool and London. With independence, Nigeria entered a new phase of nation-building.

From the onset, the Nigerian government was determined to control the economy. In the Six-Year Development Plan inaugurated soon after independence, the government initiated a mechanism that would enable Nigerians "to participate to an ever-increasing extent in the ownership, direction and management of Nigerian industry and trade." The realization of this goal, however, was not immediately feasible because the basic structure of dependence on foreign capital had been cast. It required more than nationalist fervor to translate political independence into economic sovereignty and action. The departure of the British created political and power vacuums which Nigerians sought to fill. This vacuum occasioned a power struggle among interest groups and the foreign firms exploited the political feud.
corruption, such as the one that led to federal investigation of the Marketing Boards, between 1962 and 1966, raised serious questions about the role of foreign firms and caused the Nigerian public to associate capitalism with ‘kick-backs’ and ‘palm-greasing’. \(^{42}\)

Most Nigerians tended to construe capitalism as an elitist phenomenon. The general perception among most Nigerians was that only a privileged class of politicians and businessmen, acting as middlemen and commission agents, gained from the largesse of the multinational and foreign trading firms. This perception seemed convincing because, despite apparent industrial and commercial expansion after independence, no noticeable changes had occurred in the economic condition of the average citizen. For instance, in 1964, a general strike almost brought the nation to a standstill because workers found themselves unable to cope with inflation. \(^{43}\)

To a large extent, the popular speculation about an apparent national wealth for all seemed justified. Nigeria, in relation to most African nations, had a strong economic and resource base. \(^{44}\) The government’s Development Plan, partially supported by grants and loans from the U.S. Foreign Assistance program, had attracted direct investments by U.S. firms. \(^{45}\) There was also a major growth in Nigeria’s foreign trade. By the mid-1960s, Nigeria was exporting low-sulphur petroleum and importing
heavy industrial equipment and machinery. In 1959 for example, Nigeria exported only three million (sterling) pounds of crude oil, but by 1966 Nigeria was producing 100 million pounds worth of crude oil, more than 90 percent of which was for export. Yet, there was no corresponding improvement in the economic life of the average citizen.

The foreign firms were partly responsible for the economic imbalance in Nigeria in the 1960s. Much of the revenue that had accrued from oil production was being siphoned out by the oil companies. In 1965, for instance, foreign oil firms in Nigeria repatriated $22 million out of the $35 million that was their aggregate contribution to Nigeria’s balance of payment for that year. While the oil companies needed to reinvest in equipment and materials, the firms repatriated huge profits from Nigeria and that bore its strains on Nigeria’s foreign exchange reserves and balance of payment position.

The oil industry had a negative impact on the nation’s economic planning. The more immediate pay-off and profitability in the oil industry, apart from luring farm hands away from the rural areas (with the consequent problems of urban overcrowding), diverted the attention of the Nigerian political economy from its base industry to the oil sector where the country lacked both the capital and technology needed to neutralize the oligopoly of the multinational corporations.
The bulk of private sector employees in Nigeria were employed by the MNCs, which gave the firms a giant stature in the political economy. Because the Nigerian worker had fought the wrong battles under colonial rule, he inherited, after independence, a legacy of internal self-defeat that made him indefensible against the MNCs and their take-it-or-leave-it labor practices. Labor leaders continued to dwell on political issues at the expense of the workers’ interests. By 1969, the foreign oil firms appeared to be in virtual control of the economy. The problem was who should yield to the other: business to government or vice versa. Because Nigeria was a single national market, its peculiar national interests were not sufficiently weighty to alter the multinational strategy of the foreign firms, especially the oil companies.49

OIL POLITICS IN NIGERIA

Nigeria’s oil resource turned out to became the bane and canker of the political economy. Because the petroleum industry was the mainstay of the economy, it fueled the embers of economic nationalism in Nigeria and mirrored the relationship between the MNCs and the government. Following the discovery of oil in commercial quantities and the sudden appearance of foreign prospectors, the strategy and structure of the giant oil firms became an issue for the government in the 1970s. The problem was how to reconcile the multinational strategy of the firms
with the nationalist aspirations of the country. Mobil Oil, Texaco, Gulf Oil, Tenneco, California Asiatic Oil, Phillips Petroleum, Union Oil and a host of other MNCs, had direct and portfolio investments in Nigeria and were affected in varying degrees by the politics for the control of oil.

The Nigerian government took steps to regulate the composition and activities of foreign firms, particularly the oil firms. In 1968, the Companies Act was enacted. The Act required all foreign firms to be incorporated in Nigeria as Nigerian institutions. Foreign firms in Nigeria, therefore, initiated necessary changes in their structures. For example, the Texaco (Nigeria) Limited was formed in 1969, to bring the subsidiary directly under the laws of Nigeria. Texaco Africa Limited, however, still held 100 percent of the stock on behalf of Texaco Incorporated, the parent company headquartered in the United States. The Companies Act required all business firms to disclose their ownership structure and any subsequent changes in the composition of interests.

The government also pursued a systematic plan of action that would transfer to Nigerian citizens the ownership and management of foreign enterprises. Under this plan, the Registrar of Companies was empowered under the Companies Act to oversee corporate transactions in and transfers of stocks and debentures, including mergers,
reconstructions, liquidations and the winding-up of all firms doing business in Nigeria, to ensure that government policy was not circumvented through bogus transfers of stocks and interests.\textsuperscript{51}

The Nigerian government was determined to gain a more realistic control on the economy and the management of its resources. The intent was to release the country gradually from undue reliance on foreign capital and control, especially for reasons of national security. The immediate objective, however, was the involvement of Nigerian citizens in managerial positions and creating a skilled labor force able to replace expatriate management in the long-run.

The foreign oil firms were the main target. The government had enacted a law in 1979 requiring oil companies to step up the hiring of Nigerians, so that within seven years, 70 percent of a firm’s labor force would be constituted by Nigerians.\textsuperscript{52} The government’s ‘Nigerianization’ policy was effective. For instance, by 1979 the Board of Texaco (Nigeria) Ltd. included four Nigerian directors. The chairman, H.C. Minor and the Managing Director, J.C. Sheldon, however, were American. The three other directors were Canadian, British and French.\textsuperscript{53} Although Texaco’s operating divisions were all headed by Nigerians, a Nigerian General Manager was not appointed until in 1978. Available data do not reflect
any major move by Texaco toward the sharing of ownership portfolios or the effective recruitment of Nigerians in top-level management before 1977.54

The strategy of the MNCs included the retention of managerial control. It was not surprising, therefore, that the foreign oil firms did not have a blueprint for the involvement of Nigerians in top-level management.55 Out of 3,901 employees in the oil industry in 1967, 649 were foreign and 3,252 Nigerian, mostly junior-level workers. Out of 63 senior managers, only 16 were Nigerians, and of 520 professional staff only 141 were Nigerians. Although the bulk of the technicians (about 1,043 out of 1,128) were Nigerians, most of them acquired their technical skills prior to joining the foreign firms.56

THE CONSOLIDATION OF THE NATIONALIZATION PROCESS

The reluctance of the foreign firms to decentralize management powers prompted the government to take legislative action. In its Second National Development Plan, the government indicated an intention to acquire equity participation in certain strategic industries "in order to ensure that the economic destiny of Nigeria is determined by Nigerians themselves."57 In pursuit of this plan, the government in 1972 enacted the Nigerian Enterprises Promotion Act (the so-called "indigenization" law), designed to promote and increase the participation of Nigerians in the economy.58
Technically, the new law sought to transfer to Nigerians exclusive privileges in certain enterprises. The Act, amended in 1977, set up an Enterprises Promotion Board to oversee the implementation of statutory provisions. The Act classified "enterprises" into three categories; the first category comprised business exclusively reserved for Nigerians, such as advertising, appliances assembly, distributive trades, merchandising and commercial transportation.

The Nigerian Enterprises Promotion Act altered the strategy and, therefore, the structure of all foreign firms in Nigeria. Under the Act, the government required foreign firms to surrender certain percentages of their stock to Nigerian citizens. All foreign enterprises under Category Two, such as banks and insurers, were required by law to reserve not less than 60 percent of their equity for Nigerian participation. Under Category Three, foreign firms were required to reserve at least 40 percent equity for Nigerian participation. This class of enterprises were those that involved intensive capital outlay and technology such as the oil industry.59

The Act reconstituted the ownership structure of foreign firms. For example, in compliance with this law, Texaco (Nigeria) Ltd, previously incorporated as a private company, in 1979 offered 40 percent of its shares to the Nigerian public through the stock exchange. By 1987,
Texaco had 13,000 Nigerian shareholders and was no longer owned 100 percent by Texaco Incorporated of Delaware.\textsuperscript{60} Thus, as with Texaco, the global strategy of the MNC did not determine its structure in Nigeria; instead the altered structure of the firm produced new strategies.

Most foreign firms began to diversify their operations and to plan new strategies to cope with the government's action. The rigidity of the Enterprises Promotion Act caused most firms to diversify their activities as a survival strategy. Diversification, as a competitive strategy, was most visible in the petroleum industry where government policies clearly defined acceptable structures for the MNCs. Texaco expanded its operations to include agricultural production, the manufacture of lubricants and grease, plastic packaging, liquid petroleum gas filling and bunkering. The oil firms had to make strategic adjustments to remain profitable. The government now regulated crude oil production and supplies through the supervisory medium of the Nigerian National Petroleum Corporation, a federal agency created in 1977 to replace the defunct Nigerian National Oil Corporation.\textsuperscript{61}

Texaco's experience in Nigeria was similar to Mobil's. By 1979, the Mobil Group in Nigeria was the largest American direct investor in the oil industry. The Mobil Oil Nigeria Ltd, incorporated under the Nigerian Companies Act of 1968, evolved from Mobil Exploration
Nigeria Incorporated, which began offshore operations in Nigeria in 1962 as an exploration company. From 1962, Mobil carried on extensive drilling and exploration on Nigeria's western coast, installing dozens of separate geological structures in the process, with the discovery of high-gravity low-sulfur crude oil. Temporary floating storage permitted Mobil to exceed 50,000 barrels production of crude per day by 1970 from the two fields where drilling began. At this time, Mobil's other major operations in Africa was in Libya where, by 1965, seemed to be Mobil's largest field discovery in the world.

Mobil's expansion in Nigeria was remarkable. Within a decade Mobil secured seven offshore fields in full production and a loading terminal averaging about 166,000 barrels a day. By the end of 1972, Mobil had reached 191,000 barrels a day. Other affiliates emerged in the course of time. These included Mobil Development Nigeria Inc., in which Mobil of New York held 100 percent of the voting securities and Mobil Producing (Nigeria), a nonsubsidiary company in which the Nigerian government, by 1973, had acquired 50 percent of the voting securities. In subsequent years, the government indicated its intention to increase this share. Mobil Producing (Nigeria) and Mobil Oil (Nigeria) Ltd., both organized under the laws of Nigeria, served as the main investment vehicles for the Mobil Oil Corporation. Like Texaco, Mobil altered its
strategy and diversified into real estate development, import-substitution projects, agriculture-related ventures, the manufacture of plastics and of insecticides. These measures were strategic response to structural and environmental imperatives.

Although the oil industry is capital-intensive, the oil firms did not fully utilize local labor. At Mobil, for example, aggregate manpower figures at the end of 1986 stood at 595 as against 561 in 1985, an increase of only 34 workers. Between 1984 and 1985, the total manpower of the company increased by only 7 workers. Of the nine directors of Mobil Oil (Nigeria) Ltd in 1985, five were Nigerians and the other four, Americans. As at the end of fiscal 1986, Mobil Oil Corporation of New York held 69,600,000 ordinary shares of the company, representing a majority interest because no other individual shareholder held more than 10 percent of the company's issue. Thus, Mobil of New York, as the largest single shareholder, still controlled the Nigerian subsidiary. As functional as the Mobil strategy seemed, it left room for future investment disputes.

FRANCHISING AS AN ALTERNATIVE INVESTMENT STRATEGY

Coca-Cola's approach to foreign direct investment, by involving local capital and entrepreneurs from the onset, forestalled the negative impact of expropriation on MNC investments. Coca-Cola U.S.A., a division of the
Coca-Cola Company, manufactures and markets beverage syrups and concentrates to independent bottlers in and outside the United States. The independent bottlers are usually local companies licensed by the Coca-Cola Company to manufacture and sell Coca-Cola brand products to local consumers. The Coca-Cola Company sets the price for the syrups and concentrates for the local bottler who then fixes the wholesale price for the soft drinks in the local market. By 1976, the Coca-Cola Company employed over 14,000 workers, about 98 percent of whom were citizens of the host country. This franchising arrangement has had the positive effect of excluding the Coca-Cola Company from hostile take-overs abroad and promoted business goodwill for the company overseas.

In Nigeria, the franchising strategy of the Coca-Cola Company produced a harmonious relationship between the company and government. Coca-Cola operated through a local bottler, the Nigerian Bottling Company Limited which by 1986, maintained fourteen bottling plants around the country. The Nigeria Bottling Company, a diversified and integrated firm with several subsidiary and non-subsidiary associates, maintained investments in an extensive array of activities ranging from property development to meat processing.

The ownership structure of the bottling company made nationalization unnecessary. By 1986, the company had six
Nigerians on its Board of Directors. The Board included two British and one Greek. There was no American on the Board. The company had a total of 6,065 workers of which 177 were managers: 27 expatriates and 150 Nigerians. Thus, foreign managers only comprised 15 percent of the management staff. The company also operated a retirement benefit scheme for all its Nigerian workers and an internally-managed retirement plan for its expatriate staff.\textsuperscript{72} Coca-Cola, in formulating its global strategy, stressed local ownership, management and financing as the cardinal factors for a successful enterprise abroad.

Coca-Cola’s global strategy established a stable corporate image for the company and ensured the survival of the firm even in hostile environments abroad. By this strategy, Coca-Cola sought integration into the local economy, with major portions of business profits reinvested in the local communities. This pattern of investment, in effect, spawned a cluster of support industries and local suppliers. Coca-Cola’s strategy produced a definite structure of relationships abroad, one that was mutually beneficial to the local community and the company. A senior executive of the company proudly remarked at a meeting of Chemical Engineers in 1978 that "local ownership, wherever possible, is at the foundation of our company’s commitment."\textsuperscript{73} The Coke strategy, apart from stimulating local economies, responded to the
concerns of nationalist governments abroad. Unlike the oil firms, Coca-Cola successfully evolved a unique strategy that allayed the fears of some host nations about MNC domination and foreign control.

The fear of foreign domination is not far-fetched. A special fact-finding commission set up by the Nigerian government summed up the problem in its recommendations:

as long as the MNCs continue to hold directly the economic power and indirectly exercise political power over Nigeria, so long shall there be unequal development which characterises the present world system in which developed nations continue to develop while the weaker ones....continue to be weaker. The solution to this situation, in our view, is the gradual reduction of the role of the MNCs in our economy through the policy of systematic nationalization of these companies. The commission complained about the corrupting and exploitative influence of the MNCs. The commissioners found that the oil industry, "dominated by the MNCs of Mobil, Shell, Elf, Agip, and Texaco," failed to fulfill its function as the lifewire of the Nigerian economy. The MNCs, the commissioners concluded, had contributed to the "decapitalization" of the economy and promoted structural distortions and instability in Nigeria.

The experiences of foreign firms in Nigeria were similar in Tanzania. Nigeria’s nationalization measures, however, were selective. In Tanzania, the measures were more generalized and based on a different ideological premise. There was no evidence that events in Nigeria
inspired the Tanzanians. Both governments, however, were determined to regain control over the national economy.

**TANZANIA: THE ARUSHA DECLARATION OF 1967**

Tanzania’s economic nationalism was of a sweeping dimension, revolutionary in content and socialist in orientation. Tanzania, under President Nyerere, attempted to wrest economic power from the MNCs, only to transfer same to the workers and the peasantry. The peasants and workers, however, neither possessed nor acquired the power of economic government that Nyerere sought to grant them.

Tanzanians were long dominated by foreigners. Before 1961, Tanganyika was a British trust territory under the U.N. trusteeship program. The nation achieved independence on December 9, 1961 and on April 27, 1964, united with neighboring Zanzibar (Zanzibar itself became independent on December 10, 1963) to form the United Republic of Tanganyika and Zanzibar. The Union became Tanzania on October 29, 1964. As Tanganyinka, the government had enacted the Foreign Investment (Protection) Act of 1963. The Act sought to attract "certain approved" foreign investments, yet, it provided for the compulsory acquisition of foreign investments, compensation to be paid by the government at the official local rate. 78

Tanzania’s Arusha Declaration of 1967 was a program of economic (and ideological) action that affected all foreign firms in the country. 79 The Declaration blurred
the dividing line between private and public productivity. Conceived on a plank of socialism, albeit far-removed from Marxism, the Arusha program involved the return of Tanzania to communal peasantry; a system of economic integration and government. The strength of Nyerere's "Ujamaa" nationalism, was that it sought to develop an economy based on cash crops and farmers' cooperatives. The weakness of the program was that the survival of the farm projects depended on imported capital and technology.

Nyerere's attempt to forge a political economy of "peasants and workers" took startling approaches. In one swoop, Tanzania nationalized all foreign insurance firms and elevated its National Bank of Commerce as the only commercial bank permitted to operate in the country. The government nationalized several commercial banks and direct investments belonging to foreigners, including the huge Missouri plantations and Caltex marketing operations. While some enterprises were partially nationalized, others were completely taken over by the government. Although compensations were duly paid to most of the investors, Tanzania came to rely more heavily on World Bank loans for the fulfillment of its national goals. In Tanzania, as in most nations, the confusion of abstract ideologies with pure economics had predictable consequences.
ZAMBIA: THE MINERALS AND MINES ACT OF 1969

Zambia's encounter with the MNCs is significant in three respects. One, it mirrored a continental pattern of action. The strategy of the MNC in West Africa was much the same as in the Southern region. Two, the responses of the host governments were also similar in substance, even if not in form. Three, economic nationalism in Zambia was moderate and selective, similar to Nigeria's.

Zambia's economic militancy arose from the fact the Zambian mining industry was dominated by foreign firms and remained dependent on foreign technology long after Zambia became independent on October 24, 1964. For over a century, the people of Zambia, helpless under colonial rule, and fiscally handicapped after independence, could not halt the wanton excavation of Zambian lands and minerals by foreign firms. Zambia's Minerals and Mines Act did not only cancel the exclusive concessions hitherto enjoyed by foreign firms, it discontinued the practice of granting 'leases in perpetuity', a colonial legacy which the new nations found exploitative and unreasonable.

Zambia's actions were inevitable. Because copper and mining were the mainstay of the Zambian economy, it was logical to assume that upon the attainment of sovereign statehood, a new nationalist government would intervene in the economy to halt certain abuses by foreign firms. Zambia has been the single largest exporter of copper in
the world. The Zambian economy, nevertheless, remained
the small pond that fed the shark.81 Between 1889 and
1924, the British South Africa Company, armed with a royal
charter, ruled in Zambia as the de facto government.
Then, in 1924, the British government assumed formal
political power and a monopoly of the mineral resources.
Meanwhile, the proprietor of the British South Africa
Company, Sir Cecil Rhodes (after whom the area was named
Rhodesia, and later Zambia) had made a vast fortune, and
continued to dominate the industry after 1924.

U.S. investors had substantial interests in the
Zambian mines. The Anglo-American Corporation and the
Roan Selection Trust, had for decades dominated copper
mining in Zambia, where copper accounted for 95 percent of
the national income. The Anglo-American Corporation was
formed initially through British and U.S. efforts, the
House of Morgan and the Newmont Mining Corporation
accounting for 50 percent of the capitalization. Although
U.S. interests in the Anglo-American Corporation gradually
decreased, American capital and technology continued to be
significant in the region.

The American Metal Climax Incorporated (AMAX), the
product of a merger between the American Metal Company of
New York and the Climax Molybdenum Company in 1957,
maintained vast extractive operations in Zambia. AMAX is
a world leader in the production of molybdenum and base
metals. While Zambia’s copper resources created fortunes for the MNCs the country ravished in poverty, with little improvement in the social condition of the population. The MNCs were exporting multi-million-dollars of raw copper from Zambia, leaving behind a sea of ecological rampage, empty pits and gloomy tunnels that entrenched the Zambian political economy in poverty and deprivation. In 1969, for example, the total receipt of American Metal Climax (AMAX) in dividends alone was in excess of $20 million from its regional operations. AMAX’s declared assets and net income were in the multi-million dollar bracket, at a time when the Zambian income per capita was below $200.82 Except for operating costs, the MNCs repatriated most of their profits to their corporate headquarters abroad, to the annoyance of the government.

The need for basic changes in Zambia’s contractual relationship with the MNCs became a national issue in the late 1960s. In August 1969, the Kaunda administration initiated major policy measures to curb power of the MNCs in Zambia. The Anglo-American Corporation and the Roan Selection Trust Limited were the two large firms most affected by the Zambian nationalization of 1969. The Zambian government also acquired 51 percent equity stocks in AMAX’s Zambian operations. The Kaunda administration took these actions not only to protect Zambia’s industrial mainstay, but as a response to the complaints of the
Zambian worker whose labor was cheaply secured and miserly compensated by the MNCs.

The availability of cheap labor lowered production costs for the MNCs in Zambian mines. Before Zambian independence in 1964, the colonial administration used a poll tax policy to pressure a dominantly agricultural peasantry into seeking wages in the mines, and in 1903 created the Native Labour Bureau to organize unskilled natives to work in the mines as laborers. Apart from the fact that the native labor was poorly compensated and hired for short contract durations, the migrant workers lived in the segregated homelands from where they commuted to distant mines.

Major changes occurred in Zambia’s labor relations after independence. Early attempts at organized labor were unsuccessful because of colonial divide-and-rule practices. Labor unionism in Zambia had to wait for the arrival of a nationalist government committed to the dislocation of multinational exploitation. In 1964, the Kaunda administration initiated a program of reforms. The government reduced the quota allowed to expatriates for work in Zambia and ordered the upgrading and hiring of Zambian citizens in managerial positions. The government also initiated measures to close the wage gap between Zambians and expatriate workers. The government directed the MNCs to remedy the ecological problems resulting from
their mining operations. The government also reminded the corporate managers of their social responsibilities toward the goose that had laid the egg for over a century of multinational copper mining in the country.86

The effectiveness of Zambia’s economic reforms was weakened, however, by the fact that the country lacked the technology and capital to sustain its nationalism. Zambia needed the multinational firms for its economic survival. A common problem with all developing nations, Zambia was confronted with the lack of indigenous skilled manpower and technological resourcefulness for effective transfer of multinational corporate power to its citizens. When in 1969, Zambia acquired 51 percent participatory interest in the equity of AMAX for $150 million, Zambia conceded to AMAX a tax holiday of eight to twelve years and three-quarter percentum of gross turnover in production, and additional three-quarter per centum in management costs. In 1973 the government paid a total of $34.2 million in compensation to AMAX for the repudiated sales and management contracts.

As was the case in Nigeria, Tanzania and Egypt, the lack of a sound technological base weakened the efficacy of Zambia’s economic nationalism. Zambia could not avoid making generous payments to the MNCs because the country lacked the local skills and technological capacity to operate and manage its mining industry independently of
the foreign firms.\textsuperscript{87} These burdensome payments turned out to hurt Zambia's export earnings and balance of payments in the subsequent years.

THE LIBYAN NATIONALIZATION DECREES OF 1973

Libya's case was illustrative of ideological radicalism and diplomatic complicity in investment disputes. The Libyan case stood at the far left of the Nigerian and Zambian examples. Libya came in direct conflict with U.S. oil firms in the wake of President Gadaffi's Islamic reforms. In the early 1970s, the Libyan government nationalized the assets of certain U.S. firms. The government agreed to compensate the firms only for the net book value of assets, not for the loss of concessionary rights and future profits.

Libya's nationalization of foreign investments was dramatic. By Decrees 42 and 43 of 1973, the government nationalized foreign enterprises, including oil imports and distribution, portfolio investments in Libyan banks, and the insurance industry. The Nelson Bunker Hunt and other U.S. investors maintained the largest volume of activities in the Libyan petroleum industry. On June 11 and again on September 1, 1973 the Revolutionary Command Council, by decree, acquired 51 percent of "all funds, rights, assets, shares, stocks, activities and interests" in major U.S. oil firms.\textsuperscript{88} The firms affected by the Libyan action included Libyan American Oil Company, Grace
Petroleum Corporation, Mobil Oil Libya Limited, Standard Oil Company of California, Texaco Overseas, Asiatic Petroleum Corporation of California, Esso Standard Libya Inc. and Esso Sirte Incorporated. The dispute between these firms and Libya was as heated as it created legal and diplomatic furor, because of the adamant positions of the parties to the disputes. The issues centered on the reluctance or refusal of the multinational oil firms to surrender 51 percent of their equities for Libyan participation. Libya’s demand for majority stock ownership was part of a national plan to secure control over the Libyan economy, although done in a questionable manner and without regard for the investors’ interests.

The unwillingness of the MNCs to surrender to Gadaffi’s economic measures created problems in U.S.-Libya relations. In a note of July 8, 1973 to the Libyan authorities, the Department of State, taking up the issue of the Nelson Bunker Hunt Oil Company, described Libya’s Decree 42 of 1973 as arbitrary and discriminatory to American corporations. Gadaffi, who complained about the arrogance of the oil executives, seemed to have singled out American firms for punitive reasons:

The U.S. believes it dominates the world with its oil monopolies....In our negotiation with the American monopoly companies, we are facing U.S. arrogance and the imperialist spirit which does not heed either right or logic.
Even though firms of other nationalities were affected by the nationalization decrees, Gadaffi's actions clearly had an ideological thrust. As such, the expropriation of U.S. assets was vindictive and, therefore, ill-conceived.

As the investment disputes worsened, with no positive solution coming out of diplomatic interventions, some oil companies finally gave in. On August 11, 1973, some firms agreed to Libya's proposal for 51 percent equity interest in their enterprises. A few firms, however, remained adamant and preferred to fight the government at judicial and diplomatic fronts. Libya reacted to the situation by taking more stringent measures against the MNCs. The government canceled previous joint-venture contracts with the some of the firms and took over the remaining assets of others. By a Decree of February 14, 1974, Gaddafi completely nationalized the assets of targeted firms, but agreed to compensate the companies for the book value of their investments.

The Libyan action raised issues of sovereign immunity and privileges. Texaco Overseas and California Asiatic, dissatisfied with the amount of compensation and the arbitrariness of the Libyan measures, applied to the International Court of Justice for the appointment of a Sole Arbitrator to decide on the merits of the dispute. Libya neither appeared nor presented any argument at the arbitration proceedings. The Sole Arbitrator heard the
case of the oil firms and ruled in their favor. Libya's refusal to appear before the arbitrator, inasmuch as it was lawful, posed fundamental transnational legal problems for the future.

The expropriation of the direct investments of U.S. firms in Libya, done under the guise of overriding public interest, was not fairly compensated and, therefore, arbitrary. The U.S. government condemned the Libyan action as being discriminatory, arbitrary, politically motivated and illegal. Howbeit, American MNCs continued to operate in Libya despite the rancor of the disputes.

The Libyan attempt to control its economy mirrored a trend in Africa, except that in the other states, there was a significant measure of moderation and good faith.

THE ETHIOPIAN NATIONALIZATION DECREE OF 1975

As in Libya and Tanzania, the confusion of abstract ideologies with pure economics had predictable consequences. In Ethiopia, this complicity reenacted itself in 1975, after the overthrow of Emperor Haile Selassie I by revolutionary military officers. During the reign of Emperor Haile Selassie, the investment environment was accommodating of foreign investments. Ethiopia, like most African states after independence, had enacted an investment law in 1963 to attract foreign capital and to create recognizable structures of legal relationships with prospective foreign investors.
Before the overthrow of the Emperor, Ethiopia hosted several foreign firms. The investment law, however, did not guarantee against political instability or the rise of radical regimes in the future. When, therefore, the Emperor fell to a military coup, foreign firms were left at the mercy of socialist-minded revolutionaries, obsessed with adverse notions of Western corporate capitalism. In 1975, the Provisional Military Government of Ethiopia nationalized foreign investments in a wide range of industries including food, textile, chemicals, banking, insurance, agriculture, metals and pharmaceuticals.

The Ethiopian expropriations created international economic problems for that nation. Because U.S. firms were most affected by the expropriations, Ethiopia’s economic nationalism was interpreted by the State Department as an act of communist hostility against the United States. The controversy that followed the Ethiopian expropriations affected the goodwill and mutual understanding that had existed between the U.S. and Ethiopia under Haile Selassie. The U.S. applied foreign aid sanctions against Ethiopia. The OPIC suspended the issuance of insurance cover for new investments private in Ethiopia. Ethiopia had since carried the burden of nation-building under the cumbersome banner of socialism. The dispute in Ethiopia showed that investment guaranties did prevent did not prevent successive governments in the
host nation from taking arbitrary actions to achieve their economic goals.100

U.S. FIRMS AND THE PROBLEM OF STRATEGY

The expropriation of American FDI in Africa showed that the global strategies of U.S. firms were not sufficiently responsive to the political economy of the host countries. For example, although Japanese investors located 85 percent of their FDI in developing nations after World War II, they did not experience foreign expropriations as much as U.S. firms.101 From the onset, Japanese firms reserved limited interests for the host nation in their enterprises. Japanese subsidiary firms, usually small and medium sized, were wholly owned only to the extent of 17 percent. Following the Zaibatsu tradition, 20 percent of Japanese foreign investments involved a 50-50 joint venture and 25 percent involved minority stock interests to the host country. Japanese firms also had marginal interests in petroleum and mineral exploitation, the bulk of their investment being in manufacturing and, to a lesser extent, in services. This pattern of investment detached the operations of Japanese firms from the sensitivity of developing economies.

A sharp percentage point reduction occurred in the flow of investment capital from the U.S. between 1968 and 1979. U.S. capital export fell from over 66 percent of global FDI in 1965 to less than 50 percent by 1979.102
The regulation, begun in January 1968 as a temporary solution to balance of payment problems, also aimed to conserve investment capital for domestic projects. However, instead of strengthening the voluntary Foreign Credit Restraint Program of the Federal Reserve Board, the regulation, in its practical effects, undermined New York as the world’s capital market. Because the Eurobond now carried a lower interest rate than the dollar, U.S. investors found European lending terms attractive.103

The regulations, however, did not cause American MNCs to lose their global preponderance. If anything, the U.S. firms grew stronger, consolidating and adapting their strategies to cope with the changing regulatory regimens at home and abroad. During the first year of the mandatory control, the FDI of American firms fell by $850 million from the 1967 volume of $4.3 billion. However, by 1970, the FDI level had risen to a high of $6.8 billion.104 The MNCs adjusted their strategies by resorting to Eurobond borrowing and the reinvestment of net profits and offshore earnings in their foreign operations. Indeed, in the 1960s and 1970s, the U.S. investor faced a complex problem of coping with an increasingly regulated economy at home and abroad.105

The problem that confronted the U.S. investor abroad was the consequence of basic miscalculations in strategy. The executives of the MNCs failed to conceive their roles
in developing countries outside the scope of capital formation and accumulation. The failure of corporate management to accept social responsibilities and become responsive to the political and economic aspirations of the host nation, inhibited the capacity of the MNC to assume the benefits and burden of foreign investment. Equally significant was the reluctance of the MNCs since the 1970s, to expand their operations in the developing nations. Except for the traditional activity in primary industries, where the continuing need for raw materials justified further investments, the MNCs became discouraged by the risks of investing in the developing world.

Corporate managers failed to confront and deal with the causes of investment disputes abroad. Wholly-owned foreign subsidiaries were fast becoming a thing of the past and joint-ventures more profitable. A Department of Commerce survey of 1972, showed that minority-owned foreign subsidiaries of U.S. firms had a higher net worth than majority-owned subsidiaries. Joint ventures and incorporated partnerships that grant substantial equity participation to citizens of the host country conveniently avoid hostile expropriations. The attractiveness of investing in primary industries is in its immediate pay-off and profitability. While American firms recorded handsome profits from their operations in the Middle East, Africa and Latin America in 1966, U.S. private investments
in Europe resulted in operating losses of $148 million.\textsuperscript{108}

The developing countries emerged in recent times as an important source of income for American MNCs. In 1966, the book value of investments by U.S. oil firms in majority-owned affiliates in developing nations was $1.2 billion, as against $3.7 billion in European affiliates; however, total net income from the Middle East, Africa and Latin America amounted to $870 million, and $976 million in dividends and remitted profits; while dividends and profits remitted from European affiliates amounted to $49 million only.\textsuperscript{109} Thus, despite the uncertain investment environment in developing nations and the demand by their leaders for participation in enterprises, the revenue-yielding capacity of the developing countries indeed proved to be a profitable source of income for the MNCs and contributed to the U.S. balance of payment.

Part of the problem between African governments and the MNCs was that profits from the host country were repatriated and seldom reinvested in the national economy. The investors thought of foreign investment as "the transfer of resources from one country to another," accompanied by substantial control and management of the resources transferred.\textsuperscript{110} Foreign investors conceived their strategy, therefore, only in terms of capital accumulation and profit repatriation. In Africa, the executives of the MNCs were reluctant to reinvest income
derived from the host country in the host country. This strategy was like starving the goose that laid the egg. For example, between 1960 and 1970, total receipts for U.S. firms from FDI was $51.1 billion in cash dividends, interests, profits, royalties and fees. Of this amount, only $5.5 billion (or 17 percent) was reinvested in the developing countries, principally in Latin America.111

The developing nations, more than Europe and Canada, contributed to the growth and profitability of U.S. business enterprise abroad in recent times. While U.S. direct investment in Europe and Canada had a higher percentage book value of investment in all sectors, the developing countries accounted for a higher rate of return in the petroleum sector and about the same return in manufacturing. The developing nations yielded 33.1 percent return, as against the 4.8 percent for the more developed nations, in petroleum investments. Both geographic areas showed falling yields in manufacturing: 12 percent for the developing countries and 12.3 percent for the more developed nations.112 Yield ratios, as it affected profits from foreign investments, accounted for growth in U.S. business abroad and, consequently, the contribution of the MNCs to the U.S. balance of payment.

The failure of the MNCs to broaden the scope of their activities in Africa, shows a lack of foresight and long-range strategy.113 By failing to develop and strengthen
the revenue-yielding capacity of their operations and to become responsive to the peculiar needs of their investment environment in Africa, the MNCs have perpetuated the misconceptions about their neo-colonialist intents and exhibited the same characteristics of "big business" that brought about direct federal regulation for the public good.114

The conflicts between the new African nations and American MNCs were as much a moral issue as they were political and economic. The investment disputes added new dimensions to U.S.-Africa relations and underscored the forceful interplay between business and politics in international relations. The following chapters examine the policy framework that governed this relationship.
PART II

THE MANAGEMENT OF INVESTMENT DISPUTES

The U.S. government intervened in foreign investment disputes to protect the contractual and proprietary rights of U.S. investors in low-income nations. Between 1962 and 1972, Congress adopted far-reaching measures to discourage the "ultra-nationalistic" disposition of "third world" governments toward U.S. firms. The measures resulted in a regimen of anti-expropriation laws that attempted to regulate contractual relations between U.S. investors and host governments abroad. The U.S. expropriation policy, however, catered to the especial interests of the American business community at the expense of America's foreign-policy objectives and long-term business interests in Africa. The expropriation policy also had a negative impact on business relationships between U.S. firms and post-colonial governments in Africa. Moreover, the policy altered the ideological basis of U.S.-Africa relations.

The U.S. foreign assistance program was the principal medium for the implementation of the expropriation policy. This policy framework neither fulfilled the expectations of business nor the purpose of the Foreign Assistance Act.
CHAPTER IV

THE POLITICS OF FOREIGN ASSISTANCE

The intervention of the U.S. government in foreign private investment disputes arose from the need for a policy framework to manage or avoid disputes between U.S. investors and their host governments in developing nations. In 1962, and again in 1963, Congress amended the Foreign Assistance Act to provide additional protection for U.S. firms in developing countries. The so-called Hickenlooper amendments sought to preserve the contractual rights and proprietary interests of U.S. firms vis-a-vis foreign governments seeking to acquire "permanent sovereignty" over their national wealth and resources. The issue was whether U.S. economic and technical assistance should benefit a foreign government that had expropriated property belonging to Americans without satisfactory compensation.

The effects of the American laws clashed with the aspirations of emerging nations in Africa. Although the U.S. government did not intend to limit the sovereign capacity of developing nations to determine their economic destinies, it established a contractual code for the
conducted business relations between host governments and American MNCs. Under the Foreign Assistance Act, as amended, expropriation included "any abrogation, repudiation or impairment" by a foreign government of its own contract with an investor, where such breach was not caused by the investor's own fault and adversely affected the continued performance of the contract.¹ Because most acts of economic nationalism in Africa adversely affected the contractual expectations of the MNCs, the Foreign Assistance Act, as a mechanism for the management of investment disputes, was averse to the activism and concerns of host governments in Africa.

The amendment to the Foreign Assistance Act, designed specifically to cater to business interests, negated the original purpose and thrust of the Act, which was to help develop and strengthen the forces of freedom in less-developed foreign countries.² While the initial goal of the Act was to promote the foreign policy interests of the United States, "by assisting peoples of the world in their efforts toward economic development," the Act as amended in 1963 acquired an immense extra-territorial force for the regulation of private contracts between foreign governments and American MNCs.³

The Hickenlooper amendment transformed the Foreign Assistance Act from an essentially political instrument to a code for business ethics. The employment of the
Foreign Assistance Act in the management of foreign investment disputes watered down the political purpose of the Act and assigned to it, instead, a business purpose. The Act lost its developmental focus and became more concerned with the manner and conduct of economic nationalism in developing countries. In proposing his amendment, Senator Bourke Hickenlooper (Republican, Iowa) warned that "if a contract made with one government is likely to last no longer than the inauguration of the next government.... then the whole concept of long-term investment can no longer apply." The Foreign Assistance Act, in theory, contradicted the prevailing notion, among the developing nations, of free enterprise and the freedom of contract. The developing nations understood "free enterprise" to include the right of the state to exercise control over its national wealth and resources. Thus, actions the U.S. interpreted as expropriation, the developing countries, in their nationalistic poise, conceived as "indigenization", suggestive of an urgent need for the state to manage its economic resources for the "public good".

THE LATIN AMERICAN CATALYST

Congress intervened in foreign investment disputes to restore the sanctity of private contracts and to foster the ideology of "free enterprise", which had come under serious assault abroad. Events in Latin America created the setting for the intervention of the U.S. government in
foreign investment disputes. The events also provoked extensive alterations in America’s business relationship with the developing nations. Three major controversies led to the changes in policy: (a) Fidel Castro’s nationalization of U.S. investments in Cuba in 1959; (b) the nationalization of the assets of ITT in Brazil by the governor of Rio Grande do Sul in 1962; and (c) President Arturo Illia’s revocation, in 1963, of mining concessions held by U.S. oil firms in Argentina. The actions of Latin American governments, therefore, brought about the changes in U.S. business policy toward the developing nations.

In spite of the notoriety of Latin American states for the expropriation of U.S. investments, the impact of changes in America’s business policy was less severe in Latin America than in Africa. While most African states experienced a reduction in the volume of U.S. investments, Latin American states continued to maintain the largest concentration of U.S. direct investments among the developing nations.6 The expropriation of U.S. investments in Cuba, Brazil and Argentina represented a general pattern in Latin America.

In Cuba, U.S. firms were the primary targets of the government’s expropriatory actions. The Cuban actions evoked legislative and judicial reactions from the U.S. government. In May 1959, Fidel Castro’s revolutionary regime initiated a series of land reforms in Cuba to
revise land concessions made to foreigners in real estate, mining and agriculture by the previous government. Castro's reform policy, inspired by a socialist ideology, sought to extricate the Cuban economy from the stranglehold of foreigners, mostly Americans engaged in oil exploration and mining, agriculture and nickel extraction. Castro's land reforms dispossessed U.S. firms of their vested interests, without adequate compensation.

Subsequent measures taken by the Castro government showed that American firms were the primary targets of the Cuban policies. From October 26, 1959, the Castro government proceeded to impose punitive tax rates on American enterprises in the nickel and other mining industries. On May 17, 1960, the National Bank of Cuba requested all U.S. oil firms in Cuba to purchase 300,000 tons of Russian crude oil for the remaining seven months of the year. The enforcement decree threatened punitive penalties, such as nationalization, on defaulters. Meanwhile, the State Department had made diplomatic representations to Cuban authorities in protest of the discriminatory nature of the Cuban reform policies. On July 5, 1960, the State Department expressed strong objections to the manner in which the reforms were implemented, describing the Cuban actions as illegal, arbitrary, unfair and politically motivated.7
The Cuban actions were obviously prejudicial to American firms and interests. It was unfair to require U.S. firms to purchase their crude oil from Russian or other particular sources. The failure of the Cuban government to compensate the dispossessed firms to the full value of their property was equally unfair, and denying aggrieved American investors due process for legal redress in Cuban courts was improper and punitive. These prejudices became obvious when, within twenty-four hours after the July 5 protestation of the State Department, Cuba enacted Law No. 851, which legitimized, or rather restated, the inherent power of the State to intervene in its own economy, ostensibly to salvage the economy from foreign domination and exploitation.

The Cuban episode produced reactions and counter-reactions at inter-governmental levels. On July 7, President Eisenhower directed a reduction in the import quota of Cuban sugar in retaliation to the creeping expropriation or forced liquidation of American business enterprises in Cuba. In response, Cuba on August 6, 1960, moved to full-scale nationalization of the assets of twenty-six companies substantially organized with American capital. On September 17, three U.S.-owned banks were nationalized by the Cubans in spite of strong protests by U.S. authorities and private interests.
The Castro regime held the U.S. to ransom on the issue of compensation. The Cuban government placed two conditions on compensation: compensation due to dispossessed Americans would be valued at Cuban exchange rates and paid from a contingency fund from the proceeds of sugar sales to the United States. This stipulation meant that the U.S. must lift the quota restrictions on Cuban sugar imports if American investment claims were to be effectively and promptly compensated. The protracted nature of the Cuban controversy created legal and diplomatic problems, and involved the U.S. government more directly in private disputes.10

Congressional reaction was swift and combative. Congress amended the Foreign Aid Appropriation Act to prohibit economic assistance to any country "which sells, furnishes or permits any ships under its registry" to carry arms or materials to Cuba.11 This amendment, in effect, placed restrictions on aid to nations in active friendship with the Castro regime. The amendment complemented the powers of the President, under the Foreign Assistance Act, to ensure that U.S. foreign aid was not applied in a manner that promoted or assisted the activities of Communist-bloc countries.12

The Foreign Aid Appropriation Act also complemented the Johnson-Bridges Amendment to the Mutual Security Act of 1959, passed in the wake of the Cuban controversy. The
amendment, introduced by Senators Olin Johnson and Styles Bridges, provided for the immediate suspension of U.S. foreign aid to any expropriating nation that failed to compensate dispossessed American citizens or firms within a six-month period. The compensation was to occur in accordance with international law. Unlike the Hickenlooper amendment to the Foreign Assistance Act, the Johnson-Bridges amendment did not mandate the President to suspend aid to a beneficiary country in default of making "prompt, adequate and effective" compensation to American citizens or firms.

LEGAL DEVELOPMENTS, 1962 - 1964

The controversy that followed the expropriation of American investments in Cuba raised major questions in international law and relations. The basic issue was the right of a sovereign nation to nationalize or expropriate private property for overriding public interest, provided the owners of such property, whether citizens or foreigners, were duly compensated. Another issue related to the quantum of compensation: should compensation be adequate or merely sufficient? In other words, should compensation be based on the book value of the property expropriated or should expected profits and business goodwill be included in the computation of compensation?
FOREIGN INVESTMENTS AND THE ACT OF STATE DOCTRINE

The Cuban controversy created an opportunity for a landmark decision by a national court in a pivotal case that raised serious transnational and diplomatic issues. The case of Banco Nacional de Cuba v. Sabbatino arose for judicial decision following Castro’s nationalization of twenty-six foreign companies in which Americans had substantial interests. The matter revolved on the validity of Cuba’s expropriatory measures under Law No. 851 which empowered the State to ‘intervene’ in the economy in the public interest. The significance of the Sabbatino case was in its outcome and implications for the development of both U.S. public law and the principles of international law, particularly in the area of foreign investments and the right of a host government to nationalize private property under the ‘act of state’ doctrine.

The Cuban controversy highlighted a problem that confronted American investors. The problem posed two questions. Did U.S. courts have jurisdiction over the privileged acts of a foreign sovereign and, if so, could a court in New York pronounce on the legality of Cuba’s nationalization decree? Or, did the popular commitment of international law to the principle of sovereign preeminence oust the competence of American courts to sit in judgment over the acts of Cuba? The custom in international law was that the courts of one nation did not, as
a matter of course, sit in judgment over the acts of a foreign sovereign. The *Sabbatino* case created an occasion for the judicial review of a long-standing custom and offered American courts an opportunity to contribute to the development of international law.

The *Sabbatino* case posed a transnational legal problem. The matter revolved around who should recover proceeds from the sale of sugar belonging to the Compania Azucarera Vertientes-Camaguey de Cuba (CAV), one of the twenty-six U.S. firms nationalized by Castro’s government. Although, technically, CAV was now a Cuban firm, the principal stockholders of CAV were American nationals normally resident in the United States. Prior to Castro’s nationalization of the company, a New York brokerage firm, Farr, Whitlock and Company, had purchased the entire sugar consignment from CAV. After the nationalization of CAV, however, the Cuban government became the de facto owner of the sugar consignment. In order to consummate its proprietary interests, Farr, Whitlock and Company concluded a fresh contract with the Cuban government for the purchase of the sugar. Upon receipt of the consignment, Farr, Whitlock and Company, instead of making due payments to Banco Nacional de Cuba, an agent of the Cuban government, sent the purchase price to a court-appointed receiver.
The brokers' actions set up the legal conflict. The Banco Nacional de Cuba asked for an injunction in the New York District Court against Peter Sabbatino, the receiver. Banco Nacional also asked the court for damages against Farr, Whitlock and Company, for conversion of the bills of lading. As for the injunction against Sabbatino, the Civil Practice Act of New York permitted the appointment of an official to receive payments and dues accruing in the state, for firms whose investments had been expropriated abroad. The Plaintiff, Banco Nacional, contended that the "act of state" doctrine applied to legitimize the Cuban nationalization of CAV. Sabbatino, representing private American interests, accepted the doctrine in principle but insisted on the overriding rights of Americans to their property and the jurisdictional competence of the District Court to adjudicate the dispute.

As a matter of policy, the U.S. recognized the right of a foreign sovereign, in certain circumstances, to expropriate private property. Provided that the dispossessed party received satisfactory compensation, the policy of the U.S., since the turn of the century had been to respect the sovereign right of a foreign government, "under the stress of necessity," to expropriate private property for public use. The right to expropriate, therefore, carried a corresponding obligation for fair compensation. The State Department had adopted this policy in
foreign investment disputes involving U.S. firms and persons. In Ceylon, for instance, the U.S. recognized the right of the host government to nationalize the investments of American firms, but insisted that the payment of "prompt, adequate and effective" compensation was necessary and required under international law.¹⁷

The *Sabbatino* case, however, presented more complicated issues that went beyond the payment of compensation. The District Court accepted the argument of Sabbatino and held that the nationalization decree in Cuba violated U.S. public law, as well as international law. The Appeals Court, mindful of the retaliatory and discriminatory nature of the Cuban expropriation and the fact that satisfactory compensation had not been negotiated, sustained the decision of the District Court and ruled that the Cuban nationalization law was contrary to international law. On further appeal to the U.S. Supreme Court, the Court granted a writ of certiorari that quashed the decision of the District Court and reversed the findings of the Court of Appeals. The Justices found that the lower courts erred in law for failing to recognize the Cuban nationalization laws as the act of a sovereign. With only one dissenting vote, the Court held that the Cuban action was protected by the act of state doctrine.

The position taken by the Supreme Court agreed with the argument of State Department in favor of upholding the
act of state rule. The State Department reasoned that the interests of the American investor and of U.S. foreign policy were best served if avenues for diplomacy and further negotiations were left unimpeded. A denial of the act of state doctrine would pose obstacles to diplomatic settlements and result in face-saving reactions from the disputants. The Supreme Court had taken the line of reason and caution. Justice Harlan, expressing the majority opinion of the Court, warned that foreign sovereigns would resent a judicial challenge to state actions within their national jurisdictions because "the concept of territorial sovereignty is so deep-seated" that to challenge it would constitute an affront to the other nation. Justice White, however, dissented. His argument was that the doctrine was a political as well as a judicial question and that the judiciary, as an avenue of last resort, must not abdicate its responsibilities.\(^\text{18}\)

**CONGRESSIONAL REACTION TO THE SABBATINO CASE**

The Supreme Court's ruling of March 23, 1964, although not a victory for Castro, incensed some American business and political interests. Business groups with major foreign investments already enjoyed the sympathy of certain members of Congress, such as Ross Adair in the House of Representatives and Bourke Hickenlooper in the Senate. Shortly after the Supreme Court's ruling in the *Sabbatino* case, Congress, on the motion of Senator
Hickenlooper, moved to reverse the legal implications and effects of the Sabbatino principle. Hickenlooper's proposed legislation (otherwise called the "Sabbatino Amendment"), came before the conference committee of Congress as the Senate's version of a House bill for an amendment to the Foreign Assistance Act.

The Foreign Assistance Act of 1964, as approved by the Senate and the House, embodied the reaction of Congress to the Supreme Court's ruling in the Sabbatino case. Under the Sabbatino case, U.S. courts were to presume that any adjudication of the legality of the act of a foreign sovereign would embarrass the conduct of U.S. foreign policy unless the President ruled otherwise. Thus, the practical effect of the 'Sabbatino principle' was to exclude the competence of U.S. courts in all cases in which the act of state doctrine was invoked. The amendment introduced by Hickenlooper, however, sought to relocate the order of presumption. The amendment provided for the presumption of competence and jurisdiction on the part of U.S. courts to adjudicate on the merits of a foreign act of state, until and when the President gave notice that the assumption of jurisdiction would embarrass U.S. foreign policy.\(^{19}\)

The 1964 amendment to the Foreign Assistance Act, granted wide powers to U.S. courts in foreign investment disputes in which one of the parties was a sovereign. The
amendment was retroactive extending to acts of foreign
governments occurring after January 1, 1959. The
amendment stipulated that no court in the U.S. would
decline to decide on the merits of a case in which the act
of state doctrine had been invoked by a foreign state,
except in the following cases:

(a) where the action of the foreign government was
in accordance with international law;

(b) where the President, in furtherance of U.S.
foreign policy objectives, decided that the act of
state doctrine should apply in a particular case;

(c) where judicial proceedings began after January
1, 1966.\textsuperscript{20}

A Senate amendment to section 620 (e) of the Act granted
U.S. courts jurisdiction in cases involving the validity
of acts of foreign governments occurring after January 1,
1959, except where the President determined and notified
the court that the application of the doctrine was
necessary in the interest of U.S. foreign policy.\textsuperscript{21}

The executive branch had opposed the bill to reverse
the Supreme Court’s ruling in the \textit{Sabbatino} case.
Although the amendment seemed justifiable on grounds of
business expediency, the executive branch had reservations
concerning the legal and diplomatic consequences of the
Sabbatino amendment:

If the President were to decide to object in
one case and not to object in another, he would
only invite charges of discrimination....and would
run an unacceptable risk of an adverse effect on
U.S. relations with that country.
The President is forced to decide whether a court ruling on the act of a foreign state was prejudicial to U.S. foreign policy at a time and in a manner chosen by private parties to a court case and not at the time and in a manner chosen by the President. This would be unwise. The State Department reasoned that by subjecting the act of state doctrine to presidential discretion, the amendment would expose U.S. foreign policy interests to embarrassment and charges of discrimination.

The State Department was equally concerned with the implications of the amendment for the separation of powers. The executive branch argued that leaving it to the President to decide when or when not to object to foreign acts was likely to interfere with court adjudication of disputes and lead to a breakdown in negotiation. The Department of State found the Supreme Court ruling in the Sabbatino case to be of sound judgment and in the interest of U.S. foreign relations, rather than a victory for Fidel Castro. In the opinion of the executive branch, the existing framework for dealing with foreign governments was adequate and made the proposed amendment unnecessary. The executive branch reasoned that the amendment would unduly expand the scope of judicial interference in diplomatic negotiations between the U.S. and foreign governments.

The act of state doctrine, as a highly volatile and complex issue, required judicial restraint, diplomatic adjustments and mutual compromises. The Department of
State, in a memorandum to the Congressional Committee, restated its opposition to the inclusion of the Sabbatino amendment in the Foreign Assistance Act of 1964:

The Executive Branch strongly opposes inclusion of this amendment in the Foreign Assistance Act. This amendment would seriously prejudice the President’s conduct of foreign relations....Since nationalization programs are typically undertaken as a result of deep-seated political, social and economic causes inherent in local conditions, the deterrent effect of the amendment on such programs of foreign countries would appear to be slight. It is unrealistic to expect that nationalization programs would be prevented by the prospects of later litigation in United States courts which might declare the actions unlawful and ineffective to pass title.23

The executive branch reasoned that it would be unwise for Congress to seal off the avenues of compromise and diplomatic adjustment. The objections of the executive branch notwithstanding, Congress passed the Foreign Assistance Act of 1964 with the "Sabbatino" amendment.24

The Cuban controversy generated much concern about the uncertainty of international legal rules as they related to private property and public policy. As State Department officials had predicted, the amendment did not deter further expropriation of the portfolio and direct investment of American corporations in developing areas. Also, the amendment did not address a practice in international law by which foreigners and foreign investors could expect no more than the national treatment which a host country was able and willing to offer to persons within its jurisdiction, under the so-called Calvo Doctrine.
Host governments continued to expect American MNCs to seek redress and legal remedies from local courts and administrative channels. In many cases, however, the level of protection and nature of relief in the host country were not comparable to remedies available under U.S. domestic laws. U.S. firms seemed helpless in the face of foreign nationalizations to which they were the primary targets.

THE SEARCH FOR DETERRENCE, 1962 - 1968

The widespread threat of hostile expropriation of American investments in developing countries assumed acute proportions in the 1960s. Back in 1958, Argentina had taken over the assets (without the liabilities) of the American Power and Foreign Company. The parties, however, had resolved their differences by November of that year.

In 1959 Brazil's Governor in the State of Rio Grande do Sul expropriated the assets of the American and Foreign Power Company. Meanwhile, threats and possibilities of expropriation were looming in Bolivia, Chile, Peru, Honduras and other areas in South America and Asia. Again, U.S. oil and mining firms seemed to be the primary targets because of their extensive involvement in the sensitive industries.25

The expropriations raised major concerns among business groups and political leaders. The immediate source of concern occurred in February 1962, when the Brazilian Governor of Rio Grande do Sul, Leonel Brizola,
expropriated the property of the International Telephone and Telegraph Company (ITT). Governor Brizola did not compensate ITT for the full value of the company's communication investments in the Companhia Telefonica Nacional, an ITT subsidiary. Brizola's government agreed to compensate the ITT only to the extent of 20 percent of the net worth of Companhia Telefonica Nacional. Brizola's actions created much embarrassment in U.S.-Brazilian relations and caused some members of Congress to consider cutting off economic aid to Brazil.

The expropriation of American investments by the government of Rio Grande do Sul called for caution as much as it called for action. President Kennedy, in order to sustain cordial relations between the two nations, was reluctant to support congressional calls for tough anti-expropriation action against Brazil. Kennedy's Secretary of State, Dean Rusk, took the position that legal and diplomatic channels were in place to secure fair compensation from the Brazilian government for the expropriation of ITT investments in Rio Grande do Sul. The mood in the Congress, however, favored prompt action against foreign expropriators. Barely three months after the Rio Grande expropriation, Senator Hickenlooper introduced a bill to amend the Foreign Assistance Act to deny economic assistance to any foreign government that expropriated American
investments without immediate and effective compensation under international law.

There was general agreement among Senators and Representatives on the need for legislative discouragement of foreign expropriations, particularly by nations that derived benefits under the Foreign Assistance Act. In the House, the Foreign Affairs Committee questioned the wisdom of extending aid to developing nations that expropriated U.S. private investments abroad. The Committee members were in general agreement that developing nations could not receive U.S. assistance on the one hand, only to expropriate the property of American firms on the other.

The facts in issue were political as well as moral. While recognizing the right of foreign governments to nationalize private property in exercise of their sovereign privileges, the Committee on Foreign Affairs was concerned that U.S. funds were being used for the payment of compensation. Because foreign assistance, like private direct investments, contributed to economic development abroad, and because expropriation discouraged the inflow of investment capital, the Committee agreed that developing nations should not expect foreign assistance funds to substitute for private capital.²⁶ By a count of 221 to 162 votes, the House passed the Hickenlooper amendment.

In the Senate, the climate of opinion favored the denial of economic assistance to expropriating nations.
The Hickenlooper amendment passed the Senate by a 56 to 27 vote, despite specific objections from the executive branch and its preference for "situational response." The Department of State held the view that the amendment would at best advance the marginal interests of the American investor, but in the long-run, would hamper certain foreign policy goals which the Foreign Assistance Act was intended by Congress to achieve and promote. The Senate, on the other hand, welcomed the amendment. Senator Hickenlooper's contention was that the amendment did not dictate to foreign countries what they could do under their sovereignty and within their territories. The Senator argued that the amendment merely ensured that U.S. monetary aid did not benefit those countries that expropriated the property of American nationals without due compensation. The purpose of the amendment, therefore, was not to deny the host nation the right of eminent domain or other sovereign privileges, which the U.S. government had always recognized as inviolate.

The expropriation of ITT investments in Rio Grande do Sul had provoked a major shift in U.S. policy toward the developing countries. After several debates on the wording of the bill, Congress passed the Hickenlooper amendment, which was signed by the President on August 1, 1962. The protection of U.S. private investments abroad now became a public policy issue. The Hickenlooper
amendment, in effect, elevated private contractual disputes to a central position in America's diplomatic relations with the developing nations. The executive branch had preferred an approach based on caution and realism, realizing that the conduct of foreign governments could not be effectively legislated. As it seemed, Hickenlooper's emotional concern for the interests of the business community overshadowed the voice of caution. As former Representative Judd cautioned, if all the proposed amendment did was to "make us feel better by getting rid of some of our adrenalin," the amendment was unwise and only hurt U.S. foreign policy interests.29

Indeed, the Hickenlooper amendment did not solve the problem of foreign expropriations. Instead, it brought home the acuteness of the problem. In 1962, Ceylon (Sri Lanka), a small island-nation on the Southern tip of India, by a string of decrees, nationalized the properties of Esso Standard Eastern Inc., Caltex Ceylon Limited, Texaco, Standard Oil of California and other oil firms. Ceylon, like Chile, Bolivia, Honduras and Brazil, was a major recipient of U.S. aid under the Foreign Assistance Act.30 At the time of the Sri Lankan expropriation, a $800,000 development grant for the 1963 fiscal year and a development loan of over $3,000,000 had already been approved by Congress for Sri Lanka. These benefits were immediately suspended because Sri Lanka had not taken
appropriate steps to compensate the U.S. firms. The threat of sanctions under the Foreign Assistance Act did not deter Sri Lanka from expropriating U.S. assets.

The Sri Lankan dispute also brought to the fore the paradoxical link between U.S. foreign assistance and private foreign investments. The U.S. government, while recognizing the right of Sri Lanka as a sovereign state to nationalize private property within its borders, cautioned that when such property belonged to foreigners, the payment of satisfactory compensation became necessary under international law.31 The U.S. and Sri Lanka severed diplomatic relations, reinstated in 1963, only after Sri Lanka showed positive willingness to compensate American firms dispossessed of their investments. On the face of it, it had seemed as if the Hickenlooper amendment was responsible for Sri Lanka's willingness to negotiate a settlement with U.S. firms. However, renewed threats of expropriation abroad clearly showed that the Hickenlooper amendment was not an effective deterrent.

ARGENTINA AND THE HICKENLOOPER BROADSWORD

A further amendment to the Foreign Assistance Act seemed necessary to cope with the recalcitrance of certain host nations. This time, the concern of Congress centered on the expropriation of American assets in Argentina. The need for a tougher expropriation policy, however, reflected the cumulative response of the U.S. government to the
growing economic nationalism of developing countries. The government found it reprehensible that developing nations benefitting from U.S. financial and technical aid, would arbitrarily nullify or repudiate the contractual rights of U.S. firms without mutual accord and satisfaction. In 1963, Congress further amended the Foreign Assistance Act to reflect these concerns. The amendment, again championed by Senator Hickenlooper, signified the confluence of business anxiety and public policy.

The Argentine controversy provided the setting. In November, 1963, there was widespread shock among politicians, business groups, diplomats and the American press concerning the plans of the new Argentinian government of Arturo Illia to "throw out Yankee imperialists." Indeed, President Illia had concluded plans to nullify and renegotiate major oil concessions held by certain U.S. firms in Argentina. These included the subsidiaries and affiliates of seven major corporations: the Standard Oil Companies of New Jersey and Indiana, Tennessee Gas Transmission, Kerr-McGee Oil Industries, Marathon Oil, Continental Oil and City Service Oil.

Tough anti-expropriation legislation and repraisal were necessary to halt the impending investment disputes in Argentina. Several oil companies approached Senator Bourke Hickenlooper to enlist congressional support and legislative protection. Hickenlooper was already
popular for his tough stand against foreign expropriations and investment disputes. Apparently, diplomatic attempts had failed to stop President Illia from implementing his nationalization policy because Argentina revoked the concessions held by American firms shortly after U.S. Under-Secretary Averll Harriman left Buenos Aires. The Peoples' Radical Party (UCRP) of Argentina charged that the concessions were illegally granted by the erstwhile government of Arturo Fondizu in the late 1950s and, therefore, untenable.

Before the massive infusion of American capital, the Argentinian economy was stagnated for decades. By 1958, inflation, political instability and alarming falls in productivity, put the national economy in ramshackles. In spite of the abundance of petroleum under its soil, Argentina remained a net importer of oil throughout the 1950s. President J.F. Kennedy's proposal for an Alliance for Progress, adopted at the Punta del Este, Uruguay, meeting of American Finance Ministers in 1961, contributed to the influx of foreign capital and the dramatic improvements in the Argentinian economy. Half of the investment outlay for the Alliance came from private sources. The Argentinian radicalism and expropriations, therefore, set back the Alliance for Progress.

American oil firms in Argentina sought the protective support of Congress because of the unfair and arbitrary
disposition of the host government. The oil firms argued that they went to Argentina as independent contractors on the invitation of the government. The poor performance of the economy had been due to the lack of requisite capital and technology, which the oil firms readily provided.\textsuperscript{37} Hickenlooper shared the concern of the oil firms that American capital and skills helped to transform the Argentinian economy. Hickenlooper remarked that U.S. oil firms, "in competition with each other....came in, negotiated contracts running to forty years and proceeded to supply the money, personnel, equipment, and techniques which turned the tide."\textsuperscript{38}

The Argentine controversy presented two related ironies. First, although the Argentine government had benefitted from U.S. capital and technical assistance, American firms in Argentina came off the worse for it. Second, the American private sector encouraged the federal government to intervene in foreign private contracts. Not long ago, however, private investors had resented the intrusion of the government's foreign aid program in matters of foreign investment. The investors now wanted the government to come to their rescue in their private contractual dealings abroad. The situation involved balancing the delicate ends of foreign policy against the private pursuits of business. As events turned out, the Argentine disputes created a common ground for government
policy and business expectations. It seemed illogical that the U.S. would continue to provide economic assistance to a foreign government that insistently violated the sanctity of private contracts.

A COMPARISON OF THE HICKENLOOPER AMENDMENTS

Was there a need for a second Hickenlooper amendment? The amendment of 1963 seemed necessary because the previous amendment did not provide adequate protection to U.S. investors abroad. The Foreign Assistance Act of 1962, at the time of its enactment, had seemed a foolproof measure against foreign expropriations. As events in Ceylon and Argentina would show, the Act was deficient in major respects. For one thing, the 1962 amendment was couched in general terms and, therefore, became self-limiting in scope. The amendment provided for the denial of aid to any country or political subdivision of any country that "expropriated, nationalized or otherwise acquired control or ownership of property of American nationals," without immediate and effective compensation as required by "international law, justice and equity."39

The sanctions also applied to any host country that imposed discriminatory and limiting conditions on U.S. firms, except where such restrictions equally applied to nationals of the host country or foreigners of other nationalities. The amendment, however, did not cover all forms of creeping expropriations, especially in cases
where U.S. firms monopolized particular industries and, therefore, bore the brunt of expropriation exclusively.

A second amendment to the Foreign Assistance Act was necessary. The 1962 amendment did not prevent a host government from revising or repudiating individual contracts, since no single contract usually applied to all firms. For example, the Peruvian repudiation of exploration contracts with the International Petroleum Company in 1963 on grounds of public policy, and the discriminatory tax policy of the Chilean government directed at two U.S. firms, the Kennecott Copper Company and the Anaconda Copper Company, were cases in which nations benefiting from U.S. foreign assistance subtly attempted to achieve the ends which the 1962 amendment sought to prevent.40

The Hickenlooper amendment of 1963, therefore, was a cooperative effort by government and business to institute a comprehensive anti-expropriation policy for the benefit of American firms in developing nations. Under the 1962 law, the suspension of aid under the Foreign Assistance Act, did not prevent the offending nation from deriving other bilateral benefits, for example, under the Trade Act or the Treaty of Friendship, Commerce and Navigation. The 1962 amendment only required the expropriator to take "appropriate steps" within a "reasonable time" to compensate dispossessed investors; it did not specify a limitation period. The Foreign Claims Settlement
Commission was required by the Act to report a fair valuation of the property expropriated but did not specify time within which the President must act on the report.

Congress hoped to strengthen the effectiveness of the Foreign Assistance Act for the adequate protection of American business interests abroad. The need for further modification in the language of the Act became necessary, particularly in view of undeterred plans in Latin America and other developing areas to nationalize American direct investments.\textsuperscript{41} Hickenlooper's concerns, therefore, represented the response of American business groups and policy-makers to the contractual distortions that had become a habit of action in developing areas.\textsuperscript{42} While the 1963 amendment was particularly provoked by the Argentine problem, its impact was far-reaching.

Hickenlooper in his argument, directed the force of the amendment to:

\begin{quote}
any other countries in Latin America which are engaging in or planning to engage in expropriation of American property, and to any countries in any other part of the world which are engaging in or planning to engage in the expropriation of American property....it is one thing to love thy neighbor as thyself, as the Bible enjoins us, but this is becoming a pretty large neighborhood.\textsuperscript{43}
\end{quote}

The symbolic expression of the Hickenlooper amendment, therefore, was the unwritten message it conveyed to foreign nations, including those that were not beneficiaries under the Foreign Assistance Act but had derived benefits under other laws or treaties. Although the U.S.
was willing to continue its foreign aid program, there was a limit beyond which the government would not go.\textsuperscript{44}

The Foreign Assistance Act of 1963 was more inclusive than the previous legislation. The new law had a retroactive application to expropriations and other "takings" of U.S. property that occurred since January 1, 1962.\textsuperscript{45} The amendment also stated that the President shall suspend assistance to the government of any country to which assistance is provided "under this or any other Act".\textsuperscript{46} Under the Foreign Assistance Act of 1962, Congress limited the President’s suspension power to countries receiving aid under the enabling Act. However, under the amendment of 1963, the President could suspend U.S. bilateral assistance, whether economic or military, even though such aid did not come under the Foreign Assistance Act.

The enforcement provision of the Hickenlooper amendment granted little choice to the President. The 1963 amendment required the President to suspend aid to any foreign government, or its political subdivision, that failed to make prompt, adequate and effective compensation to U.S. investors within six months after the compensation became due and payable. The State Department had expressed its objections to mandatory suspension of aid: "it would give the appearance that the aid programs were motivated by a desire to protect U.S. private investment, and were in effect, tools of U.S. capital."\textsuperscript{47} However,
while sanctions were threatened against some states, they were sparingly invoked; the threat of sanctions, for instance, against Congo and Somalia yielded more positive results because these countries suddenly showed firm willingness to settle their disputes with the MNCs.48

The Congress intended sanctions to include the suspension of disbursements from the President's Contingency Funds. At the congressional debates of November 13, 1963, Senator Wayne Morse raised the question whether foreign assistance as contemplated by the amendment included disbursements from the President's Contingency Fund. Hickenlooper agreed, but excluded cultural exchange benefits under programs such as the Peace Corps, except where expropriation abuses were "great enough" to warrant the inclusion of cultural exchanges.49

The suspension of aid remained in force until the President was satisfied that appropriate and satisfactory steps were being taken by the offending government. Complaints from business groups, however, showed that the mandatory imposition of sanctions did not make for flexibility in diplomacy and negotiations with host governments. In 1973, an amendment to the Foreign Assistance Act made the President's imposition of sanction discretionary and more in tune with the initial position of the State Department.50
The legislative and the executive branches interpreted the Hickenlooper amendment differently. While Hickenlooper intended the amendment to cover "almost any possible contingency that could develop in a foreign country", the State Department envisaged only those cases where the host country engaged in total nullification or repudiation of existing contracts. For instance, by a letter dated August 29, 1978, William F. Collins, President of Revere Copper and Brass Company, requested Secretary of State Cyrus Vance to invoke sanctions against the Jamaican Government for enacting a 1974 Act, the Bauxite (Production Levy), which altered Revere's original contractual rights in the Jamaican mining industry.

The question was whether the facts of the Revere case warranted mandatory sanctions against Jamaica. The Office of the Legal Adviser in the State Department was to advise whether the U.S. could legally invoke Section 620 (e) (1) of the Foreign Assistance Act as amended, to suspend U.S. assistance to Jamaica mandatorily. The Legal Adviser was also to determine if Section 502 (b) (4) of the Trade Act of 1974 was applicable to cause the President to revoke beneficiary status of Jamaica for U.S. aid. After reviewing the Revere Case, the Legal Adviser concluded that both the Trade Act and the Foreign Assistance Act did not apply to the Revere case because Jamaica had not sought total control of Revere's mining investments.
Congress, however, had intended to provide a comprehensive policy on foreign expropriation. This was the view expressed by Hickenlooper on November 13, 1963, during the consideration of the amendment in the Senate. Hickenlooper, responding to a question from Senator Morse, stated that the anti-expropriation amendment was intended to protect U.S. firms from almost all conceivable disputes. Hickenlooper took the position that "if a foreign government should seek by one means or another to expropriate the value of the property or nullify contractual relations that would have a bearing upon the value of the property." Hickenlooper's position seemed more tenable, in view of the discretionary powers granted to the President under the Act to determine the occurrence or otherwise of expropriatory actions.

The Hickenlooper amendment affected tangible and intangible rights in property. To confine the law only to cases of total expropriation of American investments would have meant the exclusion of forced or coerced equity participation in multinational corporate ownership, from the ambit of section 620 (e) of the Foreign Assistance Act; an exclusion that was not intended by the framers of the amendment. This is more so, considering that the amendment was designed to cover even disputes over patent rights and any limitations on the exercise of such rights in foreign countries. As Hickenlooper observed, "those
rights are undoubtedly rights, just as tangible property rights are."55

THE JURISPRUDENCE OF THE HICKENLOOPER AMENDMENT

Although the Hickenlooper amendment relied on international law as the basis of its equity, the textual thrust of the amendment was based on American public law and policy. Thus, notwithstanding that the Hickenlooper amendment recognized and accepted international law as the broker and measure of justice in foreign investment disputes, the amendment derived its moral autochthony from American public policy and the common law notions of fairness, equity and good conscience. Hickenlooper, himself, appeared not to understand fully the legal basis of his amendment. On the contrary, the Senator, who had practised law in Iowa between 1922 and 1942, knew that his amendment sought to project U.S. public policy into the realm of international law. Howbeit, in response to a question by Senator Miller, Hickenlooper excluded the relevance of international law to his amendment:

I am not quite sure what international law is. I know what it is said to be....it is a hodgepodge of itinerant agreements, treaties, international agreements, and this, that, and the other thing.56

The Hickenlooper amendment was in effect an American proposal to the world, particularly the developing nations, for a redefinition of the international legal rules governing private business transactions. This was more so considering that the U.S. had abandoned the act of
state doctrine through the statutory reversal of the Sabbatino decision. The American proposal was reflected in the closing remarks of Hickenlooper in Congress on November 13, 1963:

I hope we can work out with those countries a basis of equity, fairness, decency and appropriate concepts of property and moral rights such as their own citizens have. The issue confronting the legislators was finding an equitable balance between means and ends in politics. The U.S. sought to encourage international economic development through the free flow of trade and private investment capital. The American political economy hoped to encourage growth in the developing countries on terms of friendly and mutual reciprocation. While the Hickenlooper amendments envisaged the realization of these goals, the amendments did not strengthen the avenues for achieving them. The amendments neither halted foreign expropriations nor promoted friendly and mutual relations between American investors and foreign governments. The Hickenlooper amendments remained in the statute book, more as emotional responses to foreign investment disputes than realistic solutions to actual problems in international business relations.
CHAPTER V

REAPPRAISING THE FOREIGN ASSISTANCE PROGRAM

Changes in the Foreign Assistance program after 1968 affected U.S. business relations with Africa. In 1968, Congress ordered a reappraisal of the Foreign Assistance program to make it a more effective instrument of U.S. foreign policy. The reappraisal involved a comprehensive review and reorganization of all aspects of the Foreign Assistance program, including the structure of U.S. contributions to the international lending institutions. Although the review process began during the term of Lyndon Johnson, it was the Nixon administration that organized an effective framework for the management of U.S. business relations with the developing countries. The Nixon administration, through new institutional arrangements, attempted to reduce the scope of U.S. government involvement in private investment disputes abroad. Nixon also restored the developmental and humanitarian purposes of the Foreign Assistance program, which the Hickenlooper amendments had seemingly obscured.

The need for a reappraisal arose because the Foreign Assistance program, as it then existed, had become
disruptive and ineffective in promoting America’s foreign policy in the developing nations. The Foreign Assistance program, particularly, lacked relevance to changing world conditions. New nations were becoming more assertive of their rights to self-determination and resentful of outside encroachment on their sovereignty. The Hickenlooper amendments symbolized such encroachment because they introduced a take-it-or-leave-it structure of relationship between the U.S. and developing nations, in disregard of the original design and purpose of the Foreign Assistance program.

The Hickenlooper amendments had altered the essence of the foreign assistance program. The Hickenlooper amendments transferred the focus of the Foreign Assistance Act from its developmental base and purpose to satisfying private concerns over foreign investment disputes. The Foreign Assistance Act no longer fulfilled its original purpose of promoting U.S. diplomatic interests in developing countries. Instead, the Act, to a large extent, became an instrumentality that catered to private business interests in foreign contracts. Thus, the Foreign Assistance Act operated as a legal code that prescribed contractual conditions and imposed mandatory sanctions on foreign governments in investment disputes.

The reappraisal of the Foreign Assistance Act involved the adoption of new approaches to old problems.
The imposition of sanctions under the Foreign Assistance Act had not offered an effective deterrence to economic nationalism abroad. The imposition of sanctions also had not enhanced the strategy of American MNCs for secure access to industrial raw materials abroad. The seemingly easy choice between U.S. foreign aid and the nationalization of extensive multinational business investments, indeed, had weakened the forcefulness and implementation of the Hickenlooper amendment. Most American MNCs realized that it was a more realistic choice to adjust their strategies to the economic policies of host countries than to abandon operations altogether.

The absence of an institutional arrangement for the management of investment disputes was a major shortcoming of the Hickenlooper amendments. In effect, the Foreign Assistance Act, as amended, impeded the speedy settlement of investment disputes and created ruptures in U.S. diplomatic relations with the host countries. The Hickenlooper amendment did not prevent nationalization of U.S. private investments in Nigeria, Kenya, Congo, Morocco, Malagasy or the Sudan, where the host governments insisted on acquiring a certain percentage interest in the ownership and management of multinational business enterprises in certain basic industries. In Libya, the outright nationalization of multinational corporate investments occurred only when the MNCs rejected Libya’s
initial proposal for equity participation in the oil industry.²

The Hickenlooper amendment to the Foreign Assistance Act was not compatible with the political and economic realities of post-colonial Africa at the close of the decade. African nations could no longer depend on international charity for the execution of their economic development plans and were willing to forego the benefits that Hickenlooper threatened to withhold. It became necessary, therefore, for the American government to reappraise the foreign assistance program, to align it with changing world conditions and make it a continuing and effective implement of U.S. foreign policy.³

An institutional response to the management of foreign investment disputes seemed to be a more realistic approach. In 1968, a comprehensive review and reorganization of all foreign assistance programs was initiated in Congress on the motion of Senator Jacob K. Javits.⁴ The Javits proposal followed the recommendation of the International Private Investment Advisory Council (IPIAC) on ways to increase private capital outflow to friendly developing nations. The IPIAC recommendation, itself, was in response to congressional debates on the most effective means of promoting private capital outflow to developing nations without exposing U.S. firms to unnecessary investment risks abroad.⁵
The concern of Congress was to relate U.S. foreign policy to the immediate problems confronting American investors in developing nations, such as expropriations, confiscations and revolutions. The IPIAC suggested the establishment of a U.S. Overseas Private Enterprise Development Corporation, a quasi-governmental agency with powers to participate in capital market transactions and overseas private investment. Such an agency, however, would have stood in unhealthy competition with private firms and was not supported by private business groups. The Javits proposal, therefore, put forward an alternative framework that seemed able to achieve private business objectives without sacrificing U.S. foreign policy goals in developing countries.

Senator Javits' proposal came before Congress in the form of an amendment to the Foreign Assistance Act. The proposal called for a review of programs under the Act on ways and means to achieve U.S. foreign policy goals in friendly developing countries in partnership with private capital. Javits recommended a review of the role of investment guaranty programs and private capital in the development of U.S. private enterprise abroad. A National Foreign Assistance Review Committee established for this purpose would, in addition, examine ways of expanding and underwriting new capital investments, investing in the securities of development institutions, transferring U.S.
technology and skills, and assisting in the development of local capital markets in low-income nations. The Javits' proposal passed in the Senate on July 31, 1968. Following a joint conference, a compromise version of the bill was approved by Congress as an amendment to the Foreign Assistance Act and included a provision for the founding of an investment corporation based on public-private partnership.

The Foreign Assistance Act of 1968, as amended, called for the reappraisal of the foreign assistance program in view of changing world conditions and the need to make the program an effective foreign policy tool. The reappraisal was directed particularly at economic, technical, and military sales components of U.S. policy, and the contribution of international lending institutions connected with development in the Third World. Section 502 (a) of the Act requested the President to make a second reappraisal of private capital and skills transfer to friendly developing nations. The Act required that the report be submitted to Congress before March 31, 1970.

THE OVERSEAS PRIVATE INVESTMENT CORPORATION

The President's reappraisal was intended by Congress to cover the terms of reference that the Javits' amendment had proposed for the consideration of the Foreign Assistance Review Commission. Following the recommendations of President Nixon, Congress, in 1969,
established the Overseas Private Investment Corporation (OPIC), to provide insurance coverage for American business abroad. The creation of the OPIC was based on the need to mobilize and facilitate the participation of American private capital and skills in economic and social progress of "friendly" developing nations through institutional coordination.

The OPIC functioned independently of direct federal control, even though the President appointed members of the governing board. In addition to inheriting the functions hitherto performed by USAID's Office of Private Resources, the OPIC emerged as an institution for the promotion of U.S. business enterprise in low-income nations. The OPIC was chartered under the Foreign Assistance Act of 1969, as a financially self-sustaining institution, and required to conduct its insurance operations "with due regard to principles of risk management." 9 The financial self-sufficiency of OPIC depended on its ability to organize its activities along the lines of profitability. These activities included the Investment Guaranty program, inherited from USAID, the Direct Investment Fund program, and the Productive Credit Guaranty program. The Investment Guaranty program underwrote private capital investments in developing countries. The underwriting of major investment projects
by the OPIC stretched the corporation’s insurance earnings and its capacity to settle investment disputes.

THE CORPORATIST STRUCTURE OF THE OPIC

The purpose of the OPIC followed the operational strategy of its predecessor, the USAID, which in the early 1960s, brought private groups and public officials into a partnership to support the multinational spread of American direct investments in post-colonial Africa.\textsuperscript{10} The OPIC consisted of a self-governing partnership between the private and the public sectors, reflective of the Hooverian tradition and a corporatist paradigm.\textsuperscript{11} The objective of the OPIC was to relate means to ends in terms of U.S. foreign policy goals and the particular interests of American investors in developing nations. With the establishment of the OPIC, the federal government became less involved in foreign investment disputes. Within this framework, the collective interests of business and government were harmonized in the allocation of resources, in containing economic nationalism abroad, and in securing efficiency in U.S. multinational corporate productivity.

The OPIC had a minor government presence in its bureaucracy. The Corporation was governed by a board of eleven directors. Six of the directors were appointed by the President with the advice and consent of the Senate. Also, the six directors were specifically required by the OPIC charter to come from outside the government and to
include three persons respectively experienced in small business, organized labor, and cooperatives. Three other members were appointed by the President from federal government offices. The Departments of State, Commerce and the Treasury have over the years participated in OPIC government. The President of the OPIC (former President Bradford Mills, came from the private sector) and the Administrator of the USAID served as ex-officio members. The Administrator of the USAID participated as chairman. The board mobilized and facilitated "the participation of U.S. private capital and skills in the economic and social progress of less-developed friendly countries," in furtherance of the purposes and objectives U.S. foreign assistance program.

The government of the OPIC was intended by Congress to be based on private-sector initiatives. An Advisory Council comprising private businessmen and citizens served as OPIC’s consultative body. The chairman of OPIC appointed the members of the council who, by law, must be consulted periodically with reference to the operations of the corporation. Major divisions within the corporation reflected the geographical focus of U.S. business enterprise in developing areas. The Insurance Department, subdivided into Near East-Asia and Latin America-Africa, complemented the working of the Finance Department, itself, subdivided into Near East-South Asia, East Asia,
and Latin America-Africa. Other divisions within the OPIC included Public Affairs, Treasury, Development and General Counsel. The corporatist structure of the OPIC, which has remained largely intact over the years, was designed by Congress to offer private solutions to public concerns on a basis of cooperation and internal self-regulation.

The OPIC depended on private-source funds for its operations. The corporation's guidelines also encouraged the participation of small businesses in its programs. Private initiatives and competitive structures received support from OPIC in accordance with its mandate to discourage monopolies and monopolistic tendencies in the execution of its programs. The OPIC increased private participation by selling its direct investments to American private investors willing and able to undertake direct investments in developing nations. The cardinal purpose of the OPIC under the Foreign Assistance Act was to support and protect American direct investments abroad; in doing this, the OPIC took into account the state of diplomatic relations between the host nations and the American government, especially the attitude of the former to American investments. The OPIC also took into consideration the balance of payment effects of its operations on the U.S. economy.12

The organization and programs of the OPIC showed a continuing pattern of interdependence between government
and business, a meeting point between nineteenth century privatism and the dictates of a changing world economy in which the firm had stepped out of its traditional and limited role of capital accumulation to accommodate the foreign policy imperatives of government. With government providing supportive services to business, the American political economy successfully evolved institutional solutions to transnational problems.

**OPIC AND THE U.S. POLITICAL ECONOMY**

The services of the OPIC were mutually beneficial to the United States and African nations. The charter of the OPIC organized the programs of the corporation in three major categories: (a) investment insurance against inconvertibility of foreign currencies, expropriation and war, revolution or insurrection; (b) investment financing through Guaranties Direct Funding, and the Productive Credit guaranty; and (c) informational and promotional programs, such as preinvestment surveys and support to American firms seeking investment opportunities in developing countries. The OPIC charter, with specific exceptions, limited the corporation's capacity to finance surveys and investments in the mining and extractive industries. Congress was mindful of the fact that these areas were the high-risk and sensitive sectors, the traditional target-industries for economic nationalism in developing countries.
The investment insurance program benefitted the small and large firms. The OPIC had flexible authority to issue insurance cover for the full value of a new investment, but in cases of huge and sensitive projects, the OPIC usually showed reluctance to grant insurance. In disputes over expropriation or nationalization, OPIC required the American firm thereby affected to inform the OPIC promptly in writing of the circumstances of the dispute and measures taken by the firm to exhaust any available remedies. In the event that the American firm was unable to secure satisfactory compensation or settlement from the host government, OPIC would duly compensate the dispossessed firm; thereafter, all rights and interests in or title to the expropriated property reverted and became subrogated to OPIC who would in turn proceed against the expropriating government for restitution. The Foreign Assistance Act, therefore, required a formal investment guaranty contract between the U.S. and a foreign government as a precondition for the OPIC program to become beneficially operative in the host country.

Under the Foreign Assistance Act of 1969, individuals as well as not-for-profit organizations could benefit from OPIC programs. To qualify for coverage, the applicant must be a U.S. citizen; an organization, including non-profit groups created under the laws of the U.S. and substantially owned by U.S. citizens; or a foreign
corporation, partnership or other association wholly owned by one or more U.S. citizens, partnerships, corporations or other associations. The OPIC, adopting the language of the Hickenlooper amendment, defined 'beneficial and substantial ownership' as involving the control by American citizens or associations, of no less than 50 percent of the corporate stock. Allowance was made, however, for U.S. firms organized abroad and owned partly by non-U.S. investors in compliance with a foreign law. Provided the interest of U.S. citizens was not less than 50 percent in stock distribution and the sum of foreign ownership did not exceed 5 percent of the corporate stock, such firms were deemed qualified for OPIC programs in insurance and financing.

The OPIC strictly adhered to its established guidelines for the issuance of insurance based on the principle of risk-management. Like the local insurance firms, OPIC accepted or rejected a project essentially on the basis of risk factors, depending on the political conditions in a particular host country, and subject to the approval of investment arrangements by the host country. An insurance contract lasted for twenty years and OPIC continually monitored the progress of the enterprise to determine its developmental contributions to the host country and the structural impact of the investment on the U.S. balance of payment position. The
OPIC also did not guarantee loans to U.S. firms investing in mining and minerals, and withheld support for surveys in the sensitive industries.

The Foreign Assistance Act of 1969 specifically expected the OPIC to play a significant role in America's balance of payments. In pursuit of this role, the OPIC has since its inception been careful not to embark on overseas programs that would harmfully compete with U.S. domestic production. In a 1973 report to Congress, the President of the OPIC, Bradford Mills, observed that American manufacturing investments in the developing nations accounted for nearly a quarter of a million jobs in the U.S. and contributed $800,000,000 to America's balance of payments.

American private direct investments in developing countries increased substantially between 1969 and 1979. In the interim, capital outflow from the U.S. had adverse effects on the balance of payments; however, in the long-run, returns from foreign investments translated into balance of payment benefits for the American economy. To achieve this goal, the OPIC discouraged investments in the so-called "runaway industries" or enterprises whose foreign operations were likely to cause a permanent drain on the U.S. economy. The OPIC was reluctant to finance or insure firms whose main purpose was to manufacture overseas for export to the American market, or investments
that would contribute to unemployment in the United States.\textsuperscript{18}

OPIC-sponsored projects in Africa encouraged investments that supplemented and complemented U.S. domestic productivity. American firms investing in essential raw materials and agricultural products received priority consideration, especially because the expansion of American business abroad involved huge exports of capital and technology from the United States and was expected to yield commensurate returns. In 1974, for example, the OPIC projected a net trade benefit of over $140 million from the export of capital goods and equipment during the 1973-1979 period; this projection was realized because the OPIC tailored its projects to design.\textsuperscript{19} The OPIC, therefore, was an institutional response to the American political economy, particularly the desire of U.S. firms to remain competitive and profitable in foreign markets.\textsuperscript{20}

OPIC AND THE AFRICAN POLITICAL ECONOMY

The OPIC served as a functional, though less effective, instrumentality for the management and settlement of investment disputes between American investors and African governments. The corporation’s insurance program, which spanned a mixed spectrum of industrial sectors, contributed to the containment of investment disputes in Africa. American investors insured
by OPIC no longer had cause to engage in controversies
with a host government over the payment of compensations
because the OPIC assumed the burden of compensating the
firms and the espousal of their claims against the host
government. The OPIC thus contributed to the expansion of
American business in Africa by creating a relatively
stable investment environment.

Although the OPIC settled few investment disputes
throughout the 1970s, it succeeded in attracting many new
investments to Africa. In the 1974 fiscal year, alone,
OPIC insured over twenty American business enterprises in
a number of African states. In Malawi, the OPIC helped to
establish a commercial banking venture of the Bank of
America; in Tunisia, a Borden Incorporated textile
manufactory; in Zaire, a Central Overseas Corporation
flour mill project, a Chase Manhattan textile
manufacturing involving a single maximum coverage of
$1,725,000, and a commercial banking project by the
Crocker International Development Corporation. The OPIC
also encouraged investments in agriculture and
infrastructural projects. In Kenya, the corporation aided
the construction of two agricultural processing plants
belonging to CPC International and the Del Monte
Corporation; and in Ghana, the OPIC issued a single
maximum coverage of $1,411,200 for a Firestone Tire and
Rubber Company expansion project.21
The OPIC also encouraged the regional distribution of investments. In North Africa, Firestone expanded its rubber productions in Tunisia, while the Goodyear Tire and Rubber Company achieved similar results in Morocco and Zaire. The ITT Sheraton also built a $1,886, 250 hotel in Tunisia; the Rigel Textile Corporation, the Regis Paper Company, and the Springs International, manufactured in Morocco. In Southern Africa, the Grove International Corporation began roads construction in Botswana; and in central region, the Morgan Guarantee International expanded its banking services in Cameroon and Gabon. In the West Africa, the Trans-World Airlines expanded its hotel business in Ghana and the Star-Kist Company began tuna fishing and processing also in Ghana.

OPIC AND THE SETTLEMENT OF INVESTMENT DISPUTES

The general pattern of U.S. manufacturing and direct investments in Africa under OPIC showed a clear departure from the traditional concentration of industries in petroleum and mining activities. The diversification of investments into non-sensitive areas diluted nationalist sentiments among host governments and, therefore, the incidence of expropriations in Africa. Moreover, the new investments did not compete with or directly threaten U.S. domestic production but were complementary to it.²²

The founding of the OPIC was the unilateral response of the United States to foreign investment disputes,
attempts at multilateral action having failed. Previous efforts by the U.S. government to establish institutional mechanisms for the management and settlement of investment disputes proved unsuccessful for different reasons. The U.S. had given its broad support to proposals for the establishment of a multilateral insurance agency that encourage the speedy settlement of investment disputes. The International Bank for Reconstruction and Development (World Bank), in 1961 conducted an organizational survey at the request of the Organization for Economic Cooperation and Development (OECD), as a basis for the establishment of an International Investment Insurance Agency (IIIA) for the protection of multinational direct investments against economic nationalism and expropriation. Owing to disagreements among participating government agencies and representatives over the articles of association, the proposed IIIA met with serious obstacles.

The International Investment Insurance Agency did not materialize because of the narrow interests and concerns of the negotiating nations. The areas of disagreement related to the representative composition of the IIIA, the distribution of voting rights among members, the procedures for dispute settlement, and the membership status of developing nations in terms of their financial contributions. The U.S. Commission on International Trade
and Investment Policy (CITIP), in its 1971 report to the President, had supported U.S. participation in the IIIA. The IIIA, the report concluded, would be a more favorable venue for the settlement of investment disputes than the OPIC medium. Under the OPIC compensation was certain and guaranteed to an investor in the event of foreign expropriation. The CITIP, therefore, concluded that the OPIC was not a suitable medium for the settlement of investment disputes because it shifted the burden of negotiation to the federal government.

The general support shown by the U.S. for the establishment of the IIIA, however, was not equally reciprocated by other governments. A subsequent attempt at a multilateral approach to investment disputes was proposed by Secretary of State Henry Kissinger on May 6, 1976 at the Fourth Ministerial meeting of the United Nations Conference on Trade and Development (UNCTAD) in Nairobi, Kenya. The U.S. proposed an International Resource Bank to guarantee direct investments in developing countries. However, because such multilateral arrangements involved protracted diplomatic adjustments and major compromises, the proposal for an International Resource Bank faded.

The eagerness of foreign governments to protect selfish national interests worked against the organization of multilateral efforts for the management of investment
disputes. In 1972, disagreements among nations led to the collapse of negotiations for the establishment of a Judicial Remedies Convention to handle cases of expropriation compensation claims; Germany and England, particularly, for reasons of national interests frustrated the proposal. It is doubtful, however, that judicial solutions would have been appropriate for the settlement of international investments disputes because of problems of enforcement. For example, the International Center for the Settlement of Investment Disputes (ICSID), an affiliate of the IBRD and a quasi-judicial arbitrator, was severely handicapped by its constitution. As a result, the Center could not serve as an effective medium for disputes settlement.

The overall failure of multilateral arrangements caused U.S. officials to think more in terms of unilateral solutions to foreign investment disputes. In 1975, the U.S. considered the possibility of establishing the Office of a Special Representative for Overseas Investments, under the auspices of the Department of Treasury, to supervise negotiations for disputes settlement between investors and their host government. The proposal, however, was rejected by representative groups of the MNCs who preferred a less active role for government in foreign investments. As things stood, therefore, the OPIC
remained the most viable medium for the management of foreign investment disputes.

The purpose of the OPIC compared in major respects with programs existing in other Western capitalist countries. The experiences of Japan and Western nations showed that investment guaranty contracts, on a bilateral basis, were preferrable to multilateral arrangements.²⁴ For example, the Convention establishing the Organization for Economic Cooperation and Development (OECD), created a forum for member-nations, including the United States, to pursue economic growth, trade expansion and financial stability within a framework that guaranteed the protection of investments in developing nations.²⁵ As of August 1972, nine of the OECD members had Investment Protection Agreements (IPA) with developing countries. The members were Belgium, Denmark, France, Germany, Japan, the Netherlands, Norway, Sweden and Switzerland.

Other Western nations adopted policies that suited their special investment interests in developing areas. Austria's liberal attitude led to the establishment of an investment insurance scheme in 1966, administered by the Austrian Export Payments Insurance Corporation. Italy's marginal interests in Ivory Coast, Gabon, Guinea, Mali, Morocco, Niger and Tunisia, were protected by bilateral agreements with the host governments. The United Kingdom, in July 1972, established an Overseas Investment Insurance
scheme administered by the Export Credits Guarantee Department (ECGD) to provide insurance coverage against restrictions on remittances of profits, war and expropriations. The Commonwealth Development Corporation, the successor to the Colonial Development Corporation established by the British Parliament in 1948, assisted British investors in developing countries but, unlike the OPIC, did not operate on a commercial basis.

Japan had since 1956 offered investment insurance assistance to its corporations through the Ministry of International Trade and Industry (MITI). The Overseas Investment Principal Insurance created in 1956 and the Overseas Investment Profits Insurance created in 1957, respectively, provided for the protection of capital and profits of Japanese firms abroad. In 1970, both programs were merged by the Japanese government to create the Overseas Investment Insurance Scheme, under MITI management, to oversee Japanese investments in developing countries against war, seizure and expropriations. Japanese private investments in Africa did not generate disputes because of their insignificant volume and sectoral locations in non-sensitive areas.

In terms of scale and scope of activities, no other capital-exporting nation had an institution comparable to the OPIC. The OPIC, formally organized on January 19, 1971, by the end of June 1972, had an outstanding maximum
coverage of $3.4 billion for inconvertibility, $3.5 billion for expropriation and $3.0 billion for war risks. At the close of 1974, OPIC’s gross revenue peaked at $40.9 million with a net income of $37.1 million. During the same period, OPIC’s insurance reserve stood at $80.5 million; paid-up premiums amounted to $27.9 million, and new coverage issues increased from $649.3 in 1973 to $994.8 million in 1974. OPIC’s financial services in 1974 yielded $4.1 million and total combined financing portfolios went up to $211.8 million for the same period.

The OPIC, more than the OECD, showed a greater responsive capacity to development projects and needs in Africa. The redirection of U.S. private direct investments to agriculture-related industries and the building of infrastructures, reshaped the strategy of American multinational firms in Africa. Between 1971 and 1973, OPIC supported the construction of a milk plant in Zaire, the production of avocados in the Cameroon, the establishment of retail markets in Kenya, and a peanut factory in Dahomey. These minor projects, however, reflected OPIC’s deliberate efforts to relate American corporate multinationalism to the local aspirations and development plans of the host countries.

Yet, there was the initial appearance of coercion in U.S. foreign economic policy that made OPIC’s successes
seem less realistic. The Foreign Assistance Act of 1964 required the executive branch to withhold economic aid to a developing country refusing to enter a bilateral agreement for an investment insurance program. From previous experiences, however, coercion had not proved to be a more effective alternative to voluntary initiatives by host countries. The requirement under the Act of 1964, therefore, was modified in the Foreign Assistance Acts of 1965 and 1966.28 In spite of the statutory regulation of the OPIC, by Congress, the corporation was able to harmonize U.S. foreign policy goals in Africa with the business concerns of private groups. The OPIC, through its insurance program, was able to assume the diplomatic management of investment disputes in developing countries, thereby preventing the direct involvement of the federal government in expropriation disputes.

The OPIC, despite its deterrent mechanisms, was unable to prevent certain investment disputes. American firms came in conflict with their host governments in a number of cases, for example, the investment disputes involving Procter and Gamble in Algeria; Diamond Distributors Incorporated in the Central African Republic; Pfizer, Sterling Drugs and Union Carbide, in Ghana; Chase Manhattan and First National City Bank of New York in Kenya; Bethlehem Steel and Republic Steel in Liberia; National Cash Register in Sudan; W.R.Grace in Togo, and
major banking facilities in Uganda. Although most of these disputes were finally settled, negotiations were conducted more in deference to the policy position of the host country than to OPIC’s preventive stance. In Nigeria, for example, negotiations between the Mobil Corporation and the government over the acquisition of major interests in Mobil’s operations, lasted from 1973 to 1977. Compensation was paid to Mobil, not because of OPIC intervention, but on ground of Nigeria’s public policy.

In Ethiopia, the OPIC could not prevent the expropriations of the military government; the OPIC only enforced executive directives suspending U.S. economic assistance to Ethiopia. The Military regime in Ethiopia had nationalized major foreign investments in which American investors had substantial and beneficial interests. These included enterprises in agriculture, food, beverages, printing, textile, leather, iron ore, chemicals, banking and insurance. The Department of State, by an aide-memoire of July 3, 1979 addressed through the Ethiopian Embassy in Washington, informed the Ethiopian government that U.S. Public Law required the suspension of assistance to Ethiopia under the Foreign Assistance Act. The suspension of assistance to Ethiopia, however, did not include $20 million in humanitarian aid and $30 million already earmarked for economic assistance. The OPIC in pursuance of executive
directives, suspended further support for U.S. private direct investments and capital projects in Ethiopia.

The OPIC did not forestall or settle investment disputes in Somalia. The Somali government had nationalized U.S. investments between 1971 and 1974. Somalia's nationalization of American investments in petroleum marketing and other enterprises did not attract similar sanctions as in the Ethiopian case. The U.S. also refrained from invoking S. 502 (4) of the Trade Act of 1974, which would have had the effect of denying Somalia the status of "beneficiary developing country" for purposes of trade preferences. OPIC's continuation of projects in Somalia was as a result of the willingness of the Somali government to compensate the dispossessed American investors. Generally, however, the corporation, as the main business link in U.S.-Africa relations, proved to be a promising medium for the management of investment disputes.

Congress was determined to strengthen the developmental role of the OPIC abroad. The Overseas Private Investment Corporation Amendment Act of 1978, mandated the OPIC to give increased attention to developing countries with very low levels of per capita income. The newer nations of Africa, such as Botswana, had since independence been favored beneficiaries of OPIC's investment programs. Botswana, described as "a
ground floor opportunity for foreign investors," with its abundant deposits of diamonds, manganese, nickel, copper and talc, also showed extensive potentials for agricultural and infrastructural investments.  

Botswana’s development projects received special attention from the OPIC. By the end of fiscal 1974, the OPIC had issued a total of about $35 million of insurance coverage to American interests in the Shashe-AMAX industrial project alone. The Selebi-Pikwe nickel mines and Shashe infrastructure projects by 1974 accounted for thirty five percent of Botswana’s development budget, and total investments in the project, sponsored by the American Metal Climax (AMAX) and the Anglo-American Corporation of South Africa, was about $304 million including expenditures on a dam and related infrastructures.  

The investment relationship between Africa and America, in spite of the strains and disputes involved, produced mutually beneficial results. The Selebi-Pikwe nickel project in Botswana, for example, produced about two million metric tons of ore annually and created over 350 jobs in the U.S. at the Louisiana refineries for smelted ore. In addition to the balance of payment contributions of American private direct investments, the U.S. was able to structure a more predictable relationship with African nations than would not have been
the case on a strictly political platform; to this extent the OPIC proved a functional component in the development of U.S.-Africa relations.

The problem, however, was that the U.S. did not have a separate and distinct policy on expropriation for Africa. The existing policy platform for the containment of expropriation addressed the developing countries generally and collectively. Thus, laws enacted in response to investment disputes in Latin America invariably had a spill-over effect on relations between African nations and the United States. Events in Latin America continued to determine the thrust of U.S. policy on foreign expropriations. In 1972, Congress enacted the so-called Gonzalez amendments to deter foreign governments from expropriating American investments. The measures were of a fundamental nature because they limited the ability of certain African nations to obtain credit and development funds from multilateral finance institutions in which the U.S. had a weighted vote.

The involvement of the multilateral lending institutions in U.S. foreign relations was counter-productive. While Nixon’s reorganization of the Foreign Assistance program produced a concrete and positive framework for the conduct of business relations between the U.S. and Africa, the Gonzalez amendments, conceived by Congress as a deterrent to foreign expropriations,
achieved negative results. The Gonzalez amendments reinforced the coercive purport of the Hickenlooper amendments and, in the long run, contributed to the deterioration of business relations between American MNCs and their host governments in Africa.
CHAPTER VI

ECONOMIC ASSISTANCE AND INVESTMENT SECURITY

America’s policy for the expansion of U.S. private direct investments in Africa remained consistent from the time of Eisenhower to the end of the Carter administration. The various administrations also showed concern for the security of American investments abroad. The leaders, however, differed in their approaches to the problems of foreign direct investment, particularly in their responses to expropriation disputes. During the Kennedy era, the presence of government in foreign direct investments increased. At the same time, Kennedy applied government resources for the expansion of U.S. business enterprise in Africa. A change in policy occurred in the Nixon era. The Nixon administration designed a framework to reduce the frequency of contact between the U.S. government and the host nations in matters that concerned foreign investments and disputes.

During Nixon’s term in office, U.S. expropriation policies ran at cross purposes. Nixon’s approach to the problems of foreign expropriation was analogous to the physician who prescribed treatment without determining the
cause of illness. Nixon’s response to foreign expropriations was to shift the burden of managing investment disputes to the multilateral development banks. The Nixon administration also reorganized the Foreign Assistance program and initiated a multilateral system of foreign assistance in which the international lending institutions would assume and provide leadership for the development of low-income nations. Nixon’s "recruitment" of the multilateral development bank for the management of foreign investment disputes, however, signified the inadequacy of the Foreign Assistance Act, as amended, to cope with the problems of foreign expropriations of U.S. private direct investments.

Nixon’s reorganization of the Foreign Assistance program altered the relationship between African governments and the multilateral lending institutions. Under a new policy, the U.S. government applied its weighted vote in the multilateral banks, to oppose or abstain from supporting loan applications from a low-income nation that had unresolved disputes with U.S. firms. Nixon hoped that this policy would deter the expropriation of U.S. investments by the low-income nations. On the contrary, the new measures worsened relationships between American MNCs and low-income nations in need of development funds. Nixon’s fiscal measures affected many African governments, whose
post-colonial development programs, to a large extent, depended on external borrowing.

Nixon's fiscal policy attempted to halt economic nationalism in low-income countries. For one thing, Congress had not repealed the Hickenlooper amendment of 1963. For another, the Sabbatino amendment of 1964, permitted U.S. courts in certain cases to sit in judgment over the acts of a foreign government. The Hickenlooper and Sabbatino amendments were already unpopular among host nations in the developing world. To most low-income nations, therefore, Nixon's recent expropriation policy was superfluous and unwelcome. Because the new policy put to question the credit-worthiness of governments involved in compensation disputes with U.S. firms, most African nations viewed the policy as an attempt by the Nixon administration to stifle their economic growth. The U.S. expropriation policies had a cumulative impact on business relations between the U.S. and Africa. As it turned out, the MNCs became the scapegoat of the tussle.

POLICY CHOICES AND PREFERENCES

Nixon's expropriation policy was part of the administration's efforts to strengthen the foreign aid program. At the time Nixon assumed office in 1969, Congress was beginning to question the wisdom of retaining a costly foreign aid program. The Nixon administration, however, preferred to continue the program on a new framework.
Under the Nixon Doctrine, the administration sought to reduce the presence and intervention of the federal government in transnational investments and economic exchanges. Nixon also planned to transfer the burden of economic development abroad to multilateral agencies and the private sector, resulting, for example, in the formation of the OPIC. During the Nixon era, the multilateral lending institutions became a viable conduit for the conduct of bilateral relations between America and African governments, particularly in matters relating to foreign private investment disputes.

Nixon’s institutional approach to foreign policy and development assistance anticipated major alterations that would increase and enhance America’s contributions to economic growth and private investment in Africa. Nixon’s proposal for reform separated development aid from the humanitarian and security assistance components of the Foreign Assistance Program. Nixon also called for the establishment of a U.S. International Development Corporation (IDC) and a U.S. International Development Institute (IDI) to promote bilateral lending and technical assistance to low-income countries. The proposals were based on the recommendations of the Rudolph Peterson Task Force on International Development set up by the President to assess ways and means of making the foreign assistance program relevant to U.S. foreign policy in the 1970s.
President Nixon believed that the international community ought to share with the U.S. the burden of development assistance in low-income countries. Nixon's decision to internationalize foreign assistance was based on a number of considerations. One, the developing nations, over the years, had shown a promising capacity for self-reliance and the initiative to mobilize their own resources for internal improvements. Two, the other industrialized nations equally had a stake in the economic development of low-income nations and were now in a position to offer assistance. Three, the multilateral development agencies could effectively coordinate international development initiatives between the poor and the richer nations. Four, the private sector and the finance institutions were in a better position than the U.S. government, to assume a constructive role in international development.

In pursuit of these objectives, Nixon proposed that foreign development assistance be based on multilateral efforts and initiatives:

The U.S. should channel an increasing share of its development assistance through the multilateral institutions as rapidly as practicable. Our remaining bilateral assistance should be provided largely within a framework established by the international institutions. Depending upon the success of this approach, I expect that we shall eventually be able to channel most of our development assistance through these institutions.
The implementation of these proposals altered the existing relationship between the low-income nations and certain international lending institutions because it created new conditions for capital outflow to low-income countries. Indeed, Nixon's policy toward the developing nations involved the retraction of military commitments in East Asia and the redirection of economic forces into Africa and the Middle East.  

THE BASIS OF CHANGE AND CONTINUITY

The proposals made by President Nixon in 1970 constituted the basis of American foreign policy on expropriation in the 1970s. The President, on January 19, 1972, formally enunciated the administration's policy on foreign economic assistance and investment security in developing nations. Under the new policy, any expropriation of American private property abroad must be nondiscriminatory and in accordance with the principles of international law requiring prompt, adequate and effective compensation. There was nothing particularly novel about this provision; it merely restated existing public policy embodied in the Hickenlooper amendment to the Foreign Assistance Act.

The Nixon policy maintained that for the expropriation of American assets to be justifiable, the host country must have acted for a public purpose. Nixon, however, did not identify the constituents of "public
purpose". The Nixon policy, therefore, created an open-ended situation where a host country could justifiably nationalize U.S. private direct investments for political or retaliatory reasons under the guise of public policy. Even where the host country nationalized the investments of American firms for the public good, there still was no guarantee that the measures would yield public benefits. On the contrary, countries that expropriated foreign property often postponed the attainment of their own development goals.  

From the standpoint of U.S. foreign economic policy, expropriatory actions in host countries were self-defeating. The Nixon administration was convinced that the economic nationalism of low-income nations was short-sighted because it obstructed the flow of private investment capital and was contrary to the legitimate expectations of the American investor. The President questioned the wisdom of foreign expropriations:

the resources diverted to compensate investments that are already producing employment and taxes often could be used more productively to finance new investments in the domestic economy, particularly in areas of high social priority to which foreign capital does not always flow.  

The rationale for Nixon's expropriation policy was not much different from the reasoning that sustained the passage of the Hickenlooper amendment. While foreign expropriations of private American capital had become a tolerable phenomenon, it was incumbent on the host
government to make satisfactory compensation. However, where a host country had expropriated "a significant U.S. interest" without satisfactory compensation, the Nixon administration maintained that:

the U.S. will not extend new bilateral economic benefits to the expropriating country unless and until it is determined that the country is taking reasonable steps to provide adequate compensation or that there are major factors affecting U.S. interests which require continuance of all or part of these benefits.6

Under the new policy, humanitarian aid continued to belong to a special category of U.S. foreign assistance not directly affected by a host country's ability to effect satisfactory compensation.

INTERNATIONAL CREDIT AND FINANCE

The Nixon administration introduced major changes under the Economic Assistance and Investment Security policy. The administration believed that the role of international institutions, such as the World Bank group and the International Monetary Fund, should be expanded to provide a policy framework for the funding of development assistance to low-income nations. The new policy framework, therefore, enlisted the multilateral development banks as diplomatic agents for the implementation of Nixon's expropriation policy. Under this arrangement, American directors on the board of the multilateral banks received executive directives to vote
against loan applications from any developing country that had expropriated the investments of American firms without prompt, adequate and effective compensation.

The Nixon administration sought to bring the lending policy of the multilateral development banks under the purview of American public policy. Because the U.S. was the largest single contributor to the operating funds of the international financial institutions, the Nixon administration expected that low-income nations benefitting from the credit facilities of the institutions to make good their contractual obligations to American firms and create an investment atmosphere favorable to foreign investment. In 1970, Nixon pledged to replenish the fund of the World Bank’s International Development Association by an annual contribution of $320 million from 1972.

The employment of international financial organizations in the settlement of investment disputes, left the impression that domestic legislative sanctions had proved inadequate to deter expropriations in developing countries. In Latin America, for example, existing statutes had not prevented the seizure of privately-owned U.S. seagoing vessels by Colombia, El Salvador, Ecuador, Honduras, Mexico, Nicaragua, Panama and Peru. At the same time, approved military sales to certain Latin American countries had continued, with intermittent suspensions, despite the existence of the Foreign Military Sales Act which
prohibited military sales to countries that confiscated or otherwise requisitioned American fishing trawlers operating beyond the customary 12-mile offshore limit.\textsuperscript{8}

It was necessary to isolate the President from frequent involvement in foreign investment disputes. In some instances, the President, for diplomatic reasons, did not impose sanctions against foreign governments. For example, although the President had powers under the Sugar Act to suspend the importation of sugar from any country expropriating the private investment and property of U.S. citizens without satisfactory compensation, no presidential actions were taken to that effect before 1974 when the Act expired.\textsuperscript{9} In some other cases, however, the President could not avoid imposing statutory sanctions against developing nations that had expropriated U.S. investments, or as in the case of Uganda, violated certain notions of human rights.\textsuperscript{10} For instance, in 1975 the President, by executive order, excluded Uganda and Somalia from the preferential trade list under the Trade Act of 1974. The decision of the Nixon administration to shift the burden of managing investment disputes to international institutions, therefore, was crucial.

President Nixon also hoped to reduce the frequency of bilateral contacts between the U.S. and host nations in sensitive areas, such as investment disputes. The new policy, however, operated within the framework of existing
domestic law, pending appropriate amendments by Congress to reflect the change in policy.\textsuperscript{11} The Nixon administration was concerned with the problems that expropriation and investment disputes created for U.S. foreign relations. It was necessary, therefore, to clarify and reconcile America’s foreign policy goals with certain legitimate economic interests of low-income nations. Nixon was expanding on an existing policy theme, more particularly, responding to the disturbing developments in Chile where heated controversies had erupted following the ‘creeping’ nationalization of U.S. private direct investments.\textsuperscript{12}

The need for a formal policy statement arose out of pressures brought on the Nixon administration by the Treasury Department and the House Banking and Currency Committee in the wake of the Chilean expropriation of the assets of the Kennecott Copper Corporation in 1971. The executives of Kennecott, representing the views of other U.S. mining interests in Chile, called attention to the seriousness of the dispute.\textsuperscript{13} The reluctance of the Allende government to compensate U.S. firms and the far-fetched possibility for a speedy settlement, caused the World Bank to reject Chile’s applications for development loans. The Inter-American Development Bank, to which the U.S. was the single largest contributor, also refused to approve a $30 million loan to Chile.
The Nixon administration supported a multilateral approach to the management of investment disputes because such an approach held the promise of building better relations between the capital-exporting and the capital-importing nations. In 1972, Nixon renewed his pledge to replenish the financial reserves of the Inter-American Development Bank (IDA) and to sustain existing commitments to the IDA, the Inter-American Development Bank and the Asian Development Bank. Nixon's purpose was to enable the banks to pursue and achieve "a mutually beneficial investment environment" that was free of controversy.\textsuperscript{14} Nixon, while stressing the factor of mutual benefit as the sine qua non of successful private investment abroad, cautioned that the U.S. would withhold its support for loans to low-income nations expropriating American investments without satisfactory compensation.

THE GONZALEZ AMENDMENTS

Nixon's policy was well received in Congress, but some legislators wanted the Congress to state its own expropriation policy independently of the executive branch. Chile had recently expropriated the assets of the Kennecott Copper Corporation. The Chilean dispute had incensed some powerful interest groups in America. There was general consensus among legislators, business groups and officials of the Treasury Department for a tougher policy on expropriation, instead of the "situational
response" favored by the Department of State. In the House of Representatives, Henry Gonzalez of Texas condemned the Chilean expropriation. Gonzalez observed that expropriation instantly created an external debt, which in turn compounded the problems of development for a low-income nation. Gonzalez warned that Congress had a duty to protect U.S. investments abroad and to ensure that foreign assistance programs bore "the full fruit of their promise."

Although Gonzalez was receptive and supportive of Nixon's expropriation policy, he maintained that the President's policy was not comprehensive. Gonzalez considered the Nixon framework deficient in certain respects. To Gonzalez, the Nixon policy on expropriation lacked a positive thrust in its language and did not lodge responsibility for its implementation on any specific person or department. For one thing, Nixon's policy statement on January 19, had been the outcome of Congressional pressure which threatened to legislate mandatory executive actions if the President did respond, particularly, to the Chilean disputes.

Indeed, the President's expropriation policy foreshadowed a motion already tabled in the House to regulate multilateral lending to expropriating nations. Thus, even before Nixon's January 19 policy statement, Gonzalez had introduced bills in the House that would amend the
statutes and enhance the functional position of the U.S. in the operations of the multilateral development banks. The Gonzalez amendments were to authorize the American directors on the Boards of the banks to oppose loan applications from foreign governments that had expropriated American investments without satisfactory settlement. While the Gonzalez amendments underscored the broad outline of the Nixon policy, the amendments also provided for similar sanctions and enforcement procedures characteristic of the Hickenlooper amendment. The Nixon policy did not contain similar enforcement provisions.

Like the Nixon policy, the Gonzalez amendments related to the functional relationship between the low-income nations and the multilateral development banks. The Gonzalez amendments which became law on March 10, 1972, barely two months after Nixon’s landmark policy statement, sought, through the medium of three multilateral development banks, to deny development funds and credit facilities to any developing country that failed to conform to U.S. expropriation policy and investment guidelines. The Gonzalez amendments thus altered the statutory structure and nature of America’s participation in the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development and its affiliate, the International Development Association.18
The Gonzalez amendments reintroduced the coercive
tenor of the Hickenlooper amendments. Congress approved
the Gonzalez amendments despite the fact that sanctions
under the Hickenlooper amendment had failed to yield
desired results. The Gonzalez expropriation law required
the President to instruct the U.S. executive director of
each bank to vote against any loan "or other utilization
of the funds of the Bank" for the benefit of any country
adjudged to have committed any of the following acts:

(1) nationalized or expropriated or seized
ownership or control of property owned by any United
States citizen or by any corporation, partnership, or
association not less than 50 percentum of which is
beneficially owned by United States citizens; or

(2) taken steps to repudiate or nullify existing
contracts or agreements with any United States
citizen or any corporation, partnership, or
association not less than 50 percentum of which is
beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or
other exactions, or restrictive maintenance or
operational conditions, or has taken other actions
which have the effect of nationalizing,
expropriating or otherwise seizing ownership or
control of property so owned.19

While the Gonzalez amendments complemented the
Hickenlooper amendment in certain respects, there were
basic differences between them. The Gonzalez amendments
reenacted the classification of causes or sources of
investment disputes enumerated in the Hickenlooper.
However, more than the Hickenlooper, the Gonzalez
amendments gave the President a reasonably flexible scope
for discretionary action. The Gonzalez released the
President from the statutory mandate to impose sanctions on a foreign government, if the President determined: (a) that an arrangement for prompt, adequate and effective compensation was in effect between the host country and a dispossessed American party; or (b) that the parties to the dispute had submitted to arbitration under the rules of the Convention for the settlement of Investment Disputes, a World Bank regimen established in 1966; or (c) that the parties had commenced "good faith negotiations" aimed at providing prompt, adequate and effective compensation in accordance with international legal principles.

Although the Gonzalez amendments, like the Hickenlooper, were the immediate response of Congress to private investment disputes between American firms and their host governments in Latin America, the long-run effects of the policy measures adversely bore on the political and economic relationships between America and the other low-income nations of the world. The business and political implications of these policy measures in Latin America were not often the same for American firms in Africa, the Middle East or Asia. Moreover, American private direct investments in Latin America continued to take a most-favored position in terms of total U.S. capital export to developing countries. While the Organization of American States provided a conciliatory
forum for U.S.-Latin American relations, a similar forum did not exist for America’s relations with other developing countries.21

The blanket application of expropriation policies to ‘Third World’ nations, conceived as a monolithic entity, often yielded counterproductive results for U.S. foreign policy goals and business interests abroad. Situational responses based on particular circumstances and strategic calculations, as recommended by the State Department, appeared to be a more realistic approach. Indeed, the negligible impact of both the Hickenlooper and Gonzalez amendments on American business enterprise in developing countries underscored the preference for circumstantial responses to foreign investment disputes. At best, the Gonzalez amendments facilitated temporary cooperation accords between the U.S. and the borrowing country but did not, in any important particulars, solve or contain the problems which they were intended by Congress to address.

The Gonzalez amendments were unnecessary because they merely legislated an existing practice. Before the amendments, U.S. representatives in the international financial institutions, in a few cases, had withheld their votes in furtherance of U.S. diplomatic interests. Before 1972, U.S. representatives at the World Bank abstained from voting on loan applications from Bolivia, Guyana and Peru. Guyana’s $5.4 million loan application for naval
development was approved, however, by the World Bank in 1971 notwithstanding that the U.S. vote of 24 percent was withheld. In the same year, Bolivia's application to the Inter-American Development Bank for $23.25 million for gas pipelines was granted. The U.S. abstained in the vote.

The Gonzalez amendments was not efficacious. In many cases, the multilateral banks approved loans for low-income nations, notwithstanding the negative or absenting votes of the American representatives. For instance, in 1972 the U.S. by a 23 percent weighted vote, opposed Iraq's application to the World Bank for a $12.9 million loan for educational development. In 1973 the U.S. abstained from voting on a $40.0 million World Bank loan for Iraq's irrigation project. In May 1973, the American representatives in the International Development Association abstained from voting on Syria's $15 million loan application for water projects. In December 1976, the U.S. applied its 23.5 percent vote in the World Bank against Congo's $8 million education loan application. In all of these cases, the Banks approved the loans, notwithstanding the abstaining or opposing votes of the American representatives.22

THE EFFECTS OF FISCAL POLICY MEASURES ON AFRICA

Inasmuch as the multilateral development banks had the potential to function as effective diplomatic tools in U.S.-Africa relations, the banks constituted a major
source of economic retardation for many African nations. The financial institutions, more than the non-financial forum of the UN General Assembly or the International Court of Justice, proved effective for the realization of America's policy objectives in Africa. While the U.S. was able to use its weighted votes in the banks to pursue certain policy goals, America's diplomatic resources in the UN, though immense, could not achieve similar goals. However, the use of multilateral financing and institutions to secure the compliance of low-income nations with American public policy, created certain misconceptions in U.S.-Africa relations.

The U.S. policy on foreign assistance and investment security was bound to be misunderstood by the low-income nations. While the American policy sought to maintain the delicate balance between multiple interests and often conflicting goals, investment disputes in many cases, resulted from the reaction of the low-income nations to U.S. policy choices and preferences, rather than the actions or inactions of the MNCs. The role of the U.S. as a manager of the international financial system, therefore, was bound to become of critical importance to most African nations in their respective efforts toward economic self-reliance. As should be expected, most African governments interpreted the Nixon policy and the subsequent Gonzalez amendments as coercive measures by
which the U.S. used its weighted votes to allocate financial favors. The U.S., however, perceived the matter differently; America's support for the allocation of resources by the banks was based on the principle of constructive cooperation between the U.S. and the borrowing country.23

The apparent misunderstanding of purpose and intentions stemmed from the experiences of many low-income nations with the multilateral institutions. Because of the dominant position of the U.S. in relation to the World Bank and the IMF, most borrowing nations expected the U.S. to influence the lending decisions of the multilateral agencies, and by so doing, create a mutually beneficial investment atmosphere for American MNCs in Africa. On the contrary, however, the IMF continued to dictate to many African countries what their agricultural and food policies should not be. The IMF based its international liquidity and balance of payment adjustment programs on technical restrictions and conditionalities that had the effect of retarding economic development and the emergence of a favorable investment atmosphere.

African governments often found the multilateral institutions unsympathetic to their economic problems. IMF lending policies, ignoring the pre-capitalist structures of African economies, prescribed "boardroom"
solutions to geo-political problems, seldom paying attention to the relationship between the low-income borrowers and the MNCs. It was not clear to most borrowers whether IMF policies were designed to secure loans repayment or to discourage borrowing. Indeed, IMF credit was seen by some African nations as another way of financing imports from the richer countries of the West. IMF policies in Africa were often rooted in political considerations and the need to keep the African continent in check and out of radicalism. The IMF seemed unaware of the remote causes of economic nationalism in Africa and the post-colonial conditions of most African nations.

African nations looked to the U.S. to use its weighted votes in the international institutions to promote mutually beneficial relationships. Most African leaders shared Nixon’s idea that America’s foreign assistance program should not be based on charity, but on meaningful economic exchanges beneficial and conducive to the growth of American private enterprise abroad. As a panel of the Economic Policy Council reported, the persistence of global economic uncertainty made active U.S. leadership and support for strong international financial institutions of fundamental importance:

U.S. support for the international financial institutions is an integral component of a rationally far-reaching economic and foreign policy. The success of the World Bank and the IMF in promoting economic development and a stable international monetary system have
effectively advanced important U.S. foreign economic and strategic objectives.  

Nixon's Economic Assistance and Investment Security policy, more than the Gonzalez amendments, sought to apply America's financial leadership role toward the creation of a global economic order that would benefit both the exporter and the importer of investment capital. Indeed, trade between the U.S. and the low-income nations increased at such a scale that it could not reasonably be ignored. Between 1970 and 1980, America's exports to the developing countries grew at an average annual rate of 19.2 percent; in the same period, exports to Western Europe, Canada and Japan went down to 15.6 percent. By 1980, the developing countries accounted for 39.4 percent of total U.S. exports, which apart from creating jobs within the U.S. economy. Two million jobs or 6 percent of all manufacturing jobs and a quarter of farm acreages under cultivation in America depend on consumptions, imports and private investments in developing countries.  

In most cases, African nations borrowed from the multilateral banks to pay for imports from abroad. On the one hand, increased U.S. contribution to the IMF and the World Bank group, enabled these low-income nations to pay for essential imports from America. On the other hand, the adverse economic conditions in most African states, caused by natural and man-made factors, created conditions that perpetuated the dependence of these nations on
foreign imports and financial credit. A reduction or stoppage of America’s contributions to the international institutions would have restricted the low-income nations to borrowing from the capital market, with high interest rates and security conditions. Nixon’s foreign policy recognized this predicament and sought to strengthen the functional capacity of the banks to meet the economic challenges of the 1970s.

THE NIXON POLICY AT CROSS-PURPOSES

Nixon’s policy lumped together two distinct objectives. Nixon’s Foreign Assistance and Investment Security policy reenacted the flaws that plagued the Foreign Assistance Act, as amended by Hickenlooper. On the one hand, Nixon attempted to separate development assistance from purely humanitarian aid. On the other hand, Nixon failed to distinguish between "foreign assistance", as a one entity, and "investment security", as another. By redirecting U.S. foreign assistance through the multilateral banks, Nixon continued to tie U.S. foreign assistance to private investment disputes. Nixon, of course, had bowed to congressional pressures for a tougher expropriation policy. However, because the President had the primary responsibility for the conduct of foreign policy, it was up to Nixon to exclude from his reforms the emotional aspects of the Hickenlooper
amendment, by separating foreign assistance from foreign investment disputes.

Nixon’s reform measures, however, were well meaning. The administration was concerned for the financial viability of low-income nations. Nixon hoped that his reforms would remove the causes of friction and investment disputes between American firms and the host governments. Because most African nations were unable to borrow from open-market sources because of high interest rates, the multilateral banks seemed to be a last resort. However, African nations were finding it increasingly difficult to secure funds from the multilateral development banks because of the rigid lending terms and conditions put forward by the banks. The new expropriation policy seemed to worsen the problem of securing loans from the banks. The inability of most low-income nations to implement their national economic plans led to frustrations, revolutions and hostility toward foreign firms.

Nixon intended his institutional approach to international business and economics to establish a framework, flexible enough to cope with present realities and the demands of the future. America’s basic self-interest in world development, in Nixon’s view, stemmed from the fact that there was no sanctuary for the rich in a world of the starving. The President recognized that the present international economic system created serious
debt problems for most low-income nations and demanded as much international concern:

This problem calls for responsibility on the part of the lower-income countries, co-operation on the part of the lenders, and leadership by the international institutions which must take responsibility for analyzing debt problems and working closely with the creditors in arranging and carrying through measures to meet them. The United States will play its role in such a co-operative effort.30

President Nixon restructured the foreign assistance program to make it relevant to the changed conditions of the 1970s. Nixon's policy encouraged the internal development efforts of African governments, the strengthening of the investment guaranty program and the expansion of American direct investments in Africa. To achieve these objectives, the Nixon administration, in 1970, eliminated the condition under which U.S. foreign assistance grants had to be applied to the purchase of American exports only. The administration encouraged other nations to do the same. Under Nixon, the Foreign Assistance program became relatively three-dimensional:

(a) the promotion of American security interests by assisting other nations in securing their own security;
(b) the provision of humanitarian relief to others, and
(c) social and economic aid to low-income nations.

Congress intended the foreign assistance program to be mutually beneficial to the U.S. and the low-income nations. While Nixon's Foreign Assistance and Investment
security policy did not ensure the effective management of investment disputes, the policy showed that multilateral financing was a viable tool for the conduct of bilateral relations between the U.S. and low-income nations. By discouraging multilateral lending to expropriating nations, the Nixon policy and the Gonzalez amendments encouraged an international reporting system on the credit worthiness of host nations.

The World Bank accepted and implemented the Nixon policy in principle. The Bank had shown particular interest in foreign investment disputes resulting from expropriation and confiscations. In some cases the Bank denied credit facilities to low-income nations that failed to reach satisfactory settlement with a foreign investor. However, since the Bank's decisions were determined by the weighted votes of members, loan applications were in many cases approved, the opposing votes of certain representative groups notwithstanding, as was the case in 1976, when the Bank approved an $8 million loan for the People's Republic of Congo.

Nixon's expropriation policy and the Gonzalez amendments produced mixed results. In some cases, the U.S. policies had persuasive effects on expropriating governments. In other cases, the policies compounded the problem of economic development in the host country. For
example, in 1976, the Republic of Benin, under the threat of the Gonzalez amendments, promptly arranged for the compensation of Texaco and the Mobil Corporation. In Tanzania, on the other hand, the government's payment of investment compensation created budget deficits and, therefore, the need for external borrowing. External borrowing compounded Tanzania's balance of payments and disrupted the national development plans. Ironically, however, Nixon's foreign assistance policy had sought to alleviate the developmental problems low-income nations like Tanzania's.

Nixon's foreign assistance program continued under Jimmy Carter. More than Nixon, however, Carter emphasized the humanitarian aspects of U.S.-Africa relations. President Carter's concern with human rights violation caused his administration, in 1977, to oppose the granting of multilateral development loans to Angola, Uganda and Mozambique. Carter shared Nixon's belief that a stable and prosperous world environment would enhance U.S. security and economic interests and adopted a set of policies that directly addressed the problems of economic development in Africa, especially in terms of bank lendings for agriculture and small-scale projects development.

The Carter administration took measures to strengthen the coordination of policies affecting the developing
nations. In 1979, the President indicated to Congress his intention to create an International Development Cooperation Administration (IDCA) within the executive branch, to oversee the foreign assistance program and the complementary coordination of U.S. bilateral programs and those of the multilateral development banks. Carter's purpose for creating the IDCA was to evolve "a more coherent strategy of development and the more effective use of the various bilateral and multilateral instruments by which the U.S. can encourage the growth of developing economies."³

ARBITRATION AND THE SETTLEMENT OF INVESTMENT DISPUTES

Between Nixon and Carter, however, no procedural rules emerged for the settlement of investment disputes. Only structural reforms dealing with the scope and span of foreign assistance and investment security occurred. Except for the Congressional amendment to the Foreign Assistance Act in 1964, that partially reversed the effects of the Act of State doctrine and conferred limited jurisdiction on American courts in cases involving sovereign acts of foreign governments, a need still existed for elaborate procedures for the settlement and management of investment disputes.³³ The judicial enforcement of American policies on foreign investment security and expropriation, therefore, had to depend on international arbitral rules and processes.
The Gonzalez amendments encouraged the parties to an investment dispute to seek arbitral settlement. Under the Gonzalez amendments, the President, in exercise of executive discretions, had powers to instruct the American executive director of a multilateral development bank to support (or not to oppose) loan applications from a low-income nation involved in an investment dispute with an American firm. The fact that a dispute had gone to arbitration, operated in favor of the host country. Under the Gonzalez amendments, the President could instruct the American director at the bank to support or abstain from voting against an expropriating nation engaged in "good faith" negotiation toward a settlement.

The Gonzalez amendments encouraged the parties to an investment dispute to seek arbitration under the rules of the Convention for the Settlement of Investment Disputes. Thus, the Gonzalez amendments prescribed sanctions without defining the procedure and rules for adjudication. The amendments merely shifted the burden of settlement to the parties and to the World Bank's International Center for the Settlement of Investment Disputes. The World Bank had been concerned with the issue of expropriation and compensation since the early 1960s and had successfully sponsored a Convention to organize multilateral efforts for the settlement of expropriation and compensation disputes. The Convention on the Settlement of Investment
Disputes Between States and Nationals of Other States, formally established the International Center for the Settlement of Investment Disputes (ICSID) on October 14, 1966.34

CENTER FOR THE SETTLEMENT OF INVESTMENT DISPUTES

It is surprising that the Gonzalez amendments recommended the ICSID as an exemplary forum, in spite of the center’s history of ineffectiveness. Before the Convention on the Settlement of Investment Disputes, no explicit treaty existed for the multilateral protection of foreign investments and the settlement of disputes in peacetime. Previous attempts to establish a regimen had failed, largely as a result of divisive national interests and disagreements on the jurisdictional competence of the tribunal.35 Hence, capital-exporting nations welcomed the founding of the ICSID. The charter of the ICSID charged the Center with the function of conciliatory and arbitral intervention in investment disputes between member-states and nationals of other contracting states, subject, however, to the voluntary submission of the disputants. This proviso basically weakened the effectiveness of the forum and its enforcement powers.

The ineffective of the ICSID was as a result of its limited jurisdiction. Only members of the World Bank and states participating in the institution under the Statute of the International Court of Justice came within the
jurisdictional ambit of the ICSID. The latter category of states were invited to sign and ratify the Convention on the Settlement of Investment Disputes, upon a majority vote of the Administrative Council. The U.S., as one of the original signatories to the Convention, recognized and accepted the procedural rules established under the treaty for the settlement of investment disputes, hence the specific reference to these rules in the Gonzalez amendments.

The rules of the ICSID were as uncertain as the laws it applied. Article 42 of the Convention enjoined the Center to apply such rules of international law "as may be applicable" in the circumstance; this provision, in its broad interpretation included and emphasized the law of the contract as agreed upon by the parties.36 Thus, in many cases, the applicable law in investment disputes would be the laws of the host country and not the personal law of the multinational investor.37 However, the tribunal would give effect to the laws of the contract or terms agreed upon by the contracting parties, subject to the domestic laws of the host country.38

The conflict of laws often operated to frustrate the expectations of American investors abroad. Courts in developing nations were more disposed to give effect to statutory promulgations of the host country, which in most cases, did not satisfy the contractual expectation of the
foreign investor. National tribunals often showed inconsistency in the rules they applied in disputes involving the host government and foreign investors. The opinion of a British court in the case of *Rex v. International Trustees* (1937), however, seemed to be the appropriate approach. In that case, the question arose whether English or American law should govern certain portfolio transactions between Americans and the U.K. government. The House of Lords held that:

> in every case whether a Government be a party or not, the general principle which determines the proper law... depends upon the intention of the parties either expressed in the contract or to be inferred from the terms of the contract and the surrounding circumstances....³⁹

American firms were concerned with the impartial arbitration of their disputes with foreign governments. The extent to which U.S. laws were given effect in foreign and international tribunals, therefore, became of fundamental and crucial importance to American business interests abroad. The reference in the Gonzalez amendments to arbitration under the rules of the ICSID, however, created an avenue for delays in the settlement of investment disputes. Although article 54 of the Convention enjoined each contracting State to recognize an award rendered by the ICSID as binding, and to enforce the pecuniary obligations imposed by such award within its territory as if it were a final judgment of a domestic or municipal court of that State, not many countries
submitted to the ICSID jurisdiction. The Center, in effect, was limited by its own constitution.

The ICSID maintained a history of ineffectiveness since its establishment. By mid-1972, only 29 African states had ratified the IBRD convention. Worse still, only one case of African origin came before the Center between 1966 and 1972, involving the Holiday Inns S.A. and the Occidental Petroleum Corporation against Morocco. In February 1972, however, the government of Ghana broke with a seeming pattern and agreed to submit to the jurisdiction of the ICSID. Ghana had nullified some major contracts it had with certain foreign firms on grounds of public policy. Ghana’s submission to the jurisdiction of the ICSID was for the purpose of determining the nature of foreign claims and extent of compensations due to the firms. The system of voluntary submissions to the jurisdiction of the ICSID, however, hampered the institution’s effectiveness as an arbitral tribunal and as a medium for the achievement of the goals of the Gonzalez amendments.

LEGAL AND CONTRACTUAL PROBLEMS

Although U.S. expropriation laws encouraged "good-faith" negotiation between American firms and foreign governments for the speedy settlement of disputes, a number of factors impeded expeditious settlements. One problem related to the choice of laws and the proper venue
for the adjudication of disputes. In Fritz Scherk v. Alberto-Culver Company, the U.S. Supreme Court took a firm stand on the issues.40 The respondent, a U.S. firm headquartered in Illinois, was engaged in the production of cosmetics and toiletries at home and abroad. In 1969 the Culver company contracted with a German national, Fritz Scherk, to acquire Scherk’s licenses and trademark rights in certain cosmetic products. The contract, signed in Vienna, Austria, provided that any controversy arising out of the agreement or its breach would be referred to arbitration before the International Chamber of Commerce in Paris.

Although the dispute in the Alberto-Culver case did not involve a foreign government, the ruling of the U.S. Supreme Court in the matter helped to fill procedural gaps in the U.S. expropriation laws. The contract between Scherk and Culver had stipulated that the laws of Illinois would apply to the interpretation and performance of the contract. In 1970, the Culver Company rescinded the contract and sued Scherk for damages and equitable relief in the District Court of Illinois. Scherk contended that the District Court lacked jurisdiction. The court, nevertheless, restrained Scherk from proceeding with arbitration in Paris and held that arbitration was not a bar to judicial proceedings under the Securities Act of 1933 and Supreme Court rule in Wilks v. Swan.41 On a
subsequent appeal to the U.S. Supreme Court, the Court, in clear terms held that:

A contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is, therefore, an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. Furthermore, such a provision obviates the danger that a dispute under the agreement might be submitted to a forum hostile to the interests of one of the parties or unfamiliar with the problem area involved.\textsuperscript{42}

The refusal of a party to submit to arbitration, constituted a major impediment to "good-faith" negotiations and the speedy settlement of investment disputes. Such a situation arose in the dispute between Texaco Overseas Petroleum Company, the California Asiatic Oil Company, and the Government of the Libyan Arab Republic. The respondent, Libya, neither presented an argument nor appeared before the Sole Arbitrator appointed by the International Court of Justice (ICJ).\textsuperscript{43} Although the sole arbitrator ruled in favor of the oil firms, neither the Sole Arbitrator nor the ICJ had the enforcement powers to give effect to the contractual expectations of the American petitioners. In the Libyan case, the Gonzalez amendments became ineffectual because Libya was financially self-sufficient and did not seek funds from the multilateral development banks.

A third problem that impeded the speedy settlement of investment disputes concerned the national identity of the so-called "split corporations". American firms
incorporated under the laws of a host country became juristic citizens in that country and, as such, subject to the local laws for purposes of arbitration. Most firms, however, continued to identify their corporate interests with the laws of the United States. Thus, the problem often arose as to the jurisdictional competence of U.S. courts in cases involving the nationality of split corporations. Technically, all MNCs assumed split national identities and loyalties: one to the country of origin and the other, to the host country. Different national standards, therefore, applied in determining the nationality of the corporation depending on what interests were involved.

U.S. expropriation laws did not clarify the ambiguities of legal rules governing multinational business transactions. American firms, therefore, became subjected to varying standards of legal norms abroad. For example, in the Chilean nationalization of El Teniente Mines, the German superior court of Hamburg, ruled that the test of corporate nationality was the place of residence of the corporation; which was the location of direct investments.44 Going by the decision of the German court, U.S. firms would first have to seek remedies in the local courts. However, going by the opinion of Justice Douglas in Fritz Scherk v. Alberto-Culver Company, American courts would readily assume jurisdiction in all
cases touching upon U.S. laws. However, the problem of enforcement, particularly against foreign governments, remained an issue.

AFRICAN GOVERNMENTS AND THE SETTLEMENT OF DISPUTES

Generally, African governments showed a predictable disposition toward peaceful settlement of investment disputes and avoided protracted litigation over the payment of compensation. Except in a few cases, the expropriation of U.S. direct investments in Africa did not provoke the imposition of sanctions by the American government. The U.S. government leaned more in favor of arbitration than the imposition of sanctions. As a quasi-judicial remedy, arbitration, since the eighteenth century, had been a viable diplomatic practice in U.S. foreign relations. In the 1960s and 1970s, arbitration became a mitigating factor in America's expropriation policy.

The requirement for good-faith negotiation stood at the center of America's expropriation policy and was encouraged by the executive branch. For instance, the inability of Uganda and Somalia to make prompt, adequate and effective compensation to American firms for certain expropriations, in 1975, resulted in the omission of both countries from the list of preferred nations for trade purposes. Somalia, however, proceeded to make positive efforts at "good-faith negotiations" and was relisted by
the executive branch as a beneficiary developing country. In the case of Uganda, the continued controversial stance of President Idi Amin in international relations prevented the timely inclusion of Uganda on the preferential list. The Ethiopian government was equally affected by executive measures under the Trade Act. President Carter, in 1979 withdrew from the Provincial Military Government of Socialist Ethiopia the designation of 'beneficiary developing country' under the Generalized System of Preferences.

The President's decision was the aftermath of certain expropriations of foreign direct investments in Ethiopia between 1975 and 1976. In Ethiopia, sixteen of the cases involved enterprises in which U.S. citizens and firms held at least fifty percent stock and beneficial interests. Ethiopia did not take steps to compensate the investors and failed to show good faith toward a settlement despite the initiatives of the Interagency Staff Coordinating Group on Expropriation (ISCGE).

The ISCGE came into existence following Nixon's expropriation policy of 1972 on Economic Assistance and Investment security in developing nations. The Group comprised the Secretaries of State, Commerce and the Treasury, and included as circumstances warranted, the representatives of other agencies and groups concerned with foreign investment disputes. The Group had responsibility for monitoring and reporting on the efforts
of a host country toward good-faith negotiation and settlement. In addition, the Group gave periodic briefings to Congress on foreign expropriations and coordinated government policies on expropriation. The ISCGE encouraged and sustained negotiations between American firms and the host governments and made recommendations to the Council on International Economic Policy for executive action. Carter's decision to withdraw from Ethiopia the status of "beneficial developing country" was the outcome of executive consultations with the Council and the ISCGE.

A host country's reluctance to pursue good-faith negotiation and settlement activated all applicable expropriation laws and sanctions. For example, the failure of Ethiopia to take appropriate steps toward a settlement evoked sanctions under the Trade Act, the Foreign Assistance Act and OPIC directives. While the OPIC suspended its investment programs, the executive branch suspended economic and technical assistance to Ethiopia under the Foreign Assistance Act. President Carter, however, hoped that the Ethiopian government "will move quickly to take steps to discharge its obligations under international law so that we can resume Ethiopia's beneficiary status, and move forward unimpeded in our efforts to improve U.S.-Ethiopian relations."
The American government only intervened in the negotiation process as a last resort. The policy on expropriation encouraged the private settlement of disputes; however, under the International Claims Settlement Act of 1949, the government, by agreement with a host country, assumed and espoused the claims of American citizens and organizations on a government-to-government basis. That way the was able to present a package of private claims through state channels. In pursuance of the Act, the U.S. and the UAR (Egypt) on May 17, 1979, signed the Agreement Concerning U.S. Government and Other Claims. Under the treaty, Egypt agreed to make payments to the U.S. Government for certain debts due to Americans "for the nationalization, confiscation, sequestration, and other forcible taking of their property in Egypt which arose in the period January 1, 1952 to October 26, 1976."53 The Act charged the Secretary of the Treasury with the responsibility for the receipt and disbursement of payments to American interests based on the priority of individual claims.

An issue, however, arose concerning the legality of the American claims to compensation. Although Egypt satisfied the outstanding claims presented by the Americans, the Egyptian government did so with some reservations. The Egyptian Undersecretary, Salah El-Din Hassan, contended that in international law, "the
government of the U.S. has no standing to present such claims against the Egyptian administrative agencies."\(^{54}\) The Egyptian argument was not logical considering that the payments were made following an agreement between the two governments. El-Din Hassan, however, insisted that the government of Egypt settled the claims, not for any compulsion of international law, but as a gesture of goodwill and grace.

The Foreign Claims Settlement Commission did not play a significant role in investment disputes because of the diplomatic consequences of that medium. It was important that private claims did not become elevated to an inter-governmental dispute. The direct involvement of government in private investment disputes was likely to create undesirable ruptures in America's foreign relations. The Claims Commission, however, enabled the American government in special circumstances to espouse diverse private claims at a government-to-government level.\(^{55}\) Nevertheless, inter-governmental negotiations, were time-consuming and hindered business expediency.

The basic thrust of American policy on foreign expropriations remained consistent as it sought to balance multiple and often conflicting goals toward overriding national interests. The multiplicity of interests, be they business, economic, security or ideological, created complex conditions for the conduct of American foreign
relations in developing countries. Indeed, much of the hostility toward American firms in the developing countries were symbolic expressions of discontent with certain U.S. foreign policy measures as the host nations understood them. While America’s expropriation policy, attempted to legislate and establish moral codes for international business transactions, the U.S. policy failed to recognize the peculiar circumstances of post-colonial economies and, therefore, failed to create an effective formula that would minimize investment disputes and allow for the conduct of harmonious relations between the U.S. and developing countries in Africa.

Indeed, the responses of the U.S. government to foreign investment disputes were neither punitive nor intended to be. The U.S. expropriation policy evolved in response to events and developments abroad, for which the MNCs and the host governments were equally responsible. The conflict of objectives between the MNCs and the host governments, however, went beyond the confines of private contracts to become a major issue in U.S.-Africa relations. The investment disputes worsened only because Congress, in formulating its expropriation policy, aimed at the symptoms rather than the causes of the disputes. Except for the efforts of the OPIC to monitor the investment priorities of new U.S. firms in Africa, neither the Foreign Assistance Act nor the Gonzalez amendments
considered the causes of foreign investment disputes. Thus, Congress did not examine the strategies and structures of American firms in Africa, to determine their compatibility with the broader objectives of U.S. foreign policy.

The host governments assumed the task of altering the strategy and structure of the firm to conform with the national objectives. In effect, the strategy of the U.S. firm failed to determine its structure in Africa.
CONCLUSION

All the industrial nations, at the initial stages of their development, relied on capital imports for their growth. In the early 1960s, when most of Africa became independent of colonial rule, America, through the Foreign Assistance Program, presented African governments with an opportunity to utilize American capital in their development plans. The Foreign Assistance Act created for U.S. firms the basis for a mutually beneficial relationship with the post-colonial governments in Africa. While most African nations took advantage of the American assistance to attract foreign direct investments, many of them were determined to ensure that the influx of foreign capital did not take away their sovereign rights to economic self-determination. The attempt by most African states to translate their political independence into economic sovereignty brought them into conflict with U.S. firms. The investment disputes that ensued, evoked policy responses from the U.S. government, which operated unfavorably in U.S.-Africa relations.

The Foreign Assistance program was a partial success in post-colonial Africa. The program succeeded to the
extent that it formed the basis for the expansion of U.S. private direct investments in Africa. The program further cemented America's relationship with post-colonial governments in Africa. With the Hickenlooper amendment, however, the Foreign Assistance Act ceased to serve its purpose of promoting a "mutually beneficial" relationship between the U.S. and African governments. The Act, instead, became a code of business ethics to which host nations must conform or be denied the benefit of the U.S. foreign assistance program. The Hickenlooper amendment, therefore, deprived the Foreign Assistance Act of its efficacy as a functional implement for the advancement of U.S. business and diplomatic interests in post-colonial Africa.

The Gonzalez amendments of 1972 did not help to improve business relations between American firms and African governments. The amendments, instead, heightened the causes of economic nationalism in Africa. When the Gonzalez amendments enlisted the multilateral development banks as component implements of the U.S. expropriation policy, it became more difficult for some host governments to secure development funds from the international development agencies. The consequent frustration of the host nations and their perception of the Gonzalez amendments as an intimidating aspect of U.S. foreign policy, affected goodwill between American firms and African
governments. Ultimately, it was the American firm that bore the adverse effects of ruptures in U.S.-Africa relations.

The strategy and structure of the U.S. firm did not help the situation, either. Throughout the colonial era, Africa served as a service economy, providing raw materials for overseas plants and manufacturers, and a market for finished products from Europe. American business enterprise expanded to Africa and blended into the existing pattern of industrial activity. U.S. direct investments in colonial Africa concentrated in the extractive and mining sector of the economy. As U.S. business presence in Africa expanded in the 1960s and 1970s, nearly all the capital-intensive investments clustered in the extractive industries. U.S. direct investments in manufacturing were marginal and, in some cases, non-existent in Africa. Because of the virtual absence of manufacturing in Africa and the reliance of most host nations on the primary sector for revenue, most African governments became sensitive to the investment strategy of the MNC.

The executives of the MNCs, however, were insensitive to the economic concerns of their host governments. Most governments in Africa, confronted with the daunting presence of the large industrial firm, felt a loss of control over the commanding heights of their national
economies. The host governments feared that U.S. firms were gradually replacing the erstwhile colonial firms. The European trading companies had been the principal agents of colonialism in Africa. The trading companies had dominated politics and business in Africa. After independence, nationalist governments in Africa took steps to protect the economic basis of their sovereignty. The nationalists acted to ensure that their hard-won independence was not eroded by the seemingly exploitative strategies of the MNCs. U.S. firms, because of their size and the scope of their operations, therefore, became the primary targets of economic nationalism in Africa.

Although the nationalization of U.S. private direct investments in Africa followed the trend in Latin America, there is no evidence that the events in Latin America inspired the actions of African governments. As in Latin America, however, the nationalization of U.S. private assets in some African states was a logical reaction of the host governments to America’s expropriation policies. Indeed, the scenario presented a vicious circle. While foreign expropriations provoked the enactment of anti-expropriation laws by Congress, such laws, in turn, provoked further hostility against U.S. firms abroad. America’s expropriation laws had different consequences, however, for U.S. business enterprise in Latin America and in Africa. Latin America, of all "third world" regions,
continued to host the largest share of U.S. foreign direct investment, in spite of the spate of expropriations in that region.

Many African states witnessed the disinvestment of capital by U.S. firms as a result of investment disputes or the unwillingness of some firms to relinquish a percentage of their stocks to local participation. This was the case, especially, with firms that were engaged in sales and distribution. Unlike in Latin America, where U.S. firms maintained manufacturing facilities, U.S. firms engaged in marketing found it expedient, in the face of economic nationalism, to transfer their operations to a more conducive national market. For those firms engaged in raw materials production the choice was not as easy. For example, in spite of the hostility of Gadaffi’s government toward U.S. firms, the oil companies continued to do business in Libya. For U.S. firms in the extractive industries, therefore, the global strategy of the firm failed to determine the structure of the firm in Africa.

The Overseas Private Investment Corporation played a major role in bringing the strategy of U.S. firms into line with the developmental aspirations of host governments in Africa. Through its risk insurance program, the OPIC redirected the investment priorities of U.S. firms toward the less sensitive industrial sectors, such as tourism and hotel management. The OPIC indirectly
encouraged American investors to enter into business partnerships with the host governments in the development of infrastructural projects, such as roads and other public utilities. However, because OPIC-sponsored projects were mainly new investments, the corporation was not in a position to alter the strategy or structure of the older firms.

OPIC's risk insurance program, apart from attracting new American investors to Africa, contributed to the management of direct investment disputes. The insurance program helped to reduce the frequency of contact between the U.S. government and host governments over investment disputes. Although the corporation served as a buffer in several expropriation disputes, the OPIC did not always succeed in preventing the nationalization of U.S. direct investments. It was not that the OPIC failed as an institution. Most host governments were determined to take control of their economic destinies. Thus, in spite of institutional safeguards against expropriation, the host governments proceeded to nationalize foreign investments, often, with predictable consequences.

The expropriation of U.S. private investments in Africa adversely affected the economic progress of many host governments. In Ethiopia, for instance, the socialist-motivated expropriation of U.S. private investments had disruptive impact on the industrial base of the
Ethiopian economy. For Ethiopia, as for most host nations, the payment of compensation to foreign firms created a portfolio of external debts and worsened the problem of balance of payments. A host nation’s inability to make "prompt, adequate and effective" compensation to a foreign firm, tainted the credit-worthiness of the expropriating government and heightened the government’s need for foreign credit. It became obvious, from the experiences of most African governments, that African nations could not develop their industrial and economic resources by the seizure of foreign investments.

Economic nationalism in Africa did not fully achieve the desired results because the host nations lacked the technological base and the capital liquidity to maintain control of their industrial enterprises. Because industrial productivity in most African states depended on external borrowing and imported technology, the idea of economic sovereignty, as a matter of practicality, became most illusive and far-fetched. Since independence, African leaders had spoken of the need for "the transfer of technology" from the West. The leaders, however, failed to understand that technology need not be "transferred", as long as a conducive industrial base existed for the innovations and growth of technology. The expropriation of foreign direct investments in Africa, unfortunately, retarded the formation of the necessary
technological base. By their actions, African governments consolidated their dependence of the West for development.

Because the MNC was the largest private sector employer in Africa, the expropriation of foreign business enterprises by African governments escalated the problems of unemployment. Africa's political history in the 1960s and 1970s was punctuated by eruptions of military coups and counter-coups. Mass frustration, resulting from unemployment, inflation and stagflation in some African states, led to political instability. The consequences of political instability for business enterprise in a developing economy were serious. Apart from the uncertainty that underscored fragile political superstructures, foreign investors were reluctant to transfer capital to potentially revolutionary environments. The expropriation of foreign investments in Africa, therefore, discouraged the entry of new business enterprises.

Economic nationalism in Africa created ruptures in U.S.-Africa relations. America's enforcement of its expropriation laws was seen by some African leaders as an attempt by the U.S. government to give extra-territorial effect to U.S. public policy. The Hickenlooper amendment to the Foreign Assistance Act altered the basis of business relations between America and the developing nations. The amendment also attempted to regulate the determination of private contracts between American firms
and the host governments. By providing sanctions and conditions for the termination of foreign investment contracts, the Hickenlooper amendment usurped the judicial functions of local courts and tribunals in the host country. By passing the Hickenlooper amendment against the experienced counsel of the State Department, Congress limited the diplomatic effectiveness of the executive branch in foreign investment disputes.

The Hickenlooper and Gonzalez amendments, while providing for sanctions in investment disputes, failed to address the causes of dispute. Thus, America’s expropriation laws omitted any reference to the social responsibility of U.S. firms abroad.

The business firm occupies a pivotal position of responsibility that invokes socially desirable standards of corporate behavior and responsiveness. The expectations of society from business have become more critical. It is no longer excusable for business to encase itself in the traditional profit-seeking mold. Because society constitutes the environment in which business operates, the nascent social expectation of most host nations is a responsiveness, on the part of the MNCs, to the economic and social aspirations of the local population.

The managers of the MNCs failed to understand the peculiar role of the business firm in a developing society. In Zambia, for example, U.S. firms were
recording turn-overs, in millions of dollars, at a time when the income per capita of the average Zambian barely exceeded two hundred dollars. The MNCs, apparently, had ignored the goose that owned the golden egg. Mining firms in Zambia dug up pits and tunnels for profit, without equal regard for the environment of business. Zambia’s nationalization law of 1969 expressed the government’s demand for equity, social justice and a more humane relationship between the MNCs and the people of Zambia.

The success of U.S. corporate multinationalism in developing countries would depend, to a large extent, on the problem-solving capacity of the MNC and its utilitarian relevance to local needs and aspirations. The experiences of most American MNCs since World War II, show that corporate managers need to reappraise their strategies and the structure of their foreign operations, in order to contain the erratic hostility of host governments toward the firm. The tendency had been for developing nations to equate American corporate multinationalism with exploitation and foreign domination. To avoid this misconception, American MNCs should seek avenues to return benefits to the local environment, for example, by relating to the economic, educational and recreational needs of the population.

The MNC, as a conceptual category in the history of American business enterprise, mirrors the working of the
capitalist system in foreign environments. Because the challenges of today prepare us for the future, the American MNC is confronted with a leadership role in a changing world; one in which an urgent need exists for a more constructive partnership between private institutions and public interests. Public and private institutions, therefore, must look beyond their structural partitions and seek cooperative grounds for the benefit of human civilization. How to achieve this objective, constitutes a central theme in the history of American business enterprise at home and abroad.
APPENDIX
DECOLONIZATION IN AFRICA

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>1962</td>
<td>Former French dependency.</td>
</tr>
<tr>
<td>Angola</td>
<td>1975</td>
<td>Portuguese, 1885-</td>
</tr>
<tr>
<td>Benin</td>
<td>1960</td>
<td>French, 1893-</td>
</tr>
<tr>
<td>Burundi</td>
<td>1962</td>
<td>German, 1886-1923 *</td>
</tr>
<tr>
<td>Botswana</td>
<td>1966</td>
<td>British, 1885-</td>
</tr>
<tr>
<td>Cameroun</td>
<td>1960</td>
<td>German/1884, UK/ France, 1919</td>
</tr>
<tr>
<td>Central African</td>
<td>1960</td>
<td>French, pre-1910 *</td>
</tr>
<tr>
<td>Chad</td>
<td>1960</td>
<td>French, pre-1910 *</td>
</tr>
<tr>
<td>Congo (Brazaville)</td>
<td>1960</td>
<td>French, pre-1910 *</td>
</tr>
<tr>
<td>Djibouti</td>
<td>1977</td>
<td>French, (UN Res. 2228, 1966)</td>
</tr>
<tr>
<td>Egypt</td>
<td>1922</td>
<td>Turkish/19th C.- British/1882</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>1968</td>
<td>Spanish, 1778-</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>1898</td>
<td>Independent, pre-colonial.</td>
</tr>
<tr>
<td>Gabon</td>
<td>1960</td>
<td>French, pre-1910 *</td>
</tr>
<tr>
<td>Gambia</td>
<td>1965</td>
<td>French, 1889 *</td>
</tr>
<tr>
<td>Ghana</td>
<td>1957</td>
<td>British, 1886 (Gold Coast) *</td>
</tr>
<tr>
<td>Guinea</td>
<td>1952</td>
<td>French, 1904-</td>
</tr>
<tr>
<td>Guinea Bissau</td>
<td>1973/74</td>
<td>Portuguese, pre-1973</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>1960</td>
<td>French, 1889 *</td>
</tr>
<tr>
<td>Kenya</td>
<td>1963</td>
<td>British, pre-1920 *</td>
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280
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<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>History Note</th>
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<tr>
<td>Liberia</td>
<td>1838</td>
<td>Colonization Societies</td>
</tr>
<tr>
<td>Libya</td>
<td>1951</td>
<td>Turkish/19th C.-Italian 1911</td>
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<tr>
<td>Mali</td>
<td>1960</td>
<td>French, pre-1960 *</td>
</tr>
<tr>
<td>Malawi</td>
<td>1964</td>
<td>British, pre-1964 *</td>
</tr>
<tr>
<td>Mauritania</td>
<td>1960</td>
<td>French, pre-1904, 1920 *</td>
</tr>
<tr>
<td>Morocco</td>
<td>1956</td>
<td>French, 1912 Fez treaty *</td>
</tr>
<tr>
<td>Mozambique</td>
<td>1975</td>
<td>Portuguese, 16th century</td>
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<tr>
<td>Namibia (S. Africa)</td>
<td>occupied</td>
<td>British/1878, German/1890</td>
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<tr>
<td>Niger</td>
<td>1960</td>
<td>French, Decree of 1922 *</td>
</tr>
<tr>
<td>Nigeria</td>
<td>1960</td>
<td>British, 1862, 1889*</td>
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<td>Rwanda</td>
<td>1962</td>
<td>German, 1886- *</td>
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<tr>
<td>Senegal</td>
<td>1960</td>
<td>French, pre-1904</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>1961</td>
<td>British, 1787- *</td>
</tr>
<tr>
<td>Somalia</td>
<td>1960</td>
<td>British, Italian, 1884/1887*</td>
</tr>
<tr>
<td>Sudan</td>
<td>1956</td>
<td>Anglo-Egyptian condominium *</td>
</tr>
<tr>
<td>Swaziland</td>
<td>1968</td>
<td>British, 1881 *</td>
</tr>
<tr>
<td>Tanzania</td>
<td>1961/64</td>
<td>German, British, 1890/1922 *</td>
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<tr>
<td>Togo</td>
<td>1960</td>
<td>German, 1884- *</td>
</tr>
<tr>
<td>Tunisia</td>
<td>1956</td>
<td>French, 1881-</td>
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<tr>
<td>Uganda</td>
<td>1962</td>
<td>British, 1894-</td>
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<tr>
<td>Upper Volta</td>
<td>1960</td>
<td>French, 1919- *</td>
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<tr>
<td>Western Sahara</td>
<td>nascent</td>
<td>Spanish, until 1976</td>
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<tr>
<td>Zaire</td>
<td>1960</td>
<td>Belgian, pre-1960</td>
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<tr>
<td>Zambia</td>
<td>1964</td>
<td>British, 1889, 1900 *</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>1975</td>
<td>British, 1885, 1923 *</td>
</tr>
</tbody>
</table>

**NOTE:** * includes periods of governance under corporate charters or major colonial reorganization.
NOTES TO CHAPTER I


8 ibid, pp. 10-11.

9 Lewis, *America’s Stake in International Investments*, p. 605.

10 Lewis, *The United States and Foreign Investment Problems*, p. 10.

11 Blackford and Kerr, op cit, p. 176.


13 Lewis, *America’s Stake in International Investments*, p. 580.


16 Lewis, *America's Stake in International Investments*, op cit.


19 ibid, p. 66.


21 Bernard Baruch, The Public Years, New York: Holt, Rinehart and Winston, 1960, Baruch, Baruch: My Own Story, New York: Henry Holt and Co., 1957; Henry Ford, Today and Tomorrow, (New York, 1926); Warren Harding Papers, Roll 131, Box 407-409. In a letter of January 4, 1922 Hoover suggested to President Harding "the removal of artificial barriers we suffer in other markets from production under subsidized industries and inflated fiscal policies...if we could secure these blessings, we might afford to give a holiday (to the Europeans) on interest payment for say five years to all countries."

22 U.S. Department of State, Papers Relating to the Foreign Relations of the United States, (1925) vol. 2, pp. 199-209, for text of Convention; see also letter from Secretary Hughes to Frank Kellogg, U.S. ambassador in London, Foreign Relations, (1924), vol. 2, p. 193. Kellogg's position on the Central African issue was that no effective disposition of the German territories could be concluded "without the assent of the United States as one of the participants in the victory" of WW I.


24 ibid, pp. 82-84; Lewis, America's Stake in International Investments, p. 188; Cleona Lewis, Debtor and Creditor Countries: 1938, 1944, Washington: The Brookings Institution, 1945.


28 Duignan and Gann, op cit, pp. 224-225.
29 London Times, 28 September, 1917.

30 Duignan and Gann, op cit, p. 223.


32 Lewis, America's Stake in International Investments, pp. 330, 331, 606.

33 ibid, pp. 300, 306.

34 Wilkins, "Multinational Corporations and the Diffusion of Technology to Africa," in Thomas, Importing Technology to Africa. op cit, pp. 28-43.


36 The distribution of FDI showed 50% in Latin America, one-tenth in western Europe and the remainder in Canada. Report on International Investment Organization for European Economic Cooperation (OECD), (Societe D'exploitation de L'imprimerie Bellenand-Paris 1.394), p. 17.


40 Fortune, November 1931, pp. 91-98; Wilkins, The Emergence of Multinational Enterprise. p. 217; Chandler, The Visible Hand, p. 350, describes the auto market as the 'huge new market'.


42 Hogan, Informal Entente. p. 186.


46 Foreign Relations, (1914-1920), vol I, pp. 311-312.


48 Hogan, Informal Entente. p. 18; Parrini, Heir to Empire, p 8.


50 Memorandum from the Rubber Association of America to the Secretary of State on the Stevenson scheme, July 17, 1925, and other related issues, Foreign Relations, (1925), vol. 2, pp. 245-256.

51 Foreign Relations, (1926), vol. 2, pp. 503-597.
Parrini, *Heir to Empire*. Parrini suggests that while business interests did not dictate to the political leadership, they presented alternative policy framework to the politicians. Because Hoover had a free hand in directing foreign economic policy matters, business interests and recommendations were treated with deference; Hogan, *Informal Entente*. p. 193.


Harvey Firestone to Secretary Hughes, *Foreign Relations*, (1925), vol. 2, p. 384.


65 ibid. p. 68.

66 ibid, p. 55.

67 ibid, pp. 54-55.


70 Department of Commerce, Survey of Factors Limiting U.S. Investment Abroad, ibid, p. 79.


74 ibid.

NOTES TO CHAPTER II

1 Richard M. Nixon, "The Emergence of Africa," Report to the President by Vice President Nixon on his Trip to Africa, February 29 – March 21, 1957, Department of State, Public Service Division, Washington D.C., April 7, 1957.


4 See, however, Report Prepared for the President's Committee for Financing Foreign Trade (compiled by J. Frank Gaston). National Industrial Conference Board, Inc. Obstacles to Direct Foreign Investment, Technical Paper No. 2, New York, April 1951. In September 1949, the President requested the Committee for Financing Foreign Trade to examine barriers to U.S. investments abroad and way of expanding private U.S. capital, particularly to the developing areas. The Report found colonial barriers to U.S. FDI in Africa to include multiple exchange rates, export/import quotas, control on capital movement, restrictions on repatriation of capital, immigration restrictions, discrimination in land tenure, concessions, etc., poor infrastructural facilities, double taxation, etc.


6 Benjamin Higgins, United Nations and U.S. Foreign Economic Policy, Homewood, Illinois: Richard D. Irwin,


10 Brendon, Ike: His Life and Times, op cit.

11 Kaufman, Trade and Aid, op cit.


13 Richard Goold-Adams, The Time of Power: A Reappraisal of John Foster Dulles, London: Weidenfield and Nicolson, 1962, p. 12: Secretary Dulles was "slow to learn that diplomacy is not law" and closed his eyes to accusations of U.S. imperialism.


18 ibid, pp. 8-10.


22 Economic Cooperation Act, 1950, 64 Stat. 204; see s. 402 (c). By inter-governmental agreement, technical assistance and capital investments were designed, in part, to ensure that investors will not be deprived of their property without satisfactory compensation.


25 ibid.

26 ibid, p. 54.

27 ibid.


34 ibid, pp. 245-260. Also, ss. 921 and 922, Internal Revenue Act 1954 on 'Western Hemisphere' corporations. See note 36 below.


Western Hemisphere Trading Corporations' are defined as institutions that qualify under Sections 921 and 922 of the Internal Revenue Act of 1954 and, therefore, entitled to a 14 percent-point reduction in income tax.

37 President Dwight Eisenhower to the 83rd Congress, January 21, 1954, and to the 84th Congress, January 10, 1955.
38 Statement of Fred W. Peel, Rapporteur of the Committee on Taxation of the United States Council of International Chamber of Commerce, Hearings, House, 85th Cong., 2d sess., December 5, 1958, p. 469.


40 Hon. C. Douglas Dillon, "United States Foreign Policy and Its Relationship to International Investment - The Role of Private Capital in U.S. Foreign Policy," Dicta, (1959), op cit, p. 10. Also see Dillon's statement as Undersecretary of State for Economic Affairs, on the "special stake" of the business community in America's efforts against communism in newly independent states; a matter of "utmost concern." Hearings, House, 85th Cong., 2d sess., Dec. 1, 1958, pp. 4-5.


42 ibid, p. 15.


44 ibid, p. 315.

45 ibid, pp. 314-315.


47 64 Stat. 204, 1950. S. 402 (c).

48 Mooney and Brown, Truman To Carter: A Post-War History of the United States of America, p. 119; Kenneth W. Thompson, ed., The Kennedy Presidency: Seventeen
Intimate Perspectives of John F. Kennedy, Portraits of
American Presidents, vol. IV, Lanham, MD: University Press
of America, 1985; Congressional Record, (April 2, 1963),
p. 5128. President Kennedy, speaking on mutual defense
and assistance programs, urged the increased flow of
private capital to developing nations as a crucial aspect
of certain foreign policy objectives.

49 Thompson, The Kennedy Presidency. Crawford Young,
Ideology and Development in Africa, New Haven: Yale Univer-
sity Press, 1982, p. 256; "Report to the President of
the United States from the Task Force on Promoting
Increased Foreign Investment and Increased Foreign
Financing for U.S. Corporations," Washington: GPO, April
27, 1964. President Lyndon Johnson, in December 1963, re-
affirmed J.F. Kennedy’s charge to the Task Force and re-
quested that Report be submitted to him.

50 USAID, Aid to Business - Overseas Investment,
Document No. 3420-7 AID 218, Washington: GPO, September
1965; USAID, Commercial Exports Under AID Program,
Washington, Office of Material Resources; Foreign Assist-
ce Act, 1961, S. 231; Christian Science Monitor,
(Eastern edition), Nov. 9, 1962, p. 14: "Wall Street in
Africa." The Bank of America and the Morgan Guaranty
Trust Company moved into Africa soon after decolonization.
The Bankers International Corp., a wholly-owned subsidiary
of Bankers Trust, also established offices in Liberia and
Nigeria, initially by acquiring minority stocks in local
banks. The First National City Bank of New York negotia-
ted a partnership arrangement with the French-owned Banque
de l’Afrique Occidentale, for operations in former French
West African territories.

51 USAID, Press Release of March 14, 1966 signed by
Donald Hoagland, Assistant Administrator for Development
Finance and Private Enterprise; USAID Report No. W-33,
May 16, 1966.

52 Countries Guaranteeing Against Inconvertibility
and Expropriation: British Guiana, Central African
Republic, Chad, Congo Brazzaville, Congo Leopoldville,
Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast,
Kenya, Liberia, Malagasy, Mali, Mauritania, Morocco,
Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan,
Tanzania, Togo, Tunisia, Uganda, Upper Volta, and the
United Arab Republic (Egypt). Although Rwanda’s applica-
tion to participate was acceptable, a formal treaty was
subject to ratification by the Rwandan legislature.

Countries Guaranteeing Against War, Revolution,
Insurrection and Extended Risk: all of the above states
except Ethiopia, Gabon, Ghana and Nigeria. In these
countries, military coups or threats of coups could not guaranty such commitments by 1966. Also, the Rwandan treaty was subject to legislative ratification; USAID Report No. W-33, May 16, 1966, Office of Development Finance and Private Enterprise, Specific Risks Guaranty Division, Washington D.C.

53 Section 104 (e), Title I, Public Law No.480. The Agricultural Trade Development and Assistance Act, 1954, commonly referred to as the Cooley loans (after its Congressional sponsor, Harold Cooley); USAID, Publication No. 3420-7 AID 218, Washington D.C., September 1965, pp. 26-27.

54 Sections 25, 25(a) of the Federal Reserve Act. The Edge Act Corporation and Agreement Corporations.


56 For example, International Commerce, a weekly periodical on global trends and the Checklist, a bibliographical bluebook on foreign investment.

57 Even at the eve of independence, some African nationalists were already stipulating operational conditions for foreign firms. Prospective investors were expected to transfer technical and managerial skills in due course to citizens of the host country. See, for example, Report of the Nigerian Advisory Committee on Aid to African Businessmen, Lagos 1959. In later years, most host nations took legislative action to implement these goals, even though the transfer of skills could not be effectively legislated. The nature of MNC strategy made this practice ineffective. Richard E. Caves, "International corporations: The Industrial Economics of Foreign Investment," Economica, XXXVIII (1971); S. Lall and R. Streeten, Foreign Investment, Transnationals and Developing Countries, (London, 1981); P. Jalee, The Pillage of the Third World, (New York, 1968); S. Amin, Unequal Development: An Essay on the Formations of Peripheral Capitalism, (New York, 1976); E. Reynolds, "Economic Imperialism: The Case of the Gold Coast," Journal of Economic History, 35 (1975): 1; Claude Ake, A Political Economy of Africa, Portharcourt: Longman, 1981, p. 39. For Ake, although a dependent economy becomes absorbed into the capitalist system, it nevertheless remains at the fringe of the system. Reynolds refers to this phenomenon as "peripheral capitalism."

58 Ake, A Political Economy of Africa, p. 40; E. Domar, "The Effects of Foreign Investment on
NOTES TO CHAPTER III


3 GAO Report, p. (i).

4 ibid, p. 2.

5 ibid, p. 3.


17 Information exchange has been a crucial aspect of domestic and international business strategy. Moreover, "distribution systems perform the function of transferring information....between manufacturers and consumers,"


22 For example, General Zelaya's revocation of concessionary land rights held by U.S. firms and individuals in Nicaragua. See note of November 5, 1910, from the Nicaraguan Minister for Foreign Affairs, Tomas Martinez, to Dawson, U.S. Special agent in Nicaragua. *Foreign Relations*, 1911, p. 625; Mexican land reforms, 1917 to 1941, involving expropriation of oil fields, *Department of State, Publication 1288, Inter-American series 12*, p. 45; *Foreign Relations*, 1918, pp. xxv-xxvi, the President's message to Congress, Dec. 7, 1911. Other cases concerning the expropriation of American property include, Cuba (1919), Guatemala (1928), Russia (1917). American interests in the Bolshevik confiscations amounted five percent; the Latinov Assignment Fund (Nov. 16, 1933) compensated dispossessed American nationals; *Department of Commerce, Bureau of Foreign and Domestic Commerce, Foreign Capital Investment in Russian Industries and Commerce*, Misc. series, 124, Washington: GPO, 1923, p. 27. Post-World War II cases include, Czechoslovakia (1945), Hungary (1945), Yugoslavia (1946), Poland (1946), Bulgaria (1947), Romania
(1948) and China (from 1950). For the response of the U.S. to war-time confiscations, see Inter-Allied Declaration Against Acts of Dispossession Committed on Territories under Enemy Occupation/Control; Foreign Relations, 1943, vol 1, publication 7585, pp. 443-444.

23 On July 19, 1956, Secretary of State, F. Dulles cancelled a $56 million loan to Egypt for the construction of the Aswan High Dam, following the nationalization of the Suez Canal Company; six years later, Law No. 72 (1963) empowered the government's nationalization of 222 foreign firms. In Ghana, section 5 of the Ghana Concession Act, No 124 of June, 1962 invested the President with wide powers to cancel land grants to aliens for reasons of public safety and interest. In Tanzania, the Insurance (Vesting of Interests and Regulations) Act (1967) nationalized all foreign insurance firms.


25 Young, Ideology and Development. op cit.

26 See Anglo-Iranian Oil Company v. Idemitsu Kosan Kabushiki Karsha, ILR 20 (1953) pp. 309 ff. In the Anglo-Iranian case Resolution 626 (VII) was relied to justify expropriatory actions.


28 UN Doc. 1/AC.97/L.II, May 20, 1961, the basis of resolution and report of the UN Commission on Permanent Sovereignty Over Natural Wealth and Resources. On the rules of arbitration and conciliation for the settlement of international disputes between two parties of which one is a state, see the Netherlands International Law Reports, vol 9, July 1962.

29 The Group of 77, constituting 2/3 of the General Assembly and mostly developing states, have progressively
worked for greater equity in international economic relations.

30 UN, Department of Social and Economic Affairs, The Impact of Multinational Corporations on Development and International Relations, New York, UN, 1974.

31 Sections 2(e) and 4, Part II, Ghana Capital Investment Act, April 19, 1963, GP/A1052/6,496/62-63. Government Printing Department, Accra, Ghana.


36 Articles 1-5, Law No. 15 (1963), UAR, op cit. Earlier decrees include Law No. 52 of 1940 governing land distribution for building purposes; Law No. 37 of 1951 prohibiting non-citizens from acquiring agricultural lands; Law No. 178 (land reforms) and Law No. 124 of 1958 governing the ownership of desert lands.


41 While some states chose a socialist path to development (e.g. Ghana, Algeria and Tanzania) Nigeria, Ivory Coast, Zaire and Morocco adopted a "mixed economy" system that combined liberal capitalism with limited state participation.


Companies Act, No. 51, 1968, Laws of Nigeria. Part X excluded certain foreign firms from the requirement to register as Nigerian companies, e.g., firms engaged in special projects on temporary basis or at the request of the government.


Thomas, Importing Technology Into Africa. op cit, pp. 146, 162: only 3% of cumulative expenditure of the oil firms went to local manpower development.


Schedules I, II and III of the Nigerian Enterprises Promotion Act, 1977


Mobil Oil Annual Reports 1963-1968; Socony Mobil Oil Company, Inc. Annual Report, 1965, p. 7, disclosure of huge prospects for offshore drilling in Nigeria. (It is interesting that at the time the Standard Oil Trust was broken by the court in 1911, Mobil’s parent company, Socony, already had marketing outlets in South Africa), Ravleigh Warner, Jr., "Mobil Oil - A View from the Second Century," address at the National Newcomen dinner, New

63 Socony Mobil Oil Company, Inc. Annual Report 1965, p. 7. The Amal Field had since yielded further discoveries. Other Mobil operations in Africa included extensive geological surveys on a 10 million-acre concession in Tunisia, preliminary surveys in Ghana and on-shore discoveries in Zaire, where oil, gas and hydrocarbons were located by the company.


66 ibid.


68 Mobil Oil Nigeria, Annual Report, 1986, p. 16.

69 Coca-Cola Fact Sheet, February 1986.


72 ibid.

73 Roberto C. Coizueta (Executive Vice President Coca-Cola Company), speech at the 1978 Annual Meeting of the American Institute of Chemical Engineers.


75 Findings of the Political Bureau, Federal Republic of Nigeria, March 1987, op cit, p. 58.

76 ibid.

77 ibid.

78 Section 6 (1) and (4), Law No. 40, Sept. 20, 1963; TLM, vol 2, 6(Nov. 1963), p. 1119-1121.
79 The Arusha Declaration became the basis of civil government in Tanzania.


85 Sklar, Corporate Power in an African State, op cit, pp. 19, 25: By 1964 only about 28 percent of the Zambian population had graduated from high school and only about 109 Zambians had college degrees.


87 Should Zambia have compensated the foreign firms? Adeoye Akinsanya, The Expropriation of Multinational Property in the Third World, New York: Praeger, 1980, p. 153, on the contrary, suggests that Zambia was entitled to restitution for "fraudulent and illegal exploitation" and "to refuse to make reparation for bringing its copper resources under public control."


89 ibid.


92 ibid.

93 ibid.


95 Department of State, "Statement on 'Hot' Libyan Oil," op cit. It is significant that not all firms were supported the embargo on Libyan oil. Small business interests saw the action of the State Department as pro big business. However, even the large firms continued to purchase crude oil from Libya. See for example civil suit No. 234-74-A, filed in the (Eastern) District Court of Virginia, April 26, 1974: Bunker Hunt v. Mobil Oil Corp. (substance of dispute discussed in International Legal Materials - Current Documents, 13 (May 1974): 661.


105 For example, pressures from AFL-CIO caused Senator Hartke to introduce a bill in September 1971 to halt the 'run-away' of American jobs and technology to developing countries, leading to the Foreign Trade and Investment Act of 1972, (S. 2592). See Department of Commerce, Policy Aspects of Foreign Investment, op cit, pp. 1-8.

106 Department of Commerce, Bureau of International Commerce, "Trends in Direct Investments Abroad by U.S. Multinational Corporations 1960-1970," Washington: Offices of International Investment and Business Economics, Staff Study, February, 1972, (majority-owned affiliates defined as those in which aggregate U.S. interest amounted to 50% and minority-owned affiliates as in which aggregate interests were at least 25% but less than 50% of voting stock). Also see, Department of Commerce, The Multinational Corporation, vol. 1, March 1972, op cit, p. 62.


109 ibid.


112 ibid, pp. 6, 7, 10.


NOTES TO CHAPTER IV


3 ibid; for text see Joint Committee Print, Senate Committee on Foreign Relations, House Committee on Foreign Affairs, Legislation on Foreign Relations, 87th Cong., 2nd Sess., Washington: GPO, February 1962.


7 43, Department of State Bulletin, February 1, 1960, pp. 158-171.

8 S. 620 (e), Foreign Assistance Act of 1961, as amended. 'Creeping expropriation' included all actions that had the effect of nationalizing, expropriating or otherwise seizing ownership or control of property. Standard investment guarantee contracts incorporated this clause, prohibiting 'other takings' or the forced liquidation of business enterprises. For reactions in the U.S. to reduction in sugar imports from Cuba, see "Cuba Nationalization Law, July 6 1960" American Journal of International Law, 55 (1961) pp. 822-24.

9 Legitimacy of Cuban actions based on Law No. 851; Executive Power Resolution No. 1 of August 6, 1960; Resolution No. 3 of October 25, 1960; Law No. 890 and Law No. 891 of October 31, 1961.

10 The Johnson-Bridges Amendment to the Mutual Security Act of 1959 passed in the wake of the Cuban controversy provided for suspension of aid to an expropriating nation that failed to effect compensation within six months; also s. 102 (1) (2), Trade Expansion Act, 1962, sought to prevent "communist economic penetration" into free-world commerce; the Burte-Hartke Act, for other reasons, applied to restrict the level of U.S. private investment abroad, while Public Law 95-223 of Dec. 28, 1977 limited the President's powers under Trading with the Enemy Act to regulate international economic relations in peacetime; House, Committee on International Relations, 95th Cong., 1st sess., 1977.

11 S. 107, Foreign Aid Appropriation Act (as approved by the House and the Senate); 87th Cong., 2d Sess., 1962.

12 S. 301 (d) (1), Foreign Assistance Act of 1962: In Oct. 1964, HR 12259, as law, authorized the Foreign Claims Commission to determine American private claims against Cuba, whose assets in the U.S. were blocked and vested in the federal government, proceeds from sale to be applied to the expenses of administering HR 12259.

13 U.S. Department of State, Nationalization, Expropriation and Other Taking of U.S. and Certain Foreign


16 The Upton Case (1903); U.S.-Venezuela Mixed Commission (1911); Message of the President to Congress, December 7, 1911, Department of State, Foreign Relations, Washington: GPO, 1918, pp. XXV-XXVI, on the need to protect the financial interests of American citizens abroad against "arbitrary and injurious treatment on the part of foreign governments...."


18 See note 14 above.


21 Senate amendment No 39, Expropriation by Foreign States, added subsection (2) to s. 620 (e) of the Foreign Assistance Act, to the effect that no court "shall refuse on the ground of the act of state doctrine to examine the


23 Comments of the Executive Branch to the Conference Committee (September 1964), objection to the inclusion of the Sabbatino Amendment in the Foreign Assistance Act; Congressional Record, (August 14, 1964), vol. 110, 18946-18948.


31 ILM, 2 (March 1963): 386.

33 New York Herald-Tribune, ibid.


35 Christian Science Monitor, ibid.


38 ibid, p. 21759.

39 Section 620 (e) (i), Foreign Assistance Act of 1962. Under the Act, as amended, the Foreign Claims Settlement Commission (established under Reorganization Plan No. 1 of 1954, 68 Stat. 1279) had the duty of assessing the value of expropriated property, and compensation was due and payable within 90 days of the seizure or taking, or 45 days of the date of this enactment which ever is later; S. 190 Foreign Relations Law, U.S. Restatement (Second) required compensation to be in cash or "readily convertible into cash". Under OPIC agreements, the U.S. may facilitate foreign exchange convertibility to enable an expropriating government pay compensation.


41 Congressional Record, (1963), vol. 109, Part 16, pp. 21757-21783.

42 ibid.

43 ibid, pp. 21759, 21760.

44 ibid.


46 ibid, S. 620 (e) (i).
47 ILM 2 (1963): 1096

48 Note, however, Article 16 of the Organization of American States which discouraged economic or political coercion by member-states in order to obtain an advantage of any kind.

49 Congressional Record, (1963), vol 109, p. 21763.

50 S. 15 of the Foreign Assistance Act of 1973, 87 Stat. 714, 22 USC 2370 (e) (1), providing for authority to waive suspension under the Hickenlooper amendment.

51 Department of State, Office of Legal Adviser, Publication 9374, Washington D.C., December, 1983.


53 Congressional Record, (1963), vol. 109, op cit, p. 21762

54 S. 620 (e) (3), Foreign Assistance Act of 1963.

55 Congressional Record, (1963), vol. 109, op cit, p. 21763.

56 ibid, p. 21764.

57 ibid, p. 21769.


59 ibid.

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1 Adeoye Akinsanya, The Expropriation of Multina-
tional Property in the Third World, New York:
Praeger, 1980.

2 Department of State, Statement on "Hot" Libyan Oil
ILM 13 (1974) op cit; and "International Arbitral
Tribunal Award on the Merits of Dispute Between Texaco
Overseas Petroleum Co., California Asiatic oil Co. and
the Government of the Libyan Arab Republic." ILM 17
(1978), op cit.

Public Law 90-554 [H.R. 15263], 82 Stat. 960 approved
October 8, 1968.

4 Generally, since 1948, Risk Insurance accompanied
U.S. foreign assistance, e.g. the Economic
Cooperation Act (Marshall Plan) for Europe went with
insurance against political risks such as war, insurrec-
tion, etc. In 1951 the Mutual Security Act amended the
scope of the Marshall Plan in terms of insurance coverage
for all territories benefiting from U.S. foreign assis-
tance. The Mutual Security Act of 1953 established the
investment guaranty program for the benefit of countries
entering into investment contracts
with the U.S. The Act as amended in 1959 limited the
guaranty program to developing countries. Under the
Foreign Assistance Act of 1961 (Title IV), the program
reimbursed U.S. investors wishing to invest in developing
countries up to 50 percent of costs incurred in investment
surveys; the program covered risks and losses resulting
from insurrections, revolutions and wars, inconvertibility
of currency and expropriations. See U.S. Congress, House
Committee on Foreign Affairs, Subcommittee on Foreign
Economic Policy, The Involvement of U.S. Private Enter-
prise in Developing Countries: Report, (H.R. 179), No.
1271, 90th Cong., 2d sess.; U.S. Congress, Senate
Committee on Foreign Relations, Foreign Assistance Act of
1962. Report on S. 2996 (for further amendment to the
Foreign Assistance Act of 1961) 87th Cong., 2nd Sess.,
Senate Report 1535; House Report on H.R. 11921, for
further amendment to the Foreign


8 S. 502 (a) Foreign Assistance Act of 1968.


10 The Office of Private Resources of the USAID administered the initial framework of OPIC between 1970 and January 19, 1971 before Executive Order 11579 formally organized OPIC and transferred to it the investment functions previously handled by USAID. The OPIC Board of Directors had responsibility "to mobilize and facilitate the participation of U.S. private capital and skills in the economic and social progress of less-developed friendly countries and areas, thereby complementing the development assistance objectives of the United States."

11 Michael J. Hogan, "Corporatism – A Positive View," Diplomatic History 10 (Fall 1986). The corporatist framework of business-government relations, "locates the apparatus of economic government in the private sector." As with the OPIC, government provided the institutional coordinator in the relationship. The Board of the OPIC comprised 11 Directors: 6 members, essentially from the private sector, appointed by the President on the advice and with the consent of the Senate; 3 others, appointed by the President from among government officials; 2 ex-officio members, ie the President of OPIC and the Administrator of USAID, as chair of the Board. See, Presidential Documents (1974), vol. 10, No. 14, p. 385, Office of the Federal Register, National Archives and Record Services, General Services Administration, Washington D.C.

12 U.S. Congress, House, Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy: The

13 The OPIC also manages the Cooley Loan program by which U.S. investors receive loans in local currencies of host countries. See also, S. 234 (d) Foreign Assistance of 1969 granting power to OPIC to support and encourage U.S. private investment activities in developing areas.


16 S. 231 (i) Foreign Assistance Act, 1969.

17 Statement of President of OPIC, Bradford Mills; U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy, OPIC Hearings, Daily Transcript, June 19, 1973, pp. 442-431. The OPIC conducts its guaranty and loans programs in complementary relationship to contributions from other sources including private U.S. and foreign investors and particularly, the international finance institutions e.g. the Export-Import Bank (EXIMBANK) and World Bank affiliates.


19 In 1974 a process was initiated for the participation of private insurers in OPIC insurance program; OPIC Amendment Act of 1974, Public Law 93-390, 93rd Cong., [S. 2957], August 27, 1974, required the OPIC to submit to Congress an analysis of the possibilities of transferring all of its activities to private insurers or other agencies; Report to Congress by the Overseas Private Investment Corporation on the Possibilities of Transferring OPIC Activities to the Private Sector, Washington, D. C., 1976.


25 OECD Convention, signed in Paris on December 14, 1960. OECD comprised Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxemborg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, U.K. and the U.S.

26 OECD Report, 1972, op cit, p. 95. By 1972, OPIC's program was active in 90 developing countries compared to Germany's insurance contracts with 39, Britain 34, and France 14.

27 OPIC Annual Report, Fiscal 1974, p. 3.


32 Foreign Assistance Act of 1963, as amended, ss. 603 and 620 (e); Department of State, Office of Legal Adviser, 1979, Publication 9374, Washington, D.C., December 1983, p. 1389.


35 ibid, p. 21.

36 ibid.
NOTES TO CHAPTER VI


5 ibid.

6 ibid.


9 Sugar Act of 1948 as amended in 1971 by Public Law 92-138; under the 1971 amendment, the President was given additional and discretionary powers in all cases involving the expropriation or other taking of U.S. private investment by a sugar-exporting country; GAO, Report to the Congress, op cit, p. 11.

10 Executive Order 11844, March 26, 1975 excluding Uganda, South Yemen and Somalia from the preferential
list under the Trade Act of 1974; GAO, Report to the Congress, ibid, p. 13.


17 ibid.


19 ibid.


22 GAO, Report to the Congress, op cit, p. 10.


32 In compliance with Title III of the International Development and Food Assistance Act of 1978, informing Congress of steps to strengthen U.S. policies in developing areas. "Message from the President of the United States Transmitting a Report on Steps He Has Taken and Proposes to Take to Strengthen the Coordination of U.S. Economic Policies Affecting Developing Countries
Pursuant to Section 308 of Public Law 95-424," (Message referred to Committee on Foreign Affairs and printed), Washington: GPO, March 8, 1979).

33 Jimmy Carter, Negotiation: An Alternative to Hostility, Inaugural Lecture, The Carl Vinson Memorial Lecture Series, (Marcon, GA: Mercer University Press, 1884, p. 13, ". . . realizing that in dealing with sovereign nations there is no judge or juror who can finally impose a settlement."

34 Executive Directors' Report, for a Convention on the Settlement of Investment Disputes Between States and Nationals of other States, Cmdn. 2745 (1965) p. 5; ILM, 4 (1965) 524.

35 For example, the Havana Charter on Trade and Employment (1948); the (Abs-Shawcross) Draft Convention on Investments Abroad (1959); and the Draft Conventions on the Protection of Foreign Property (of 1962 and 1967) whose provisions were considered arbitrary and oppressive by the capital-importing nations; Proceedings, 1965, American Society of International Law, p. 35 et seq.

36 Article 42 (I) (Cmdn. 2745) (1965).


S.C. No. 73-781, June 17, 1974. See, however, the dissenting opinion of Justice Douglas with whom Justices Brennan, White and Marshall concurred to the effect that "when a defendant...has through proscribed acts within (U.S.) territory brought itself with the ken of federal securities regulation," U.S. laws would apply.


In the Matter of Sociedad EL Teniente, St. a Corporation, (a split company of the Former Chilean Corporation), Superior Court of Hamburg, Docket No. 5 0 80/73, March 13, 1974; ILM XIII, No. 5 (September, 1974), op cit.


Instances of preference for arbitration include Jay's Treaty (1794); the Canadian Fisheries case (1854); Alabama Claims (1871); U.S.-Nicaragua Mixed Commission (1911), etc. Arbitration treaties were encouraged, e.g. with Haiti (Protocol of May 24, 1884); Costa Rica (1860); Ecuador (1862), etc.

For example, Public Law 93-618 (1974), s. 502 (b) (4). The Trade Act denied 'beneficiary developing country' status to expropriating nations that failed to pursue "good faith" negotiation toward a settlement.

Executive Order 11844 of March 26, 1975.


Public Law 93-618 (1974), s. 502 (a) (2).


President Carter, "Withdrawing Designation of Ethiopia as a Beneficiary Developing Country," (communic-
ation from the President transmitting to Congress the intention of the executive branch to withdraw the designation of Ethiopia as a Beneficiary Developing Country for purposes of the Generalized System of Preferences, pursuant to section 502 (a) (2) of the Trade Act of 1974 as amended). Referred to the House Committee on Ways and Means, 96th Cong., 1st sess., House Doc. No. 96-197, Washington D.C.: GPO, 1979.

53 The Case Act 1 USG 112 (b); Department of State, Digest of U.S. Practice in International Law, Publication 9374, Office of the Legal Adviser, Washington, D. C., 1979, p. 1216.


55 S. 4 (a) and (8), Title I, International Claims Settlement Act, as amended, 22 USC 1623 (A) 1627.
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