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Overseas Private Investment Corporation and Investment in the Americas

Perspective

We in Overseas Private Investment Corporation are convinced that United States private investment, and the technical assistance and management that goes with such investment, can make a most important contribution to development. It is frequently pointed out that there are insufficient public funds for foreign assistance and that our development strategy must rely upon private investment.

United States investors today are concerned about the increased risk of expropriation of their investments. Stockholders may require that management obtain OPIC insurance and any other available government or international protection. In development theory, a reduction of the investor's risk will make a lower rate of return on the investment acceptable. This should increase the benefits of the investment to the developing country and assist the United States investor in competing with other foreign investors.

The payment of an insurance premium is an ideal way of sharing the risk with other investors through the pooling of insurance premiums in OPIC's insurance reserves. In addition to OPIC's reserves, our insurance contracts are backed by the full faith and credit of the United States. We have now obtained reinsurance of a small portion of our risks through Lloyd's of London. OPIC is striving to minimize or eliminate any cost to the American taxpayer by developing a reinsurance market and developing other risk-sharing mechanisms with the other twelve capital exporting countries with similar investment insurance programs.

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Economic Nationalism

Economic nationalism is described by some as "stealing what you cannot afford to pay for." But perhaps we should try viewing economic nationalism in a more sympathetic light in the hope of finding a solution to the problems which give rise to expropriation. Nationalism is not altogether bad. We certainly recognize the importance of national pride and self-respect and we appreciate more and more the importance of preserving individuality and local customs.

On the other hand, it certainly is not meant to imply that the United States Government should not protect the rights of its citizens under international law.

It is understandable that the people of developing countries may resent foreigners who appear to exploit their labor and natural resources. It may be difficult to distinguish constructive development from exploitation, when some politicians are trying to exploit this resentment for their own political purposes. It is easier to misinterpret the facts and to exploit resentment when too much has been promised and high expectations cannot be met.

Economic Folly

Some developing countries are saying "We can do it ourselves." We should be in the position to help people to help themselves, and we should appreciate the importance of their own role. The development process will be infinitely more difficult without the capital, technology and management which foreign investors can provide. Access to international markets will be much more difficult without the assistance of multinational corporations.

The political gain, in the short term, of "recapturing our natural resources" may not warrant the economic cost in the long term. In the process of compensating for expropriation, some countries are incurring large new debts when their available credit, local capital and earnings could be used for new investment rather than acquiring old investment. (Economic nationalism is more of a political phenomenon than a rational economic policy.)

Win – Win Solution

It is assumed by some who are inexperienced in business that in every business deal one party is a winner and one party is a loser. We know this is not true, and that successful business deals must be mutually advantageous to both parties. Mr. Lee Morgan of Caterpillar Tractor Company has described United States foreign investment as a "win-win" solution.

Both the United States economy and the host country economy can benefit from this investment. If it is good for both countries, there must be a solution to the political problem of economic nationalism.

It is part of OPIC's job to find a way to mobilize United States capital and credit with United States technology and management for foreign investment, and still satisfy the nationalistic requirements of the host countries. New modes of investment will be encouraged. United States investment in the future will probably consist of more loan and less equity financing, coupled with technical service and management contracts. We will probably follow the Japanese example of investment through supply contracts for natural resources. Smaller capitalization of the foreign enterprise will make it easier to obtain the required amount of local capital to meet the requirements of the Andean Investment Code and similar laws.

Competing Investment Opportunities

There is a trend apparent from OPIC's statistics that less United States investment is going to Latin America and more to the Far East. Elsewhere developing countries will compete for investment, and it will go where it is most welcome, other factors being equal. The Treaty of Cartagena holds all Andean countries to the same terms for investment with certain exceptions for Bolivia and Ecuador.

It has been said that thus far Brazil has been the chief beneficiary of the Andean Investment Code. It is certainly true that the favorable investment climate of Brazil is attracting new investment at an accelerating rate. This investment flow to Brazil tends to hide the lack of investment in other areas of Latin America when we are examining statistics for the whole continent.

The advantages of the Andean Common Market may have been oversold to participating countries, leading them to believe that they will receive new investments in spite of the harsh terms of the Andean Investment Code. It is still possible that sensible implementation of the Code, together with a genuine desire for new investment, can overcome these obstacles in the world-wide competition for capital and technology.

Crisis of Investment Climate

Capital and tourism are hard to attract, and are easily frightened by unstable political conditions. Expropriation, particularly if it occurs without compensation, and the bald repudiation of valid indebtedness incurred by prior governments, are certain to discourage new investment. Retroactive determination of excess profits on the excuse of extracting reparation for "the sins of the past" are unacceptable in anyone's view of international law. It is ironic that some Latin American countries are turning their back on western capitalism at the same time that some East European socialistic economies are seeking partnerships with western capitalism.

National Sovereignty and Expropriation

No one questions the right of a sovereign people to determine by their own legal process, what property may be taken from its private owners for a public purpose. No one questioned the right of the Government of Great Britain to nationalize its steel industry, although some questioned the economic rationale. The only real question is that of compensation.

The international standard is "prompt, adequate and effective compensation." A speaker at a recent meeting of the American Society of International Law warned of the danger of becoming "hung up" on the words "prompt, adequate and effective." We may recognize the problem of becoming "hung up" on the words, but we must guard against throwing out what little international law we have on the subject, until we find a new means for dealing with the problem.

Most expropriating governments cannot afford to pay cash for the properties taken. In some cases, investors are willing to sell on deferred payments. OPIC has been able to facilitate such agreements in Chile by partially guaranteeing the payment as in the case of Bethlehem Steel. Bethlehem succeeded in negotiating a sale of its properties to CAP, the steel company owned by the Chilean Government, for more than its OPIC insurance coverage. This arrangement was advantageous to Bethlehem Steel, to the Government of Chile and to OPIC.

Expropriation may take place in many ways: by statutory nationalization, constitutional amendment, or intervention (taking over management) under such excuses as labor problems, national security or inadequate production. The indirect or creeping expropriation is just as devastating to the investor as formal nationalization. OPIC insures against indirect as well as direct expropriation. If a government is seeking political credit for expropriation, it will formally nationalize the property rather than merely intervene. Intervention seems to be a process for forcing the investor to agree to sell on unreasonable terms.

OPIC Insurance in Expropriation Cases

"Expropriatory Action" as defined in OPIC's insurance contracts must continue for a period of one year. In several cases of indirect expropriation, the host government actions have been reversed or modified within the one-year period. Some credit in such cases is due to OPIC and the good offices of United States Embassies. During the one-year period, OPIC may assist in obtaining "voluntary" agreements for sale which are advantageous to the United States investor. It is therefore apparent that OPIC can discourage expropriation in some cases and facilitate divestment in other cases.

There have been some settlements in Chile of which we are proud. Bethlehem Steel was one. Another is Parsons & Whittemore, which has recently agreed to sell its interest in a paper mill in Chile. The Government had threatened to take over the management of the plant. Parsons & Whittemore did not want to give up management unless it could sell its 20 per cent equity interest. With OPIC assistance and backing, the sale was concluded on terms acceptable to the buyer and the seller. The need for continuing technical assistance from the seller made the negotiations easier in this case. Other investors are still negotiating with the government. Hopefully these negotiations can be consummated before the next review of Chile's international debt by the Paris Club at the end of 1972.

We have also had some disappointments in Chile. After one and a half years of tedious negotiations and patient waiting, OPIC hoped to see the consummation of the voluntary sale of Purina de Chile by Ralston Purina to CORFO. Spokesmen for the Chilean Government have publicly referred to the agreement as evidence of their Government's intention to pay full compensation.

The sale has not been closed and OPIC has agreed to pay to Ralston Purina its net investment of $614,000 in the foreign enterprise. OPIC will succeed to the shares and will seek compensation from the Chilean Government. OPIC's hopes grew out of the promises of a sale for cash in contrast to deferred payment, and at an early date in the new administration as a hopeful precedent for other negotiations. We will not speculate as to the reason for the failure of the deal to close. There still may be some hope.

Other OPIC Development Tools

In addition to its political risk insurance, OPIC offers investment surveys, all risk guaranties, and loans from a small direct investment fund. The all risk guaranty is OPIC's principal financial tool. The guaranty is used most frequently to back loans by private United States lenders to the foreign enterprise.

A new development tool is OPIC's direct investment fund. While OPIC cannot take an equity position in an enterprise (in contrast to IFC and competing European agencies) OPIC can use its Direct Investment Fund to take convertible debentures. This authority has most interesting possibilities in meeting the need to encourage joint ventures between United States investors and host country nationals. Similarly, there is a need under the Andean Investment Code for time-phased transfers of ownership from foreign to local hands.

OPIC could sell its convertible debentures to host country nationals, thus increasing local equity participation without costly disinvestment of the United States partners. If there is a shortage of local capital, as is frequently the case, the foreign enterprise could establish an employee benefit plan, either thrift, pension or profit-sharing, and the trustee of the plan could acquire OPIC convertible debentures.

OPIC's management and its unusual private-public board of directors can use these development tools in new and imaginative ways. The selective encouragement of investment, and I emphasize selective, because there is an obvious need to be selective, can achieve United States development objectives, lessen the adverse political impact in the host country, and also make a positive contribution to the United States domestic economy.