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Appendix to American Bar Association Brief in *Banco Nacional de Cuba v. Farr, et al.* (2nd Circuit, C. A. 60-3929-S.D.N.Y.) Provisions in Constitutions, Investment Laws & Treaties of Developing Countries on Compensation for the Taking of Foreign Privately Owned Property

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Appendix to American Bar Association Brief in *Banco Nacional de Cuba v. Farr, et al.* (2nd Circuit, C.A. 60 3929-S.D.N.Y.)

Provisions in Constitutions, Investment Laws, Treaties, etc., of Developing Countries Relating to Compensation for the Taking of Foreign Privately Owned Property*

The purpose of this analysis is to bring together for reference purposes relevant extracts from constitutions, investment laws, treaties, nationalization decrees, agreements, official statements and other documents of ninety less developed countries outside Europe that evidence official acceptance by governments of a duty to pay compensation for the taking of private property owned by foreign interests. The relevance of municipal law in ascertaining a norm of international law is, of course, indicated by Article 38(c) of the Statute of the International Court of Justice. The evidence in this respect is impressive, particularly on the part of the new countries. Not only does their legislation accord with already established principles of customary international law, but they have in many instances entered into treaty commitments which bind them internationally to pay compensation to the nationals of other States.

It appears unnecessary to set out the municipal law data of the developed countries. Accordingly, the material contained in this Appendix is limited to the so-called less developed countries. In all but a few instances of the ninety countries there listed, the recognition of a duty to compensate aliens appears to be clearly established. In the few instances where material is not immediately available, there are no indications of disagreement with the norm. On the contrary, it is believed that further research would establish that these countries also accept it.

The following abbreviations are used, among others:

"Peaslee" for "Peaslee, Constitutions of Nations, 2d ed. (1956)".

"EAMA Codes" for "Codes des Investissements des Etats Africains et Malgache Associés a la CEE," published by the Directorates of Overseas Development and Development Studies of the European Economic Communities in April 1966.

"UN Report on Investment Laws" for "Investment Laws and Regulations in Africa", published by the United Nations in New York, U. N. Publication Sales No.: 65.II.K.3.

AFGHANISTAN

Constitution (1931; I Peaslee, at 22, 23)—

"15. In Afghanistan the movable and immovable property of everyone is protected. In the event of any immovable property being required by Government in the public interest, the value of it will be paid to the owner according to Shariat law and the special code concerned, before it is taken over.

* * * * *

"17. Confiscation of both movable and immovable property is forbidden, with the exception of that belonging to persons residing abroad making propaganda or intrigues against the Afghan Government."

Law Encouraging the Investment of Private Foreign Capital in Afghanistan (Afro-Asian Review, No. 26, p. 27, Nov. 1961)—

* Compiled by G. W. Haight.

"12. In the event that an enterprise shall be nationalized or taken over by the Government in an emergency under the law the Government guarantees to pay the owners equitable compensation. Should a disagreement occur on the amount of this compensation an arbitrator acceptable to both parties shall be called upon to settle this disagreement."

Guaranties—Agreement with the United States, entered into force June 9, 1957 (TIAS 3972). As at June 30, 1966 guaranties against expropriation risks had been issued to Pan American World Airways in the amount of \$200,000.

Miscellaneous—In the U. N. Conference on Trade and Development a representative of Afghanistan said: (E/Conf. 46/STA/42 p. 7):

"We are well aware of the contribution that an influx of private capital can make in speeding up the process of development. My country has already taken steps to clarify and to protect the position of foreign investors. We welcome their participation in our economic development and hope that it will continue."

ALGERIA

Code of Investments (Ordinance No. 66-284 of 15 Sept. 1966, O. J. No. 80, 17 Sept. 1966)—

"Art. 8.—Where the public interest imperatively requires the taking by the State of enterprises benefiting from the provisions of the present Code, such a measure could not be pronounced except by a text of a legislative character. It shall *ipso facto*, by virtue of the present Ordinance, call for the payment with a maximum delay of nine months of compensation equal to the net value, fixed after full argument by experts on both sides, of the property rights taken by the State.

* * * * *

"Such compensation shall be transferable abroad to the country of the beneficiary if the investment has been realized with the assistance of funds imported into Algeria."

Guaranties—No agreement with the United States is listed in "Treaties in Force" on January 1, 1966. As at June 30, 1966, however, guaranties against expropriation risks had been issued in the amount of \$15,750,000.

ARGENTINA

Constitution (May 1, 1853, as amended to 1956; and published by the Pan Am. U. 1960)—

"Article 17. Property is inviolable, and no inhabitant of the Nation can be deprived thereof except by virtue of a sentence founded on law. Expropriation for reasons of public utility must be authorized by law and previously compensated. . . . The confiscation of property is stricken out forever from the Argentine Penal Code. . . ."

Civil Code (Unofficial English translation, see also A Statement of the Laws of Argentina, Pan Am. U. 1963, at 258)—

"2511: Nobody can be deprived of his . . . property except for reasons of public utility, following dispossession and a just indemnization. In this case a just indemnization is understood to mean not only payment of the real value of the object, but

also for the direct damage resulting from being deprived of the property.

"1324: 1-a. Nobody can be obliged to sell, except when legally compelled to do so, which can happen in the following case: When the buyer has the right to buy the object by expropriation, for reasons of public utility."

Expropriation Law (Law No. 13,264 of 22 Sept. 1948, unofficial English translation; see also *A Statement of the Laws of Argentina*, Pan Am. Union, 3rd ed., 1963, at 258, 259)—

"Art. 11. Indemnification shall only comprise the objective value of the property and such damages as are a direct and immediate result of the expropriation. No account shall be taken of personal circumstances, sentimental values, nor hypothetical gains. There will be no indemnification for 'lucrum cessans'. In the case of real estate scenic values will not be taken into account, nor those attached to historic events . . ."

Guaranties—Agreement with the United States dated 22 December 1959, in force May 5, 1961 (TIAS 4799); Protocol provisionally in force June 5, 1963. At June 30, 1966, \$172,722,731 of guaranties against expropriation had been issued by the United States.

Miscellaneous—It is understood that recent claims of oil companies arising out of cancellation of exploration/exploitation contracts have been satisfactorily settled with adequate compensation.

BOLIVIA

Constitution (1945; I Peaslee, at 181)—

"Art. 17. Private property is guaranteed . . . Expropriation is effected for reasons of public utility . . . ; it must be authorized in accordance with the law and upon previous and just indemnity."

Law for the Encouragement of Investments (10 December 1960; unofficial translation)—

"Article Three. These investments shall not be the subject of expropriation and shall receive from the Government a special treatment of stimulus, encouragement and cooperation. If, in exceptional circumstances, and in the highest interests of the State, expropriation should prove to be essential, it shall be effected only subject to payment of the value of the investment in the currency in which it was made."

Guaranties—Agreement in force September 23, 1955 (TIAS 3404); amended March 4, 1964 (TIAS 5548). At June 30, 1966 guaranties in the amount of \$32,422,850 had been issued against expropriation risks.

Miscellaneous—The Minister for Economic Affairs is reported to have said: "that nationalization had proven a failure . . ." (*Journal of Commerce* Feb. 23, 1965).

BOTSWANA

Constitution (in effect 30th September 1966, The Botswana Independence Order 1966, Stat. Instr. 1966 No. 1171)—

"8.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where . . .

(a) the taking of possession or acquisition is necessary or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health,

town and country planning or land settlement . . .

(b) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the High Court, either direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

"(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time . . . , the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Botswana."

BRAZIL

Constitution (1946; transl. Pan Am. U., 1958)—

"Art. 141. The Constitution ensures to Brazilians and foreigners residing in the country the inviolability of rights concerning life, liberty, individual security, and property, in the following terms:

"§ 3. The law shall not prejudice any vested right . . .

"§ 16. The right of property is guaranteed except in case of expropriation for public necessity or utility, or social interest, with previous and fair compensation in money . . ."

Guaranties—Agreement with the United States, in force September 17, 1965. As at June 30, 1966 one guaranty against expropriation risks had been issued for \$1,953,000.

BURMA

Constitution (24 Sept. 1947; I Peaslee, at 279)—

"23. (1) Subject to the provisions of this section, the State guarantees the right of private property and of private initiative in the economic sphere.

"(4) Private property may be limited or expropriated if the public interest so requires but only in accordance with law which shall prescribe in which cases and to what extent the owner shall be compensated."

Investment Act, 1959—

"6. (1) No enterprise shall be nationalized for a period of ten years from the date on which commercial operation commences . . .

"(2) If an enterprise having foreign capital as a part of its investment is nationalized, compensation for the foreign capital so invested shall be paid accordingly in the foreign currency in which such investment was made."

Insurance Companies Nationalization Act of 1951—According to an article by Hla Aung in "Nation" of 1/3/63, this Act provides for payment of "equitable" compensation, which is to be based on the prevailing market value of the property acquired on the date of nationalization. Reference is also made to a Nationalization Ordinance relat-

ing to banks and it is said that this ordinance "provides for payment of compensation to all the nationalized banks".

The Industries Nationalization Law, 1963 (Law No. 33 of 1963, adopted October 19, 1963; III Int. Legal Materials 13, January 1964)—

"3. (1) The Government shall have the authority to nationalize any industry by issuing a notification to that effect.

• • • • •

"5. (1) The Government shall form by notification, an assessment committee . . .

"(2) The assessment committee shall assess and recommend,

"(a) the value and assets of the industry nationalized,

"(b) a fair amount of compensation, and

"(c) the mode of payment."

(For nationalization of the Burma Economic Development Corporation see the New York Times of September 8, 1963; and of the Burma Corporation (1951) Ltd., a silver mining corporation, owned jointly by British interests and the Burmese Government, see the London Times of 19 January 1965 and the Wall Street Journal of the same date.)

BURUNDI

Constitution (This has not yet been obtained)

Code of Investments (Law of 6 August 1963; EAMA Codes, p. 1; III Int. Legal Materials 15, January 1964)—

"Article 2: Acquired rights ("Droits acquis"), in the matter of movable and immovable property, the right of residence and the lawful exercise of an agricultural, industrial or commercial activity are guaranteed to persons and enterprises whatever their nationality, regularly established in Burundi and exercising there an activity of that nature."

CAMBODIA

1956 Constitution (unofficial translation)—

"Article 7. No one can be deprived of his property except for a public purpose, in the situations established by law and on payment of just and previous compensation."

Civil Code (unofficial translation)—

"Article 644. Property is the right to enjoy and dispose of a thing in an absolute manner and by exclusive title, with the sole exception of not using it in a manner prohibited by law.

"Article 645. No one can be forced to surrender his property, except for a public purpose and against just and previous compensation."

Foreign Investment Law (No. 220-NS of 13 Sept. 1957)—

"Foreign capital invested under the conditions provided for in this law shall have the benefit of just and equitable compensation in case of nationalisation or of expropriation for a public purpose.

"A guaranty of 10 to 30 years against the risks of nationalisation or expropriation can be given . . ."

CAMBODON

Investment Law (Law No. 60-64, 27 June 1960; EAMA Codes, p. 8)—Provides for "establishment" agreements for certain approved enterprises and these include:

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"Art. 16 . . .

"b) various guaranties on the part of the Government:—guaranties of stability in the legal, economic and financial domains, as well as of financial transfers and of the commercialization of products . . ."

Treaty—With the United Kingdom (July 29, 1963; TS No. 66 (1963); Cmnd. 2133):

"If one of the Contracting Governments expropriates or nationalises or takes any other confiscatory measures against the property, rights or interests of the nationals, concerns, associations or companies of the other country it shall, in accordance with international law, make provision for the payment of adequate and effective compensation . . ." (Art. V(2)).

Treaty—With the Republic of Germany (Bundesgesetzblatt 1963, No. 26, 3 Aug. 1963):

"The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected and shall be fixed and made without delay; it shall be actually realizable and freely transferable . . ." (Art. 3(2)).

Treaty—With the Swiss Confederation (in force 6 April 1964):

"In case one Party shall expropriate or nationalise the property, rights or interests belonging to nationals, foundations, associations or companies of the other Party, or shall take against such nationals, foundations, associations or companies any other measures of dispossession, it must provide for the payment of effective and adequate compensation, in accordance with international law. The amount of this compensation shall be provided in transferable currency and shall be paid without unjustified delay to the person entitled to it. Moreover, measures of expropriation, nationalisation or dispossession must not be discriminatory nor contrary to a specific undertaking."

CENTRAL AFRICAN REPUBLIC

Constitution—According to the U.N. Report on Investment Laws, the Constitution

"gives a general guaranty in the preamble with regard to property. In case of 'public necessity' fair and just indemnity is legally recognized." (p. 23)

Investment Code (Law No. 62-355 of 19 Feb. 1963; EAMA Codes, p. 13)—

"Art. 3.—Acquired rights (droits acquis) of every nature are guaranteed to enterprises regularly established in the Central African Republic.

"Art. 4.—Within the system of foreign exchange regulation, the State guarantees freedom of capital transfer, particularly:

—of profits regularly audited;

—of funds arising from the transfer or realized upon the cessation of the enterprise."

Treaty—With the Republic of Germany: An investment protection treaty has been signed but is not yet in force.

Guaranties—Agreement with the United States dated December 31, 1964 (TIAS 5747).

CEYLON

Official Statement—Government Policy on Private Foreign Investment (V Int. Legal Materials 591, July 1966):

"Foreign investors will be secure from expropriation and any form of discriminatory treatment. Government has no intention to nationalize any of the private undertakings. If, however, this was to become necessary for overriding considerations in the public interest, prompt, effective and adequate payments will be made to compensate investors for the loss."

Treaty—With the Republic of Germany: An investment protection treaty has been signed but is not yet in force. This includes the following:

"Article 3(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose and against full compensation. It shall be actually realizable, freely transferable, and shall be paid without delay. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law."

Petroleum (Foreign Claims) Compensation Act (V Int. Legal Materials 224, March 1966):

"WHEREAS, under the provisions of the Ceylon Petroleum Corporation Act, certain assets of foreign-owned petroleum companies were vested in, or requisitioned for, the Ceylon Petroleum Corporation:

"And whereas, under the said provisions, such companies were entitled to compensation for such assets . . .

"And whereas disputes and differences as to such compensation arose between the Government and such companies:

"And whereas the Government, being desirous of settling such disputes and differences speedily, entered into agreements with such companies* in regard to such compensation with a view to a full and final settlement of such disputes and differences:

• • • • •

"2. (1) Each petroleum compensation agreement to which this Act applies shall be deemed, at all times, to have been, and to be, duly entered into, notwithstanding anything to the contrary in the provisions of any written law (other than this Act), and accordingly—

"(a) the Minister of Finance, or any person authorized by such Minister in that behalf, shall be deemed, at all times, to have had, and to have, power and authority on behalf of the Government, to have signed such agreement and all documents connected therewith, and to have done and to do all such acts or things as may have and may be necessary for the purpose of entering into and implementing such agreement;"

CHAD

Investment Code (Decree No. 156/PR of 26 Aug. 1963) (EAMA Codes, at 146)—

"Art. 2.—Acquired rights of every nature are guaranteed to enterprises regularly established in Chad.

"Art. 3.—Within the framework of exchange regulations the State guarantees freedom of capital transfers, particularly:

Of regularly audited profits;

Of funds realized from the transfer or cessation of the enterprise.

• • • • •

"Art. 44.—The agreement of establishment will specify in particular:

"(a) its length;

"(b) general conditions of exploitation . . .

"(c) various guaranties on the part of the State, in particular:

"Stability of certain legal, economic and financial conditions, in particular as regards transfers of funds and non-discrimination in the area of legislation and regulation applicable to companies . . .

"Art. 45.—Settlement of differences arising out of the interpretation and application of the provisions of the agreement and eventual determination of the compensation due for breach of undertakings, can be made the object of an arbitration procedure . . ."

Note: It is stated in the U. N. Report on Investment Laws that

"There is no specific regulation in the Investment Code on Nationalization. The ordinary law of Chad guarantees fair compensation except in cases where a particular property or industry is sequestered by the Government for 'special reasons'."

Guaranties—Agreement with the United States, in force May 12 1965 (TIAS 5812).

CHILE

Constitution (translation issued by Pan American Union, 1957)—

"Article 10. The Constitution ensures to all the inhabitants of the Republic:

• • • • •

"(10) Inviolability of all property, without any distinction.

"No one can be deprived of property under his control, nor of any part thereof, nor of the right he may have therein, except by virtue of a judicial decree or a writ of expropriation on account of public interest, conformable to a law. In this case indemnification, as may be agreed on, or as may be fixed by appropriate court proceedings, shall be paid the owner in advance."

Treaty with the Republic of Germany—has been signed, but is not yet in force.

Guaranties—Agreement with the United States dated July 29, 1960, in force February 15, 1961 (TIAS 4707). As of June 30, 1966 guaranties of \$51,843,441 had been issued against expropriation risks.

Miscellaneous—The representative of Chile in the United Nations Commission on Permanent Sovereignty on 19 May 1959 said that his Government "had encouraged and protected foreign capital" and that it should be "clearly understood that the State could expropriate and nationalize (natural) resources provided that its acts were in

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* See IV Int. Legal Materials 1074, November 1965.

accordance with its laws, were non-discriminatory and the owner was paid appropriate advance compensation . . . (A) State could not . . . disregard the acquired rights of persons or corporations, whether they were its own nationals or aliens."

REPUBLIC OF CHINA

Constitution (1947; I Peaslee, at 516)—

"Art. 15. The right of . . . property shall be guaranteed to the people."

Treaty—With the United States (in force Nov. 30, 1948, TIAS 1871):

"Article VI . . . 2. The property of nationals, corporations and associations of either High Contracting Party shall not be taken within the territories of the other High Contracting Party without due process of law and without the prompt payment of just and effective compensation . . ."

Guaranties—Agreement in force June 25, 1952 (TIAS 2567); amended December 30, 1963 (TIAS 5509). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$43,095,441.

COLOMBIA

Constitution (I Peaslee, at 544; Wurfel, Foreign Enterprise in Colombia, at 364)—

"Art. 30. Private property and other rights acquired under just title, in accordance with the civil law, by natural or juridical persons, are guaranteed . . . For reasons of public utility or of social interest defined by the legislature, there may be expropriation by judicial order and after indemnification.

"Art. 34. The penalty of confiscation may not be imposed."

Civil Code—Arts. 852-61 govern expropriation procedures, including the appointment of appraisers to determine the amount of compensation; from 1890 to 1956 there were 46 different laws authorizing expropriation with compensation for specific public purposes (Wurfel, Foreign Enterprise in Colombia (1965), at 365, 366).

Guaranties—Agreement in force October 5, 1962 (TIAS 5210). As at June 30, 1966, \$71,406,701 of guaranties had been issued against expropriation risks.

Miscellaneous—In 1958 the Supreme Court of Colombia held that a law confiscating the property of German nationals in Colombia during World War II as an offset for war damage claims against Germany was unconstitutional (Wurfel, *op. cit.*, and Eder 54 American Journal of International Law 159 (1960)).

Treaty—With the Republic of Germany was signed on June 11, 1965, but is not yet in force.

CONGO (BRAZZAVILLE)

Investment Code (Law No. 39/61 of 20 June 1961; EAMA Codes, p. 26)—

"Article 2—In the system of exchange regulation, the State guarantees freedom of capital transfers, particularly:

- of profits regularly audited;
- of capital realized upon the transfer or cessation of the enterprise."

Treaty—With Switzerland, dated 12 February, 1963, in force 11 July, 1964:

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"Article 7—Protection of Investments . . .

In the case where one Party shall expropriate or nationalise the property, rights or interests belonging to nationals, foundations, associations or companies of the other Party or held indirectly by such nationals, foundations, associations or companies, or shall take against such nationals, foundations, associations or companies any other direct or indirect measures of dispossession, it must provide for the payment of effective and adequate compensation, in conformity with public international law. The amount of this indemnity which must be fixed at the time of the expropriation, nationalisation or dispossession, shall be provided in transferable currency and shall be paid without unjustified delay to the person entitled to it, whatever may be his place of residence. However, measures of expropriation, nationalisation or dispossession must be neither discriminatory nor contrary to a specific undertaking."

Treaty—with the Republic of Germany, signed but not yet in force.

Guaranties—Agreement with the United States, entered into force September 1, 1962 (TIAS 5183).

CONGO (LEOPOLDVILLE)

Constitution (adopted by popular referendum 10 July, 1964)—

"Article 43.—Property rights, which have been acquired by virtue of customary or written law, are guaranteed in accordance with national laws.

"No one can be deprived of his movable or immovable property justly acquired in any region of the territory of the Republic except for motives of general interest and by virtue of a national law providing for the previous payment of equitable compensation with the right for the interested party, in the event of a dispute, to require the tribunals of the judicial order to adjudicate his rights and to fix the amount of the compensation . . .".

Code of Investments (Decree-Law of 30 August, 1965; EAMA Codes, at 41)—

"Art. 5.—No direct or indirect measure of expropriation or dispossession of private property, resulting in the transfer of the property or of the management of goods, can be taken except in the general interest, in the case and manner provided by law, and after payment of equitable compensation. "When this compensation shall be due to a foreign physical or juridical person it will be convertible in the money of the country of the person entitled to it."

Treaty—with the Republic of Germany, initialed 21 September, 1963, but not yet in force.

Guaranties—Agreement with the United States entered into force November 17, 1962 (TIAS 5308). As at June 30, 1966 guaranties had been issued to Pluswood Industries against expropriation risks in the amount of \$475,000.

COSTA RICA

Constitution (Promulgated Nov. 7, 1949; A Statement of the Laws of Costa Rica, Annex II, Pan Am. Union, 1961)—

"Article 45. Property is inviolable; no one may be deprived of what is his except for legally proven public interest after compensation in accordance with the law."

Treaty—with the Swiss Confederation, in force 8 August, 1966.

Guaranties—Agreement with the United States in force February 23, 1955 (TIAS 3201). As at June 30, 1966 guaranties in a total amount of \$16,407,568 had been issued against expropriation risks.

CUBA

Treaty—with Japan, in force July 20, 1961, provides:

"Article IV. Property of nationals and companies of either Party shall not be taken within the territory of the other Party except for a public purpose, nor shall it be taken without just compensation. In all the matters dealt with in this Article, nationals and companies of either Party shall receive, within the territory of the other Party, treatment no less favourable than that accorded to nationals and companies of any third country."

CYPRUS

Constitution (signed 6th April, 1960; Cmd. 1093, July, 1960, at 91)—

"Article 23—

"1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, minerals and antiquities is reserved.

"2. No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

• • • • •

"4. Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only—

"(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and

"(b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and

"(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil court."

DAHOMY

Investment Code (Law No. 61-53 of 31 December 1961; EAMA Codes at 58; U. N. Report on Investment Laws at 31, also para. 68, p. 9)—

"Article 2.—The Republic of Dahomey, desirous of seeing private investments flow to the national development, in accord with the Law and the public order, guaranties to enterprises established or about to be established there:

—equitable compensation, in the event of expropriation;

—non-discrimination as between nationals and foreign nationals as regards the law;

—in the area of exchange control, freedom to transfer profits regularly audited, and capital realized upon the transfer or cessation of the enterprise . . .".

Treaty—with the Swiss Confederation, signed 6 April, 1966, but not yet in force.

Guaranties—Agreement with the United States in force March 13, 1965 (TIAS 5837).

DOMINICAN REPUBLIC

Constitution (A statement of the Laws of the Dominican Republic, 2d ed., Pan Am. Union, 1958)—

"Art. 8 . . . the following standards are fixed:

"9. The right to own property. However, for justifiable reasons of public benefit or social security, property may be taken after just compensation . . . a general confiscation of property is prohibited, except as a punishment for persons guilty of treason or espionage . . .".

Treaty—with the Republic of Germany, dated 23 December, 1957, now in force, provides for the payment of just compensation where property is taken.

Guaranties—Agreement with the United States entered into force May 2, 1962 (TIAS 5005). As at March 31, 1966 guaranties against expropriation risks had been issued in the amount of \$7,535,000.

ECUADOR

Constitution (Promulgated 1947, as amended to Oct. 25, 1960; transl. Pan Am. Union, 1961)—

"Article 183. The right to own property is guaranteed . . . Confiscation of property is prohibited, and if this happens to take place, it shall not cause any change in the rights of the injured party nor in prescription of any kind, and a summary action for damages shall originate against the authority that ordered the confiscation and against the State. "No one may be deprived of property rights nor of the possession of his property, except by virtue of a judicial order or of expropriation, legally carried out, for public benefit."

Code of Civil Procedure (A Statement of the Laws of Ecuador, Supplement No. 1, Pan Am. Union, 1958)—It is said that this Code provides that expropriation may be accomplished only by due process of law. A petition for expropriation must show the assessed valuation for two years preceding the petition. In addition, the judge appoints appraisers who evaluate the property and the judgment fixes the price to be paid.

Treaty—with the Republic of Germany has been signed but is not yet in force. It provides for compensation equal in value to property expropriated.

Guaranties—Agreement with the United States entered into force on March 29, 1955 (TIAS 3230), amended Sept. 4, 1963 (TIAS 5426). As at June 30, 1966, \$17,826,475 of guaranties against expropriation risks had been issued.

EL SALVADOR

Constitution (transl. issued by Pan Am. Union, 1961)—

"Art. 138. Property may be expropriated for reasons of legally proven public utility or social interest, and after due compensation . . .

"Whenever justifiable, the amount of compensation fixed for expropriated property, in accordance with the preceding paragraph, may be paid in installments over a period not to exceed twenty years . . .

"Confiscation of property is prohibited . . ."

Treaty—with Japan, in force July 1, 1964 (IV Int. Legal Materials 477, May 1965)—

"ARTICLE IV. Property of nationals and companies of either Party shall not be taken, within the territory of the other Party, except for public purpose and with just compensation in conformity with the provisions of the Constitution and laws of such other Party. In all the matters dealt with in this Article, nationals and companies of either Party shall receive, within the territory of the other Party, treatment no less favourable than that accorded to nationals and companies of the said Party or any third country."

Guaranties—Agreement dated 29 January 1960, entered into force April 8, 1960 (TIAS 4459). As at June 30, 1966 guaranties in the amount of \$5,458,353 had been issued against expropriation risks.

ETHIOPIA

Constitution (Revised Constitution, 1955)—

"Art. 44. Everyone has the right, within the limits of the law, to own and dispose of property. No one may be deprived of his property except upon a finding by ministerial order pursuant to the requirements of a special expropriation law enacted in accordance with the provisions of art. 88, 89 or 90 of the present constitution, and except upon payment of just compensation determined, in the absence of agreement by juridical procedures established by law . . ."

Decree to Provide for the Encouragement of Capital Investment (Decree No. 51 of 1963; III Int. Legal Mat. 41, Jan. 1964)—

"Whereas, the increased investment of private capital, both foreign and domestic, is vital to the accelerated growth and development of the economy of the Empire of Ethiopia . . ."

Treaty—with the United States, entered into force October 8, 1953:

"Article VIII . . .

"2. Property of nationals and companies of either High Contracting Party including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just and effective compensation."

Treaty—with the Republic of Germany, signed, but not yet in force.

Official Statement—In the Second Committee of the Seventh Session of the General Assembly (1952) the delegate of Ethiopia said that:

"It was a government's right, when necessary to delimit the public and private sectors of the economy and, to promulgate laws to regulate them. A government's

right to nationalize undertakings could not be disputed. But, if a government exercised that right it must also assume responsibility for the consequences of its policy, such as the payment of compensation." (A/C.2/SR.235, para. 20).

Guaranties—Agreement with the United States entered into force August 3, 1962 (TIAS 5134).

GABON

Code of Investments (Law No. 55 of 4 December 1961; EAMA Codes at 78)—

"Article 2.—Acquired rights ("droits acquis") of every nature are guaranteed to enterprises regularly established in Gabon."

Convention—between Cameroon, Central African Republic, Republic of the Congo, Gabon, and Chad:

"Article 1.—Acquired rights of every nature are guaranteed to enterprises regularly established in the countries forming part of the Customs and Economic Union of Central Africa hereinafter called the "Union".

"Article 2.—Within the system of their exchange regulations, States of the Union guarantee freedom of transfer:

- a) of capital
- b) of profits regularly audited
- c) of funds arising from the transfer or cessation of the activity of the enterprise."

Guaranties—Agreement with the United States entered into force April 10, 1963 (TIAS 5328). As at June 30, 1966 Morgan Guaranty had been insured against expropriation risks for \$244,440.

GAMBIA

(No information has yet been obtained)

GHANA

Constitution—(to be obtained)

Capital Investment Act (Act 172 of 19 April 1963; II Int. Legal Materials 666, July 1963)—

"8. (1) Subject to the provisions of this section, no investment under this Act shall be subject to expropriation by the Government.

"(2) Where, however, in exceptional circumstances an approved project is taken over in the public interest, the Government shall pay fair compensation for the takeover in the currency in which the investment was originally made.

"(3) Where there is a dispute as to the amount of compensation payable under this section, the matter shall be referred to an arbitrator appointed by the parties and failing such appointment to arbitration through the agency of the International Bank for Reconstruction and Development."

Guaranties—Agreement with the United States entered into force September 30, 1958 (TIAS 4121). As at June 30, 1966 Parker House Sausages Company had been guaranteed against expropriation risks in the amount of \$420,000.

GUATEMALA

Constitution (2nd February 1956; transl. issued by Pan Am. Union, 1960)—

"Article 124. The right of private property is guaranteed. The State shall assure to the owner thereof the conditions which are indispensable for the development and utilization of his property . . .

"Article 125. In specific cases private property may be expropriated for duly proved reasons of collective utility, social benefit or public interest. Expropriation shall be subject to procedures established by law and the property shall be fairly appraised by experts on the basis of its current value . . .

"Compensation for expropriation must be paid in advance and in cash . . .

"Article 126. All persons may freely dispose of their property according to law.

"The State shall in no way limit ownership of property because of political offenses. Confiscation of property is prohibited."

Civil Code (translation obtained privately)—

"Article 388.—Ownership is inviolable . . .

"Article 391.—No one may be compelled to cede or transform his property nor to permit others to make use of it . . . Regulations relating to expropriation and transformation in the public interest are determined by special laws."

Expropriation Law (Decree No. 529 as amended by Presidential Decree No. 277)—

"Article 5.—All classes of property, whether commercial or otherwise, may be expropriated for reasons of public utility or necessity or in the interest of society.
• • • • •

"Article 10.—Compensation must include payment to the owner of the value of the property and all damages, depreciations and expenses arising from expropriation.

"Article 11.—Compensation must be fixed in cash unless expropriator and expropriated agree to some other form of payment.

"Article 12.—Where there is no agreement between the parties, the compensation shall be determined by experts who shall take the following into account when making their assessment:

"(a) In the case of immovables:

"I. The value of the property as stated in the fiscal register . . .
• • • • •

"(b) In the case of property other than immovable property:

"I. The reciprocal offers between expropriator and expropriated;
and

"II. The evidence produced by each party.
• • • • •

"Article 18.—Compensation must be made prior to expropriation of the property . . ."

Guaranties—Agreement in force August 29, 1962 (TIAS 5158). As at June 30, 1966 guaranties in the amount of \$2,772,000 had been issued against expropriation risks.

GUINEA

Investment Code (Law No. 50 AN/62) (U.N. Report on Investment Laws, at 38)—According to the U.N. Report on Investment Laws this Code provides that "foreign capital shall enjoy protection and necessary security within the framework of and with due regard to the laws and regulations." It is said that the "guarantee extends to legal persons who are responsible for investment of foreign capital", and that they are protected against "dispossession under the ordinary law".

Treaty—with the Republic of Germany, in force 5 March, 1964:

"Article 3 . . .

"(2) Nationals and companies of one Contracting Party cannot be expropriated of their investments on the territory of the other Contracting Party except for a public purpose and against compensation. The compensation must correspond to the value of the investment at the time of expropriation, must be effectively realizable, freely transferable and must be paid without delay."

Treaty—with the Swiss Confederation, in force 29 July, 1963:

"Article 7—*Protection of Investments* . . .

"In case one Party shall expropriate or nationalise the property, rights or interests belonging to nationals, foundations, associations or companies of the other Party or held indirectly by such nationals, foundations, associations or companies, or shall take any other direct or indirect measures of dispossession against such nationals, foundations, associations or companies, it must provide for the payment of effective and adequate compensation, in accordance with international law. The amount of such compensation, which must be fixed at the time of expropriation, nationalisation or dispossession, shall be paid in transferable currency and without unjustified delay to the person entitled to it, whatever his place of residence may be. However, measures of expropriation, nationalisation or dispossession must not be either discriminatory or contrary to a specific undertaking."

Guaranties—Agreement with the United States in force May 9, 1962 (TIAS 5052). At March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$103,600,000.

GUYANA

Constitution (in effect 26th May, 1966; H.M.G. Stat. Instr. 1966 No. 575, The Guyana Independence Order 1966)—

"8.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that acquisition or taking of possession is made by a written law—

"(a) requiring the prompt payment of adequate compensation; and

"(b) giving to any person claiming such compensation a right of access, either directly or by way of appeal, for the determination of his interest in or right over the property and the amount of compensation, to the High Court."

HAITI

Constitution (November 25, 1950; I Peaslee, at 130)—
“Art. 8 . . .

“The right to own real property is . . . accorded to . . . foreign companies for the needs of their agricultural, commercial, industrial, or educational enterprises . . .

“Art. 15. The right to own property is guaranteed, although expropriation for a legally-established reason of public use may take place in consideration of the payment or appropriation of a just and prior indemnity by judgment of court to the order of the person entitled thereto.”

Guaranties—Agreement with the United States entered into force April 2, 1953 (TIAS 2818). At March 31, 1966, guaranties has been issued against expropriation risks in the amount of \$10,879,306.

HONDURAS

Constitution (A Statement of the Laws of Honduras, Pan Am. Union 1959)—

“Art. 154. The State recognizes, promotes, and guarantees private property.

“Art. 155. No one may be deprived of his property except by virtue of a law or by a judgment based on law.

“Art. 156. The expropriation of property on grounds of public need or benefit must be accomplished through a law or a judgment based on law, and shall not take place without prior compensation.”

Expropriation Decree (No. 113 of April 9, 1914)—According to the Pan Am. Union Statement (p. 204) this provides that the requirements for expropriation are (a) a declaration of public necessity; (b) a declaration that all or a part of the property is required; (c) a fair price; and (d) payment of this price representing indemnity compensation.

Guaranties—Agreement with the United States entered into force June 10, 1955 (TIAS 3270). As at June 30, 1966, guaranties against expropriation risks had been issued in the amount of \$30,473,000.

INDIA

Constitution (Nov. 26, 1947; II Peaslee, at 223)—

“31. (1) No person shall be deprived of his property save by authority of law.

“(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.”

Treaty—with Iran, signed at Teheran December 15, 1954 (Tadashi Kikuchi, Observations on the Contents of Treaties of Commerce and Navigation, Tokyo 1965, at 70):

“Art. 3. The properties of the nationals of either contracting party in the territory of the other shall receive lawful protection. The properties, of whatsoever description, of the nationals of either contracting party shall not be seized or confiscated except for public purposes and only if real and just com-

pensation is given to them for such expropriation. Reasonable facilities will be given for remittance of compensation payable on expropriation.”

Treaty—Agreement with the Republic of Germany evidenced by an exchange of letters dated October 15, 1964 (5 Indian J. of Int. Law 91, Jan. 1965):

“Considering that

the Government of India welcome private foreign investment particularly in industry in accordance with the priorities established in their Plans, and have been following a policy intended to encourage such investment;

it has been the policy of the Government of India freely to allow transfer of profits, interest, dividends, royalties, and of repayment of loans after payment of taxes as well as repatriation of the proceeds of liquidation;

the Government of the Federal Republic of Germany are actively promoting German private investments abroad by offering loans and tax concessions to intending German investors, and by issuing Federal guarantees;

in all matters relating to such investments the Government of the Federal Republic of Germany intend in similar circumstances, to give investments in India a treatment no less favourable than that accorded to investments in any other country; an understanding has been reached as a result of these discussions, which may be summed up as follows:

“1. The Government of India welcome the steps taken by the Government of the Federal Republic of Germany and agree that the following provisions shall apply to German assets, including those from Land Berlin, in India provided the investment of such assets has been approved on or after the 15th October, 1964, in accordance with the Indian laws referred to in paragraph 2, and the rules and regulations framed thereunder (hereinafter referred to as ‘investments’):

“(d) The Government of India do not intend, as a rule, to nationalize or expropriate approved foreign investments. Any decision to nationalize or expropriate a German investment or part of it taken by the Government of India shall be based on practical considerations and be taken in the national interest. In the event of a German Investor being directly or indirectly deprived of his investment by nationalisation or expropriation, the Government of India shall pay fair and equitable compensation and shall permit its effective transfer without undue delay.”

Note—See S. C. Dash, “The Constitution of India” (1960), pp. 395-405.

Guaranties—Agreement with the United States entered into force September 19, 1957 (TIAS 3900), as amended December 7, 1959 (TIAS 4368). As at June 30, 1966, guaranties against expropriation risks had been issued in the amount of \$95,889,767.

INDONESIA

Nationalization Decree (Act No. 86 of 1958—unofficial translation)—

“Article 1. Dutch-owned enterprises within the territory of the Republic of Indonesia, which will be determined by Government Ordinance, are nationalized and declared full and free property of the State of the Republic of Indonesia.

"Article 2. (1) The owners of the enterprises referred to in article 1 will be given compensation, the amount of which will be determined by a Committee whose members are appointed by the Government."

Treaty—with Japan, in force March 8, 1963 (II Int. Legal Materials 706, July 1963):

"Article IV. Property of nationals and companies of either Party shall not be taken within the territory of the other Party except for a public purpose, nor shall it be taken without just compensation in accordance with the laws and regulations of such other Party. In all the matters dealt with in this Article, nationals and companies of either Party shall receive, within the territory of the other Party, treatment no less favourable than that accorded to nationals and companies of any third country."

Agreement with P. T. Shell Indonesia (Platt's Oilgram News Service, Jan. 20, 1966)—provides for the payment of \$110,000,000, in secured instalments of dollars in New York over five years, for exploration, production and manufacturing assets and inventories.

Official Statement—by the representative of Indonesia in the Second Committee of the Seventeenth General Assembly on November 22, 1962 (A/C.2/SR. 850):

"So far as Indonesia was concerned, sovereignty over its natural resources was an inalienable principle laid down in its Constitution. However, as it wished to obtain the help of foreign private capital because of its inability to secure all the assistance it would like to have in the form of public loans, it had worked out a system of profit-sharing which eliminated fears for the safety of investments.

"... the Commission on Permanent Sovereignty over Natural Resources had been instructed to protect the interests of developing countries. It was therefore from that standpoint that the Commission's draft resolution should be studied. The draft resolution defined the principle of sovereignty in appropriate terms with due regard for the rules of international law and the need to promote economic co-operation between countries. It was therefore quite in keeping with the wishes of the General Assembly and would receive the support of the Indonesian delegation."

IRAN

Constitution (October 8, 1907; II Peaslee, at 403)—

"Art. 6. The life and property of foreigners resident in Iran are secured and guaranteed except in those cases in which the laws of the realm make exceptions.

"Art. 15. No owner can be deprived of his land except by sanction of the Sheri, and then even only after the fixing and payment of a just price."

Treaty—with India, signed at Teheran December 15, 1954 (Tadashi Kikuchi, *Observations on the Contents of Treaties of Commerce and Navigation*, Tokyo 1965, at 70):

"Art. 3. The properties of the nationals of either contracting party in the territory of the other shall receive lawful protection. The properties, of whatever description, of the nationals of either contracting party shall not be seized or confiscated except for public purposes and only if real and just compensation is given to them for such expropriation. Reasonable facilities will be given for remittance of compensation payable on expropriation."

Treaty—with the United States, entered into force June 16, 1957 (TIAS 3853):

"Article IV

"2. Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken . . ."

Treaty—With the Republic of Germany, signed 13 February, 1964, but not yet in force.

"Article 3

"(2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected, it shall be actually realizable, freely transferable, and shall be made without delay . . ."

Treaty—With the United Kingdom, signed 11 March 1959, but not yet in force (Comm. 698, March 1959).

Guaranties—Agreement with the United States entered into force September 24, 1957 (TIAS 3913). As at June 30, 1966, guaranties in the amount of \$50,253,375 had been issued against expropriation risks.

IRAQ

Constitution (March 21, 1925, as amended 29th July, 1925, and 27th October, 1943; II Peaslee, at 415)—

"Art. 10. Rights of ownership shall be safeguarded. No person's goods or property shall be expropriated except for the public benefit, and in the circumstances and in the manner prescribed by law, and on condition that just compensation is paid."

Nationalization Measure (Law No. 99 of 14 July, 1964; III Int. Legal Materials 938, Sept. 1964)—

"Article One: All insurance and re-insurance companies in Iraq shall be nationalized. The companies and establishments mentioned in the attached list shall also be nationalized and their ownership shall be transferred to the State.

"Article Two: The shares of the companies and the capital of the establishments referred to above, shall be transferred to State nominal bonds per annum payable fifteen years after the date of promulgation of this law at an interest of 3% per annum. The bonds are transferable and the Government may amortize all or part of these bonds at the nominal value by means of drawing lots in public.

"Article Three: The nationalization price per share shall be fixed in accordance with the latest stock index with the Rafidain Bank, or on the basis of the book value of the net assets on the day of the issuance of this law, whichever is less."

NOTE: The method of compensation provided for in

Article Two of the above Law was never applied to foreign companies. The bonds referred to were never issued because the Iraqi government paid all claims of the foreign claimants directly and in cash. It is understood that foreign claimants were satisfied without the intervention of their own governments.

Nationalization Measure (Law No. 100 of 14th July 1964; III Int. Legal Materials 942, Sept. 1964)—

"Article One: All non-government banks operating in Iraq, including branches of foreign banks shall be nationalized, and their ownership transferred to the State including all the movable and immovable property registered in their names or the name of their headquarters abroad in the case of foreign banks.

• • • • •

"Article Three:

- A. Shareholders of nationalized Iraqi banks and headquarters of nationalized branches of foreign banks operating in Iraq shall be compensated with nominal bonds of the State repayable fifteen years from the date of publication of this law at an interest of 3% per annum; these bonds shall be transferable.
- B. The government may amortize these bonds in full or in part at the nominal value by means of drawing lots in public at any time it so desires.

"Article Four:

Nationalization value for every share of the nationalized banks shall be fixed according to the last stock index of Rafidain Bank, or according to book value of net assets on the day of nationalization, whichever is the lesser."

Agreement with Kuwait—On 8 July 1966 The Financial Times, London, reported that Iraq and Kuwait had ratified an agreement for capital investment and for the expansion of trade and economic cooperation between them; and that this agreement provided that

"invested capital cannot be confiscated, except in the public interest. In such circumstances fair and adequate compensation should be paid to investors."

This was said to mean that Kuwaiti investments in Iraq would be guaranteed against nationalization, the July 1964 socialist measures in Iraq having discouraged foreign investment.

IVORY COAST

Investment Code (Law No. 59.134 of Sept. 1959; EAMA Codes, at 49)—

"Art. 10 The regulation of the settlement of differences arising from the application of provisions of an establishment agreement and the eventual determination of the compensation due for a breach of undertakings can be made the object of an arbitration proceeding, the procedures for which shall be fixed in each agreement."

Treaty—With the Swiss Confederation in force 18 November 1962:

"Article 8 . . .

"Where one Party expropriates or nationalises the property, rights or interests belonging to nationals, foundations, associations or companies of the other Party or takes against such nationals, foundations, associations direct or indirect measures of dispossession, it must provide for the payment of effective and ade-

quate compensation, in conformity with international law. The amount of this compensation which must be fixed at the time of expropriation, nationalisation or dispossession, shall be provided in transferable currency and paid without unjustified delay to the person entitled to it, whatever may be his place of residence. However, measures of expropriation, nationalisation or dispossession must not be either discriminatory or contrary to a specific undertaking."

Treaty—With the Netherlands, ratified by the Netherlands 24 March 1966, but not in force pending exchange of instruments of ratification:

"Article 5—Where one Party expropriates or nationalises the property, rights or interests belonging to physical or legal nationals of the other Party or proceeds to take against them a direct or indirect measure of dispossession, it must provide for the payment of effective and adequate compensation, in conformity with international law.

"The amount of this compensation, which must be fixed at the time of the expropriation, nationalisation or dispossession, shall be provided without unjustified delay to the person entitled to it and immediately transferred. However, measures of expropriation, nationalisation and dispossession must neither be discriminatory nor contrary to a specific undertaking."

Guaranties—Agreement with the United States in force April 21, 1962 (TIAS 5561). At March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$2,881,070.

JAMAICA

Constitution (Jamaica (Constitution) Order in Council 1962; H.M.G. Stat. Instr. 1962 No. 1550)—

"19—(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under the provisions of a law that—

- (a) requires the making of compensation therefor; and
- (b) secures to any person claiming an interest in or right over such property a right of access to a court for the purpose of—
 - (i) establishing such interest or right (if any);
 - (ii) determining the amount of such compensation (if any) to which he is entitled under the law; and
 - (iii) enforcing his right to any such compensation . . ."

Guaranties—Agreement with the United States in force Jan. 4, 1963 (TIAS 5270). At March 31, 1966, investment guaranties against expropriation risks had been issued in the amount of \$338,792.

JORDAN

Constitution (January 1, 1952; II Peaslee, at 527)—

"11. No property may be expropriated except for purposes of public utility and on payment of fair compensation as may be prescribed by the law."

Guaranties—Agreement with the United States in force September 24, 1956 (TIAS 3663), amended 1957 and 1958 (TIAS 4012) and June 25, 1963 (TIAS 5395). At March 31, 1966, investment guaranties against expropriation risks had been issued in the amount of \$8,000,000.

KENYA

Constitution (IV Int. Legal Materials 244, March 1965; the Kenya Independence Order in Council 1963, H.M.G. Stat. Instr. 1963 No. 1968)—

"19. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

"(a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

"(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

"(c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

"(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for—

"(a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

"(b) the purpose of obtaining prompt payment of that compensation . . .

"(4) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any payment of that compensation, the whole of that payment (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya."

Foreign Investments Protection Act (No. 35 of 1964) (IV Int. Legal Materials 241, March 1965)—

"8. No approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt payment of compensation contained in Section 19 of the Constitution of Kenya and reproduced in the Schedule to this Act."

Treaty—with the Republic of Germany, signed but not yet in force.

Guaranties—Agreement with the United States in force April 20, 1964 (TIAS 5573). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$4,960,000.

KOREA

Constitution (July 12, 1948; II Peaslee, at 550)—

"Art. 15. The right of property shall be guaranteed . . . Expropriation, use or restriction of private property for public purposes shall be accompanied by due compensation in accordance with the provisions of law."

Foreign Investment Encouragement Law (No. 532, of Jan. 1, 1960) (Nat'l For. Trade Council, Bull. No. M-631, Mar. 1960)—

"Article 32. (Expropriation of Registered Enterprises)

"1. The assets of registered enterprises under this Law shall not be subject to any compulsory expropriation or any form of compulsory transfer of ownership, except appropriation by the Government for a public purpose.

"2. In the event of the expropriation of the assets under the preceding paragraph by the Government, just compensation shall be paid for in accordance with the provisions of the laws. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken.

"3. The investor shall have the right to remit abroad without delay any sums of money received as payment for action taken under this Article free of taxes or fiscal charges.

"Article 33. (Requisition of Registered Enterprises)

"1. Registered enterprises shall not be subject to requisition, except in the event of a state of war or national emergency, and only for the duration thereof.

"2. In the event of requisition, the investor shall receive fair compensation, remittable in the foreign currency of the original investment, for the use of his assets.

"3. The amount of compensation under the preceding paragraph shall be determined by mutual agreement between the Korean Government and the investor. In the event of disagreement, such compensation shall be determined by arbitration as provided for in Article 36.

"Article 35. (Expropriation and Compensation during Armed Conflict)

"1. In the event the private property, rights and interests of a foreign national invested under provisions of this Law are expropriated during a period of armed conflicts, the determination and performance of compensation shall be deferred until after the cessation of armed conflict.

"2. In the event of such expropriation, the amount to be paid will be the fair value of the property, rights and interests at the time of taking, but in no event less than the amount of the registered foreign capital plus the amount which was invested by the foreign investor in Korean currency. Such amounts will be paid within one year after the cessation of armed conflict, under the provisions of Article 36. It is understood, however, that in such cases the investor may be represented by his own Government or by another Government representing the interests of his own Government."

Treaty—With the United States, in force November 7, 1957 (TIAS 3947):

"Article VI . . .

"4. Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof."

Treaty—With the Republic of Germany, signed but not yet in force.

Guaranties—Agreement with the United States in force February 19, 1960 (TIAS 4431). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$69,472,047.

KUWAIT

Constitution (per Rescript of 11 Nov. 1962; see Habachy, Constitutional Government in Kuwait, Columbia Journal of Transnational Law 116)—

"Article 18

"No property shall be expropriated except for reasons of public utility in the cases specified by law and in the manner indicated therein, provided that just compensation is paid therefor."

Agreement with Iraq—On 8 July 1966, The *Financial Times*, London, reported that Iraq and Kuwait had ratified an agreement for capital investment and for the expansion of trade and economic cooperation between them, and that the agreement provides that "invested capital cannot be confiscated, except in the public interest. In such circumstances fair and adequate compensation should be paid to investors."

LAOS

Guaranties—Agreement with the United States in force December 29, 1964 (TIAS 5746). As at March 31, 1966, one guaranty had been issued against expropriation risks in the amount of \$1,500,000.

LEBANON

1926 Constitution (as amended to January 21, 1947) (II Peaslee, at 573)—

"Art. 15. Property is under the protection of the law. No one may be deprived of his property except for reasons of public utility, in the cases established by the law and upon just and previous indemnity."

Treaty—Note dated 8 September, 1944, from the Minister for Foreign Affairs to the U. S. Diplomatic Agent in Beyrouth:

"the existing rights of the United States and its nationals particularly as set forth in the Treaty of 1924 between the United States and France are fully recognised and will be effectively continued and protected . . ." (58 Stat. 1494)

The Treaty of August 13, 1924, provided:

"Article 3.

"Vested American property rights in the mandated territories shall be respected and in no way impaired."

LESOTHO

Constitution (in effect 4th October 1966, The Lesotho Independence Order 1966, H.M.G. Stat. Instr. 1966 No. 1172)—

"16.—(1) No property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

"(a) the taking of possession or acquisition is necessary in the interests of defense, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit; and

"(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

"(c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

"(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

"(a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and

"(b) the purpose of obtaining prompt payment of that compensation . . .".

LIBERIA

Constitution (July 26, 1847, as amended to May, 1955; II Peaslee, at 586; U.N. Report on Investment Laws, at 44)—

"Sec. 13. Private property shall not be taken for public use without just compensation."

Treaty—with the United States, in force Nov. 21, 1939 (TS 956).

Treaty—with Switzerland, in force 22 Sept., 1964.

Treaty—with the Republic of Germany, signed 12 December, 1961, but not yet in force.

Guaranties—Agreement with the United States in force September 12, 1960 (TIAS 4571). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$20,757,625.

LIBYA

Constitution (as revised 8 December 1962 and 25 April 1963; U.N. Report on Investment Laws, at 46)—

"Article 50. Property shall be inviolable. No owner may be prevented from disposing of his property except within the limits of the law. No property of any person shall be expropriated except in the public interest and in the cases and in the manner determined by law and provided such person is awarded fair compensation."

Royal Decree—Investment of Foreign Capital (30th January 1958)—

"Article (8)—No property of any foreign investor shall be expropriated except in the public interest and in the cases and manner determined by the Expropriation Law and provided such investor is awarded compensation according to the provisions of the said Law."

MADAGASCAR

Constitution (15 October 1962; U.N. Report on Investment Laws, at 47)—provides that property, both domestic and foreign, is protected and cannot be taken over except in case of "public necessity" and against "just indemnity".

Treaty—with Germany, signed 21 September 1962, now in force:

"Article 3 . . .

"(2) . . . just compensation . . . must correspond to the value of the investment subjected to expropriation."

Treaty—with Switzerland, in force 31 March, 1966.

Expropriation Ordinance (No. 62-023 of 19 September 1962)—

"Article One.—The present ordinance regulates the conditions of expropriation for public utility . . .

"Art. 28.—Compensation for expropriation is established by taking into account in each case

"1. the value of the immovable at the date of the decree declaring the public utility . . .

Expropriation on the ground of public utility must compensate in a just manner those who have been expropriated; but in each case it cannot allow enrichment without cause of interested persons who have not established direct participation in the evaluation of the property."

Guaranties—Agreement with the United States in force July 26, 1963 (TIAS 5407). Apparently no expropriation guaranties have yet been issued.

MALAWI

Constitution (in effect 6th July 1964, The Malawi Independence Order 1964, H.M.G. Stat. Instr. 1964 No. 916)—

"16.—(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

"(a) the taking of possession or acquisition is necessary or expedient—

"(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

"(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community and

"(b) provision is made by a law applicable to that taking of possession or acquisition—

"(i) for the prompt payment of adequate compensation; and

"(ii) securing to any person having an interest in or right over the property a right of access

to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation."

MALAYSIA

Constitution of the Federation of Malaya (in force 31st August 1957; L. A. Sheridan, *The Federation of Malaya Constitution*, 1961)—

"13. (1) No person shall be deprived of property save in accordance with law.

"(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation."

Treaty—with Germany in force 6 July 1963:

"Article 4(1) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for a public purpose, nor shall they be expropriated without prompt, adequate and effective compensation which shall be freely transferable between the territories of the two Contracting Parties. The legality of any such expropriation and the quantum of compensation shall be subject to review by due process of law in the territory of the Contracting Party in which the investment has been expropriated."

Treaty—with Japan, in force 16 August 1960:

"Article IV. Property of nationals and companies of either Party shall not be taken within the territory of the other Party except in accordance with law and in an equitable manner, nor shall it be taken without prompt, adequate and effective compensation."

Guaranties—Agreement with the United States in force April 21, 1959 (TIAS 4214). As at March 31, 1966 guaranties against expropriation risks had been issued in the amount of \$1,598,240.

MALDIVES ISLANDS

(No information has yet been obtained.)

MALI

Economic Cooperation Agreement—with France of 9 March 1962 (1):

"Article 19—French investments resulting from the Mali development Plan will benefit from the advantages and guaranties to convention enterprises accorded by Mali legislation.

"In the event this legislation is modified, acquired rights will in every circumstance be respected."

Guaranties—Agreement with the United States entered into force June 9, 1964 (TIAS 5636). No guaranties appear to have been issued at March 31, 1966.

MALTA

Constitution (in effect 21st September 1964, The Malta Independence Order 1964, H.M.G. Stat. Instr. 1964 No. 1398)—

"19. The State shall encourage private economic enterprise.

"38.—(1) No property of any description shall be compulsorily taken possession of, and no interest

in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition—

“(a) for the payment of adequate compensation;

“(b) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

“(c) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta.”

Treaty—with the Swiss Confederation, in force 23 February 1965:

“Article 5. Protection of Investments.

“In the event that one Contracting Party should expropriate or nationalise the property, rights or interests belonging to nationals, foundations, associations, or companies of the other Contracting Party, or held indirectly by such nationals, foundations, associations, or companies, or should take against such nationals, foundations, associations, or companies any other measures of direct or indirect dispossession, it must provide the payment of effective and adequate compensation, in conformity with international law. The amount of this compensation which must be fixed at the time of expropriation, nationalisation or dispossession shall be provided in transferable currency and paid without unjustified delay to the persons, foundations, associations, or companies which can claim it, whatever may be their place of residence or establishment. However, measures of expropriation, nationalisation or dispossession must not be either discriminatory or contrary to a specific undertaking.”

MAURITANIA

(No significant information has yet been obtained. The law in the EAMA Codes does not appear helpful.)

Guaranties—Agreement with the United States in force July 3, 1964 (TIAS 5727). No guaranties appear to have been issued at March 31, 1966.

MEXICO

Constitution (January 31, 1917, as amended; transl. issued by Pan Am. Union, 1961)—

“Article 27 . . .

“Private property shall not be expropriated except for reasons of public use and subject to payment of indemnity.”

Miscellaneous—The Supreme Court has established:

“For private property to be expropriated two conditions are necessary: first, that it is so required by public utility; second, that compensation be paid.” (Vol. XCVII, Weekly Judicial Bulletin of the Federation, Appendix p. 887, thesis 464.)

Guaranties—No agreement with the United States appears to have been concluded.

MOROCCO

Treaty—with Belgium, dated 28 April, 1965:

“Article Four.—In case one Party should expropriate or nationalise investments, property rights or interests belonging to nationals, physical or legal persons, of the other Contracting Party, it must provide, in conformity with International Law, the payment of effective and adequate compensation. The amount of this compensation, which must be fixed at the time of expropriation or nationalisation, shall be provided without delay to the person entitled to it, and then transferred to the person entitled to it upon proof of his residence abroad. Measures of expropriation or nationalisation must not be either discriminatory or contrary to a specific undertaking.”

Treaty—with the Republic of Germany, signed 31 August, 1961 but not yet in force:

“Article 3 . . .

“(2) Capital investments by nationals and companies of one State, party to the Treaty, may only be expropriated in the sovereign territory of the other State, party to the Treaty, in the common weal, and against compensation. Compensation must be to the amount of the expropriated capital investment, positively realizable and freely transferable, and paid without delay. At the latest, at the time of expropriation adequate provision must be made for fixing and discharging the compensation. The legality of the expropriation, and the amount of the compensation must be open to review before a proper court of law.”

Official Statement—by representative at U.N. General Assembly: (U. N. Gen. Ass. Off. Rec. 17th Sess., 2nd Comm (A/C.2/SR. 856):

“Everyone knew how much importance the Governments of the developing countries attached to natural resources. Those Governments also understood the anxiety expressed by the foreign investors who were seeking safeguards for their rights and interests. Those countries badly needed foreign capital for their development programmes, and that need had led them to give increasingly firm guarantees, with legislative and constitutional support. Those guarantees were based on the principles of international law. In that connexion, his country was bound by international agreements regarding the ownership of industrial undertakings. In addition, Morocco guaranteed the immediate and complete transfer, not only of invested capital, but also of the income, dividends and interest it earned . . .”

Guaranties—Agreement in force March 31, 1961 (TIAS 4728) as amended October 2, 1963 (TIAS 5456). As at March 31, 1966 guaranties against expropriation risks had been issued in the amount of \$3,130,436.

MUSCAT AND OMAN

Treaty—with the United States, in force June 11, 1960 (TIAS 4530):

“Article IV . . . 2. Property of nationals and companies of . . . Party . . . shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such

compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken . . .".

NEPAL

Constitution (10 April 1951; II Peaslee, at 742)—

"12. The State shall endeavor to . . .

"(c) foster respect for international law . . .

"(d) encourage settlement of international disputes by arbitration.

• • • • •

"16. The State shall, subject to such conditions as are necessary for the public good or for the maintenance of public order or the security of the State ensure for the citizens the right—

• • • • •

"(b) to acquire, hold and dispose of property . . .".

Official Statement—by representative at U. N. General Assembly: (U. N. Gen. Ass. Off. Rec. 17th Sess., 2nd Comm (A/C.2/SR. 860):

"His Government believed in mutual co-operation between public and private capital used for the purposes of economic and social development. Nepal had a mixed economy and did not discriminate against foreign capital or enterprise. It accepted the principle of fair compensation in the case of expropriation or nationalization."

Guaranties—Agreement in force May 17, 1960 (TIAS 4477) as amended June 4, 1963 (TIAS 4391). As at March 31, 1966 guaranties against expropriation risks had been issued in the amount of \$50,000.

NICARAGUA

Constitution (November 1, 1950; III Peaslee, at 4)—

"Art. 63

"Property is inviolable. No one may be deprived of his property except . . . for public use or social interest according to law and upon prior payment in case of just compensation . . .".

Expropriation Law (September 17, 1883, as amended July 12, 1909; Statement of the Laws of Nicaragua, Pan Am. Union, 1957)—Prerequisites are (1) a declaration of public use or social interest, (2) a statement that the property is indispensable for the work required, (3) a fair appraisal of the property, (4) payment of the price or indemnity compensation. Procedures are available for resort to the Supreme Court in the event the compensation is considered inadequate, etc.

Treaty—with the United States, in force May 24, 1958 (TIAS 4024):

"Article VI . . .

"4. Property of nationals and companies of either Party shall not be expropriated within the territories of the other Party except for public purposes and reasons of social utility as defined by law, nor shall it be expropriated without prompt and just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of the expropriation for determining and effecting such compensation."

Guaranties—Agreement with the United States in force April 14, 1959 (TIAS 4222). As at June 30, 1966 guaranties had been issued against expropriation risks in the amount of \$5,079,708.

NIGER

Treaty—with Switzerland, in force 17 November 1962:

"Article 7. Protection of Investments.

"In case one Party should expropriate or nationalise the property, rights or interest belonging to nationals, foundations, associations or companies of the other Party or should take against such nationals, foundations, associations or companies any other direct or indirect measures of dispossession, it must provide payment of effective and adequate compensation, in conformity with international law. The amount of this compensation which must be fixed at the time of the expropriation, nationalisation or dispossession, shall be provided in transferable currency and shall be paid without unjustified delay to the person entitled to it, whatever may be his place of residence. However, measures of expropriation, nationalisation or dispossession must not be either discriminatory or contrary to a specific undertaking."

Treaty—with Germany, signed 8 September 1964, now in force.

"Article 3 . . . (2) The investments of nationals or companies of one Contracting Party on the territory of the other . . . cannot be expropriated except for reasons of public utility and against compensation. Compensation must correspond to the value of the investment expropriated, be effectively realizable, freely transferable and be paid without delay . . .".

Guaranties—Agreement with the United States in force April 26, 1962 (TIAS 5187). No guaranties appear to have yet been issued.

NIGERIA

Constitution (1963)—According to Proehl, "Foreign Enterprise in Nigeria" (1965), Section 31 provides for "adequate compensation" in the event of "compulsory acquisition" of property. (see pp. 161, 230)

Policy Statement—The U. N. Report on Investment Laws states, at page 56:

"In an economic policy statement the Government has indicated that there are no plans for nationalizing industry beyond the extent to which public utilities are already nationalized. In the event of nationalization fair compensation, assessed by independent arbitration, would be paid."

Nationalizations—In the three instances of nationalization since independence, agreed compensation has been provided in convertible funds. (Proehl, *op. cit. supra*, 161, 230.)

Guaranties—Agreement with the United States in force December 24, 1962 (TIAS 5237). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$7,323,097.

PAKISTAN

Treaty—with the United States, in force February 12, 1961 (TIAS 4683):

"Article VI . . .

"4. Property of nationals and companies of either Party shall not be taken within the territories

of the other Party, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof."

Treaty—with the Republic of Germany, in force 28 April 1962:

"Article 3 . . .

"(2) Nationals or companies of either Party shall not be subjected to expropriation of their investments in the territory of the other Party except for public benefit against compensation, which shall represent the equivalent of the investments affected. Such compensation shall be actually realizable and freely transferable in the currency of the other Party without undue delay. Adequate provision shall be made at or prior to the time of expropriation for the determination and the grant of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law."

Treaty—with Japan, in force August 20, 1961:

"Article IV . . .

"4. Property of nationals and companies of either Party shall not be taken within the territory of the other Party except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken."

Guaranties—Agreement with the United States, in force May 26, 1955 (TIAS 3269). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$78,960,967.

PANAMA

Constitution (of March 1, 1946; transl. issued by Pan Am. Union, 1956)—

"Article 45. Private property acquired in accordance with the law by natural or juridical persons is guaranteed and may not be disregarded or impaired by subsequent laws . . .

"Article 46. For reason of public benefit and of social interest defined by law, there may be expropriation pursuant to judicial judgment and prior compensation."

Guaranties—Agreement with the United States in force January 23, 1961 (TIAS 4976). As at June 30, 1966 guaranties against expropriation risks had been issued in the amount of \$10,922,008.

PARAGUAY

Constitution (July 10, 1940; III Peaslee, at 114)—

"Art. 21.

"The Constitution guarantees private property . . . No one may be deprived of his property except in virtue of a sentence founded in the law. The ownership of all kinds of property may be transformed juridically by means of expropriation for reasons of social profit defined by the law, which will also determine the manner of indemnification . . .

"Art. 25.

"In no case may . . . confiscation of property be applied for political causes."

Guaranties—Agreement with the United States entered into force May 4, 1956 (TIAS 3558). As at June 30, 1966 guaranties had been issued against expropriation risks in the amount of \$6,912,000.

PERU

Constitution (April 9, 1933; III Peaslee, at 135)—

"Art. 29. Property is inviolable . . . No one may be deprived of his own except for reason of public utility legally proven and after appraised compensation.
• • • • •

"Art. 38. The State may, by virtue of a law, take over or nationalize land, sea, river, lake and serial transport, or other public services in private ownership, after compensation and in conformity with the laws in force."

Forcible Expropriation Law (No. 9125 of 4th June, 1940, as amended)—

"Article 2.—Expropriation shall be effected after the property has been valued and paid for in national currency. The valuation shall be determined by averaging the direct and indirect assessments in respect of the property. The valuers shall take into account the declarations made by the owner for the purposes of assessing property or industrial tax and for the fixing of income tax.
• • • • •

"Article 22.—Should the valuation made by the expert appointed by the owner differ from that of the State Experts, the Judge shall appoint, by ballot, an adjudicating expert. For this purpose, the High Courts of Justice shall draw up a list of not less than four and not more than six experts in the beginning of each law year. The owner shall be entitled to cross only one name off the list before the aforesaid ballot takes place."

Agrarian Reform Law (29 Nov. 1964; amended†)—provides for the expropriation of land required for redistribution. An amendment proposed on 30 September 1965 would spell out details of compensation to be paid partly in cash and partly in government bonds. This property was administered by a department specially created for that purpose. After the war this department was disbanded and such property as had not been sold was returned to its owners.

Miscellaneous—During World War II, the Peruvian Government seized the property of subjects of the Axis powers and their allies.

Treaty—with Japan, in force 18 Dec. 1961:

"Article IV. The property of nationals and companies of either Party shall not be expropriated or used, within the territory of the other Party, except for a purpose of public utility and against just compensation in accordance with the constitutional and legislative provisions of the other Party."

Guaranties—Agreement with the United States, entered into force March 16, 1955 (TIAS 3203). Apparently it is available only for convertibility risks. As at June 30, 1966 no guaranties had been issued in respect of expropriation risks.

PHILIPPINES

Constitution (Feb. 8, 1935, as amended; III Peaslee, at 165)—

"Article III . . .

"Sec. 1. (2) Private property shall not be taken for public use without just compensation."

Treaty—with Germany, signed 3 March 1964, now in force.

Treaty—with Japan, signed 9 December 1960, not yet in force.

Guaranties—Agreement with the United States, in force February 19, 1952 (TIAS 2517). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$10,427,309.

RWANDA

Investment Code (Law of May 4, 1964) (IV Int. Legal Materials 1031, Nov. 1965; EAMA Codes, at 121)—

"Article 18. No legislative or statutory disposition taking effect after the date of the granting of categories A or B to an enterprise shall derogate from the advantages described above . . . The present disposition is valid until 31 December 1980.

.....

"Article 23. The Convention of establishment determines the guarantees and various obligations assumed by the Government of the Republic and by the beneficiary enterprise. These guarantees and privileges may be:

"a) on the part of the Government of the Republic:

.....

"—guarantee of stability of certain juridical, economic, and financial conditions . . ."

Treaty—with Switzerland, provisionally in force.

SAUDI ARABIA

Constitution (Kingdom of Hejaz, Aug. 29, 1926; III Peaslee, at 266)—

"Art. 6. In the Kingdom of the Hejaz, the legal standards shall be always in conformity with the Book of God, the Sunna of the Prophet . . ."

Constitution—guarantees right to property (Hazard, Am. For. Law Ass., 26 Oct. 1965).

SENEGAL

Investment Code (21 March 1962) (U. N. Report on Investment Laws, at 57-59; EAMA Codes, at 127)—

"Art. 29—The contract of establishment shall in particular provide:

.....

"(c) Guaranties provided by the State as regards: "—Legal, economic and financial conditions for the operation of the enterprise . . ."

.....

"Art. 37—The contract of establishment may provide that settlement of disputes concerning the validity, interpretation, or application of the clauses of the contract will be the subject of an arbitration procedure, the terms and conditions of which shall be determined by the contract."

Treaty—with the Republic of Germany, in force 16 January, 1966:

"Article 3 . . . 2) Capital investments of nationals or companies of one Contracting Party on the territory of the other . . . cannot be expropriated except for reasons of public utility and against compensation. Compensation must correspond to the value of the investment expropriated, evaluated at the moment of expropriation, be fixed and paid without unjustified delay; it must be effectively realizable and freely transferable . . ."

Treaty—with the Swiss Confederation, in force 13 August, 1964:

"Article 7—Protection of Investments—

.....

"In case a Party should expropriate or nationalise the property, rights or interests belonging to nationals, foundations, associations or companies of the other Party or should take against such nationals, foundations, associations or companies any other direct or indirect measures of dispossession, it must provide payment of effective and adequate compensation, in conformity with international law. The amount of this compensation which must be fixed at the time of expropriation, nationalisation or dispossession shall be provided in a transferable currency and shall be paid without unjustified delay to the person entitled to it, whatever may be his place of residence. However, measures of expropriation, nationalisation or dispossession must not be either discriminatory or contrary to a specific undertaking."

Guaranties—Agreement with the United States provisionally in force June 12, 1963. As at 31 March, 1966 guaranties against expropriation risks had been issued in the amount of \$753,130.

SIERRA LEONE

Constitution (27 April, 1961; The Sierra Leone (Constitution) Order in Council, 1961; S.I. 1961 No. 741)—

"17.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

"(a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit; and

"(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

"(c) provision is made by a law applicable to that taking of possession or acquisition—

"(i) for the prompt payment of adequate compensation; and

"(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation."

Treaty—with Germany, signed 8th April 1965, but not yet in force:

"Article 3 . . . (2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment expropriated; it shall be actually realizable, freely transferable, and shall be made without delay. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving of such compensation . . .".

Guaranties—Agreement with the United States in force May 19, 1961 (TIAS 4759), as amended December 28, 1962 and November 13, 1963 (TIAS 5470). As at 31 March, 1966 guaranties against expropriation risks had been issued in the amount of \$19,980,000.

SINGAPORE

(no information has yet been obtained)

Guaranties—Agreement with the United States, in force April 21, 1959 (TIAS 4214). As at March 31, 1966 guaranties against expropriation risks had been issued in the amount of \$20,884,000.

SOMALIA

Law on Foreign Investments (Law No. 10 of 18 February, 1960) (EAMA Codes, at 135)—

"Art. 15.—*Guaranties of Foreign Investments*

.....

"The property of enterprises registered in accordance with the present Law is free from every measure of expropriation, nationalisation or other administrative form of compulsory transfer of property, except in case of public utility."

Policy Statement—

"Every possible encouragement is being given to private enterprise by investment in industries which have a reasonable scope for becoming profitable and the establishment of which is in the national interest." (Planning and Co-ordination Committee for Economic and Social Development, July 1963, as quoted in the U. N. Report on Investment Laws, at 61.)

Guaranties—Agreement with the United States, in force January 8, 1964 (TIAS 5512). As at March 31, 1966 guaranties against expropriation risks had been issued in the amount of \$444,640.00.

SUDAN

The Approved Enterprises (Concessions) Act, 1956 (Act No. 8, 11 February, 1956) (U. N. Report on Investment Laws, at 64)—

"... if at any time any property belonging to an approved foreign enterprise is compulsorily acquired by the Sudan Government in furtherance of nationalization, compensation shall be paid for the same and the said compensation shall be remitted out of the Sudan."

Treaty—with the Republic of Germany, signed 7th February 1963, but not yet in force:

"Article 3 . . . (2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be

expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected; it shall be actually realizable, freely transferable, and shall be made without undue delay. Adequate provision shall have been made at or prior to the time of the deprivation for the determination and the giving of such compensation. The amount of compensation shall be subject to review by due process of law."

Guaranties—Agreement with the United States, in force March 17, 1959 (TIAS 4201), amended March 2, 1964 (TIAS 5544). As at March 31, 1966, one guaranty against expropriation risks had been issued in the amount of \$2,250,000.

SYRIAN ARAB REPUBLIC

Constitution (September 5, 1950; III Peaslee, at 364)—

"Art. 21. Property is public and private.

.....

"(3) Private property shall be guaranteed . . .

.....

"(6) Expropriation on grounds of public utility shall be allowed and shall be effected in accordance with a law giving the right to a fair compensation."

Nationalization Decrees—According to the New York Times of January 4, 1965, four decrees were issued nationalizing 22 factories in Damascus, Aleppo, Hama and Homs, establishing 90% State control of 24 enterprises and 75% of 61 other concerns in the same area. These provided for "immediate compensation" for "small stockholders", and severe punishments for "obstructionist attempts of any kind." Compensation was otherwise to be paid within fifteen years at 3 percent interest.

On March 4, 1965, a "Legislative Decree" was issued providing for the nationalization of "All companies for oil and fuel in the Syrian Arab Republic." After listing nine companies, this Decree provided:

"ARTICLE TWO—The net assets of these companies shall be converted into nominal bonds on the State for fifteen years at an annual interest of three percent; these bonds are transferable.

"ARTICLE THREE—

"(a) The net assets of the companies listed in Article One shall be estimated by assessment committees each of which shall be composed of three members.

"(b) The Minister of Industry shall issue a decision, nominating these committees and fixing their duties.

"(c) The committees' decisions containing the assessment results shall be issued within a period not exceeding three months from the date of their appointment and these decisions shall be final without recourse." (IV Int. Legal Materials 456, May 1965)

THAILAND

Constitution (Aug. 3, 1952; III Peaslee, at 386)—

"Section 29. The right of private property is guaranteed by the State. Expropriation of private property by the State is prohibited unless necessary for the purpose of public utility . . . in which case just compensation shall be paid to the owners thereof or to other persons entitled thereto who suffer loss thereby."

Treaty—with the Republic of Germany, in force 10th April 1965:

"Article 3—

• • • • •

"(2) Nationals or companies of either Contracting Party shall not be subjected to expropriation of their investments in the territory of the other Contracting Party except for the public benefit and against just compensation. Such compensation shall be actually realizable, freely transferable, and shall be made without undue delay. Adequate provision shall have been made at or prior to the time of the expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law."

Treaty—with the United States, signed 29th May 1966, not yet in force (V Int. Legal Materials 737, July 1966)—

"Article III—

• • • • •

"2. Property of nationals and companies of either Party, including direct or indirect interests in property, shall receive the most constant protection and security within the territories of the other Party. Such property shall not be taken without due process of law or without payment of just compensation in accordance with the principles of international law."

Guaranties—Agreement with the United States, in force September 1, 1954 (TIAS 3086), amended December 22, 1965 (TIAS 5940). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$13,055,593.

Togo

Code of Investments (Law No. 65-10 of 21 July 1965) (EAMA Codes, at 159)—

"Art. 25—The establishment agreement defines its duration, the undertakings assumed by the enterprise, and the counter-guaranties offered by the Government. The agreement provides an arbitration procedure appropriate for settling every difference arising out of its application.

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"Art. 28—The agreement also fixes the counter-guaranties agreed to by the State. These guaranties are determined in principle from the following list:

"—guaranty of stability of certain legal, economic or financial conditions, concerning in particular the system of transferring funds and the principle of non-discrimination applicable to legislation or to regulation relative to companies . . ."

Treaty—with the Republic of Germany, in force 21st December 1964, provides:

"Article 3—

• • • • •

"(2) Nationals and companies of a Contracting Party cannot be expropriated of their investments on the territory of the other Contracting Party except for reasons of public utility and against compensation. Compensation must correspond to the value of the investment expropriated, be effectively realisable, freely trans-

ferable and paid without delay. The amount of the compensation and the manner in which it is to be paid shall be fixed, at the latest, at the time of expropriation."

Treaty—with the Swiss Confederation, in force 9 August 1966.

Convention of Establishment—with the Republic of France:

"Article 7 Neither of the High Contracting Parties may take against the property, rights and interests held in its territory by natural or juridical persons of the other Party, any arbitrary or discriminatory measures which may prejudice such property, rights or interests and in particular where these result from investments or consist in a direct or indirect participation in the assets of a company or other juridical person.

"Property belonging to the natural and juridical persons of one of the High Contracting Parties in the territory of the other Party may be subjected to expropriation on grounds of public utility or to nationalisation only on condition of the payment of just compensation fixed not later than the time of expropriation.

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"Article 14 Without prejudice to the provisions of the second paragraph of Article 7, each of the High Contracting Parties shall respect the rights acquired in its territory by the natural and juridical persons nationals of the other Party."

Guaranties—Agreement with the United States, in force March 20, 1962 (TIAS 4983). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$20,162,000.

TRINIDAD AND TOBAGO

Constitution (24th August 1962, the Trinidad and Tobago (Constitution) Order in Council 1962)—

"Chapter I . . . 1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

"(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;"

Land Acquisition Ordinance (An Ordinance to Authorise the Acquisition of Land for Public Purposes, No. 40-1947, 27th November 1947)—

"10. (1) Compensation shall be payable in respect of the compulsory acquisition of any land in accordance with the provisions of this Ordinance.

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"11. . . . rules for determination of compensation for land . . ."

Town and Regional Planning (Ch. 37, No. 3-1940)—

"29. . . . any person (a) whose property is injuriously affected . . . shall . . . be entitled to recover compensation . . . the amount by which his property is decreased in value . . ."

Guaranties—Agreement with the United States, in force January 15, 1963 (TIAS 5278). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$35,232,171.

TUNISIA

Treaty—with the Swiss Confederation, in force 19 January 1964—

"Art. 3—In case one Party should expropriate or nationalise the property, rights or interests belonging to nationals, foundations, associations or companies of the other Party or should proceed to apply to them any other measure of dispossession, it must provide the payment of adequate and effective compensation, in conformity with international law. The amount of such compensation, which must be fixed at the time of expropriation, nationalisation or dispossession, shall be paid without unjustified delay to the person entitled to it. The amount of this compensation shall be transferred within a reasonable time. However, measures of expropriation, nationalisation or dispossession must not be either discriminatory or contrary to a specific undertaking."

Treaty—with the Netherlands, signed 23 May 1963, now in force, provides for the payment of compensation in terms similar to those set out in the Swiss treaty noted above.

Treaty—with the Republic of Germany, in force 6th February 1966—

"Article 3 . . . (2) Nationals or companies of one Contracting Party cannot be expropriated of their investments on the territory of the other Contracting Party except for reasons of public utility and against compensation. The compensation must correspond to the value of the investment expropriated, be effectively realisable, freely transferable and paid without delay . . ."

Guaranties—Agreement with the United States, in force March 18, 1959 (TIAS 4224), amended January 22 and March 6, 1963 (TIAS 5329). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$7,474,000.

TURKEY

Constitution (1961; unofficial translation from Official Gazette No. 10816 dated 31 May 1961)—

"Article 13—The rights and freedoms defined in this part, may be limited for foreigners by law in accordance with international law.

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"Article 38—The State and the public Law Corporations have, in the cases essential for the public welfare, the authority to expropriate real estates under private possession wholly or partly, provided that the funds covering their value are paid in advance, or to form administrative easements over them in accordance with the principles and procedures set down by law."

Expropriation Act (31 Aug. 1956)—provides procedures for the determination of "cost value" and for "legal action at the Council of State" and at the Civil Court of first instance where there is disagreement with the valuation.

Treaty—with the Republic of Germany, in force 16 December 1965.

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Guaranties—Agreement with the United States, in force November 15, 1951 (TIAS 2500), amended January 15, 1957 (TIAS 3761) and November 27, 1964 (TIAS 5704). As at 31 March, 1966, guaranties against expropriation risks had been issued in the amount of \$55,138,106.

UGANDA

Constitution (III Int. Legal Materials 1065, Nov. 1964)—

"22. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

"(a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit; and

"(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

"(c) provision is made by a law applicable to that taking of possession or acquisition—

"(i) for the prompt payment of adequate compensation; and

"(ii) securing to any person having an interest in or right over the property a right of access to the High Court of Uganda, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation."

The Foreign Investments (Protection) Act, 1964 (Act 19, 30 July 1964) (III Int. Legal Materials 1062, Nov. 1964)—

"2. (1) No approved enterprise, interest in or right over any property or any undertaking forming part of the enterprise shall be compulsorily taken possession of or acquired save in accordance with the provisions of section 22 of the Constitution.

"(2) Subject to the provisions of the preceding subsection, compensation in respect of the approved proportion of the value of the enterprise specified in the certificate issued under section 1 of this Act, shall be paid within a period not exceeding six months from the date of the taking of possession or acquisition.

"(3) Any person not satisfied with a compulsory acquisition or possession under subsection (1) of this section or the amount of compensation payable thereon, may apply to the High Court for the determination of,

"(a) his interest or right;

"(b) the legality of the taking possession or acquisition . . . ; and

"(c) the amount of the compensation to which he is entitled and the prompt payment of that compensation."

Guaranties—Agreement with the United States, in force May 29, 1965 (TIAS 5818).

UNITED ARAB REPUBLIC

Nationalization Decrees—No. 117 of 1961 nationalizing all banks and insurance companies, and also companies named in an attached list, provided for compensation in the form of negotiable State bonds, bearing interest at 4%, and due in fifteen years.

Agreement with Switzerland (20 June 1964) (III Int. Legal Materials 1125, Nov. 1964)—provides for compensation to be paid by the U.A.R. for Swiss property, rights and interests affected by designated U.A.R. measures. These include Law 117 above. The estimated sum involved is said to be 4,000,000 Egyptian pounds of which 65% is to be paid into a special account for transfer to Switzerland.

Official Statement—In explaining the vote of the United Arab Republic in favor of the Declaration on Permanent Sovereignty over Natural Wealth and Resources in the plenary session of the Seventeenth General Assembly, the representative of that country said on 14 December 1962:

"The resolution points out that the exploration, development and disposition of the natural resources of a country, as well as their nationalization, expropriation or requisitioning, should be in conformity with the rules and conditions freely prescribed to by this country, with appropriate compensation to owners of property. These rights, it may be stressed, are in accordance with international law. It is noteworthy that the United Arab Republic, in exercising its economic sovereignty rights, has lived up to its foreign obligations of compensation. Two important examples, in this respect, are the Suez Canal compensation and the compensation to the United Kingdom nationals, which we have paid in full at a time when we had heavy pressure on our balance of payments as necessitated by our comprehensive development plan.

"Concern has been expressed about the impact of the resolution on the flow of foreign capital. This concern has, we feel, been taken care of in the draft resolution, since compensation of property is an important principle in the resolution."

(A/PV.1194, at 11)

Guaranties—Agreement with the United States, in force June 29, 1963 (TIAS 5383). No guaranties appear to have been issued as at March 31, 1966.

UNITED REPUBLIC OF TANZANIA

Foreign Investments (Protection) Act, 1963 (Law No. 40 of 1963)—

"6.—(1) If, at any time, any approved enterprise or any property belonging thereto is compulsorily acquired by, or at the direction of, the Government in furtherance of the nationalisation or expropriation thereof, or of any industry of which such enterprise forms a part, the full and fair value of such enterprise or property shall be ascertained and the holder of a certificate relating to such enterprise shall be paid a proportion specified in his certificate as the approved proportion.

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"(4) Compensation paid under this section shall be paid in the approved foreign currency and may be transferred out of Tanganyika at the prevailing official rate of exchange."

Treaty—with the Swiss Confederation, in force 16 Sept. 1965.

Treaty—with the Republic of Germany, signed but not yet in force.

"Article 3 . . . (2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment expropriated; it shall be actually realizable, transferable, and shall be made without delay . . ."

Guaranties—Agreement with the United States, in force November 14, 1963 (TIAS 5465). No guaranties appear to have been issued as at March 31, 1966.

UPPER VOLTA

Law No. 14-62-AN (EAMA Codes, at 93)—

"Art. 14.—The settlement of differences arising from the application of the Convention of agreement, particularly in the case of serious breaches involving the cancellation of the agreement and the eventual determination of the compensation due for disregard of its engagements, will be submitted to arbitration in accordance with the following procedure:

"(a)—each of the parties will designate one arbitrator;

"(b)—a third arbitrator will be designated by agreement of the parties or, in default of such designation, by an authority highly qualified who will be designated in the Convention;

"(c)—decision rendered by a majority of the arbitrators, the arbitral award being definitively and immediately subject to execution."

Guaranties—Agreement with the United States, in force June 18, 1965 (TIAS 5847).

URUGUAY

Constitution (October 26, 1951; translation issued by Pan Am. Union, 1959)—

"Art. 32. The right of property is inviolable . . .

"No one may be deprived of his property rights except in case of public necessity or utility established by law, and in such cases the National Treasury shall always pay just compensation in advance.

"Whenever expropriation is ordered for reasons of public necessity or utility, the property owners shall be indemnified for loss or damages they may suffer on account of delay, whether the expropriation is actually carried out or not."

Expropriation Law of March 28, 1912, as amended October 15, 1952—provides for the determination of value and also for appeals to the courts where valuation is not accepted.

Nationalization of Railways—An agreement dated 2nd March, 1948 provided for the payment of £7,150,000 as the price for assets and liabilities of British owned railway companies.

VENEZUELA

Constitution (23 January 1961; transl. issued by Pan Am. Union, 1961)—

"Article 99. The right to own property is guaranteed . . .

• • • • •

"Article 101. The expropriation of any kind of property may be declared only on grounds of public benefit, by final judgment and the payment of fair compensation . . .

"Article 102. Confiscation may not be decreed or executed except in those cases permitted by Article 250. There are excepted from this, with respect to foreigners, those measures accepted by international law."

Guaranties—Agreement with the United States, dated November 26, 1962 (TIAS 5326). As at June 30, 1966 guaranties against expropriation risks had been issued in the amount of \$32,099,033.

Judicial Decisions—The Federal Court of Cassacion on 21st February, 1956, in relation to the valuation of the property of Guayana Mines Ltd., noted that the government had accepted a valuation higher than their own, thus showing their respect for the law, their impartiality and their guaranty with respect to foreign capital investments in Venezuela.

VIETNAM

Investment Law (No. 2-63 of 14 Feb. 1963)—provides:

"Article 12. Investments made within the framework of the present decree-law will not be subject to any nationalization measure for a minimum period

of fifteen years from the date of the decree of approval.

• • • • •

"Article 18. In the case of nationalization provided for in Article 12, the indemnity,

"a) for the part returning to external capital, will be immediately transferable, and

"b) for the part returning to internal capital of foreigners, will be subject to the foreign exchange regulations in effect."

Treaty—with the United States, in force November 30, 1961—

"Article IV—

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"2. Property of nationals and companies of either Party, including direct or indirect interests in property, shall receive the most constant protection and security within the territories of the other Party. Such property shall not be taken except for a public purpose, nor shall it be taken without the payment of just compensation. Such compensation shall be in an effectively realizable form and without unnecessary delay, and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the termination and payment thereof."

Guaranties—Agreement with the United States, in force November 5, 1957 (TIAS 3932), amended August 8, 1963 (TIAS 5419). As at March 31, 1966, guaranties against expropriation risks had been issued in the amount of \$3,618,972.