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PRIVATE INVESTMENT IN THE DEVELOPING COUNTRIES TODAY

Professor Richard M. Buxbaum*

As the first proposition I would ask: What are we talking about when we speak of private investment today in the developing countries? Any answer should compare this flow with two other quantities: United States private investment in the developed countries, and the total public and private capital flow from the United States, not to mention other developed countries, to the developing countries.

The Survey of Current Business annually publishes what may be the most direct indication of actual investment by American firms in various countries—the so-called "Plant and Equipment Expenditures in Direct Foreign Investment." We have an impressive total, there is no doubt about that. The estimate for 1967 is almost $5 billion, and it is low because of the rather heavy effect our efforts at improving our balance of payments position has had thereon. This estimate includes only direct foreign investment in plant and equipment expenditures by private parties. These expenditures have been very high and growing throughout the 1960's. They have grown from $3 billion in 1964 to almost $4 billion in 1965 to $4.8 billion in 1966 and they are going to maintain that level in 1967. The figures would appear encouraging to people concerned with development except, of course, for the identity of the recipients. When you look to see where this money goes, you find, for example, that Europe took well over $2.4 billion of this investment in 1966 and will again in 1967. (Indeed, Great Britain alone takes almost $800 million and Germany takes between $620-650 million each year.) Of the total investment in the manufacturing sector, the entire continent of Africa will receive approximately $58 million in 1967. And, since the Union of South Africa is in Africa, I should mention that it will receive almost half of that amount. The entire East Africa area, including the former Federation, has been listed for each of the last four years as receiving the grand total of $1 million annually. These figures I have mentioned are admittedly only manufacturing figures and do not include expenditures for mining or petroleum, which are a separate matter, but they do, on the other hand, include plowed-back earnings as well as fresh money. Now I quote these figures not to disparage the

amounts entering these areas, but to disabuse us of any notion that
under present terms private investment is a significant factor in the
areas where we think it is most needed. I do not see any possi-
bility of private investment becoming a significant factor under
normal growth rates if the figures quoted are to be the basis of
future growth. One could mention other developing areas where
private investment is necessary but negligible. In Latin America,
for example, annual private investment in the manufacturing sector
has been around $400 million for several years. It must be remem-
bered, of course, that of this amount Argentina, Brazil and Mexico
take, in order, $114, 120 and 140 million. When you add those up it
leaves $20 million for the other Latin American countries. I do not
pretend that Brazil, Mexico, and Argentina have no use for this
private investment, but do suggest that in terms of the relative
scarcity of investment in the manufacturing sector, such a dis-
tribution pattern distorts considerably the picture of American
private investment in Latin America. In any event, that is where
we have been for the first half of the 1960's, the so-called "De-
velopment Decade" of the United Nations.

On the second aspect of the problem, I suggested a comparison
with the total flow of public capital into developing countries.
This comparison will show that private investment is a very small
part of total capital flow. For example, the ratio of private invest-
ment to the total capital flow into India, where for a variety of
reasons you might expect a fairly substantial private manufacturing
inflow from United States sources, is one to ten. There has been
not quite $3 billion from American public sources invested in India
since 1961. Taking the very highest estimate, you might speak of
$280 million flowing into India from American private sources during
that period. But if you look only at manufacturing investment, the
amount is considerably less. It was $36 million in 1964, and has
now reached about $80 million.

For a country the size of India, even $80 million of private in-
vestment is not a significant amount. Yet, if you eliminate our in-
vestment in the Indian steel industry, or in its primary metal in-
dustry, and examine our investment in other manufacturing, the
dollar flow is a very small sum. This proves, it seems to me, a
propostition alluded to this morning. It was said that the success of
the American aid program and multilateral aid programs in countries
like South Korea, Formosa, and Greece is attested to by the fact
that now private investors are willing to enter those countries.
Turn that statement around and it says something equally significant: that private investment follows development rather than being a condition of it. Given the fact that it took almost two decades of massive public inflow into countries like Greece, Turkey and Korea to generate a private flow it seems obvious that we cannot expect private money to be moving into less-developed countries, at least not in significant amounts or within any reasonably short time.

This is, to me, the realistic context of private investment in less-developed countries, and it is not a surprising one. After all, 100 countries of the world today have less than 15 million population. So the question is really, what kind of manufacturing activity (apart from food processing) can American industry be interested in, or even contemplate, in many of these countries in terms of its own expertise and its own standards of production output? The kind of capital intensive industry with which we are all familiar is not particularly suited to those areas which have very low population and paradoxically have a surplus — outside the agricultural sector — of underemployed people. Mexico 15 years ago was far happier with semi-automated textile equipment than it would have been with the fully automated equipment that our textile industry might have introduced. Alternatively, the things that Mexico might require may be things in which our industry no longer invests.

There are other problems about private investment, particularly but not exclusively in the smaller regions, which have not been discussed. The guarantee of a local monopolistic fiefdom, desired by many entrepreneurs, is not necessarily a good thing for the country. Local entrepreneurs who enjoy such privileges and who have grown fat on import substitution provide an example of the harm that can result. Mexico today is suffering somewhat from the promises it made earlier to permit investors to operate the one and only plant for a certain type of product in the country. Countries that are either just beginning import substitution, or, while perhaps a little more advanced, are nevertheless very small, may have to strike similar bargains. I have my doubts about the social benefits of such bargains, even if without the competence to speak to the economic efficiency or inefficiency of the kind of enterprise thus favored. I raise the social concern as a reason for justifying doubt about certain of the impulses to private investment, but in spite of such misgivings I recognize the obvious need for private investment in these countries. It is obvious that public investment, or public
flow from the developed countries, is not yet sufficient. Compared to what we can expect from private investment in the foreseeable future, however, it is much closer to being adequate. Nevertheless, anything we can do to increase industrialization will be helpful to the less-developed countries, and that, of course, includes private investment.

Now, as a lawyer involved in public international law, I would like to ask: Is there a possibility of creating an atmosphere in which government and industry in this country, or in developed countries generally, can use new approaches to expand all investment activity, including – on an entirely new order of magnitude – private investment activity? Perhaps it is not inappropriate here to make what is almost the only reference so far to UNCTAD, and to the efforts of the developing countries to organize themselves and, by a kind of collective bargaining process, get something which so far they have not been able to obtain.

The Trade and Development Conference did not speak only of trade and tariff preferences. The Final Act, and more importantly, the recommendations of the Conference, made a surprising number of useful statements that are relevant to the question of private investment. But, from the standpoint of stating cognizable claims, are the statements practical? I am sure you have been exposed to the notions of the rationalization and justification of demands. At the last meeting of the American Society of International Law, Harold Lasswell spoke of the obligation public international law imposes upon capability: *richesse oblige.* But this obligation should not be met in the kind of sporadic, fortuitous, and arrogant manner we have seen in the past. Capability creates an obligation to be met in a different sense. You heard this morning the quotation from President Kennedy: “If a free society cannot help the many who are poor, it cannot save the few who are rich.” Should we not view that statement as a recognition of a threat, rather than as a response taken from a position of disinterested altruism? It can be related to a question often asked: What motovation will compel us to do more for the developing countries? The inquiry usually refers, of course, to public aid, but I think it also can be related to private investment.

I think fear is a very compelling motivation, probably the most consistent motivating factor that history has produced. I think fear, in the sense of “help the poor or we won’t be saved,” is behind the Lasswell approach and, equally, behind the notions of Mr.
Prebisch when he organized underdeveloped countries in UNCTAD. The real question is, how can we stimulate the rich nations to even greater efforts on behalf of the poor nations, while still recognizing the effect on recognized norms of public international law of political expediency? In this matter it is important that we take seriously whatever muscle the developing countries can put behind the collective bargaining unit they have now created in UNCTAD and with the new development board. Even the political behavioralists recognize that normative statements are a constraint on political action; and I would say it is time that we help expand, and bring to the consciousness of the entire population of the developed world, this group of normative statements now being generated by the developing countries, and that we give these statements not only the cloak, but also the substance of normative legitimacy.

My colleague at Berkeley, Professor Wilkins, who is a former general counsel of AID, asks whether customary public international law norms may not be derived out of developments such as UNCTAD, and whether we may not come to recognize international law prohibitions of such things as for example, political conditions on aid like the Hickenlooper amendment, or denial of aid to countries that have gone through an expropriation adventure. In this connection I would abandon the search for public international law norms such as “expropriation demands prompt, effective, and just compensation.” Such a norm is useless except in a power situation, where it is unnecessary.

In any event, as Mr. Ebb noted, expropriation is not really much of a problem for us. Would we not do better to look instead to what the United States legal system can do to stimulate private investment in new undertakings? UNCTAD recommends that we take as a norm of public international law the proposition that the developed countries should create machinery for accepting from developing countries statements of investment needs, and then remove unnecessary mechanical and substantive conditions that prohibit or restrain private investment where such investment is appropriate. To translate that recommendation into concrete form, why not create a section in the Department of Commerce which would bring information on appropriate areas for manufacturing activity to the attention of American industries looking for potential investment opportunities? To do so is, after all, already a governmental obligation, at least in an abstract sense, despite the United States
vote against the UNCTAD recommendation. Indeed, in a rudimentary way the Department now does this. Why not use tax pressures to encourage investment in technology, or investment to provide manpower support for industrial development abroad? These subjects, it seems to me, are more relevant than discussing rules for expropriation, payment guarantees, or the creation of an agency such as the World Bank has now set up to provide arbitral procedures for disputes on concession agreements. There is much that lawyers and other professionals can do here; and I would like to see this thinking become a part of the common currency of the dialogue about development problems which is now occurring in the United States. This dialogue, plus the muscle that the developing countries collectively may exert, should get us off dead center. I can assure you that right now we are not moving at all.